



**UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE
INTERNATIONAL PROTECTION NEEDS OF ASYLUM-
SEEKERS FROM COLOMBIA**

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

UNHCR *Eligibility Guidelines* are issued by the Office to assist decision-makers, including UNHCR staff, Governments and private practitioners, in assessing the international protection needs of asylum-seekers. They are authoritative legal interpretations of the refugee criteria in respect of specific groups on the basis of objectively assessed social, political, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned. The pertinent international protection needs are analyzed in detail and recommendations made as to how the applications in question should be decided upon in line with the relevant principles and criteria of refugee law as per, notably, the UNHCR Statute, the 1951 Convention and its 1967 Protocol, and relevant regional instruments such as the Cartagena Declaration, the 1969 OAU Convention and the EU Qualification Directive. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues *Eligibility Guidelines* to promote the accurate interpretation and application of the above-mentioned refugee criteria in line with its supervisory responsibility as contained in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination. It is hoped that the positions and guidance contained in the *Guidelines* will be considered carefully by the authorities and the judiciary in reaching decisions on asylum applications. The *Guidelines* are based on rigorous research, factual evidence provided by UNHCR's global network of field offices and information from independent country specialists, researchers and other sources, rigorously reviewed for reliability. The *Guidelines* are posted on UNHCR's Refworld website at <http://www.refworld.org>.

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I. Introduction

These Guidelines contain information on the current situation in Colombia, and groups at risk of persecution or serious harm,¹ and assess the need for international protection in the context of the refugee criteria under the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol,² UNHCR's mandate,³ relevant provisions of the Cartagena Declaration⁴ and complementary/subsidiary forms of protection such as the relevant provisions of the EU Qualification Directive,⁵ and other international and regional instruments.⁶

The armed conflict in Colombia has lasted over four decades and continues to cause significant civilian casualties. While there has been a decrease in violent and criminal acts, the number of Colombians seeking protection, both inside the country and abroad, remains high. The Guidelines are intended for use by UNHCR and State adjudicators in properly deciding on claims lodged by Colombian asylum-seekers. The Guidelines supersede and replace the 2005 UNHCR *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*.⁷

The Guidelines are divided into four Sections including this Introduction (Section I). Section II provides an outline of trends and causes of displacement within and outside Colombia, and highlights the main types of Colombian asylum claims being dealt with by UNHCR and States. Section III provides background information relevant to the main types of asylum claims mentioned in Section II. Section IV outlines the approach being advised by UNHCR as to how claims should be dealt with. It elaborates the relevant country of origin information and the accompanying legal analysis and conclusions for purposes of inclusion and exclusion from refugee status in light of the most common types of claims. Guidance is also provided on assessing the availability of an internal flight or relocation alternative. UNHCR's recommendations on the international protection needs of Colombians under complementary/subsidiary protection regimes in the context of the armed conflict are also provided.

¹ UNHCR derives its mandate to promote the accurate interpretation and application of refugee criteria from its supervisory responsibility contained in paragraph 8 of its Statute (available at <http://www.unhcr.org/refworld/docid/3ae6b3628.html>), as contained in General Assembly Resolution 428 (V) of 14 December 1950, in conjunction with Article 35 of the 1951 Convention (available at <http://www.unhcr.org/refworld/docid/3be01b964.html>) and Article II of its 1967 Protocol (available at <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>).

² UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at <http://www.unhcr.org/refworld/docid/3be01b964.html>; UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

³ UNHCR's mandate comprises, *inter alia*, as found in its Statute, the refugee criteria under the 1951 Convention as well as the broader refugee definition developed through successive General Assembly resolutions and customary international law.

⁴ *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, available at <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>.

⁵ Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 2004/83/EC, 19 May 2004, available at <http://www.unhcr.org/refworld/docid/4157e75e4.html>.

⁶ UNHCR, in the exercise of its supervisory role, has undertaken a number of activities to strengthen the linkages between international refugee law and international human rights law in order to ensure the best possible protection for refugees. UNHCR may thus fulfil a subsidiary function regarding the application of the provisions in human rights treaties that refer either explicitly to refugees or apply to them implicitly. In this respect, UNHCR guidance as it relates to the application of human rights treaties should be afforded due consideration by relevant authorities and should be given substantial weight in determination of asylum, human rights and humanitarian claims. See Volker Türk, *UNHCR's Supervisory Responsibility*, *Revue Québécoise de Droit International*, Vol. 14.1, 2001. See also Recital 15 of the Qualification Directive, which states that consultations with UNHCR "may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention".

⁷ UNHCR, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, 1 March 2005, available at <http://www.unhcr.org/refworld/docid/422c832e4.html>.

II. Trends in Displacement and Main Types of Colombian Asylum Claims

Due to the worsening of the armed conflict and the associated violations of human rights and international humanitarian law (IHL), over 110,000 Colombians were newly displaced in 2009.⁸ The largest displacements were in Bogotá, Antioquia, Valle del Cauca, Magdalena, Nariño, Meta, Cauca and Córdoba.⁹ During 2008, Tolima, Caquetá and Putumayo were also highly affected.¹⁰ Colombians have been mostly fleeing from individual targeting, generalized violence, restrictions on freedom of movement, sexual and gender based violence, and forced recruitment.¹¹

Internal displacement in Colombia is predominantly taking place on an individual basis, although a number of significant mass displacements have occurred.¹² In the period from August to October 2009, seven mass displacements took place, involving more than 7,000 persons, affecting in particular the municipalities of Mosquera, Magüí Payán, El Charco, Iscuandé, Santa Bárbara and Tumaco.¹³ In 2010, significant population displacements have been also reported.¹⁴ While in many cases registered Internally Displaced Persons (IDPs) have been displaced only once, a significant proportion of them have suffered multiple displacements.¹⁵ The increasing trend in internal displacement is for people to move from rural to urban areas.¹⁶ Since March 2009, IDPs fleeing rural areas affected by the conflict have reached the capital in the thousands, with an average arrival rate of fifty families per day.¹⁷ Other big cities such as Barranquilla, Medellín, Cali and Cartagena, have witnessed an increase inflow of displaced persons, many of whom typically end up in overcrowded slum areas.¹⁸

⁸ Acción Social, Subdirección de atención a población desplazada, Registro Único de Población Desplazada, *Índice General de Tabulados de Población Desplazada*, available at <http://www.accionsocial.gov.co/Estadisticas/publicacion%20diciembre%20de%202009.htm> [accessed May 2010]. The UN Secretary-General recently reported to the Security Council the figure of 243,343 newly registered IDPs in 2008, 30 percent of whom were children, see the UN Security Council, *Report of the Secretary-General on children and armed conflict in Colombia*, S/2009/434, 28 August 2009, p. 4, available at <http://www.unhcr.org/refworld/docid/4aae07b20.html>. According to CODHES, *Víctimas Emergentes*, Boletín informativo de la Consultoría para los Derechos Humanos y el Desplazamiento, No. 75, 22 April 2009, p. 2, available at http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=61&Itemid=50, the following departments presented in 2008 the highest increase in the numbers of forcibly displaced compared to 2007: Magdalena (143 percent), Guaviare (132 percent), Córdoba (101 percent), Antioquia (79 percent), Guainía (65 percent), Cesar (42 percent), Valle del Cauca (38 percent), Meta (34 percent), Cauca (33 percent), and Arauca (32 percent).

⁹ CODHES, *Víctimas Emergentes*, p. 4.

¹⁰ Acción Social, Registro Único de Población Desplazada, *Índice General de Tabulados de Población Desplazada*, see above footnote 8.

¹¹ Internal Displacement Monitoring Centre, *Colombia: New displacement continues, response still ineffective*, 3 July 2009, p. 5, available at <http://www.unhcr.org/refworld/docid/4a51adfe2.html>.

¹² See CODHES, *Víctimas Emergentes*, above footnote 8, p. 4, where it is reported that in 2008 there were 82 cases of mass displacements which took place in 19 Colombian departments, with Chocó and Nariño as the most affected areas.

¹³ UN World Food Programme, *WFP Humanitarian Situation Report*, 21 October 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7X4PYU?OpenDocument&RSS20=02-P>.

¹⁴ See OCHA, *Nuevo Desplazamiento en Tierralta, Córdoba*, 25 May 2010, available at <http://www.colombiash.org/site/spip.php?article574>; OCHA, *Departamento del Cauca Desplazamientos en Toribío y Caloto Informe de Situación # 2*, 19 May 2010, available at [http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-85NFNZ-informe_completo.pdf/\\$File/informe_completo.pdf](http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-85NFNZ-informe_completo.pdf/$File/informe_completo.pdf); OCHA, *Humanitarian Bulletin, Issue 18 -19*, 3-16 May 2010, available at [http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VVOS-85NSJP-full_report.pdf/\\$File/full_report.pdf](http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VVOS-85NSJP-full_report.pdf/$File/full_report.pdf); OCHA, *Humanitarian Bulletin, Issue 12- 13*, 15 – 28 March 2010, available at [http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VDUX-843MZU-full_report.pdf/\\$File/full_report.pdf](http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VDUX-843MZU-full_report.pdf/$File/full_report.pdf).

¹⁵ Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *Avances en la construcción de lineamientos de la política de vivienda para la población desplazada*, 30 June 2009, available at <http://www.viva.org.co/lineamientos%20Politica%20de%20Vivienda%20final%2030%20de%20junio.pdf>.

¹⁶ Internal Displacement Monitoring Centre, *Colombia: New displacement continues, response still ineffective*, see footnote 11, p. 25.

¹⁷ Madeline Bair, *Colombian refugees' tent city a reminder of crisis*, Associated Press, 31 July 2009, available at <http://www.google.com/hostednews/ap/article/ALeqM5h1ncSvD11-HDD2y-12fdnskZyV-AD99PTUKG0>. See also Russia Today, *Colombia's forgotten refugees*, 18 June 2009, available at http://www.russiatoday.com/Top_News/2009-08-18/colombias-forgotten-refugee-millions.html.

¹⁸ Departamento Nacional de Planeación, *Política de Desplazamiento en Colombia*, 30 June 2008, available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/A0C374D7B2548DCAC12574D700428039/\\$file/DNP+IDP+Policias+2008.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/A0C374D7B2548DCAC12574D700428039/$file/DNP+IDP+Policias+2008.pdf).

At the end of 2009, a total of 3.3 million persons were estimated by UNHCR to have been forced to flee their homes and seek sanctuary somewhere else in the country, mostly due to the armed conflict.¹⁹ In 2009, Afro-Colombians and indigenous peoples are estimated to have represented between 17 and 30 percent of Colombian IDPs.²⁰

In terms of external displacement, UNHCR reports that at the end of 2008 there were approximately 374,000 Colombian refugees, including persons in refugee-like situations, mainly in Venezuela and Ecuador, but also in other neighboring countries, such as Panama and Costa Rica.²¹ The actual number of Colombians in need of international protection in Venezuela has been estimated to be between 120,000 and 200,000 persons, while in Ecuador, the overall number is estimated at 135,000.²² In Panama, most of the displaced Colombians have been temporarily settling in the southern province of Darién for more than nine years without obtaining a specific status. Their freedom of movement is severely restricted and their precarious situation leaves them at risk of deportation.²³ In Latin America and the Caribbean region, 90 percent of recognized refugees are Colombian.²⁴

III. Background Information and Recent Developments

Colombia has been embroiled in more than forty years of armed conflict between guerrilla groups, mainly, the Fuerzas Armadas Revolucionarias de Colombia (FARC) and the Ejército de Liberación Nacional (ELN), paramilitary forces, mainly the Autodefensas Unidas de Colombia (AUC), and the Colombian army.²⁵ The ongoing conflict has heavily impacted the civilian population.²⁶ Clashes

¹⁹ UNHCR estimates from Official IDP Registration System as of 31 December 2009. However, the figure could reach over 3.9 million IDPs considering that the Government recognises an under-registration rate of 21%, see the *Report of the National Government to the Constitutional Court about advances towards overcoming Unconstitutional State of Things* in Judgment T-025/2004, see Constitutional Court, *Sentencia T-025/04*, 22 January 2004, available at <http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm>. On statistics for IDPs, see also UNHCR, *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 16 June 2009, in particular Table 2, updated 10 June 2009, available at http://www.unhcr.org/statistics/08-TPOC-TB_v5_external_PW.zip, and Amnesty International Canada, *Colombia: Millions of people forced from their homes*, 16 July 2009, available at http://www.amnesty.ca/take_action/actions/colombia_millions_forced_from_their_homes.php.

²⁰ For the first figure, see Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *Garantizar la Observancia de los Derechos de la Población Desplazada*, 30 April 2009, p. 71, available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/73C67C3F2B667C88C12575E00041A054/\\$file/VOL_2_DH.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/73C67C3F2B667C88C12575E00041A054/$file/VOL_2_DH.pdf); for the second figure, see Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2009 - Colombia*, 16 July 2009, available at <http://www.unhcr.org/refworld/docid/4a66d9ba2a.html>.

²¹ UNHCR, *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 16 June 2009, p. 10, available at <http://www.unhcr.org/4a375c426.html>. Other sources report that an additional 500,000 have reportedly fled to neighboring countries, see Amnesty International, *Everything Left Behind: Internal Displacement in Colombia*, 16 July 2009, AMR 23/015/2009, available at <http://www.amnesty.org/en/libary/info/AMR23/015/2009/en>.

²² Refugees International, *Colombia: Crisis Bubbling Over*, 7 July 2009, available at <http://refintl.org/sites/default/files/070709%20colombia%201.pdf>. In 2008, the Ecuadorian Government has started, with the technical assistance of UNHCR, a large scale registration process that will progressively put an end to the limbo situation of undocumented displaced Colombians in Ecuador. More than 11,000 refugees were registered in Esmeraldas Province in western Ecuador between March and June. See UNHCR, *Ecuador's northern border: Refugee documentation comes to the jungle*, 17 August 2009, available at <http://www.unhcr.org/4a8975ea6.html>. See also UN News Service, *Colombian refugees begin registering in Ecuador under UN-backed project*, 27 March 2009, available at: <http://www.unhcr.org/refworld/docid/49fab9db1e.html>. See more recently, UN News Service, *UN mobile teams register 26,000 Colombian refugees in northern Ecuador*, 6 April 2010, available at <http://www.unhcr.org/refworld/docid/4bc2cd158.html>.

²³ Jesuit Refugee Service, *Panama: the fragility of refugee rights*, 25 June 2009, available at <http://www.jrs.net/reports/index.php?lang=en&sid=4619>.

²⁴ UNHCR, *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 16 June 2009, p. 18, available at <http://www.unhcr.org/4a375c426.html>.

²⁵ Please note that throughout the paper the following distinction between armed actors will be made: the term *guerrilla* shall refer to the members of small independent left-wing groups fighting against the Government and its regular armed forces or against the right-wing paramilitaries; the term *paramilitary* shall refer to the members of right-wing illegal armed organizations that operate on similar lines to a military force; the term *security* or *regular armed forces* shall

routinely involve organized criminal gangs and narco-traffickers, who, allegedly, have links to guerrilla and paramilitary groups.²⁷ All actors to the conflict are reported to perpetrate serious violations of human rights law and of IHL, the main causes of displacement within the country.²⁸

Following decades of intense fighting, a negotiated peace process with the FARC took place between 1998 and 2002. The negotiations eventually broke down in February 2002 and the conflict resumed, creating large population displacement.²⁹ Since 2003, President Alvaro Uribe committed to defeat the guerrillas pursuant to the 'Democratic Security and Defence Policy'.³⁰ The current military efforts, such as the killing of FARC's chief commanders and the dismantling of its military structure, have significantly weakened the FARC.³¹ The ELN also initiated negotiations with the Government in early 2004, but has not reached an agreement and reportedly continues committing serious violations of IHL, including threats, murders and kidnappings.³²

The Colombian Government reports that in 2009, almost 2,700 guerrilla members were demobilized.³³ Moreover, the Government had put in place a process of negotiation with, and demobilization of, paramilitary structures in Colombia,³⁴ notably through the adoption of the 'Justice

refer to the Governmental police or armed forces; finally the term *armed groups* generically refers to all actors to the conflict, while the term *illegal armed groups* is used to describe old and new paramilitary organizations.

²⁶ International Committee of the Red Cross (ICRC), *Colombia: plight of conflict victims mostly unreported*, 26 April 2010, available at <http://reliefweb.int/rw/rwb.nsf/db900SID/FBUO-84VCHG?OpenDocument&rc=2&cc=col>; Human Rights Watch, *World Report 2010 - Colombia*, 20 January 2010, available at <http://www.unhcr.org/refworld/docid/4b586cf72.html>; UN Security Council, *Report of the Secretary-General on children and armed conflict in Colombia*, see footnote 8, pp. 3-4; Amnesty International, "¡Déjennos en paz!" *La población civil, víctima del conflicto armado interno de Colombia*, October 2008, available at <http://www.acnur.org/biblioteca/pdf/6736.pdf>.

²⁷ UN News Service, *Struggle for survival: Colombia's indigenous people face threat of extinction*, available at <http://www.un.org/en/events/tenstories/08/colombia.shtml>.

²⁸ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, 4 March 2010, A/HRC/13/72, available at <http://www.unhcr.org/refworld/doc/id/4bc5838d2.html>. See also Freedom House, *Freedom in the World 2009 - Colombia*, 16 July 2009, available at <http://www.unhcr.org/refworld/docid/4a6452c4c.html>; US Department of State, *2009 Country Reports on Human Rights Practices - Colombia*, 11 March 2010, available at <http://www.unhcr.org/refworld/docid/4b9e5305c.html>; the Inter-American Commission on Human Rights, *2007 CIDH Report, Chapter IV, Colombia*, OEA/Ser.L/V/II.130, 29 December 2007, available at <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>.

²⁹ See for example, UNHCR, *UNHCR preparing for possible large-scale displacement in Colombia*, 26 February 2002, available at <http://www.unhcr.org/3c7bb1f44.html>; UNHCR, *Colombia: thousands fleeing in border regions*, 26 April 2002, available at <http://www.unhcr.org/3cc93c3210.html>; Colombian Commission of Jurists, *Colombia 2002-2006: Situation of human rights and humanitarian law*, January 2007, available at http://www.coljuristas.org/documentos_pag/CCJ%20Ingles.pdf.

³⁰ The Democratic Security and Defence Policy launched by President Uribe in 2003 aims at establishing and reinstating the rule of law in Colombia and protecting its population. The policy's objective is to weaken illegal narco-terrorist groups through a variety of political, economic and military means and force a negotiated settlement that will end the conflict and bring peace. See Colombia Ministry of Defence, *Democratic Security and Defence Policy*, 2003, available at <http://alpha.mindefensa.gov.co/descargas/Documentos/Home/Seguridad%20Democratica.pdf>; see also International Crisis Group, *Colombia: President Uribe's democratic security policy*, 13 November 2003, available at <http://www.unhcr.org/refworld/docid/3fd037a54.htm>.

³¹ See for example, Colombia Reports, *18 die in clashes with FARC*, 17 October 2009, available at <http://colombiareports.com/colombia-news/news/6434-18-die-in-clashes-with-farc.html>; Colombia Reports, *13 die in fights with FARC*, 30 May 2009, available at <http://colombiareports.com/colombia-news/news/4290-13-die-in-fights-with-farc.html>; Colombia Reports, *Army captures prominent FARC guerrilla*, 17 October 2009, available at <http://colombiareports.com/colombia-news/news/4187-army-captures-farc-guerrilla.html>; see also International Crisis Group, *Ending Colombia's FARC Conflict: Dealing the Right Card*, Latin America Report N°30, 26 March 2009, pp. 22-24, available at <http://www.unhcr.org/refworld/docid/49cb91582.html>.

³² Amnesty International, *Amnesty International Report 2009 - Colombia*, May 2009, available at: <http://www.unhcr.org/refworld/docid/4a1fadf537.html>; see also International Crisis Group, *Colombia: Moving Forward with the ELN?*, Latin American Briefing, No.16, 11 October 2007, available at <http://www.crisisgroup.org/home/index.cfm?id=5115&l=1>.

³³ Colombian Government, *In 2009, 2.638 guerrilla members demobilized*, 4 January 2010, available at http://web.presidencia.gov.co/english/2010/enero/04012010_eng.html [accessed January 2010].

³⁴ The process of demobilization of the paramilitary structures in Colombia rests upon two separate but complementary legal frameworks. The first one, made up by Law 48 of 1997, Law 782 of 2002 and Law 1106 of 2006 as well as Decrees 128 of 2003, 3360 of 2003 and 2767 of 2004, is described as the general demobilization configuration, while the second legal framework, Law 975 of 2005 – the so-called Justice and Peace Law – and its regulatory decrees 4760

and Peace Law', a legal process that applies reduced sentences to those who accept responsibility for actions undertaken while they were part of illegal armed groups and who report the human rights violations they have committed.³⁵ As a result of the demobilization process undertaken by the Colombian Government between 2003 and 2006, an estimated 25,000³⁶ to 32,000³⁷ members of the paramilitary groups have agreed to collective demobilization. Nevertheless, the demobilization process has been the subject of criticism regarding its success and effectiveness,³⁸ and many of the former combatants have reportedly reorganized into new factions and resumed the fighting.³⁹ Moreover, the recent scandal commonly known as 'Parapolitics' (*Parapolítica*), has highlighted the connections between some members of Parliament and the paramilitary groups, resulting in several indictments and convictions.⁴⁰

Armed groups reportedly continue to forcibly displace civilians as a strategy for gaining and/or strengthening territorial control, weakening civilian support for rival groups, seizing land and property, and further enabling drug production and trafficking in order to finance their operations.⁴¹

In 2008 and 2009 hundreds of thousands of people continued to be affected by the ongoing armed conflict, most of them civilians.⁴² In addition to the armed conflict, an internal 'drug war' between the Government and the narco-traffickers, who control one of the largest drug markets in the world,

of 2005, 2898 of 2006, 3391 of 2006, 4417 of 2007, 315 of 2007 and 423 of 2007, focuses on creating a system for individual demobilization.

³⁵ Reduced sentences under the Justice and Peace Law are not available for crimes where amnesty is not applicable as specified under Law 975, namely homicide, enforced disappearance, torture, massacres, forced displacement, genocide, kidnapping and all those crimes considered as atrocious or against humanity and international humanitarian law. For further details, see International Federation for Human Rights, *Colombia: Paramilitary Demobilization in Colombia: On the road to the International Criminal Court*, 4 October 2007, available (in Spanish) at <http://www.fidh.org/IMG/pdf/Colombiejustice481-32007.pdf>.

³⁶ Amnesty International USA, *Colombia Human Rights*, available at <http://www.amnestyusa.org/all-countries/colombia/page.do?id=1011135> [accessed March 2010].

³⁷ See La Semana, *Justice and Peace Law...four years later*, 27 July 2009, available at <http://www.semana.com/noticias-internacional/justice-and-peace-lawfour-years-later/126742.aspx>; see also National Committee for Compensation and Reconciliation, *Disidentes, rearmados y emergentes: bandas criminales o tercera generación de paramilitarismo*, 22 July 2007, p. 20, available at http://www.cnrr.org.co/new/interior_otros/informe_1_DDR_Cnrr.pdf, based upon information provided by the National Defense Ministry.

³⁸ Amnesty International, *Colombia: New law strengthens impunity for human rights abusers*, 22 June 2009, available at <http://www.amnesty.org/en/library/asset/AMR23/017/2009/en/23c919fe-f3a0-466d-b5c5-d79f483267cb/amr230172009en.pdf>; Sergio Jaramillo, Yanet Giha and Paula Torres, *Disarmament, Demobilization, and Reintegration Amidst the Conflict: The Case of Colombia*, International Centre for Transitional Justice, June 2009, available at http://www.ictj.org/static/Publications/Giha_Torres_Jaramillo_DDR_Colombia_FullCaseStudy_FCS_2009.pdf; José Alvear Restrepo, *Evaluation of the paramilitary demobilization process in Colombia*, ColPaz, 16 June 2009, available at http://www.educweb.org/colpaz/info-refanalisis/English/Referencia/info_ddhh_cajar.html.

³⁹ According to the Colombian police, the major new groups are the Urabeños, the Rastrojos, ERPAC, the Paisas, the Machos, New Generation, the group from the Magdalena Medio, and Renacer, to which Human Rights Watch adds the Black Eagles in Nariño, see Human Rights Watch, *Paramilitaries' Heirs: The New Face of Violence in Colombia*, 3 February 2010, p. 4, available at <http://www.unhcr.org/refworld/docid/4b6ae3572.html>. On the new paramilitary groups see also International Crisis Group, *Colombia's New Armed Groups*, 10 May 2007, Latin America Report N°20, available at <http://www.unhcr.org/refworld/docid/46481fc02.html>; Colombia Report, *Members of new paramilitary organization arrested*, 21 September 2009, available at <http://colombiareports.com/colombia-news/news/6012-members-of-new-paramilitary-organization-arrested.html>. See also Colombia Report, *They're back: The alarming return of Colombian paramilitarism*, 30 October 2009, available at <http://colombiareports.com/opinion/the-colombiamerican/6654-theyre-back-the-alarming-return-of-colombian-paramilitarism.html>.

⁴⁰ Amnesty International, *Amnesty International Report 2009 - Colombia*, see footnote 32. A list of the parliamentarians convicted, indicted or under investigation could be found in Café Stero Radio Bolivariana, *Los amigos de Uribe de la Parapolítica en Colombia*, 5 August 2009 available at http://www.ajpl.nu/radio/index.php?option=com_content&view=article&id=1026:-los-amigos-de-uribe-de-la-parapolitica-en-colombia&catid=42:nacional&Itemid=160. See also Diario Colombia, *Procuraduría colombiana enfrenta a Corte Suprema por "parapolítica"*, 19 September 2009, available at http://www.diariocolombia.es/n891884_Procuraduria_colombiana_enfrenta_a_Corte_Suprema_por_parapolitica.html; El País, *La 'parapolítica' ensucia Colombia*, 1 June 2008, available at <http://www.elpais.com/articulo/internacional/parapolitica/ensucia/Colombia/elpepuint/20080601elpepuint/1/Tes>; and The Guardian, *Colombia's 'parapolitics' scandal casts shadow over president*, 23 April 2008, available at <http://www.guardian.co.uk/world/2008/apr/23/colombia>.

⁴¹ Ana María Ibanez, *Forced displacement in Colombia: magnitude and causes*, Economists for Peace and Security, Vol. 4, No. 1, January 2009.

⁴² Amnesty International, *Amnesty International Report 2009 - Colombia*, see footnote 32.

intersects with the countrywide armed conflict, exacerbating violence and forced displacement of the civilian population.⁴³

While the general human rights situation of forcibly displaced Colombians has marginally improved in recent years, social inequalities, ethnic discrimination,⁴⁴ corruption,⁴⁵ impunity⁴⁶ and restricted access to courts continue to deprive displaced persons of the exercise of their fundamental human rights.⁴⁷

IV. Eligibility for International Protection

A. General Approach

In view of the serious and widespread violations of human rights, the ongoing armed conflict, and the repeated violations of IHL in Colombia, UNHCR considers that many Colombian asylum-seekers are in need of international protection. In relation to countries which are signatories to the 1951 Convention and/or its 1967 Protocol, Colombian asylum-seekers may qualify, depending on the circumstances surrounding their flight, as refugees within the meaning of Article 1A(2) of the 1951 Convention.

Due to reported violations of IHL and human rights law by various actors in Colombia, some of the claims lodged by Colombian asylum-seekers may give rise to concerns regarding possible exclusion from refugee status. Where relevant, grounds for exclusion from recognition and protection as a refugee should be assessed based on the exclusion clauses set out in Article 1F of the 1951 Convention. Group-based protection approaches need to include appropriate screening mechanisms to identify potentially excludable claims.

Colombians whose claims do not meet the refugee criteria under Article 1A(2) of the 1951 Convention may be granted international protection, due to the situation of generalized violence in some areas in Colombia, under the so-called extended refugee definition applied by UNHCR and the broader refugee criteria contained in the Cartagena Declaration. Where the Cartagena Declaration has not been implemented in national law, a complementary/subsidiary form of protection may be granted, in the appropriate circumstances, under relevant national and regional legal frameworks. The widespread disregard for their obligations under IHL by all parties to the conflict and the reported scale of human rights violations underpin grounds to believe that any person returned to conflict areas of Colombia could, solely on account of his/her presence in those areas, face a real risk of serious harm.

UNHCR considers that an internal flight or relocation alternative (IFA/IRA) is generally not available in Colombia. Nevertheless, an IFA/IRA may be available in certain circumstances and in accordance with the framework of the relevance and reasonableness test and the guidance provided in these Guidelines.

⁴³ See International Centre for Transitional Justice, *An Overview of Conflict in Colombia*, available at <http://www.ictj.org/static/2009/english/factsheets/columbia.html> [accessed March 2010].

⁴⁴ US Department of State, *2009 Country Reports on Human Rights Practices - Colombia*, see footnote 28.

⁴⁵ Colombia Reports, *Corruption: Colombia's biggest problem is only getting worse*, 29 September 2009, available at <http://colombiareports.com/opinion/111-colombiamerican/5976-corruption-colombias-biggest-problem-is-only-getting-worse.html>; Transparency International, *Global Corruption Barometer 2009*, September 2009, available at <http://www.transparency.org/publications/publications/gcb2009>.

⁴⁶ Amnesty International, *Amnesty International Report 2009 - Colombia*, see footnote 32; UK Foreign and Commonwealth Office, *Annual Report on Human Rights 2008 - Colombia*, 26 March 2009, available at: <http://www.unhcr.org/refworld/docid/49ce361747.html>; US Department of State, *2009 Country Reports on Human Rights Practices - Colombia*, see footnote 28; Human Rights Watch, *World Report 2009 - Colombia*, 14 January 2009, available at <http://www.unhcr.org/refworld/docid/49705fa64e.html>.

⁴⁷ See Constitutional Court of Colombia, *Judgment T-600/09*, 28 August 2009, available at <http://www.corteconstitucional.gov.co/relatoria/2009/T-600-09.htm>. See also UN News, *Colombia reporta violaciones de derechos humanos por partes de conflicto armado*, 25 March 2009, available at <http://www.un.org/spanish/News/fullstorynews.asp?newsID=15131&criteria1=Colombia&criteria2=ConsejoDH>.

Individuals already recognized as refugees, whether on a group-based protection approach or following individual status determination procedures, should retain this status. The refugee status of such persons should be reviewed only if there are indications in an individual case that there are grounds for cancellation of refugee status which was wrongly granted in the first instance; revocation of refugee status on the grounds of Article 1F of the 1951 Convention; or cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention.

B. Main Groups at Risk

All claims by asylum-seekers from Colombia should be considered on the basis of their individual merits according to fair and efficient refugee status determination procedures. Some of the claims lodged by asylum-seekers from Colombia may give rise to possible exclusion from refugee status. UNHCR considers that groups set out in this section face a particular risk of persecution or serious harm in Colombia, including through cumulative discriminatory acts. This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing.

1. Present and Former Members and Supporters of one of the Parties to the Conflict

In the context of the extremely polarized political situation in Colombia, there is a risk that armed groups may target anyone considered to be a supporter of a rival group, irrespective of whether the collaboration is real or imputed, forced or voluntary.⁴⁸ In areas controlled by armed groups, civilians are reportedly forced to support the ruling faction in order to avoid ill-treatment or even death.⁴⁹

In 2009, the Colombian army reportedly summarily executed suspected FARC guerrillas and captured others in raids and clashes in Central and Southeast Colombia.⁵⁰ Further reports indicate that members of the Government security forces are alleged to have perpetrated extrajudicial killings of hundreds of civilians, mostly peasants, who they claim to be “guerrillas killed in combat”.⁵¹ This phenomenon is commonly addressed under the label of “false positives”, which implies the killings involve innocent victims who are lured under false pretences to remote locations, killed, then photographed wearing guerrilla uniforms and holding a gun or grenade so as to appear as legitimate combat casualties.⁵² Security forces are then allegedly commended and rewarded for their efforts in fighting the guerrillas.⁵³ However, in an effort to curb such crimes, the Colombian Government has acknowledged that security forces were responsible for extrajudicial executions and has taken action against both the perpetrators and the head of the military.⁵⁴ Members of the paramilitary who have refused to demobilize and members of new illegal armed groups reportedly continue to kill civilians and to commit other human rights violations, sometimes with the alleged support or acquiescence of the

⁴⁸ UN General Assembly, *Human Rights Council, Fourth Session, United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/4/48, 5 March 2007, paras. 34 and ff., available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/114/10/PDF/G0711410.pdf?OpenElement>.

⁴⁹ Amnesty International, *Colombia: Thousands of civilians punished for not participating in conflict*, 24 February 2009, available at <http://www.amnesty.org/en/for-media/press-releases/colombia-thousands-civilians-punished-not-participating-conflict-2009022>.

⁵⁰ Radio Mundial, *Ejército colombiano informa que mató a 13 presuntos miembros de FARC*, 16 March 2009, available at <http://www.radiomundial.com.ve/yvke/noticia.php?21507>.

⁵¹ Amnesty International, *Colombia protests against unlawful killings by security forces*, 6 March 2009, available at <http://www.unhcr.org/refworld/docid/49b4d2192.html>. It is reported that at least 296 people were extrajudicially executed by the security forces in the 12-month period ending in June 2008, a figure slightly higher than the previous year.

⁵² More than 1,200 extrajudicial killings have been reported; see Colombia Reports, *Families of ‘false positive’ victims denounce delays*, 8 October 2009, available at <http://colombiareports.com/colombia-news/news/6313-families-of-false-positive-victims-denounce-delays.html>; see also Colombia Reports, *False positives cases to be tried by ordinary courts*, 14 October 2009, available at <http://colombiareports.com/colombia-news/news/6387-false-positives-cases-to-be-tried-by-ordinary-courts.html>; UN News Service, *UN expert voices concern over murders committed by Colombian security forces*, 18 June 2009, available at <http://www.unhcr.org/refworld/docid/4a572bbd1e.html>.

⁵³ International Crisis Group, *The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia*, 25 May 2009, p. 8, Latin America Briefing N°21, available at <http://www.unhcr.org/refworld/docid/4a1ba2a72.html>.

⁵⁴ Amnesty International, *Amnesty International Report 2009 - Colombia*, see footnote 32. It is reported that in October 2008, 27 army officers, including three generals, were dismissed, and in November the head of the army, General Mario Montoya, who had been linked to human rights violations, was forced to resign.

security forces.⁵⁵ Furthermore, demobilized elements and former combatants have reportedly been the victims of intimidation and murder by newly formed illegal armed groups and drug trafficking organizations, especially in the regions of Antioquia, Córdoba, Cesar and in the capital city of Bogotá.⁵⁶

According to some reports, coordinated deadly attacks⁵⁷ and kidnappings⁵⁸ of Colombian policemen and security forces interfering with the illegal activities of various armed groups, including against members of their families,⁵⁹ took place. The Colombian Government has reported that the FARC and ELN have continued to recruit children, commit rape, place anti-personnel explosive devices, and take hostages and hold them in captivity in inhumane conditions for long periods.⁶⁰

As a result of the dependence on narcotics production and trafficking, guerrilla and paramilitary groups reportedly seek to control populations living in coca production areas in order to guarantee a ready supply of labour for harvesting coca crops.⁶¹ In the territory under control of the FARC (Antioquia, Caquetá, Putumayo, Meta, Guaviare, Bolívar, Norte de Santander, Valle, Cauca y Nariño), coca cultivation accounts for 58 percent of the total Colombian production.⁶² Persons who harvest illegal crops (the so-called “*raspachines*”)⁶³ in areas controlled by guerrillas or paramilitaries may become targets of rival groups.⁶⁴ It should be noted that these workers are at the bottom of the drug production chain and many are forced by armed groups to harvest the crops.⁶⁵

Despite the Government’s effort to demobilize or arrest many of the country’s top narco-traffickers in recent years, especially from the North Valle Cartel, the emergent illegal armed groups have tightened their relationships with drug dealers in an effort to fill the power void left by demobilized groups, and maintain social and economic control policies that are very similar to those used by the former paramilitary organizations.⁶⁶

⁵⁵ UN Committee Against Torture, *Concluding observations of the Committee against Torture : Colombia*, 4 May 2010, CAT/C/COL/CO/4, available at <http://www.unhcr.org/refworld/docid/4bfcef362.html>. See also Amnesty International, *Amnesty International Report 2009 - Colombia*, above footnote 32.

⁵⁶ Colombia Report, *Demobilized paramilitaries rearm or are murdered*, 25 September 2009, available at <http://colombiareports.com/colombia-news/news/6106-demobilized-paramilitaries-rearm-or-are-murdered.html>.

⁵⁷ *Aparente ataque conjunto de las FARC y el ELN deja 3 policías muertos y 7 heridos en Colombia*, Radio Mundial, 24 March 2009, available at <http://www.radiomundial.com.ve/yvke/noticia.php?21890>.

⁵⁸ *Colombia releases new videos of 10 FARC hostages*, Associated Press, 7 September 2009, available at <http://www.google.com/hostednews/ap/article/ALeqM5jztnICTLyIXneMEuagueuaE15DtOwD9AIOAPO0>.

⁵⁹ UN General Assembly, Human Rights Council, Seventh session, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary-General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/7/39, 29 February 2008, available at <http://www.unhcr.org/refworld/docid/47d55e462.html>.

⁶⁰ Human Rights Council, Working Group on the Universal Periodic Review, Third session, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1*, A/HRC/WG.6/3/COL/1, 19 September 2008, available at <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CCOSession3.aspx>.

⁶¹ Vanda Felbab-Brown, *Narco-belligerents Across the Globe: Lessons from Colombia for Afghanistan?*, Real Instituto Elcano, 28 October 2009, available at http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/Elcano_in/Zonas_in/DT55-2009.

⁶² *Los nuevos capos*, Cambio, 17 September 2009, available at http://www.cambio.com.co/paiscambio/846/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-6120913.html; see also the map with the locations, names and structures of the new drug cartels Cambio, *Los nuevos carteles de la droga*, 17 September 2009, available at <http://e.eltiempo.com/media/produccion/cambio/mapaNarcotrafico.pdf>.

⁶³ See UN Security Council, *Report of the Secretary-General on children and armed conflict in Colombia*, see footnote 8, p. 2, para. 4. See also La Semana, *De raspachines a guerrilleros: así reclutan menores en el Catatumbo*, 20 May 2008, available at http://www.semana.com/wf_InfoArticulo.aspx?idArt=111990; El Tiempo, *La Muerte De Los Raspachines*, 21 June 2004, available at <http://www.eltiempo.com/archivo/documento/MAM-1509983#>; International Committee for the Red Cross, *Raspachines: Desaparecidos en vida*, 27 February 2003, available at <http://www.icrc.org/web/spa/sitespa0.nsf/htmlall/5TECQD>.

⁶⁴ For example, in June 2004 the FARC murdered 34 “*raspachines*” in the Department of Norte de Santander accusing them of harvesting coca for the Autodefensas Unidas de Colombia.

⁶⁵ Defensoría del Pueblo, *Resolución Defensorial Nacional No. 028: La crisis cafetera y las fumigaciones en el Departamento de Caldas*, 21 May 2003, para. 68, available at http://www.mamacoca.org/FSMT_sept_2003/pdf/RESOLUCION_NACIONAL_No028_20-03_CALDAS.pdf.

⁶⁶ Additionally, see UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, A/HRC/4/38/Add.3, 24 January 2007, para. 19, available at <http://www.unhcr.org/refworld/docid/461e3f5a2.html>.

In light of the above, members of, or persons associated with, one of the parties to the conflict, as well as their family members,⁶⁷ may be at risk on the ground of their actual or imputed political opinion as perceived by the rival faction.⁶⁸

2. Local and Regional Government Authorities

Colombia is administratively organized in 32 departments, each led by a governor who is the representative of all municipalities (*municipios*) in the department. There are 1,119 decentralized municipalities in Colombia, headed by a mayor (*Alcalde*) elected by popular vote, representing the highest executive government official at a municipal level under the mandate of the governor of their department.⁶⁹

Threats by illegal armed groups against current and former mayors, council members (*concejales*) and other municipal or local authorities, are common countrywide.⁷⁰ From 1998 to 2007, dozens of then-current and former mayors were reportedly murdered.⁷¹ While the situation has improved in recent years and the number of victims has progressively decreased – 2008 was the first year with no recorded assassinations of mayors in office –⁷² intimidation, kidnappings and violence against municipal civil servants, elected officials and members of their families are reportedly still taking place.⁷³ In December 2009, the governor of Caquetá department was kidnapped and killed allegedly

⁶⁷ See *Refugee Appeal No. 76289*, No. 76289, New Zealand: Refugee Status Appeals Authority, 8 May 2009, available at <http://www.unhcr.org/refworld/docid/4a2e2a5e2.html>. See also International Human Rights Law Clinic, University of California, Berkeley School of Law, *Truth Behind the Bars: Colombian Paramilitary Leader in U.S. Custody*, February 2010, p. 6, available at [http://www.law.berkeley.edu/files/Truthbehindbars_FINAL_\(embargoed_until_Feb16\).pdf](http://www.law.berkeley.edu/files/Truthbehindbars_FINAL_(embargoed_until_Feb16).pdf). The Independent, *Deported Colombian is shot after losing plea to stay in Britain*, 16 April 2004, available at <http://www.independent.co.uk/news/uk/politics/deported-colombian-is-shot-after-losing-plea-to-stay-in-britain-560151.html>.

⁶⁸ See *MZ (PSG - Informers - Political Opinion) Colombia v. Secretary of State for the Home Department*, CG [2002] UKIAT 02465, UK Asylum and Immigration Tribunal / Immigration Appellate Authority, 10 July 2002, available at: <http://www.unhcr.org/refworld/docid/46836ab2d.html>; see also *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*, 00/TH/02257, UK Asylum and Immigration Tribunal / Immigration Appellate Authority, 24 November 2000, available at <http://www.unhcr.org/refworld/docid/40487df64.html> and *Vahe Salibian v. Minister of Employment and Immigration*, Canada: Federal Court, 24 May 1990, available at <http://www.unhcr.org/refworld/docid/3ae6b7100.html>.

⁶⁹ See Federación Colombiana de Municipios [Colombian Federation of Municipalities], available at <http://www.fcm.org.co>.

⁷⁰ The Director for Protection and Special Services of the Colombian National Police, Colonel William René Salamanca Ramírez, has issued a public notification to all the mayors concerning their safety when traveling outside their constituencies, especially if traveling to Bogotá, see Federación Colombiana de Municipios, *Urgente – Medidas de Protección*, 13 July 2009, available at http://www.fcm.org.co/fileadmin/Contenidos/pdf/MEDIDAS_DE_PROTECCION.pdf.

⁷¹ Figures vary according to different sources. See Colombian Federation of Municipalities, National Federation of Council Members (FENACON) 2007, Office of the Vice-President, Observatorio de Derechos Humanos, *Indicadores*, December 2006, Federación Colombiana de Municipios, *Base de datos Alcaldes asesinados periodo 1998/1999/2000/2001/2002/2003*, available at <http://www.fcm.org.co/es/todo/ATT1065565317-1.pdf>, reporting 63 mayors murdered up to 2003; see also Federación Colombiana de Municipios, *Las Cifras del Conflicto – Alcaldes y Exalcaldes*, 31 December 2004, available at <http://www.fcm.org.co/es/noticia.php?uid=0&leng=es&det=2019&grupo=65&leng=es>, where 47 mayors in office and 11 former mayors were reportedly killed as of 2004.

⁷² Information was obtained by UNHCR from Federación Colombiana de Municipios; see also Laura Jaramillo Bernal, *En el 2008, por primera vez en más de una década, se despidió el año viejo sin que ningún alcalde del país muriera asesinado*, La Silla Vacía, 28 March 2009, available at <http://www.lasillavacia.com/historia/98>; Embassy of Colombia, “No Mayor was murdered this year” Says President Uribe, 15 October 2008, available at http://colombiaemb.org/index.php?option=com_content&task=view&id=522&Itemid=150.

⁷³ UN High Commissioner for Human Rights, *Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya, as she concludes her visit to Colombia*, 18 September 2009, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/1F7B4D313A4CD130C1257636002794F5?opendocument>; Reuters, *Suspected Colombian rebels kill two councilors*, 18 October 2009, available at <http://www.reuters.com/article/idUSN18369571>; Republic of Colombia, Ministry of National Defense, *Logros de la Política de Consolidación de la Seguridad Democrática – PCSD*, February 2009, available at http://www.mindefensa.gov.co/descargas/Sobre_el_Ministerio/Planeacion/ResultadosOperacionales/Resultados%20Operacionales%20Ene%20-%20Feb%202009.pdf; Republic of Colombia, Ministry of National Defense, *Protecting Rights: Actions and outcomes of the National Security Forces in the protection of human rights, 2002-2008*, 2 February 2009, available at http://www.mindefensa.gov.co/descargas/Asuntos_de_Interes/Derechos_Humanos/Boletin_resultados_DDHH_eng2.pdf

by FARC.⁷⁴ Furthermore, killings of former mayors by guerrilla groups were reported in 2008 and the first quarter of 2009.⁷⁵

Observers note that the frequency of attacks tend to rise during electoral periods as armed groups attempt to either obstruct or influence the elections.⁷⁶ Candidates and local officials are threatened and killed by guerrilla groups and by paramilitary groups, especially in regions with high numbers of demobilized combatants, and where new armed groups have emerged.⁷⁷ In 2009, two members of the local council of Sumapaz (south Bogotá) were found shot dead in a river,⁷⁸ while in 2008, three other Council members were reportedly killed.⁷⁹

UNHCR considers that members of local and regional government bodies may be at risk on account of their actual or imputed political opinion, particularly in areas where there are large numbers of demobilized combatants, where new groups are emerging and during elections.

3. Judges and Other Persons Involved in the Administration of Justice

Judges, public prosecutors, witnesses, lawyers and other persons who participate in legal proceedings and investigations relating to violations of human rights or IHL, involving members of the public security forces or paramilitary and guerrilla groups, are reportedly at risk of being killed, kidnapped, or subjected to torture, ill-treatment and forced disappearance.⁸⁰ Those investigating corruption, narco-trafficking, and land disputes are similarly at risk.⁸¹

f; Dirección de Justicia y Seguridad - Dirección de Evaluación a Políticas Públicas, *Boletín de resultados en seguridad democrática*, 25 September 2008, available at http://www.dnp.gov.co/PortalWeb/Portals/0/archivos/documentos/DEPP/Seguimiento_Resultados/Boletín_de_Seguridad_II.pdf.

⁷⁴ Amnesty International, *Governor killed in Colombia*, 23 December 2009, available at <http://www.unhcr.org/refworld/docid/4b39cb051a.html>; Federación Colombiana de Municipios, *La Federación Colombiana de Municipios repudia el magnicidio del Gobernador del Caquetá*, 23 December 2009, available at http://www.fcm.org.co/fileadmin/Contenidos/imagenes/COMUNICADO_DE_PRENSA_53.doc.

⁷⁵ Information obtained by UNHCR from the Federación Colombiana de Municipios; see also Justice for Colombia, *FARC Kidnap Local Government Official in Colombia*, 30 May 2009, available at <http://www.justiceforcolombia.org/?link=newsPage&story=769>.

⁷⁶ See for example Reuters AlertNet, *Days before vote, Colombia rebels kill 9 marines*, 24 May 2010, available at <http://www.alertnet.org/thenews/newsdesk/N24194130.htm>; International Institute for Democracy and Electoral Assistance, *Colombia: Local elections reveal fissures and challenges*, 12 February 2008, available at http://www.idea.int/americas/colombia/colombia_elections2007.cfm; Luz Stella Tocancipá, *Colombia: Elections Under Threat*, IPS News, 17 October 2007, available at <http://ipsnews.net/news.asp?idnews=39692>; International News Safety Institute (citing Reuters), *Colombia - Security Dozens of Colombia politicians killed ahead of vote*, 27 September 2007, available at http://www.newssafety.org/index.php?view=article&catid=54%3Acolombiasecurity&id=4696%3Adozens-of-colombia-politicians-killed-ahead-of-vote&option=com_content&Itemid=100274; Reuters Alertnet, *Colombia rebels target survivor mayor in stronghold*, 21 March 2007, available at <http://www.alertnet.org/thenews/newsdesk/N21417112.htm>.

⁷⁷ Public Services International, *Barranquilla, Colombia: More than 2,300 municipal workers dismissed. Paramilitary group issues threats against trade unionists*, 10 February 2009, available at http://www.world-psi.org/TemplateEn.cfm?Section=Urgent_actions2&Template=UrgentActionsEmailer/EN_Barranquilla_form.htm. In the period 2000 to 2008, 258 Council members were murdered, 2003 and 2004 being the most critical years, see El Tiempo, *Desde 2000 han sido asesinados 258 concejales en Colombia*, 19 March 2008, available at <http://www.eltiempo.com/archivo/documento/CMS-4018620>. According to FENACON, even though the FARC is allegedly responsible for most of these deaths, a high percentage of murders cannot be linked to a specific armed group. The same source reports that those responsible for nearly 58 percent of the homicides remain unknown while 30 percent are blamed on the FARC, 7 percent on the AUC, 2 percent on the ELN and the remaining 3 percent on common criminals. See also Colombia Reports, *Paramilitaries claim joint massacre with army*, 8 October 2009, available at <http://colombiareports.com/colombia-news/news/6311-paramilitaries-claim-joint-massacre-with-army.html>.

⁷⁸ Colombia Reports, *Two council members murdered*, 18 October 2009, available at <http://colombiareports.com/colombia-news/news/6436-two-council-members-murdered.html>.

⁷⁹ US Department of State, *2009 Country Reports on Human Rights Practices - Colombia*, see footnote 28.

⁸⁰ UN High Commissioner for Human Rights, *Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, as she concludes her visit to Colombia*, 18 September 2009, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/1F7B4D313A4CD130C1257636002794F5?opendocument>; UN Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. Addendum: Situations in Specific Countries or Territories*, A/HRC/8/4/Add.1, 28 May 2008, pp. 60-62, available at <http://www.unhcr.org/refworld/docid/484d18fa2.html>; Lisa Haugaard, *So Far to Go: Human Rights in*

The scope and effectiveness of the Colombian Attorney-General's Protection Program for victims, witnesses and others implicated in criminal proceedings, including the staff of the Attorney General's Office, has been deemed insufficient to protect individuals from such risks.⁸²

Moreover, according to recent reports, the Colombian intelligence agency, the Administrative Security Department (DAS), has reportedly been intimidating and illegally monitoring the personal life and activities of judges and members of their families.⁸³

A large number of judicial sector employees, as well as members of the People's Ombudsman Office and the Attorney General's Office, have been threatened, subjected to intimidation and even been attacked by illegal armed groups.⁸⁴

UNHCR considers that witnesses in trials against members of the illegal armed groups and persons involved in the administration of justice, in particular those investigating: (i) criminal acts committed by one of the illegal armed groups; (ii) corruption cases; (iii) narco-trafficking; and (iv) land disputes, may be at risk on the basis of their actual or imputed political opinion,.

4. Civil Society and Human Rights Activists

Colombia has a large number of non-governmental organizations, with a high level of organization and coordination, using nationwide information networks dedicated to researching and reporting on human rights violations, disappearances, displacement, and violations of IHL.⁸⁵

Members of the civil society and human rights activists currently constitute one of the most vulnerable groups in Colombia.⁸⁶ Threats and killings of human rights activists,⁸⁷ including those

Colombia, Latin America Working Group Education Fund, April 2008, p. 4, available at http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/human_rights_colombia.pdf.

⁸¹ UN News Service, *Climate of fear leads to impunity for criminals in Colombia, UN expert warns*, 17 December 2009, available at <http://www.unhcr.org/refworld/docid/4b307e78c.html>; Colectivo de Abogados, *Colombian lawyers' defense of land rights brings them into the line of fire. Resisting forced displacement in Colombia*, 3 April 2009, available at <http://www.colectivodeabogados.org/spip.php?article1531>.

⁸² International Crisis Group, *Correcting Course: Victims and the Justice and Peace Law in Colombia* Latin America Report N°29, 30 October 2008, pp. 12 and ff., available at http://www.crisisgroup.org/library/documents/latin_america/correcting_course_victims_and_the_justice_and_peace_law_in_colombia.pdf; See also International Crisis Group, *Colombia's New Armed Groups*, see footnote 39, p. iii.

⁸³ DAS was reportedly monitoring the daily routines of judges including their families, their international travels and their finances, supplementing information obtained via illegal wiretapping with data obtained from Colombia's banking system, immigration, and drivers' license bureau. See Reporters Without Borders, *Manual teaches intelligence agency employees how to spy on problem journalists*, 21 December 2009, available at <http://www.unhcr.org/refworld/docid/4b38b4402c.html>; La Semana, *Increíble... siguen 'chuzando'*, 29 August 2009, available at <http://www.semana.com/noticias-nacion/increible-siguen-chuzando/127960.aspx>; La Semana, *Director del DAS involucró a operadores de celulares en 'chuzadas'*, 7 October 2009, available at <http://www.semana.com/noticias-nacion/director-del-das-involucro-operadores-celulares-chuzadas/129733.aspx>. For a thorough account of the DAS wiretapping scandal, see Adam Isacson, *Colombia's Domestic Spying Scandal*, 8 October 2009, Center for International Policy, available at http://www.cipcol.org/files/factsheets/das_scandal.pdf.

⁸⁴ Information obtained by UNHCR from the National Judicial Association (ASONAL Judicial) – an organization which represents judges, magistrates, prosecutors and judicial employees – indicates that over 260 homicides and 37 forced disappearances have been registered from 1984 to 2006 among members of this group. According to the same source, at least 33 members of this group have been forced to abandon the country due to persecution in the same period; see also Constanza Vieira, *Colombia: Justice on Strike*, IPS News, 3 September 2008, available at <http://ipsnews.net/news.asp?idnews=43779>; Todelar, *Panorama oscuro para jueces y fiscales en el país: Asonal Judicial reporta que 287 funcionarios judiciales han sido amenazados en 2009*, 17 September 2009, available at <http://www.todelar.com/node/4607>.

⁸⁵ Among these are: Asociación de Familiares de Detenidos-Desaparecidos (<http://www.asfaddes.org.co/>), Comisión Colombiana de Juristas (www.coljuristas.org), Comité de América Latina y el Caribe Para la Defensa de los Derechos de la Mujer (<http://www.cladem.org/espanol/nacionales/colombia/colombia.asp>), Comité Permanente por la Defensa de los Derechos Humanos (<http://cpdh.free.fr/>), Consultoría para los Derechos Humanos y el Desplazamiento (<http://www.codhes.org/>), Corporación Colectivo de Abogados "José Alvear Restrepo" (www.colectivodeabogados.org), Corporación Reiniciar (www.reiniciar.org), Centro de Investigación y Educación Popular (www.cinep.org.co), Derechos Humanos Colombia (<http://www.dhcolombia.info/>), Fundación para la libertad de prensa (<http://www.flip.org.co/>), y Instituto Latinoamericano de Servicios Legales Alternativos (<http://ilsa.org.co:81/>), and others.

who promote Lesbian Gay Bisexual and Transgender (LGBT) rights,⁸⁸ have been reported. In some cases, persons who actively promote or defend human rights in any way, i.e. civil, political, economic, social and cultural rights, are perceived and labeled as human rights activists, even if they do not necessarily consider themselves as such.⁸⁹

As a result of the perception by many of the parties to the conflict, including the Government, that such organizations and their members have left-wing sympathies, many human rights activists are labeled 'guerrilla associates' and thus become targets of the paramilitaries.⁹⁰ Arbitrary detentions,⁹¹ including detention without charges, unfounded criminal accusations, prosecutions, unfair trials,⁹² harassment,⁹³ and death threats⁹⁴ against human rights activists, who denounce human rights abuses and massacres committed by the security forces and the paramilitaries, are widely reported.⁹⁵ Like

⁸⁶ See Internacional Federation for Human Rights, *Colombia: Amenaza contra 60 organizaciones de derechos humanos por parte del grupo paramilitar "Los Rastrojos-Comandos Urbanos"*, 22 April 2010, available at http://www.fidh.org/IMG/article_PDF/article_a7834.pdf; Defensoría de el Pueblo, *Defensor condena amenazas contra funcionarios de la Defensoría del Pueblo y organizaciones de derechos humanos*, 13 May 2009, available at http://www.defensoria.org.co/red/?_item=0301&_secc=03&_ts=2&n=626; UK Foreign and Commonwealth Office, *Annual Report on Human Rights 2008 - Colombia*, 26 March 2009, available at <http://www.unhcr.org/refworld/docid/49ce361747.html>; US Department of State, *2009 Country Reports on Human Rights Practices - Colombia*, see footnote 28; UN Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/10/9, 25 February 2009, p. 9, available at: <http://www.unhcr.org/refworld/docid/49c778772.html>; Human Rights Watch, *World Report 2009 - Colombia*, see footnote 46.

⁸⁷ UN High Commissioner for Human Rights, *Statement of the Special Rapporteur on the situation of human rights defenders*, see footnote 80; International Federation for Human Rights, *Observatory for the Protection of Human Rights Defenders Annual Report 2009 - Colombia*, 18 June 2009, available at <http://www.unhcr.org/refworld/docid/4a5f301419.html>; Amnesty International, *Colombian activists smeared by abuse of legal system*, 19 March 2009, available at <http://www.unhcr.org/refworld/docid/49c3547f8.html>.

⁸⁸ Immigration and Refugee Board of Canada, *Colombia: Treatment of homosexuals; especially in Bogota and Cali, availability of state protection and support services*, 14 April 2009, COL103021.E, available at <http://www.unhcr.org/refworld/docid/4a7040a8c.html>; International Gay and Lesbian Human Rights Commission, *Colombia: Protest the Murder of LGBT Human Rights Defender*, 17 March 2009, available at <http://www.ighrc.org/cgi-bin/iowa/article/takeaction/globalactionalerts/875.html>.

⁸⁹ Human Rights First, *Colombia Must Stop Baseless Prosecutions of Human Rights Defenders*, 20 March 2009, available at <http://www.humanrightsfirst.org/media/hrd/2009/alert/424/index.htm>; Amnesty International, *Lina Paola Malagón Díaz (f), lawyer, her family, other members of the Colombian Commission of Jurists (Comisión Colombia de Colombia)*, 5 March 2009, available at <http://www.amnestyusa.org/actioncenter/actions/uaa06209.pdf>; World Organisation Against Torture, *Colombia: Nuevas amenazas contra los Sres. Irene López, Claudia Erazo y Rigoberto Jiménez*, 30 March 2009, COL 003 / 0209 / OBS 030.1, available at: <http://www.unhcr.org/refworld/docid/49d1d5fd0.html>.

⁹⁰ See FrontLine, *Colombia: Death threats against human rights lawyers Ms Blanca Irene López and Ms Claudia Erazo*, 6 April 2009, available at <http://www.frontlinedefenders.org/en/node/1874>; FrontLine, *Colombia: Threats against human rights lawyer, Lina Paolo Malagón Díaz*, 11 March 2009, available at <http://www.frontlinedefenders.org/en/node/1842>; International Federation of Human Rights and World Organisation Against Torture, *Colombia: The darkness of impunity: death and persecution of human rights defenders*, FIDH/OMCT international fact-finding mission report of the Observatory for the Protection of Human Rights Defenders, July 2007, available in Spanish at http://www.omct.org/pdf/Observatory/2007/report/Informe_Mision_Colombia_120707.pdf.

⁹¹ The Los Angeles Times, *Colombian activist waits in prison limbo*, 2 April 2009, available at http://www.latimes.com/news/nationworld/world/la-fg-colombia-leftist2-009apr02_0_3559772_story.

⁹² International Crisis Group, *The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia*, see footnote 53.

⁹³ International Federation for Human Rights, *Observatory for the Protection of Human Rights Defenders Annual Report 2009 - Colombia*, see footnote 87.

⁹⁴ World Organisation Against Torture, *Colombia: Amenazas de muerte contra el Sr. Hollman Morris*, COL 004 / 0209 / OBS 031, 19 February 2009, available at <http://www.unhcr.org/refworld/docid/49acf91b0.html>; World Organisation Against Torture, *Amenazas de muerte contra la ASFADDES, la ASOPAZ, la ASOPAZ, la USO, el FCSP y la CUT*, COL 005 / 0209 / OBS 032, 19 February 2009, available at: <http://www.unhcr.org/refworld/docid/49acf91bd.html>.

⁹⁵ Ibid. See also Human Rights First, *Colombia Must Stop Baseless Prosecutions of Human Rights Defenders*, 20 March 2009, available at <http://www.humanrightsfirst.org/media/hrd/2009/alert/424/index.htm>; U.S. Department of State, *2008 Country Reports on Human Rights Practices - Colombia*, 25 February 2009, available at: <http://www.unhcr.org/refworld/docid/49a8f19a54.html>. See also Amnesty International, *Colombian activists smeared by abuse of legal system*, 19 March 2009 available at <http://www.unhcr.org/refworld/docid/49c3547f8.html>; World Organisation Against Torture, *Permanente hostigamiento contra Padre Javier Giraldo y contra Director de Corporación Jurídica Libertad*, COL 011 / 0309 / OBS 048, 13 March 2009, available at: <http://www.unhcr.org/refworld/docid/49be0d602.html>; Human Rights First, *Baseless Prosecutions of Human Rights*

members of the judiciary, human rights defenders have also been reportedly closely monitored by the Colombian intelligence agency DAS.⁹⁶

Additionally, guerrilla groups, former AUC members who refused to demobilize and newly formed illegal armed groups have allegedly threatened and kidnapped religious leaders and practitioners, primarily for intimidation purposes.⁹⁷ Religious workers involved in human rights activities have received death threats from illegal armed groups.⁹⁸

UNHCR considers that human rights activists and members of civil society advocating against the violations and abuses of the illegal armed groups and the security forces may be at risk on the ground of their actual or imputed political opinion.⁹⁹

5. Journalists and Other Media Professionals

Generally, the Government respects press freedom.¹⁰⁰ Nevertheless, there have been reports of detention of journalists,¹⁰¹ the closing down of TV broadcasts,¹⁰² and confiscation of press material by State authorities.¹⁰³ Journalists have been reportedly subjected to surveillance, including wiretapping and intimidation by DAS.¹⁰⁴ Dismissals of journalists who have criticized Government authorities were also reported.¹⁰⁵

A number of Colombian journalists at national, regional and local levels investigate and denounce corruption and narcotics cases, and generally expose violations of IHL committed by the parties to the country's decades-long armed conflict.¹⁰⁶ As a consequence, journalists and media professionals who

Defenders in Colombia. In the Dock and Under the Gun, February 2009, available at <http://www.humanrightsfirst.org/pdf/090211-HRD-colombia-eng.pdf>.

⁹⁶ The G3 section of the DAS has reportedly executed illegal wiretapping, interception of correspondence and other intelligence operations against human rights defenders' organizations; see IPS News, *Colombia: Spying on Human Rights Defenders*, 15 August 2009, available at <http://ipsnews.net/news.asp?idnews=48100>.

⁹⁷ US Department of State, *2009 Report on International Religious Freedom - Colombia*, 26 October 2009, available at: <http://www.unhcr.org/refworld/docid/4ae8614dc.html>.

⁹⁸ Ibid.

⁹⁹ See also the decision of the Human Rights Committee on failed state protection of a human rights lawyer, *Luis Asdrúbal Jiménez Vaca v. Colombia*, CCPR/C/74/D/859/1999, UN Human Rights Committee, 15 April 2002, available at <http://www.unhcr.org/refworld/docid/3f588ef4a.html>.

¹⁰⁰ See also the Constitutional guarantees contained in article 20 of the *Constitución Política de Colombia, 1991 con reforma de 1997 [Colombia]*, 27 October 1991, available at <http://www.unhcr.org/refworld/docid/3dbd4b224.html>, which provides for freedom of expression, conscience and opinion, as well as freedom of information and the right to establish mass media organizations and other forms of associations for public communication and prohibits censorship.

¹⁰¹ Committee to Protect Journalists, *Uribe, courts hold critical journalists in contempt*, 27 March 2009, available at <http://cpj.org/blog/2009/03/uribe-colombian-courts-hold-critical-journalists-i.php>.

¹⁰² Reporters Without Borders, *Risky return by TV current affairs programme after eight-month interruption*, 16 September 2009, available at <http://www.rsf.org/Risky-return-by-TV-current-affairs.html>.

¹⁰³ Reporters Without Borders, *Authorities use judicial proceedings to intimidate media*, 27 August 2009, available at <http://www.rsf.org/Authorities-use-judicial.html>.

¹⁰⁴ Committee to Protect Journalists, *Attacks on the Press 2009 - Colombia*, 16 February 2010, available at <http://www.unhcr.org/refworld/docid/4b7bc2edc.html>; Reporters Without Borders, *Manual teaches intelligence agency employees how to spy on problem journalists*, 21 December 2009, available at <http://www.unhcr.org/refworld/docid/4b38b4402c.html>; Reporters Without Borders, *Interior Ministry protection programme for journalists also used for "close-quarters spying"*, 30 October 2009, available at <http://www.unhcr.org/refworld/docid/4af7e0311a.html>; Reporters Without Borders, *Former intelligence officials leak list of news media and journalists whose phones were tapped*, 15 May 2009, available at http://www.rsf.org/article.php3?id_article=31325; La Semana, *La prensa, en la mira*, 25 April 2009, available at <http://www.semana.com/noticias-nacion/prensa-mira/123264.aspx>; Committee to Protect Journalists, *Colombian intelligence service wiretapped journalists*, 25 February 2009, available at <http://cpj.org/2009/02/colombian-intelligence-service-wiretapped-journali.php>.

¹⁰⁵ Reporters Without Borders, *Country Report - Colombia*, 5 January 2010, available at <http://www.unhcr.org/refworld/docid/4b7aa9bcc.html>. In 2009 there were at least two incidents of dismissal of two political analysts after the publication of critical pieces against the government; see International Freedom of Expression Exchange, *FLIP concerned over dismissal of columnist during election period*, 15 October 2009, available at http://www.ifex.org/colombia/2009/10/15/lopez_fired/.

¹⁰⁶ See Ambeyi Ligabo, the UN Special Rapporteur on Freedom of Expression, in the UN Commission on Human Rights, *Report of the Special Rapporteur on the right to freedom of opinion and expression*, Mission to Colombia, E/CN.4/2005/64/Add.3, 26 November 2004, available at <http://www.unhcr.org/refworld/docid/42d66e320.html>.

cover stories that run counter to the interests of guerrillas,¹⁰⁷ paramilitaries¹⁰⁸ and drug traffickers,¹⁰⁹ and their family members, are at risk of intimidation,¹¹⁰ threats, kidnapping and hostage taking,¹¹¹ harassment,¹¹² and physical attacks¹¹³ including killings by guerrillas,¹¹⁴ right-wing paramilitary groups,¹¹⁵ and military personnel.¹¹⁶ While murders of journalists reportedly decreased since January 2007,¹¹⁷ there has been a recent wave of shootings and murders of reporters. In 2009 several incidents and fatal attacks on journalists and TV presenters were widely reported.¹¹⁸

Despite efforts by the State to investigate and prosecute perpetrators of violence against media professionals,¹¹⁹ impunity for the murders of journalists allegedly remains widespread.¹²⁰

UNHCR considers that Colombian journalists, reporters, and mass media professionals who investigate and report or otherwise cover stories on any of the armed groups involved in the conflict, including narco-traffickers, are at risk on grounds of their actual or imputed political opinion.¹²¹

¹⁰⁷ Committee to Protect Journalists, *Military personnel allegedly attack journalist in Colombia*, 20 July 2009, available at <http://www.unhcr.org/refworld/docid/4a840bec28.html>; Committee to Protect Journalists, *FARC declares Colombian media a military target*, 3 February 2009, available at <http://cpj.org/blog/2009/02/farc-declares-colombian-media-a-military-target.php>.

¹⁰⁸ Committee to Protect Journalists, *Alleged paramilitary fighters shoot Colombian journalist at home*, 21 April 2009, available at <http://cpj.org/2009/04/alleged-paramilitary-fighters-shoot-colombian-jour.php>.

¹⁰⁹ Committee to Protect Journalists, *Drug Trade, Violent Gangs Pose Grave Danger*, 10 February 2009, available at <http://cpj.org/2009/02/drugs-violence-press-latin-america.php>.

¹¹⁰ Colombian Fundación Libertad de Prensa (FLIP), *The threat and the stigmatization: invisible intimidation for journalists and the media*, 9 February 2009, available at http://www.flip.org.co/documentos/346-report_abstract.pdf.

¹¹¹ Reporters Without Borders, *Kidnapped journalist Mario Alfonso Puello released after four months in captivity*, 20 June 2009, available at <http://www.rsf.org/Kidnapped-journalist-Mario-Alfonso.html>.

¹¹² Reporters Without Borders, *Paramilitaries threaten priest who runs community radio station*, 25 April 2009, available at <http://www.rsf.org/Paramilitaries-threaten-priest-who.html>.

¹¹³ International Freedom of Expression Exchange, *Journalist assaulted in Cali*, 8 October 2009, available at http://www.ifex.org/colombia/2009/10/08/mina_assaulted/; Committee to Protect Journalists, *Alleged paramilitary fighters shoot Colombian journalist at home*, 21 April 2009, available at <http://cpj.org/2009/04/alleged-paramilitary-fighters-shoot-colombian-jour.php>.

¹¹⁴ Committee to Protect Journalists, *FARC declares Colombian media a military target*, 3 February 2009, available at <http://cpj.org/blog/2009/02/farc-declares-colombian-media-a-military-target.php>.

¹¹⁵ Committee to Protect Journalists, *Alleged paramilitary fighters shoot Colombian journalist at home*, 21 April 2009, available at <http://cpj.org/2009/04/alleged-paramilitary-fighters-shoot-colombian-jour.php>.

¹¹⁶ Committee to Protect Journalists, *Military personnel allegedly attack journalist in Colombia*, 23 April 2009, available at <http://cpj.org/2009/07/military-personnel-allegedly-attack-journalist-in.php>.

¹¹⁷ Committee to Protect Journalists, *Attacks on the Press in 2008: Colombia*, 10 February 2009, available at <http://cpj.org/2009/02/attacks-on-the-press-in-2008-colombia.php>.

¹¹⁸ Reporters Without Borders, *Community journalist murdered, motive still to be established*, 17 December 2009, available at <http://www.unhcr.org/refworld/docid/4b2f862dc.html>; Committee to Protect Journalists, *Veteran TV reporter shot dead in central Colombia*, 24 September 2009, available at <http://cpj.org/2009/09/veteran-tv-reporter-shot-dead-in-central-colombia.php>; International Freedom of Expression Exchange, *Journalist killed in Supía*, 24 September 2009, available at http://www.ifex.org/colombia/2009/09/24/rojas_velazquez_killed/; Reporters Without Borders, *Community television journalist murdered*, 24 September 2009, available at <http://www.rsf.org/Community-television-journalist.html>; Committee to Protect Journalists, *Radio reporter gunned down in Colombia*, 29 April 2009, available at <http://cpj.org/2009/04/radio-reporter-gunned-down-in-colombia.php>; Colombian Fundación Libertad de Prensa (FLIP), *Alerta - Asesinado periodista en Patía, Cauca*, 24 April 2009, available at <http://www.flip.org.co/veralerta.php?idAlerta=360>.

¹¹⁹ Committee to Protect Journalists, *Colombian authorities arrest man in journalist slaying*, 14 July 2009, available at <http://cpj.org/2009/07/colombian-authorities-arrest-man-in-journalist-sla.php>; Committee to Protect Journalists, *In landmark case, ex-officials convicted in slaying*, 22 January 2009, available at <http://cpj.org/2009/01/in-landmark-case-ex-officials-convicted-in-slaying.php>.

¹²⁰ Of the 42 reported cases of murders of journalists in Colombia since 1992, 34 remained unresolved, see Committee to Protect Journalists, *Getting Away With Murder*, 23 March 2009, available at <http://cpj.org/killed/americas/colombia/>. See also Committee to Protect Journalists, *Attacks on the Press in 2008: Colombia*, footnote 117; Reporters Without Borders, *World Report 2009 - Colombia*, 1 May 2009, available at <http://www.unhcr.org/refworld/docid/49fea98428.html>. More recently, Colombia was ranked among the countries with the highest percentage of impunity for murders of journalists, see Committee to Protect Journalists, *Getting Away With Murder - CPJ's 2010 Impunity Index spotlights countries where journalists are slain and killers go free*, 20 April 2010, available at <http://cpj.org/reports/2010/04/cpj-2010impunity-index-getting-away-with-murder.php>.

¹²¹ See *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*, above footnote 68.

6. Trade Union Leaders

While the law generally recognizes the rights and activities of trade unionists,¹²² trade union leaders have been victims of harassment,¹²³ threats¹²⁴ and murders¹²⁵ at the hands of paramilitary groups¹²⁶ and of guerrillas.¹²⁷ Over the last two decades, Colombia has witnessed the murders of over two thousand seven hundred trade union leaders and activists.¹²⁸ In 2009, between thirty-nine and forty-five victims were recorded,¹²⁹ and the murders continued in 2010.¹³⁰ Despite the creation in 2007 of a special unit in the office of the Attorney General to focus on anti-union crimes,¹³¹ the lack of appropriate prosecution of perpetrators and a high level of impunity have been reported.¹³²

¹²² The most active workers' unions in Colombia are the CUT - *Central Unitaria de Trabajadores de Colombia* (The Central Union of Workers), CGT - *Confederación General del Trabajo* (General Labor Confederation), CGTD - *Confederación General de Trabajadores Democráticos* (Democratic Workers General Confederation), CTC - *Confederación de Trabajadores de Colombia* (Colombian Workers Confederation), CPC - *Confederación de Pensionados de Colombia* (Colombian Pensioners Confederation), and USO - *Unión Sindical Obrera* (Workers Syndicate Union).

¹²³ La Semana, *Sindicalistas de la Defensoría denuncian persecución*, 15 September 2009, available at <http://www.semana.com/noticias-problemas-sociales/sindicalistas-defensoria-denuncian-persecucion/128694.aspx>; BBC News, *Anti-union attacks 'on the rise*, 10 June 2009, available at <http://news.bbc.co.uk/2/hi/business/8093217.stm>.

¹²⁴ Justice for Colombia, *Colombian Trade Unionist Forced to Stay in Her House as Armed Men Attempt to Burn it Down*, 20 April 2009, available at <http://www.justiceforcolombia.org/?link=newsPage&story=667>; Human Rights Watch, *Colombia: End Threats to Unionists, Rights Workers*, 5 March 2009, available at: <http://www.unhcr.org/refworld/docid/49b4d2251a.html>.

¹²⁵ It is reported that in 2008, the number of killings rose to 49, from 38 in 2007. See Freedom House, *Freedom in the World 2009 - Colombia*, see footnote 28.

¹²⁶ Amnesty International, *Killings of Trade Unionists on the Rise in Colombia*, 5 March 2009, available at <http://www.amnesty.org/en/news-and-updates/feature-stories/killings-trade-unionists-rise-colombia-20080430>; Justice for Colombia, *Regional Trade Union President Shot Dead, Daughter Wounded*, 30 April 2008, available at <http://www.justiceforcolombia.org/?link=newsPage&story=648>; Justice for Colombia, *Five Trade Unionists Assassinated in Colombia During March*, 1 April 2009, available at <http://www.justiceforcolombia.org/?link=newsPage&story=646>.

¹²⁷ U.S. Department of State, *2008 Country Reports on Human Rights Practices - Colombia*, see footnote 95; International Trade Union Confederation, *2009 Annual Survey of violation of trade union rights - Colombia*, 2009, available at <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=COL&Lang=EN>.

¹²⁸ Freedom House, *Freedom in the World 2009 - Colombia*, see footnote 28; International Federation for Human Rights, *Observatory for the Protection of Human Rights Defenders Annual Report 2009 - Colombia*, 18 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a5f301419.html>. See also La Semana, *Colombia vuelve al vergonzoso título de ser el país más peligroso del mundo para la actividad sindical*, 18 September 2007, available at <http://www.semana.com/noticias-on-line/colombia-vuelve-vergonzoso-titulo-pais-peligroso-del-mundo-para-actividad-sindical/106334.aspx>.

¹²⁹ See US Labor Education in the Americas Project, *More trade unionists are killed in Colombia than in all other countries combined*, available at <http://www.usleap.org/usleap-campaigns/colombia-murder-and-impunity/more-information-colombia/background-violence-against-> [accessed May 2010]; Canadian Union of Public Employees, *45 Colombian union leaders assassinated in 2009*, 10 March 2010, available at <http://cupe.ca/trade/canada-colombia-trade-deal-report>. See also International Trade Union Federation, *Colombia: Trade Unions in Mourning for Two More Murdered Colleagues*, 4 September 2009, available at <http://www.ituc-csi.org/spip.php?article4262>; concerning the murder of trade union workers in 2009, see also La Semana, *MinProtección condena el asesinato de sindicalista en Cúcuta*, 23 June 2009, available at <http://www.semana.com/noticias-seguridad/minproteccion-condena-asesinato-sindicalista-cucuta/125490.aspx>; International Trade Union Confederation, *Assassinations Continue in Colombia*, 12 May 2009, available at <http://www.ituc-csi.org/spip.php?article3641>.

¹³⁰ Trades Union Congress, *Teacher trade unionists killed in Colombia every fortnight, says TUC*, 4 April 2010, available at <https://www.tuc.org.uk/international/tuc-17808-f0.pdf>. Amnesty International UK, *Sixth teacher trade unionist killed in Colombia in just three months*, 4 April 2010, available at http://blogs.amnesty.org.uk/blogs_entry.asp?eid=6302.

¹³¹ Los Angeles Times, *Murder in Colombia and a U.S. multinational*, 1 October 2009, available at <http://www.latimes.com/news/opinion/editorials/la-ed-coal1-2009oct01.0.240412.story>.

¹³² Freedom House reports that 95 percent of the cases go unpunished, see Freedom House, *Freedom in the World 2009 - Colombia*, see footnote 28; see also International Freedom of Expression Exchange, *Attorney General's Office fails to move ahead in murders of 16 journalists*, 29 July 2009, available at http://www.ifex.org/colombia/2009/07/30/16_cases_impunity_report/; Central Única de Trabajadores, *Crítica situación de derechos humanos en departamento de Bolívar*, 28 April 2009, available at http://www.cut.org.co/index.php?option=com_content&task=view&id=1784&Itemid=1; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Colombia*, A/HRC/10/82, 9 January 2009, p. 4, para 9, available at: <http://www.unhcr.org/refworld/docid/497476a90.html>; Freedom House, *Freedom of Association Under Threat - Colombia*, 21 November 2008, available at: <http://www.unhcr.org/refworld/docid/492a7517c.html>.

Trade union members and affiliates have also been the target of illegal wire tapping by DAS.¹³³ Repression of striking workers and protestors is also reported,¹³⁴ seriously limiting the right of assembly, especially where such protests have political implications.¹³⁵

UNHCR considers that in light of the reported anti-union violence and deadly attacks, trade union leaders and activists may be at risk on the ground of their actual or imputed political opinion.

7. Teachers, University Professors and College Students

Teachers in Colombia are reportedly attributed a leadership role in their community, especially in rural areas.¹³⁶ Those who have a high community profile are exposed to significant risks.¹³⁷ In 2009, several murders,¹³⁸ incidents of threats¹³⁹ and forced disappearances¹⁴⁰ against unionized and non-unionized teachers and professors continued to be reported. Individuals may face an additional risk if they are active members of a teachers' union.¹⁴¹ A special decree provides for and regulates the transfer of teachers to other regions for security reasons linked to death threats or other types of

¹³³ Confederación Sindical de Trabajadores/as de las Américas, *CSA condena interceptación ilegal de llamadas de sus afiliadas en Colombia*, 11 May 2009, available at <http://www.csa-csi.org/content/view/5081/>.

¹³⁴ Justice for Colombia, *Police Repression Forces Striking Workers Back to Work*, 21 April 2009, available at <http://www.justiceforcolombia.org/?link=newsPage&story=668>; U.S. Department of State, *2008 Country Reports on Human Rights Practices - Colombia*, see footnote 95.

¹³⁵ While Law No. 1210 of July 2008 (amending Art. 451 of the Labour Code) transfers the power to declare a strike illegal from the administrative authorities to the judiciary, it still prohibits federations and confederations from calling strikes, see International Trade Union Confederation, *2009 Annual Survey of violation of trade union rights - Colombia*, 2009, available at <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=COL&Lang=EN>. See also Freedom House, *Freedom of Association Under Threat - Colombia*, 21 November 2008, available at <http://www.unhcr.org/refworld/docid/492a7517c.html>.

¹³⁶ Formal education in Colombia is composed of preschool education, basic education, secondary education and the university level. The body responsible for coordinating education in Colombia is the Ministry of National Education, which delegates to the 78 secretaries of education and organizational managements by region; for more information see the Ministry of National Education's website available at <http://www.mineducacion.gov.co/1621/channel.html> [accessed May 2010].

¹³⁷ Dr. Mario Novelli, *Colombia - Classroom wars. Violence against education sector trade unions*, Education International, September 2009, available at http://download.eiie.org/Docs/WebDepot/EI_ColombiaStudy_eng_final_web.pdf.

¹³⁸ Colombian Federation of Teachers, *Boletín de prensa N°49: FECODE rechaza la ola de asesinatos en contra del magisterio colombiano*, 18 November 2009, available at <http://www.fecode.edu.co/pdf/bprensa/boletindeprensa49.pdf>; Central Unitaria de Trabajadores de Colombia, *La CUT condena el asesinato del compañero educador Victor Franco Franco*, 24 April 2009, available at http://www.cut.org.co/index.php?option=com_content&task=view&id=1783&Itemid=446; Education International, *Asesinados en Colombia otros dos docentes*, 4 April 2009, available at <http://www.eiie.org/es/news/show.php?id=884&theme=rights&country=colombia>; Colombian Federation of Teachers, *FECODE denuncia asesinato de dos educadores*, 29 March 2009, available at http://issuu.com/fecode/docs/denuncia_asesinato?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Fdark%2Flayout.xml; Education International, *La Internacional de la Educación insta a poner fin al asesinato de educadores en Colombia*, 12 March 2009, available at <http://www.eiie.org/es/news/show.php?id=874&theme=rights&country=colombia>; Federación Iberoamericana del Ombudsman, *Colombia: Defensor condena asesinato de educadores, muerte de indígenas y secuestro en Nariño*, 8 July 2008, available at <http://www.portalfio.org/inicio/derecho-humanitario-y-conflictos-armados/1245-colombia-defensor-condena-asesinato-de-educadores-muerte-de-indigenas-y-secuestro-en-narino>; Colombian Federation of Teachers, *Van cinco maestros asesinados en el mes de julio*, Boletín de prensa no. 11, 14 July 2008, available at http://www.fecode.edu.co/descargas/c_prensa/2008/boletin_prensa_11.pdf.

¹³⁹ According to information published on the website of the Colombian Senator, Mrs. Gloria Inés Ramírez Ríos, paramilitary groups in the Cartagena and Bolívar regions are allegedly distributing leaflets threatening the murder of students, professors, trade unionists and human rights defenders in a move to ensure 'social cleaning'; see *PCC de Cartagena denuncia amenazas de paramilitares*, 22 March 2009, available at <http://www.senadoragloriainesramirez.org/index.php/2009/03/pcc-de-cartagena-denuncia-amenazas-de-paramilitares/>.

¹⁴⁰ Dr. Mario Novelli, *Colombia Classroom wars. Violence against education sector trade unions*, Education International, September 2009, available at http://download.eiie.org/Docs/WebDepot/EI_ColombiaStudy_eng_final_web.pdf.

¹⁴¹ The U.S. State Department reports that "teachers made up the largest percentage of union members who were victims of violence by illegal armed groups, both because they constituted 34 percent of all registered unionists and because of their presence in rural, conflict-ridden parts of the country. [A source] reported that 55 percent of all unionists killed during the year [2008] were teachers"; see the U.S. Department of State, *2008 Country Reports on Human Rights Practices - Colombia*, see footnote 95.

physical risks, as well as in the case of forced displacements.¹⁴² The procedure requires, however, that the teacher requesting the transfer must prove before a special Committee for Displaced and Threatened Teachers, her/his status of seriously “threatened” person. In some cases, this burden of proof on the claimant is too high and results in restricted access to protection,¹⁴³ or the case may be delayed or left to the discretion of the approving authorities.¹⁴⁴

In 2009, there has been an increase in reported threats and aggressions against college¹⁴⁵ and university students.¹⁴⁶ The increase in violence against this group is directly related to the reportedly strong political stigmatization existing in schools, universities and the academic world.¹⁴⁷

UNHCR considers that teachers, college and university professors and students that are or are perceived to be active politically may be at risk on the ground of actual or imputed political opinion.

8. *Indigenous Peoples and Afro-Colombians*

According to the latest census, the majority of the Colombian population is composed of Mestizos (58 percent), followed by Caucasians (20 percent), Mulatto (14 percent), Afro-Colombians (4 percent), Zambo (3 percent), Amerindian (1 percent).¹⁴⁸ There are more than 80 indigenous groups living throughout the country, including the second largest group of African descendents in Latin America. These groups include ‘*palenqueros*’, the descendants of maroon communities, and ‘*raizales*’, from the English speaking Caribbean communities, in San Andres and Providencia,¹⁴⁹ the Arhuaco,¹⁵⁰ the Embera,¹⁵¹ the Kankuamo,¹⁵² the Nukak and Tukano,¹⁵³ the Paez (Nasa) and Guambiano,¹⁵⁴ the U’wa,¹⁵⁵ and the Wayúu.¹⁵⁶

¹⁴² See Article 3 of the *Decreto 3222 por el cual se reglamenta el artículo 22 de la Ley 715 de 2001, en relación con traslados de docentes y directivos docentes de los establecimientos educativos estatales [Colombia]*. 3222. 10 November 2003, available at <http://www.unhcr.org/refworld/pdfid/46d585652.pdf>.

¹⁴³ See the *Sentencia de Tutela n° 1132/04 de Corte Constitucional*, 11 November 2004, where the Constitutional Court affirmed that the burden of proof cannot be excessive nor too cumbersome.

¹⁴⁴ Colombian Federation of Teachers, *Denuncia Publica*, 4 April 2008, available at http://www.fecode.edu.co/descargas/dh/denuncia_asesinatos_putumayo.pdf.

¹⁴⁵ *Elespectador.com*, *Cerca de 100 colegios de Bogotá, amenazados por pandillas*, 24 April 2009, available at <http://www.elespectador.com/node/137557/print>.

¹⁴⁶ Asociación Colombiana de Estudiantes Universitarios, *Nuevas amenazas contra organizaciones estudiantiles y estudiantes en Manizales*, 7 April 2009, available at <http://colombia.indymedia.org/news/2009/04/100592.php>; Federación de Estudiantes Universitarios, *Comunicado ante situación humanitaria en las universidades de Colombia*, 17 March 2009, available at http://www.feufes.org/index.php?option=com_content&task=blogcategory&id=17&Itemid=83; Asdrubal Guerra, *Asesinado estudiante dentro de la Universidad de Antioquia*, W Radio, 13 March 2009, available at <http://www.wradio.com.co/nota.aspx?id=777315>; *Elespectador.com*, *Paramilitares habrían amenazado a 30 estudiantes de la U. de Antioquia*, 13 March 2009, available at <http://www.elespectador.com/node/127010/print>.

¹⁴⁷ Reportedly, the most affected zones have been the departments of Valle, Arauca, Antioquia, Cesar, Magdalena, Córdoba, Sucre, Bolívar and Guajira; see Federación de Estudiantes Universitarios, *El Estado narco-paramilitar se institucionaliza en la UIS*, May 2009, available at http://www.feufes.org/index.php?option=com_content&task=view&id=175&Itemid=12; see also UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, see footnote 59, p. 20, para. 64.

¹⁴⁸ See Administrative Department for National Statistics, *General Census 2005*, available at <http://www.dane.gov.co/censo/files/libroCenso2005nacional.pdf>.

¹⁴⁹ See Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Colombia: Overview*, May 2008, available at <http://www.unhcr.org/refworld/docid/4954ce5dc.html>. It is reported that Afro-Colombian populations in the coastal regions may constitute 90 percent of the population on the Pacific coast and 60 percent on the Atlantic coast. Most Afro-Colombians are settled in the department of Chocó, followed by Magdalena (72 percent), Bolívar (66 percent), and Sucre (65 percent). 65 percent of the Black populations are to be found in the Southern Valle, northern Cauca and Urabá, see Minority Rights Group International, *Profile – Afro-Colombian*, May 2008, available at <http://www.minorityrights.org/5373/colombia/afrocolombians.html>.

¹⁵⁰ Minority Rights Group International, *Arauco - Profile*, May 2008, available <http://www.minorityrights.org/5386/colombia/arhuaco.html>.

¹⁵¹ Minority Rights Group International., *Embera - Profile*, May 2008, available <http://www.minorityrights.org/5394/colombia/embera.html>.

¹⁵² Minority Rights Group International, *Kankumamo - Profile*, May 2008, available <http://www.minorityrights.org/5392/colombia/kankuamo.html>.

¹⁵³ Minority Rights Group International, *Nukak and Tukano - Profile*, May 2008, available <http://www.minorityrights.org/5388/colombia/nukak-and-tucano.html>.

Indigenous peoples in Colombia have the right to inhabit special territories as recognized under the Constitution,¹⁵⁷ and must be consulted allowed to and participate in decisions concerning the exploitation of natural resources that might be found in those territories, which shall never run against their cultural, social and economic integrity.¹⁵⁸ Additionally, pursuant to Law No. 70 of 1993, the Colombian government must guarantee the protection of the ancestral territories of the Afro-descendants, invest in their economic development, and protect their cultural identity and civil rights.¹⁵⁹

Indigenous peoples have special seats in the Colombian Senate¹⁶⁰ and exercise jurisdiction in their own lands in accordance with the principles of the Colombian Constitution.¹⁶¹ Indigenous peoples that are settled outside Colombia in bordering regions and departments, but who belong to the same ethnic group as the Colombian indigenous peoples, may also obtain Colombian citizenship.¹⁶² The Colombian indigenous peoples enjoy the rights stemming from the UN Declaration on the Rights of Indigenous Peoples.¹⁶³

The enforcement of such rights has reportedly been inconsistent.¹⁶⁴ Forced displacement of indigenous peoples is allegedly used by illegal armed groups as a mechanism to expropriate their land due to the strategic location of those territories, in particular for military operations, narcotics production and trafficking, and arms trafficking.¹⁶⁵ These activities have caused growing displacements of indigenous peoples from rural to urban areas, with little possibility of return to conditions that guarantee safety and dignity.¹⁶⁶ Indigenous peoples currently represent 6.5 percent of all the forcibly displaced persons in the country, whereas displaced Afro-Colombians represent

¹⁵⁴ Minority Rights Group International, *Paéz (Nasa) and Guambiano - Profile*, May 2008, available <http://www.minorityrights.org/5378/colombia/paez-nasa-and-guambiano.html>.

¹⁵⁵ Minority Rights Group International, *U'wa - Profile*, May 2008, available <http://www.minorityrights.org/5390/colombia/uwa.html>.

¹⁵⁶ Minority Rights Group International, *Wayúu - Profile*, May 2008, available <http://www.minorityrights.org/5384/colombia/wayu.html>.

¹⁵⁷ See article 286, 321, 329, 330 of the *Constitución Política de Colombia, 1991 con reforma de 1997 [Colombia]*, 27 October 1991, available at <http://www.unhcr.org/refworld/docid/3dbd4b224.html>.

¹⁵⁸ *Ibid.*, Article 330.

¹⁵⁹ *Ley N° 70 por la cual se desarrolla el artículo transitorio 55 de la Constitución Política [Colombia]*, 27 August 1993, available at <http://www.unhcr.org/refworld/docid/46d59b7a2.html>.

¹⁶⁰ Article 171.

¹⁶¹ *Ibid.*, Article 246.

¹⁶² *Ibid.*, Article 96(2); see also Article 1 of the *Ley N° 43 por medio de la cual se establecen las normas relativas a la adquisición, renuncia, pérdida y recuperación de la nacionalidad colombiana*, 1 February 1993, available at: <http://www.unhcr.org/refworld/docid/3dbd1ec44.html>.

¹⁶³ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution adopted by the General Assembly, 2 October 2007, A/RES/61/295, available at <http://www.unhcr.org/refworld/docid/471355a82.html>. While Colombia abstained from voting on the Declaration, it sent a letter to the United Nations High Commissioner for Human Rights on 20 April 2009 expressing its support for the Declaration and the principles contained therein and “subscribed to the concepts of equality, respect for diversity, and non-discrimination that constitute the foundation of the Declaration”, see UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, James Anaya, A/HRC/12/34, 15 July 2009, p. 9, para 25, available at <http://www.unhcr.org/refworld/docid/4a9d1befd.html>.

¹⁶⁴ UN News Service, *UN human rights expert spotlights enduring plight of Afro-Colombians*, 15 February 2010, available at <http://www.unhcr.org/refworld/docid/4b7e652726.html>; Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2009 - Colombia*, 16 July 2009, available at <http://www.unhcr.org/refworld/docid/4a66d9ba2a.html>; Asociación de Afrocolombianos Desplazados, *Luces y contra luces sobre la exclusión: Los Derechos Humanos de las Comunidades Afrocolombianas*, November 2007, p. 13, available at http://www.globalrights.org/site/DocServer/Colombian_Report_080520.pdf?docID=9503; Amnesty International, “Leave us in peace!” : Targeting civilians in Colombia's internal armed conflict, 28 October 2008, pp. 55-59, available at <http://www.amnesty.ca/amnestynews/upload/AMR230232008.pdf>.

¹⁶⁵ Inter-American Commission on Human Rights, *Annual Report of the Inter-American Commission on Human Rights 2007*, 29 December 2007, available at <http://www.cidh.org/annualrep/2007eng/TOC.htm>.

¹⁶⁶ *Ibid.*, p. 12.

approximately between 17 and 30 percent of all IDPs.¹⁶⁷ Mass displacements of indigenous peoples and their families were reported in 2009¹⁶⁸ and in 2010.¹⁶⁹

The continuing clashes between armed actors and the fluctuating territorial control by armed groups and narco-traffickers, including the illegal occupation of lands and the exploitation of natural resources in reservations, has resulted in human rights violations of indigenous persons and Afro-Colombians. Such violations include individual and mass murders,¹⁷⁰ torture,¹⁷¹ forced disappearances,¹⁷² death threats¹⁷³ and forced displacement.¹⁷⁴ In 2009, more than 100 indigenous Colombians were reportedly killed.¹⁷⁵ Indigenous peoples who refuse to cooperate with the guerrillas or other armed groups are reportedly perceived to be obstacles (*estorbos*) to the aims of the illegal armed groups, and their killing is, according to some observers, part of a strategy to break their resistance.¹⁷⁶ Indigenous leaders and members of their families, as well as indigenous rights defenders are at risk of being targeted by illegal armed groups with death threats, acts of violence, selective assassinations, and social discrimination as a result of their activities as indigenous leaders.¹⁷⁷

¹⁶⁷ See above footnote 20.

¹⁶⁸ For example, on 10 October 2009 in rural areas of the municipality of Olaya Herrera a group of approximately 940 Afro-Colombian and indigenous persons (Eperara Siapidara indigenous group) were reportedly forced to flee due to recurring violent confrontations between the national army and illegal armed groups in the Pacific Coast department of Nariño, see UN World Food Programme, WFP *Humanitarian Situation Report*, 21 October 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-7X4PYU?OpenDocument&rc=2&cc=col>; Office for the Coordination on Humanitarian Affairs, *OCHA Weekly Humanitarian Report*, Issues 40.41, 5 - 18 October 2009, available at [http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/MUMA-7X32L3-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/MUMA-7X32L3-full_report.pdf/$File/full_report.pdf); see also Colombia Reports, *Displacement of the Wayuu one of Colombia's long-lasting tragedies*, 27 January 2009, available at <http://colombiareports.com/opinion/107-human-rights/2708-displacement-of-the-wayuu-one-of-colombias-long-lasting-tragedies.html>.

¹⁶⁹ On 12 March 2010, 209 Indigenous and Afro-Colombian (40 women, 48 men and 121 children) in the rural area of Santa Barbara, Iscuandé Municipality (Pacific coast of Nariño Department) were forcibly displaced as a consequence of the arrival of approximately 300 men from an illegal armed group in the area, OCHA, *Weekly Humanitarian Bulletin*, Issue 1, 8 - 14 March 2010, available at [http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MINE-83TRWF-full_report.pdf/\\$File/full_report.pdf](http://reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MINE-83TRWF-full_report.pdf/$File/full_report.pdf).

¹⁷⁰ Amnesty International, *Third mass killing of Colombia's Awá Indigenous Peoples in 2009*, 28 August 2009, available at <http://www.unhcr.org/refworld/docid/4a9e6ae71e.html>; Human Rights Watch, *Colombia: Investigate Massacre in Southern Region*, 27 August 2009, available at <http://www.unhcr.org/refworld/docid/4a9e76805.html>.

¹⁷¹ Consejo Regional de autoridades indígenas de Risaralda, *Cuanto muertos mas debemos poner para que el estado realice las acciones pertinentes que garanticen la vida a los indígenas de Risalda*, 27 October 2009, available at http://www.onic.org.co/img_upload/3068e9df14b050d72c4fa19fabbab2d7/Asesiando_Jaibana_Risaralda.pdf.

¹⁷² Internal Displacement Monitoring Centre, *New displacement continues, response still ineffective*, 3 July 2009, available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountrySummaries\)/79AB92508BB4F69AC12575E8004CE3F1?OpenDocument&count=10000](http://www.internal-displacement.org/8025708F004CE90B/(httpCountrySummaries)/79AB92508BB4F69AC12575E8004CE3F1?OpenDocument&count=10000).

¹⁷³ Helda Martínez, *Colombia: Indigenous People Protest in Face of Threats*, Inter Press Service, 15 October 2009, available at <http://ipsnews.net/news.asp?idnews=44278>; UN News Service, *Struggle for survival: Colombia's indigenous people face threat of extinction*, available at <http://www.un.org/en/events/tenstories/08/colombia.shtml>; Mario A. Murillo, *Threats Mount Against the Indigenous Social Movement in Colombia*, Colombia Journal, 8 September 2008, available at <http://colombiajournal.org/colombia293.htm>.

¹⁷⁴ UNHCR, *Some 2,000 indigenous people flee threats and violence in Colombia*, 17 March 2009, available at <http://www.unhcr.org/49bfd6732.html>.

¹⁷⁵ Amnesty International, *Colombia: The struggle for survival and dignity: Human rights abuses against indigenous peoples in Colombia*, 23 February 2010, AMR 23/001/2010, available at <http://www.unhcr.org/refworld/docid/4b878f9b7.html>. See also CNN News, *Three held in slayings of indigenous Colombians*, 6 October 2009, available at <http://edition.cnn.com/2009/WORLD/americas/10/06/colombia.massacre.arrests/index.html>.

¹⁷⁶ Organización Nacional Indígena de Colombia, *Cauca/ Nuevas confrontaciones armadas en territorio Indígena*, 21 October 2009, available at <http://www.onic.org.co/actualidad.shtml?x=36346>; Javier Darío Restrepo, *Colombia: Neutrality Impossible for Indigenous Groups*, Inter Press Service, 10 September 2009, available at <http://ipsnews.net/news.asp?idnews=48397>.

¹⁷⁷ Amnesty International Canada, *Colombia: Indigenous leaders and their families are in danger*, 2 July 2009, available at http://www.amnesty.ca/take_action/actions/colombia_indigenous_leaders_families_in_danger.php; Amnesty International, *Colombia: Fear for safety*, 24 June 2009, available at <http://www.amnesty.org/en/library/info/AMR23/018/2009/en>; Amnesty International, *Colombian soldiers detained for killing of husband of Indigenous leader*, 1 May 2009, available at <http://www.unhcr.org/refworld/docid/49fe91482.html>; Amnesty International Canada, *Colombia: Killings of Indigenous and Afro-descendent land activists must stop*, 28 October 2008, available at

Furthermore, in areas that are utilized for large economic projects, such as mineral and oil explorations, agro-industrial developments or hydro-electric installations, the indigenous communities are at serious risk of eviction and displacement.¹⁷⁸

The Embera and Awá indigenous communities are currently more affected than others by the intensity of the military clashes and the armed confrontations between the parties to the conflict.¹⁷⁹ The arrival in 2009 of newly formed irregular armed groups and the fight against the guerrillas for the control of the territory in the jungles of northwest Colombia has caused the displacement of more than 2,000 indigenous Embera people, who fled violence, rape and physical abuse.¹⁸⁰ In the past year, more than 50 members of the Awá communities of the indigenous reservation of Gran Rosario in the Southwest Colombia department of Nariño have reportedly been killed.¹⁸¹

In light of the above, UNHCR considers that Afro-Colombians and indigenous people, in particular indigenous people leaders, are at particular risk based on several cumulative grounds, such as their actual or imputed political opinion, their nationality or their race.

9. Women with Certain Profiles

Women in Colombia are particularly affected by the armed conflict and forced displacement has significantly impacted women. Half of the displaced households are headed by women who suffer from lack of adequate humanitarian assistance, lack of housing and limited access to health care.¹⁸² The Colombian Constitutional Court acknowledged the specific impact the conflict has on this population and has indicated the need to establish effective mechanisms of protection specifically designed for displaced women.¹⁸³

http://www.amnesty.ca/take_action/actions/colombia_killing_indigenous_land_activists.php. See also the precautionary measures granted by the Inter-American Commission on Human Rights in order to adopt the necessary actions to remove the risk factors and to guarantee the life and personal integrity of the indigenous leaders, see Inter-American Commission on Human Rights, *PM 301/08—Leaders of the Indigenous Regional Council of Cauca (CRIC) and their Advisers, Colombia*, 14 January 2009, available at <http://www.cidh.oas.org/medidas/2009.eng.htm>. Furthermore, on 4 July 2007, the Inter-American Court of Human Rights condemned the Colombian State for the 1998 extra-judicial execution of the Nasa Yuwe indigenous community leader and rights defender Germán Escué, who fought against territorial dispossession, see Inter-American Court of Human Rights, *Case of Escué-Zapata v. Colombia*, Inter-American Court of Human Rights (IACrHR), 4 July 2007, available at <http://www.unhcr.org/refworld/docid/4ae6b8e52.html>.

¹⁷⁸ Amnesty International Canada, *Colombia: Millions of people forced from their homes*, 16 July 2009, available at http://www.amnesty.ca/take_action/actions/colombia_millions_forced_from_their_homes.php.

¹⁷⁹ Amnesty International, *Americas: Solutions to the historic violation of Indigenous rights will only be found through respectful dialogue, in good faith, with Indigenous peoples*, 7 August 2009, p. 6, available at <http://www.amnesty.org/en/library/asset/AMR01/004/2009/en/65324480-80e4-4de1-a664-efb848089378/amr010042009en.pdf>.

¹⁸⁰ Organización Nacional Indígena de Colombia, *Caldas/ Pueblo Embera denuncia violación a su integridad y sus derechos*, 27 October 2009, available at <http://www.onic.org.co/actualidad.shtml?x=36357>; UNHCR, *Hundreds of indigenous Embera people flee from armed group in Colombia*, 10 April 2009, available at <http://www.unhcr.org/news/NEWS/49de0de12.html>; UNHCR, *Some 2,000 indigenous people flee threats and violence in Colombia*, 17 March 2009, available at <http://www.unhcr.org/news/NEWS/49bfd6732.html>. In particular, the ICRC has provided humanitarian assistance to nearly 160 people from Emberá communities in Baudó Alto, and Santa Rita de Iro, Iro on the River; see International Committee of the Red Cross, *Colombia: indígenas desplazados por la violencia son asistidos por el CICR*, 3 April 2009, available at <http://www.icrc.org/web/spa/sitespa0.nsf/html/colombia-news-030409!OpenDocument>. See also International Federation for Human Rights, *No more murders of indigenous people in Colombia!*, 17 October 2008, available at <http://www.unhcr.org/refworld/docid/494a1278c.html>.

¹⁸¹ Amnesty International, *Third mass killing of Colombia's Awá Indigenous Peoples in 2009*, 28 August 2009, available at <http://www.unhcr.org/refworld/docid/4a9e6ae71e.html>; Human Rights Watch, *Colombia: Investigate Massacre in Southern Region*, 27 August 2009, available at <http://www.unhcr.org/refworld/docid/4a9e76805.html>.

¹⁸² Refugees International, *Colombia: Displaced Women Demand Their Rights*, 16 November 2009, available at <http://www.unhcr.org/refworld/docid/4b0263d22.html>.

¹⁸³ Constitutional Court, *Judicial Decree N°092 of 14 April 2008 on the protection of the fundamental rights of women victims of forced displacement caused by the armed conflict, issued as part of the monitoring of compliance with Judgment T-025 of 2004*, see *Auto No. 092 de 2008*, Colombia: Corte Constitucional, 14 April 2008, available at <http://www.unhcr.org/refworld/docid/484533ef2.html>.

Violence against women is reportedly used systematically by illegal armed groups for controlling territories and communities in different areas of the country.¹⁸⁴ Among the most commonly reported forms of gender-related violence in Colombia are sexual abuse and sexual violence,¹⁸⁵ torture, mutilation, forced prostitution and forced public nudity.¹⁸⁶

Additionally, women may be subjected to forced recruitment for the purpose of sexual servitude. Another specific way of exerting violence against women in this context is making them undergo constant social control mechanisms imposed by armed actors in communities or territories under their control.¹⁸⁷

The situation of indigenous and Afro-Colombian women is particularly critical since they are victims of several different forms of discrimination due to their race, ethnicity and frequently to the fact that they are indigent, compounded within the context of the ongoing armed conflict.¹⁸⁸ Violations of the human rights of women, girls and children from indigenous communities, including rape, harassment, and abuse by members of the security forces, have been acknowledged by the Colombian Constitutional Court as part of a conflict and control strategy.¹⁸⁹

In addition to other human rights violations related to the armed conflict, women are reportedly victims of widespread domestic violence.¹⁹⁰ State monitoring and intervention, both in terms of recording cases of such violence, providing adequate responses, and granting access to medical and psychological treatment, have been deemed to be only partially operational.¹⁹¹

As a result of the physical and psychological consequences of violence, in particular sexual violence, women reportedly often fall victim to severe forms of ostracism by their communities, families and partners.¹⁹²

UNHCR considers that Colombian women with certain profiles, in particular those living in areas affected by the armed conflict, are at risk on account of their membership of a particular social group.

¹⁸⁴ Oxfam International, *Sexual violence in Colombia*, Oxfam Briefing Paper 9 September 2009, available at <http://www.oxfam.org/sites/www.oxfam.org/files/bp-sexual-violence-colombia.pdf>; Sibylla Brodzinsky, *In Colombia, rape now being prosecuted as weapon of war*, The Christian Science Monitor, 11 May 2009, available at <http://www.csmonitor.com/2009/0511/p06s10-woam.html>; see also Inter-American Commission on Human Rights, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II, Doc. 67, 18 October 2006, available at <http://www.cidh.oas.org/women/Colombia06eng/toccolombiaeng.htm>.

¹⁸⁵ UNHCR, *International Women's Day: UNHCR helps Colombian victims of sexual violence*, 6 March 2009, available at <http://www.unhcr.org/49b1351a2.html>; Amnesty International, *Everything Left Behind: Internal Displacement in Colombia*, see footnote 21.

¹⁸⁶ See the precautionary measures granted by the Inter-American Commission on Human Rights on cases of violence in the cases *MC 270/09 – X y XX, Colombia*, 21 September 2009, available at <http://www.cidh.oas.org/mediadas/2009.sp.htm>.

¹⁸⁷ The actors to the conflict constantly monitor the behavior and attire of women and teenagers, and use rape as a form of punishment and general warning to the female population in communities under their control. These control mechanisms perpetuate culturally-entrenched gender stereotypes and favor crimes against women, which tend to remain unpunished; see Refugees International, *Colombia: Displaced Women Demand Their Rights*, 16 November 2009, available at <http://www.unhcr.org/refworld/docid/4b0263d22.html>.

¹⁸⁸ Oxfam International, *Sexual violence in Colombia*, see footnote 184, p. 3.

¹⁸⁹ *Auto No. 092 de 2008*, No. 092 de 2008, Colombia: Corte Constitucional, 14 April 2008, available at <http://www.unhcr.org/refworld/docid/484533ef2.html>. See also the report submitted by the National Indigenous Organization of Colombia to the UN Special Rapporteur for Human Rights and Fundamental Freedoms of Indigenous Peoples, Dr. James Anaya, during his visit to Colombia from 22 to 27 July 2009, *Organización Nacional Indígena de Colombia, Derechos Humanos de las Mujeres Indígenas*, July 2009, available at http://www.onic.org.co/img_upload/3068e9df14b050d72c4fa19fabbab2d7/Informe_ONIC_DDHH_Mujer_Indigena_presentado_al_Realtor_ONU_2009.pdf.

¹⁹⁰ According to a report of the Colombian Inspector General's Office, 49 cases of sexual abuse were reported daily in 2008. The main assailants reportedly remain the victim's husband in 84 percent of the cases, followed by rape and assault by other members of the family. The Inspector General said that in the last eight year, 630,000 women were victims of domestic violence; see Office of the Inspector General, *Procuraduría General de la Nación revela preocupante situación de violencia intrafamiliar y violencia sexual en Colombia*, 17 July 2009, available at http://www.procuraduria.gov.co/html/noticias_2009/noticias_358.html.

¹⁹¹ *Ibid.*, para. 3.

¹⁹² Inter-American Commission for Human Rights, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, see footnote 184, para. 58-60.

These include women victims of violence at the hands of illegal armed groups, forcibly recruited women, indigenous women or women of Afro-Colombian descent, and women who are victims of domestic violence.¹⁹³

10. Children with Certain Profiles

According to official statistics, 40 percent of the Colombian population is comprised of minors, many of whom live below the poverty line and lack access to education and healthcare.¹⁹⁴ It is reported that a number of children fall victim to commercial sexual exploitation, including pornography, prostitution, and sexual tourism.¹⁹⁵ Trafficking of children is also reported for the purpose of forced labour in domestic service, agriculture, mines, factories, and forced street begging. Children are believed to be trafficked internally from rural to urban areas.¹⁹⁶

Since 1991, Colombia is party to the Convention on the Rights of the Child, with a reservation to Article 38 of the Convention relating to the recruitment in the army and participation of children in the hostilities. The minimum age for recruitment in Colombia is set at 18.¹⁹⁷ Nevertheless, despite the efforts of the Colombian Government to prevent the recruitment and use of children by illegal armed groups, the risk of forced conscription remains high.¹⁹⁸ Governmental policies and programmes to reintegrate children separated from illegal armed groups into their communities are reportedly not always effective because many demobilized children are still believed to be part of these groups.¹⁹⁹ Some sources report that children who have demobilized from illegal paramilitary groups are then forced to act as informants for the security forces, particularly the Army and the Police, by helping to identify individuals who belong to their former groups.²⁰⁰

Boys and girls in regions where paramilitaries, dissidents or re-armed groups operate have been the most affected by forced recruitment.²⁰¹ It is estimated that in Colombia there are between 8,000 and

¹⁹³ This list is by no means intended to be exhaustive and other elements might be constitutive of the membership of particular social groups for women. See the UN High Commissioner for Refugees, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html>; and the *Guidelines on International Protection: Membership of a particular social group within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/02/02, 7 May 2002, available at: <http://www.unhcr.org/refworld/docid/3d36f23f4.html>.

¹⁹⁴ Reuters AlertNet, *World Health Day - The Forgotten Children of Colombia*, 1 April 2009, available at <http://www.alertnet.org/thenews/fromthefield/lwf/123859425418.htm>. See also Save the Children, *Children's Rights Fact Sheet*, September 2008, available at <http://www.savethechildren.org.uk/en/docs/0808-CRFS-ver2.pdf>.

¹⁹⁵ US Department of Labor, *2008 Findings on the Worst Forms of Child Labor - Colombia*, 10 September 2009, available at <http://www.unhcr.org/refworld/docid/4aba3ee88.html>.

¹⁹⁶ US Department of State, *Trafficking in Persons Report 2009 - Colombia*, 16 June 2009, available at <http://www.unhcr.org/refworld/docid/4a4214c53c.html>.

¹⁹⁷ The Colombian reservation states: 'The Government of Colombia, pursuant to article 2, paragraph 1 (d) of the Convention, declares that for the purposes of article 38, paragraphs 2 and 3, of the Convention, the age referred to in said paragraphs shall be understood to be 18 years, given the fact that, under Colombian law, the minimum age for recruitment into the armed forces of personnel called for military service is 18 years', available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec.

¹⁹⁸ UN Security Council, *Report of the Secretary-General on children and armed conflict in Colombia*, see footnote 8; UN General Assembly, *Children and armed conflict: report of the Secretary-General*, A/63/785-S/2009/158, 26 March 2009, p. 23, para 108, available at <http://www.unhcr.org/refworld/docid/49f16dc42.html>. US Department of Labor, *2008 Findings on the Worst Forms of Child Labor - Colombia*, 10 September 2009, available at <http://www.unhcr.org/refworld/docid/4aba3ee88.html>; UN News Service, *UN paints grim picture of child abuse in Colombian conflict*, 8 September 2009, available at <http://www.unhcr.org/refworld/docid/4aae401c1a.html>; UN Security Council, *Report of the Secretary-General on children and armed conflict in Colombia*, see footnote 8.

¹⁹⁹ UN General Assembly, *Children and armed conflict*, see above footnote 198, pp. 23-24, paras. 111 and ff.

²⁰⁰ *Ibid.*, p. 24, para. 114.

²⁰¹ *Colombia is examined by the UN Security Council Working Group on Children and Armed Conflict*, Colombian Commission of Jurists and Coalition against the involvement of boys, girls and youth to the armed conflict in Colombia, 9 February 2010, available at http://www.coljuristas.org/Portals/0/Coalico_C CJ_RecommendationsWGSC_2010.pdf; UN General Assembly, *Children and armed conflict*, see above footnote 198. According to this report, recruitment is often taking place in schools; see also UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Colombia*, CRC/C/COL/CO/3, 8 June 2006, p. 17. Paras. 80 and ff., available at

13,000 child soldiers recruited by the guerrillas and the paramilitaries.²⁰² Up to 30 percent of the members of illegal armed groups are reportedly minors, with an average age of 11 or 12 years old.²⁰³ Children from indigenous groups and Afro-Colombians are reported to be particularly at risk of forced recruitment due to their limited access to education and employment.²⁰⁴ The Colombian Constitutional Court has held that a combination of factors revolving around child recruitment is one of the main causes of displacement.²⁰⁵

Children forcibly conscripted by the guerrilla or the paramilitaries are reportedly used as front line combatants, to place mines and explosives, or to perform other dangerous military tasks, while girls face sexual abuse, rape and forced abortion.²⁰⁶ Child soldiers are reportedly initiated by being forced to kill an enemy or a close friend, thus demonstrating loyalty to the group and readiness for combat.²⁰⁷ Once they are operative, the child combatants are compelled to show no mercy with the enemy fighters and they are therefore forced to witness and partake in grave violations of human rights, including torture and killings.²⁰⁸

Individuals and family members who resist forced recruitment, commit infractions, or leave the guerrillas, the paramilitary forces or the new illegal armed actors, may suffer ill-treatment at the hands of these groups.²⁰⁹ Recruitment is carried out not only to acquire combatants but also to gather information and intelligence, for logistical support or tasks associated with health or cleaning duties, e.g. in urban or peripheral zones.²¹⁰

UNHCR considers that forcibly recruited and/or trafficked children in Colombia may be at risk on the ground of membership of a particular social group.²¹¹ Those recruited or trafficked from indigenous

<http://www.unhcr.org/refworld/docid/45377ee30.html>. Enrollment in the illegal armed groups is not always coerced through force. Children sometimes volunteer into these groups having no other viable option for survival and seeing it as possibility for life-long employment and income, see Immigration and Refugee Board of Canada, *Colombia: The recruitment methods of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) and government measures to help FARC members reintegrate into civilian society (2005 - February 2008)*, COL102787.FE, 14 April 2008, available at <http://www.unhcr.org/refworld/docid/4829b55c23.html>.

²⁰² Amnesty International, “¡Déjenos en paz!”, see above footnote 26.

²⁰³ Michael Kay, *Forced recruitment of minors rising, causing displacement in Colombia*, Colombia Reports, 9 October 2008, available at <http://www.colombiareports.com/colombia-news/news/1621-forced-recruitment-of-minors-rising-causing-displacement-in-colombia.html>.

²⁰⁴ UNHCR, *Armed recruitment of children in Colombia forces indigenous off their land*, 12 August 2009, available at <http://www.unhcr.org/4a82df549.html>. See also Immigration and Refugee Board of Canada, *Colombia: Forcible recruitment of Afro-Colombians by the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) and paramilitary groups; whether Afro-Colombians are targeted for recruitment (2006 - June 2008)*, COL102836.E, 22 August 2008, available at <http://www.unhcr.org/refworld/docid/49b92b531e.html>.

²⁰⁵ The Court indicates four distinct mechanisms linked to forced recruitment of children as the main causes of forced displacement: (i) forced displacement of families or of entire communities before recruitment and following direct threats from illegal armed groups or the existence of a generalized risk of forced recruitment in a given region; (ii) forced displacement of the family of the effectively recruited child; (iii) forced displacement of families of the recruited child who deserts, in order to protect him or her; and (iv) forced displacement of the unaccompanied minor who escapes from the fear and risk of forced recruitment. See Auto No. 251 de 2008, *Auto 251/08, Colombia: Corte Constitucional*, 6 October 2008, pp. 35-36, available at: <http://www.unhcr.org/refworld/docid/49cccb9a2.html>.

²⁰⁶ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008 - Colombia*, 20 May 2008, available at <http://www.unhcr.org/refworld/docid/486cb0f4c.html>. On violence against girls, see also the Colombia Constitutional Court order No. 092 of April 2008, above footnote 189.

²⁰⁷ Human Rights Watch, *Coercion and Intimidation of Child Soldiers to Participate in Violence*, 16 April 2008, p. 5, available at <http://www.unhcr.org/refworld/docid/48084a2c2.html>. See also Human Rights Watch, “You’ll Learn Not to Cry”: *Child Combatants in Colombia*, 18 September 2003, available at <http://www.unhcr.org/refworld/docid/3fe479ac4.html>.

²⁰⁸ Human Rights Watch, *Coercion and Intimidation of Child Soldiers to Participate in Violence*, above footnote 207.

²⁰⁹ Ibid.

²¹⁰ International Crisis Group, *Correcting Course: Victims and the Justice and Peace Law in Colombia*, see footnote 82.

²¹¹ See the UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>; UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2005, available at <http://www.unhcr.org/refworld/docid/47fdfb180.html>; UN Security Council, *Security Council resolution 1612 (2005) [on children in armed conflict]*, 26 July 2005, S/RES/1612 (2005), available at <http://www.unhcr.org/refworld/docid/43f308d6c.html>; UN General Assembly, *Optional Protocol to the Convention on*

groups or from Afro-Colombian minorities may have additional grounds based on nationality and/or race. Lastly, former child soldiers may be at risk on grounds of their actual or imputed political opinion. Child claims need to be assessed carefully against the aforementioned background information and in light of the UNHCR Guidelines on Child Asylum Claims.²¹²

11. Marginalized Social Groups

Currently in Colombia, mistreatment has been reported against LGBT individuals,²¹³ drug-addicts, persons with HIV/AIDS, sex-workers, vagrants, “recyclers” (people who collect, separate and sell garbage),²¹⁴ suspected petty thieves, and mentally-ill persons, under a general call for “social cleansing” (*limpieza social*), allegedly carried out by illegal armed groups as well as by local gangs.²¹⁵ Since the beginning of 2009, the distribution of pamphlets (*listas negras*) containing death threats and other threats of violence against these persons, announced the launch of a plan for “social cleansing”.²¹⁶ This “social cleansing” policy is reportedly intended to allow social and economic

the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, A/RES/54/263, available at <http://www.unhcr.org/refworld/docid/3ae6b38bc.html>.

²¹² UN High Commissioner for Refugees, *Guidelines on International Protection No. 8*, see above footnote 211.

²¹³ *Kaos en la red, Radio gay colombiana agredida por un grupo homofobico*, 4 May 2009, available at <http://www.kaosenlared.net/noticia/radio-gay-colombiana-agredida-grupo-homofobico>; Immigration and Refugee Board of Canada, *Colombia: Treatment of homosexuals; especially in Bogota and Cali, availability of state protection and support services*, 14 April 2009, COL103021.E, available at <http://www.unhcr.org/refworld/d/docid/4a7040a8c.html>.

²¹⁴ Colombia Reports, *Cali garbagemen killed in ‘social cleansing’: Ombudsman*, 11 July 2009, available at <http://colombiareports.com/colombia-news/news/4950-cali-garbagemen-killed-in-social-cleansing-ombudsman.html>.

²¹⁵ El País, *Amenaza de “limpieza social” alarma a la región*, 17 March 2009, available at <http://www.elpais.com.co/paisonline/notas/Marzo172009/Valle2.html>; UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak : addendum : follow-up to the recommendations made by the Special Rapporteur visits to Azerbaijan, Cameroon, Chile, China, Colombia, Georgia, Jordan, Kenya, Mexico, Mongolia, Nepal, Pakistan, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela*, A/HRC/7/3/Add.2, 18 February 2008, p. 39, para. 163, available at: <http://www.unhcr.org/refworld/docid/47cbbf262.html>. ‘Social Cleansing’ campaigns in Colombia are not new. In the 1990s, many persons belonging to the marginalized and impoverished sectors (criminals, prostitutes, homosexuals, beggars, drug consumers and street children) of the population have been threatened, beaten and killed by ‘death squads’. See the UN Joint report of the Special Rapporteur on the question of torture, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, *Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82. Visit by the Special Rapporteurs to the Republic of Colombia from 17 to 26 October 1994* Colombia, E/CN.4/1995/111, 16 January 1995, p. 16, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>. See also The Independent, *Cities that pass death sentences on the poor: Colombia ‘cleanses’ its thieves, beggars and prostitutes*, 30 January 1994, available at <http://www.independent.co.uk/news/world/cities-that-pass-death-sentences-on-the-poor-colombia-cleanses-its-thieves-beggars-and-prostitutes-1403436.html>; The New York Times, *Vigilantes in Colombia Kill Hundreds in a ‘Social Cleansing’*, 31 October 1994, available at <http://www.nytimes.com/1994/10/31/world/vigilantes-in-colombia-kill-hundreds-in-a-social-cleansing.html?pagewanted=1>.

²¹⁶ The existence of at least 26 different versions of these pamphlets, circulating in 24 of the country’s 32 departments has been reported by the UN High Commissioner for Human Rights, *Oficina de la ONU para los Derechos Humanos preocupada por ola de panfletos amenazantes*, 29 April 2009, available at <http://www.hchr.org.co/publico/comunicados/2009/cp0911.pdf>. See also Comisión Colombiana de Juristas, *The expression of political and social violence through paramilitary pamphlets*, 24 July 2009, available at [http://www.coljuristas.org/Portals/0/Bollet%20C3%A0n%20No%2037-24%20julio%202009%20\(2\)-ingl%20.pdf](http://www.coljuristas.org/Portals/0/Bollet%20C3%A0n%20No%2037-24%20julio%202009%20(2)-ingl%20.pdf); El Mundo, *Panfletos de ‘limpieza social’ inundan los barrios marginales de Colombia*, 11 April 2009, available at <http://www.elmundo.es/elmundo/2009/04/11/internacional/1239443550.html>; Associated Press, *Difunden panfletos contra “limpieza social” en Colombia*, 2 April 2009, available at <http://www.chron.com/disp/story.mpl/sp/nws/6355765.html>; *Kaos en la red, Colombia: la nueva fase de la “limpieza social”*, 1 April 2009, available at <http://www.kaosenlared.net/noticia/colombia-nueva-fase-limpieza-social>; N24 Nuestra Tele Noticias, *Las Águilas Negras anuncian “limpieza” social en el barrio Santa Lucía de Medellín*, 2 February 2008, available at <http://www.nuestratele.tv/content/aguilas-negras-anuncian-%E2%80%9Climpieza%E2%80%9D-social-barrio-santa-lucia-medellin>; El Tiempo, *Alerta están 20 ciudades del país por aparición de panfletos amenazantes*, 18 March 2009, available at <http://www.eltiempo.com/archivo/documento/CMS-4883795>; Telesur, *Marchan en Colombia por amenazas de “limpieza” social*, 20 March 2009, available at <http://www.telesurtv.net/noticias/secciones/nota/45513-NN/marchan-en-colombia-por-amenazas-de-limpieza-social/>. See, more recently, the appearance of those pamphlets in the Departments of Sucre and Bolívar; OCHA, *Rural and urban communities continue to be targeted by illegal armed groups*, in Humanitarian Bulletin Issue

control by paramilitary groups, especially in those areas where Government control is fragile.²¹⁷ Some of these threats have resulted in killing and violence against certain groups.²¹⁸ Investigation and prosecution of those responsible are reportedly ineffective, thereby granting *de facto* impunity to the perpetrators.²¹⁹

UNHCR considers that, given the gravity of the: (i) threats; (ii) widespread distribution of intimidating pamphlets; and (iii) the established reach of the paramilitaries and other illegal armed groups, LGBT individuals, drug-addicts, persons with HIV/AIDS, prostitutes, vagrants, “recyclers”, suspected thieves, and mentally ill persons living in Colombian urban settlements, maybe at risk on the basis of their membership of a particular social group.²²⁰

C. Internal Flight or Relocation Alternative (IFA/IRA)²²¹

A detailed analytical framework for assessing the availability of an internal flight alternative or internal relocation alternative (IFA/IRA), is contained in UNHCR’s 2003 “*Guidelines on International Protection: the “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*”.²²²

In order to assess the possibility of applying an IFA/IRA, two main sets of analyses should be undertaken, namely whether internal relocation is (i) **relevant** and, if so, whether it is (ii) **reasonable**.²²³

In the Colombian context, relocating to other areas under State control is not relevant, when the agent of persecution is the State, due to the reach of the authorities.²²⁴ Furthermore, relocation to areas under the control of illegal armed groups is not relevant, given the extreme difficulties in gaining access to such areas due to widespread insecurity. In addition, relocation to such regions may expose the individuals concerned to a risk of persecution at the hands of illegal armed groups controlling those areas. For this reason, UNHCR considers that when the agent of persecution is the State, an internal flight alternative is not available.

In relation to individuals fleeing persecution at the hands of non-State agents, an internal flight alternative is not relevant, in areas under State control, when State authorities tolerate or condone, including through corruption,²²⁵ the acts of persecution perpetrated by illegal armed groups, such as

17 - 18 covering 19 April – 2 May 2010, 2 May 2010, available at [http://reliefweb.int/rw/rwb.nsf/db900sid/VDUX-857TPP/\\$File/full_report.pdf](http://reliefweb.int/rw/rwb.nsf/db900sid/VDUX-857TPP/$File/full_report.pdf).

²¹⁷ Afro-Colombians, *Urgent Social Cleansing in Buenaventura*, 10 March 2009, available at http://www.afrocolombians.com/pdfs/LimpiezaSocial-JYPStatement_andPamphlet.pdf. This document provides an English translation of one of the pamphlets. See also WRITENET, *Colombia. Internal Displacement - Policies and Problems*, 1 June 2006, p.6, available at <http://www.unhcr.org/refworld/docid/44bf463a4.html>.

²¹⁸ El Tiempo, *Circulan Panfletos Amenazantes. Encapuchados Asesinan A Joven En U. De Antioquia*, 13 March 2009 available at <http://www.eltiempo.com/archivo/documento/MAM-3357577#>.

²¹⁹ Colombia Reports, *Prosecutors never really investigated social cleansing*, 25 August 2009, available at <http://colombiareports.com/colombia-news/news/5572-prosecutors-never-really-investigated-social-cleansing.html>;

Verdad Abierta, *Fiscales archivaron investigaciones porque víctimas eran gays, delincuentes y locos*, 24 August 2009, available at <http://www.verdadabierta.com/web3/justicia-y-paz/1537-fiscales-archivaron-investigaciones-porque-victimas-eran-gays-delincuentes-y-locos>.

²²⁰ On the definition of the Convention ground ‘membership of a particular social groups’, see UNHCR, *Guidelines on International Protection No. 2*, above footnote 193.

²²¹ IFA/IRA is relevant in the context of determining eligibility for refugee status under the 1951 Convention and its 1967 Protocol, UNHCR Mandate RSD (including the extended refugee definition), as well as determination of eligibility under certain complementary/subsidiary forms of protection as stipulated in regional instruments.

²²² See in general 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*, HCR/GIP/03/04, 23 July 2003, available at available at <http://www.unhcr.org/refworld/docid/3f2791a44.html> (further: “UNHCR, *Internal Flight or Relocation Alternative Guidelines*”).

²²³ UNHCR, *Internal Flight or Relocation Alternative Guidelines*, p. 3.

²²⁴ See UNHCR *Guidelines on International Protection, “Internal Flight or Relocation Alternative”*, above footnote 222, para. 7 I) b).

²²⁵ See Transparency International, *Transparencia en la Justicia*, available through the Colombian antenna “Transparencia por Colombia” at <http://www.transparenciacolombia.org.co/JUSTICIA/tabid/67/Default.aspx> [accessed March 2010].

the former and current paramilitary groups or narco-traffickers.²²⁶ Further consideration should be given to: (i) the presence of illegal checkpoints throughout the country, and the possibility that individuals attempting to relocate may be identified and targeted at such checkpoints by illegal armed groups;²²⁷ (ii) the reach and ability of the network of the illegal armed groups to trace and target individuals,²²⁸ both in rural areas and in urban centres, including large cities such as Bogotá, Medellín and Cali;²²⁹ (iii) the profile of the asylum-seeker and the existence of any reasonable grounds to believe that he or she will be traced and targeted.²³⁰ Where an internal flight alternative is otherwise deemed to be relevant, the reasonableness test will depend on: (i) the ability of the State to effectively protect the displaced population;²³¹ (ii) the possibility to be hosted by relatives and friends; (iii) the existence of concrete economic opportunities or of the possibility of local settlement for the displaced population, including access to healthcare and availability of accommodation; and (iv) the general security situation,²³² including the assessment of the potential heightened risk of exposure to criminality for the displaced individuals.²³³

When assessing the ‘relevance’ of IFA/IRA for those individuals fleeing from a situation of armed conflict or generalized violence in Colombia, it is of particular importance to consider: (i) the concrete prospects of safely accessing areas of Colombia not affected by generalized violence, including by assessing the risks associated with the widespread use of checkpoints and landmines throughout the territory;²³⁴ and (ii) the changing scale of the conflict and of territorial control. Moreover, in 2009, the Colombian Constitutional Court observed that the State does not have the ability to suitably protect civilians that seek refuge in parts of the country not directly affected by the armed conflict.²³⁵ If

²²⁶ See, for example, the scandal called ‘Parapolitica’ above footnote 40.

²²⁷ Individuals who, due to economic needs or personal ties, travel between areas controlled by different parties to the conflict, even on a one time visit, may be misidentified as supporters of a rival party to the conflict and thus be at risk. See the UN General Assembly, Human Rights Council, Fourth Session, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons – Mission to Colombia*, see above footnote 66, in particular paras. 16 to 18, specifically referring to the stigmatization and polarization phenomenon that affects the civilian population. According to information obtained by UNHCR, this group of people may also include truck and taxi drivers, merchants, rural teachers, street vendors, repair servicemen, healthcare providers including members of medical missions, civil servants and other people who travel frequently to different regions to visit family members, and who are often suspected by armed actors to be gathering information for rival groups.

²²⁸ Reportedly, the guerrillas and paramilitary groups often employ highly sophisticated databases and computer networks and are able to trace people even years after their initial search, see Immigration and Refugee Board of Canada, *Colombia: Availability of state protection to those who fear harassment, threats or violence by armed groups since the election of President Alvaro Uribe Vélez (August 2002-July 2003)*, 18 July 2003, available at <http://www.unhcr.org/refworld/docid/3f7d4d7de.html>. See also *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*, above footnote 68, p. 4. para. 6, which refers to the general Colombian guerrilla strategy as follows: ‘once targeted by an armed group, individuals are systematically persecuted through the use of sophisticated intelligence which enables them to be located when they flee to other parts of the country’.

²²⁹ See on this point *SZIED v. Minister for Immigration and Citizenship*, [2007] FCA 1347, 30 August 2007, available at: <http://www.unhcr.org/refworld/docid/47f34e8f10.html>.

²³⁰ In this respect see *LV (Internal Relocation - FARC) Colombia v. Secretary of State for the Home Department*, CG [2002] UKIAT 04431, 27 September 2002, available at <http://www.unhcr.org/refworld/docid/46836ac50.html>.

²³¹ The IDMC indicates that in 2009, efforts to improve the response capacity to forced displacements of receiving municipalities were attempted, but they reportedly bore negligible results because of coordination and budget limitations. See Internal Displacement Monitoring Centre (IDMC), *Internal Displacement - Global Overview of Trends and Developments in 2009*, 17 May 2010, p. 51, available at: <http://www.unhcr.org/refworld/docid/4bf150a22.html>.

²³² See for example Colombia Reports, *Medellin murder rate up 50% in 2010*, 12 April 2010, available at <http://colombiareports.com/colombia-news/news/9110-medellin-murder-rate-up-50-in-2010.html>.

²³³ In order to assess the scale of incidents and acts of violence and the reach of the armed groups and criminal gangs in Colombia, see the weekly bulletins on the humanitarian situation produced by OCHA available at <http://www.reliefweb.int/rw/srch.nsf/doc304SearchResults?OpenForm&view=rwrwb&srcid=OCHA&emid=ACOS-635NUU> [accessed May 2010].

²³⁴ Internal Displacement Monitoring Centre, *Colombia: New displacement continues, response still ineffective*, above footnote 11, p. 27. See also Electronic mine information network, *Colombia*, available at <http://www.mineaction.org/country.asp?c=8> [accessed May 2010]; Landmine and Cluster Munition Monitor, *Annual Report 2009 – Colombia*, available at http://www.the-monitor.org/index.php/publications/display?act=submit&pqs_year=2009&pqs_type=lm&pqs_report=colombia&pqs_section= [accessed May 2010].

²³⁵ Constitutional Court of Colombia, *Judgment T-600/09*, see above footnote 47. This judgment reiterates and upheld the previous judgment T-025/04, see above footnote 19, where the Court already indicated that the inadequacy of the response to internal displacement represented an “unconstitutional state of affairs”.

relocation from a situation of generalized violence is deemed to be relevant, in particular in urban areas, the reasonableness test will depend on: (i) the existence of relatives and friends and their ability to host displaced individuals; (ii) the insecurity in towns and cities; (iii) the existing economic and social opportunities; (iii) effective access to healthcare facilities and availability of medical treatment for displaced individuals;²³⁶ (iv) the frequency and scale of intra-urban displacement;²³⁷ and (v) the general stigmatization of the displaced population, which in many cases inhibits access to effective protection and available relocation even in the country's large urban centres.²³⁸ Moreover, when assessing the reasonableness of internal relocation for Colombian indigenous peoples fleeing generalized violence, careful consideration needs to be paid to issues such as: (i) linkage to a particular land or territory; (ii) the close social integration in a particular community; and (iii) the possibility to perpetuate their customs and traditions.²³⁹

D. Exclusion from International Refugee Protection

In light of reported serious human rights violations and transgressions of IHL committed by all actors to the armed conflict in Colombia, as well as reports of serious crimes committed by narco-traffickers and members of criminal organizations in Colombia, exclusion considerations under Article 1F of the 1951 Convention may be triggered with regard to individual claims for refugee status.

In the context of Colombia, exclusion considerations are of particular relevance in the case of asylum claims pertaining to former members of one of the parties to the armed conflict, including former members of the security or regular armed forces, guerrilla groups, paramilitary forces, as well as new illegal armed groups formed after the demobilization process.²⁴⁰ In particular, individual responsibility for war crimes and other grave violations of IHL committed in the context of the armed conflict²⁴¹ needs to be carefully assessed.

Acts such as murder, homicide, rape, kidnapping, hostage-taking, trafficking of persons, drugs and arms, assaults, forced prostitution and other forms of gender-based violence committed in particular by criminal gangs and/or narco-traffickers outside the framework of the armed conflict would reach

²³⁶ Andrés Quintero L and Tegan A Culler, *IDP health in Colombia: needs and challenges*, Forced Migration Review, 4 September 2009, pp. 70-71, available at <http://www.fmreview.org/FMRpdfs/FMR33/70-71.pdf>.

²³⁷ Internal Displacement Monitoring Centre, *Colombia: New displacement continues, response still ineffective*, above footnote 11.

²³⁸ Kimberly Howe, *Conflict transformation and the urban displaced in Colombia*, Humanitarian Exchange Magazine, Issue 45, December 2009, available at <http://www.odihpn.org/report.asp?id=3046>.

²³⁹ See generally the *United Nations Declaration on the Rights of Indigenous Peoples*, above footnote 163.

²⁴⁰ These exclusion categories are not intended to be exhaustive; individual cases outside the scope of these descriptions may also trigger scrutiny under the exclusion clauses. For further guidance on Article 1F(a) see, UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, paras. 23-36, 4 September 2003, available at <http://www.unhcr.org/refworld/docid/3f5857d24.html>. For the purpose of asylum procedures, the fact that an individual was a member of the State armed forces or of organized armed groups belonging to a party to the armed conflict in Colombia does not necessarily exclude him/her from being admitted to the asylum procedures or being considered as an asylum-seeker, provided it is established by the competent authority that he/she has genuinely and permanently renounced military activities. See UNHCR, *Conclusion on the civilian and humanitarian character of asylum*, 8 October 2002, No. 94 (LIII) - 2002, available at <http://www.unhcr.org/refworld/docid/3dafdd7c4.html>, paragraph (c)(vii).

²⁴¹ The International Committee for the Red Cross qualifies the Colombian conflict as an armed conflict; see the Colombia page on the ICRC's website available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/colombia!Open#Key%20document> [accessed January 2010]. In particular, see International Review of the Red Cross, *Interview with The Hon. Sergio Jaramillo Caro, Vice Minister of Defence in Colombia*, Vol. 90, No. 872, December 2008, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-872-p823/\\$File/irrc-872-interview.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-872-p823/$File/irrc-872-interview.pdf), where the Minister of Defense reportedly affirms that there is agreement on a legal characterization of the conflict that encourages the application of IHL. For further guidance on how the term "armed conflict" is defined in IHL, see International Committee of the Red Cross, *Opinion Paper*, March 2008, available at [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/\\$file/Opinion-paper-armed-conflict.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/$file/Opinion-paper-armed-conflict.pdf). For the IHL applicable to the Colombia situation, see in particular Article 8 of the Rome Statute, UN General Assembly, *Rome Statute of the International Criminal Court* (last amended January 2002), A/CONF. 183/9, 17 July 1998, available at <http://www.unhcr.org/refworld/docid/3ae6b3a84.html>, and the International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609, available at <http://www.unhcr.org/refworld/docid/3ae6b37f40.html>.

the seriousness threshold required to fall under Article 1F(b).²⁴² Particular care needs to be used for those excludable acts pertaining to cultivation, processing and trafficking of drugs.²⁴³ In these cases, the careful application of Articles 3(1) and 3(5) of the Convention against Traffic in Narcotic Drugs and Psychotropic Substances, constituting ‘serious criminal offences’ and ‘particularly serious offences’, shall inform the qualification of the act as a ‘serious non-political crime’ for the application of Article 1F(b) regarding exclusion.²⁴⁴ In both situations the seriousness threshold test will take into account the existence of aggravating circumstances, and their prevalence over potential mitigating circumstances. Additionally, grounds for rejecting individual responsibility and of possible defences to criminal liability should also be carefully considered.²⁴⁵ In order to fall under the definition of Article 1F(b) of the 1951 Convention, the drug-related criminal act needs to be weighted with reference to indicators such as the scale and frequency of the offence, if the offender was a direct perpetrator of the offence or was otherwise linked to an organized criminal group, and also at the offender’s responsibility in the chain of drug production, process and commercialization.²⁴⁶ The exclusion analysis may rather concentrate on ‘high-risk’ as opposed to ‘low-risk’ drugs.²⁴⁷

With regard to organized criminal gangs, particular attention needs to be paid to those ‘serious non-political crimes’ beyond drug-related offences, such as killings, kidnappings, hostage-taking, attacks, and brutal acts of violence perpetrated by individuals that are or have been associated with such groups, including those formed after the demobilization process, that are perpetrated outside the framework of the armed conflict and do not, therefore, constitute a war crime.²⁴⁸ In addition, careful consideration needs to be given to potentially excludable acts perpetrated by paramilitary groups against the marginalized social groups as described above, under the rubric of ‘social cleansing’.²⁴⁹

1. Individual Responsibility²⁵⁰

In the Colombian context, defences to individual responsibility may also need to be considered, in particular duress/coercion, self-defence or the defence of other persons in relation to individuals who were party to the armed conflict, or former members of organized criminal gangs and narco-traffickers. Each case needs to be considered on its own merits. In an armed conflict, the defence of duress would apply where the criminal acts resulted from the applicant acting necessarily and

²⁴² For a more detailed discussion, see: UNHCR, *Background Note on Exclusion*, above footnote 240, at paragraphs 37-45.

²⁴³ For a detailed analysis of the applicability of exclusion to drug offences, with particular reference to the Colombian context, see Martin Gottwald, *Asylum Claims and Drug Offences: the Seriousness Threshold of Article 1F(b) of the 1951 Convention Relating to the Status of Refugees and the UN Drug Conventions*, International Journal of Refugee Law, Vol. 18, No. 1, 2006.

²⁴⁴ See the UN Economic and Social Council (ECOSOC), *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 19 December 1988, available at <http://www.unhcr.org/refworld/docid/49997af90.html>.

²⁴⁵ See Martin Gottwald, *Asylum Claims and Drug Offences*, above footnote 243, p. 117.

²⁴⁶ *Ibid.*, pp.100-106.

²⁴⁷ *Ibid.*, p. 103. ‘High-risk’ drugs, such as opium, morphine and cocaine, are considered to cause unacceptable harm to both society and the user and thus constitute an aggravating factor. Other types of drugs, such as cannabis, have been considered to be ‘low-risk’ drugs. See Supreme Court (Canada), *Pushpanathan v. Minister of Citizenship and Immigration and others* (1998), 4 LRC 365; see also Federal Constitutional Court (Germany), *Cannabis Decision* (1994), BverfG NJW 1994, 1577, where the German Constitutional Court held that the equal treatment of soft and hard drugs is incompatible with the concept of justice.

²⁴⁸ On new criminal gangs see Instituto de Estudios para el Desarrollo y la Paz – Indepaz, *Informe comparativo de nuevos grupos narcoparamilitares 2008 – 2009, 2009*, available at http://www.indepaz.org.co/attachments/382_Informe%20comparativo%20nuevos%20grupos%202008%20-%202009%20INDEPAZ.pdf, which contains an updated list of currently operating criminal gangs. See also Associated Press, *Report: New Criminal Gangs in Colombia*, 16 August 2007; International Crisis Group, *Colombia’s New Armed Groups*, see footnote 39. On exclusion for members of organized crimes see UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 31 March 2010, pp. 19-20, available at <http://www.unhcr.org/refworld/docid/4bb21fa02.html>.

²⁴⁹ See Part B, Section 11 of the Guidelines.

²⁵⁰ For a detailed guidance on individual responsibility and exclusion, see UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, paras. 18-23, available at <http://www.unhcr.org/refworld/docid/3f5857684.html>; UNHCR, *Background Note on Exclusion*, above footnote 240, paras. 50-75; UNHCR, *UNHCR Statement on Article 1F of the 1951 Convention*, July 2009, pp. 9-10 and 23-26, available at <http://www.unhcr.org/refworld/docid/4a5de2992.html>.

reasonably to avoid a threat of imminent death or serious bodily harm to him or herself or another person.²⁵¹ However, acting on orders from superiors, in the absence of the imminent harm necessary to establish duress, will normally not provide a defence to criminal responsibility. With regard to members of a group or an organization involved in excludable acts, for duress to apply, consideration needs to be given to whether the individual could reasonably have been expected to simply renounce his/her membership, and indeed whether he/she should have done so earlier if it was clear that the situation in question would arise.²⁵²

2. Child Soldiers

In the Colombian context, special attention needs to be paid to asylum claims by children associated with armed forces or armed groups, including former child soldiers and children who have been forcibly recruited or have taken part in the armed conflict. It is reported that children in locations where paramilitaries, dissidents, or re-armed groups operate have been most affected by forced recruitment. Guerrilla groups (including the FARC and the ELN) and the paramilitary have reportedly used recruited children as front line combatants, to place mines and explosives, to perform other dangerous military tasks, or to partake in grave violations of human rights, including torture and killings as well as to gather information and intelligence. As noted above, children who have been demobilized from illegal paramilitary groups have reportedly been forced to act as informants for the security forces, particularly the army and the police. Similarly, children of indigenous descent and Afro-Colombian children have been reported to be particularly at risk of being forcibly recruited.

In view of the particular circumstances of the Colombian armed conflict and the vulnerabilities of children, the application of the exclusion clauses to children needs to be exercised with great caution. The exclusion analysis must take into account not only general exclusion principles but also the rules and principles that address the special status, rights and protection afforded to children under international and national law at all stages of the asylum procedure.²⁵³ In particular, those principles related to the best interest of the child, the mental capacity of children and their ability to understand and consent to acts that they are requested or ordered to undertake need to be considered. Grounds for the absence of the *mens rea* or lack of mental capacity include, for example, severe mental disabilities, involuntary intoxication, or immaturity. A rigorous application of legal and procedural standards for exclusion is also critical.

When assessing exclusion, it is important to bear in mind that children in Colombia are generally at risk of persecution arising from forced recruitment, and that child soldiers may have a legitimate claim of fearing persecution on grounds of their actual or imputed political opinion. In the case of children recruited primarily by the illegal armed groups at the age of 11 or 12 years, the exclusion clauses may not apply at all. Where children are alleged to have committed crimes while their own rights were being violated (for instance while being forcibly associated with armed forces or armed groups), it is important to bear in mind that they may be victims of offences against international law and not just perpetrators.²⁵⁴

²⁵¹ The relevant criteria are provided in Article 31(1)(d) of the ICC Statute.

²⁵² Under international criminal law, defence of superior orders will only apply if the individual in question was under a legal obligation to obey the order in question, was unaware that the order was unlawful, and the order itself was not manifestly unlawful. See UNHCR *Guidelines on Exclusion*, above footnote 251, paras. 21-23; UNHCR *Background Note on Exclusion*, above footnote 240, paras. 66-71.

²⁵³ For a detailed analysis on child asylum claims and exclusion, see UNHCR, *Guidelines on International Protection on Child Asylum under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, paras. 19-23 and 58-64; UNHCR, *Advisory Opinion From the Office of the United Nations High Commissioner for Refugees (UNHCR) Regarding the International Standards for Exclusion From Refugee Status as Applied to Child Soldiers*, 12 September 2005, <http://www.unhcr.org/refworld/docid/440eda694.html>. On procedural issues regarding exclusion, see UNHCR, *Guidelines on Exclusion*, above footnote 251 paras. 31-36 and UNHCR, *Background Note on Exclusion*, above footnote 240, paras. 98-113.

²⁵⁴ The Paris Principles state: "Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles," para. 3.6. With respect to under-age recruitment of children by armed

In relation to former child soldiers, if mental capacity is established, other grounds for rejecting individual responsibility need to be examined, notably whether the child has acted under duress, coercion, or in defence of self or others. Additional factors to consider may include: (i) the age at which the child became involved in the armed forces or group; (ii) the reasons for which he/she joined and left the armed forces or group; (iii) the length of time he/she was a member; (iv) the consequences of refusal to join the group; (v) any forced use of drugs, alcohol or medication; (vi) the level of education and understanding of the events in question; and (vii) the trauma, abuse or ill-treatment suffered. When assessing a child's claim, even if the circumstances do not give rise to a defence, factors such as the age, maturity and vulnerability of the child are important considerations, including ill-treatment by military personnel and circumstances during service. The consequences and treatment that the child may face upon return to Colombia if excluded (i.e. ill-treatment, or re-recruitment, as a consequence of having escaped the armed forces or other armed groups) also need to be considered.

E. Eligibility Under Extended/Broader Refugee Criteria or on the Basis of Complementary/Subsidiary Forms of Protection in a Situation of Generalized Violence

This section of the Guidelines aims to provide guidance for the determination of eligibility of Colombians fleeing areas of armed conflict in Colombia, and who do not meet the refugee criteria contained in Article 1(A)(2) of the 1951 Convention.²⁵⁵

It is important to note that persons fleeing their country of origin in situations of armed conflict may have a well-founded fear of persecution based on one or more of the 1951 Convention grounds.²⁵⁶ This is particularly relevant where, as in Colombia, the protracted armed conflict is rooted in social, political and ideological disputes, and where specific groups are targeted. Given the widespread human rights violations against individuals with specific profiles in many parts of Colombia, it can be expected that many asylum-seekers from Colombia, including those originating from areas where the armed conflict is being waged and in particular those groups spelled out in Section IV of these Guidelines, will be eligible for refugee protection under the aforementioned refugee criteria.²⁵⁷ Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention should broader refugee criteria and/or complementary/subsidiary regimes be examined.

The extended/broader refugee criteria enshrined in regional refugee instruments (such as the Cartagena Declaration) and UNHCR's mandate are critical in responding to the international protection needs of persons who, because of a serious threat to their life, liberty or security as a result of generalized violence or events seriously disturbing public order, are outside their country of origin.²⁵⁸

In other regions, the 1951 Convention refugee definition has not been extended, but rather complemented through the establishment of specifically tailored mechanisms to offer a form of international protection to persons who are considered to be in need of international protection but who fall outside the scope of the 1951 Convention. In the European Union, for example, "subsidiary protection"²⁵⁹ shall be granted to persons who have been found not to meet the criteria for refugee

forces and non-State armed groups, see UNHCR, *Guidelines on International Protection on Child Asylum under Articles 1(A)2 and 1(F)*, above footnote 253, paras. 19-23.

²⁵⁵ The above analysis on exclusion and availability of an internal or relocation alternative is applicable also to those Colombians who may be eligible under the so-called extended refugee criteria or on the basis of complementary forms of protection.

²⁵⁶ *UNHCR Handbook*, para. 164.

²⁵⁷ When examining the link to a 1951 Convention ground in the claims of persons who are fleeing a situation of armed conflict, there is no requirement that the individual be known to, and sought personally by the agent(s) of persecution. Whole communities may risk or suffer persecution for 1951 Convention reasons, and there is no requirement that an individual suffer a form or degree of harm which is different than that suffered by other individuals with the same profile. Furthermore, many ordinary civilians may be at risk of harm from bombs, shelling, suicide attacks, and improvised explosive devices. These methods of violence may be used against targets or in areas where civilians of specific ethnic or political profiles predominantly reside or gather, and for this reason, may be linked to a 1951 Convention ground.

²⁵⁸ UNHCR, *Note on International Protection (submitted by the High Commissioner)*, A/AC.96/830, 7 September 1994, available at <http://www.unhcr.org/refworld/docid/3f0a935f2.html>.

²⁵⁹ Art. 15 of the Qualification Directive, see footnote 5.

status under the 1951 Conventions, but are at risk of serious harm, *inter alia*, by dint of indiscriminate violence in situations of international or internal armed conflict.

In 2009, armed confrontations between the various parties to the conflict continued to impact civilians primarily. Several thousand incidents, including armed attacks, kidnappings, murders, landmine explosions, massacres and forced recruitment were recorded mainly in the regions of Antioquia, Nariño, Cauca, Valle del Cauca, Córdoba, Norte de Santander, Caquetá, Arauca, Atlántico, Tolima, Bolívar, Meta, Huila, and Cesar.²⁶⁰ Most population displacements were reported to have taken place in areas where military operations against illegal armed groups had been recently reinforced, i.e. in Southwestern Meta and Northern Caquetá departments, Tolima, Putumayo, the Pacific Coast, the Catatumbo region and the Sierra Nevada of Santa Marta mountain range.²⁶¹ In 2010, the departments mostly affected by serious events of generalized violence were primarily Antioquia, Bolívar, Bogotá D.C, Cauca, Cesar, Chocó, Córdoba, Magdalena, Nariño, Norte de Santander, Putumayo, and Sucre.²⁶²

In light of the above, UNHCR considers that the prevailing circumstances in some parts of Colombia, given the high frequency of civilian casualties and population displacement, represent a situation of generalized violence and events seriously disturbing public order in the meaning of the extended refugee definition of Part III(3) of the Cartagena Declaration or – in the European context – a situation of indiscriminate violence in a situation of internal armed conflict in the meaning of Article 15(c) of the EU Qualification Directive. Specifically, UNHCR considers that, at the time of writing, the following areas are the most affected by serious and indiscriminate threats to the life, physical integrity or freedom of Colombians as a consequence of the armed conflict and generalized violence: (i) Antioquia; (ii) Bolívar; (iii) Cauca; (iv) Cesar; (v) Córdoba; (vi) Nariño; and (vii) Norte de Santander. Therefore, UNHCR recommends that Colombians from these areas should be granted international protection on the basis of the extended refugee definition of the Cartagena Declaration, unless an IFA/IRA is deemed available in the individual case in accordance with the framework of the analysis provided above.²⁶³ In States in which the Cartagena Declaration does not apply, a complementary/subsidiary form of protection should be granted under relevant national and regional legal frameworks.

For areas not mentioned above, UNHCR, nevertheless, recommends a careful examination of the individual claim due to the fluid and volatile nature of the conflict and shifts in territorial control. Such an examination should take into account the evidence presented by the applicant and other current and reliable information with regard to the security situation in the place of origin.

²⁶⁰ OCHA, *Weekly Humanitarian Report: Humanitarian Trends in 2009, 1 January – 27 December 2009*, Issue 51, January 2010, available at [http://reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/JBRN-7Z9D89-full_report.pdf/\\$File/full_report.pdf](http://reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/JBRN-7Z9D89-full_report.pdf/$File/full_report.pdf). Additionally, a summary of the armed conflict situation for 2008 is available through the European Commission, *Map of Colombia: Armed Conflict - Affected Population*, 2008, available at <http://www.unhcr.org/refworld/docid/4821c9770.html>.

²⁶¹ International Crisis Group, *Uribe's Possible Third Term and Conflict Resolution in Colombia*, 18 December 2009, footnote 34 at p. 5, available at <http://www.unhcr.org/refworld/docid/4b2bb1992.html>.

²⁶² For an ample record of incidents and events, see the Weekly Humanitarian Bulletins produced by OCHA, all available at <http://reliefweb.int/rw/srch.nsf/doc304SearchResults?OpenForm&view=rwrwb&dt=%22Situation%20Reports%22&emid=ACOS-635NUU>.

²⁶³ See part C of the Guidelines, above p. 25.