



Caught in the Crossfire: Displaced Colombians at Risk of Trafficking

Women's Commission for Refugee Women and Children

March 2006



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MISSION STATEMENT

The Women's Commission for Refugee Women and Children works to improve the lives and defend the rights of refugee and internally displaced women, children and adolescents. We advocate for their inclusion and participation in programs of humanitarian assistance and protection. We provide technical expertise and policy advice to donors and organizations that work with refugees and the displaced. We make recommendations to policymakers based on rigorous research and information gathered on fact-finding missions. We join with refugee women, children and adolescents to ensure that their voices are heard from the community level to the highest councils of government and international organizations. We do this in the conviction that their empowerment is the surest route to the greater well-being of all forcibly displaced people. Founded in 1989, the Women's Commission is an independent affiliate of the International Rescue Committee.

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Cover photo: Women's Commission for Refugee Women and Children

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Acronyms and Abbreviations

AUC	Autodefensas Unidas de Colombia (national association of paramilitary groups)
CODHES	Consultoria para los Derechos Humanos y El Desplazamiento (NGO)
ELN	Ejercito de Liberacion Nacional (guerrilla movement)
FARC	Fuerzas Armadas Revolucionarias de Colombia (guerrilla movement)
IDP	Internally displaced person
IOM	International Organization of Migration
NGO	Nongovernmental organization
OAU	Organization of African Unity
RSS	Red de Solidaridad Social (Colombian government agency)
TVPA	Trafficking Victims Protection Act
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USAID	U.S. Agency for International Development

EXECUTIVE SUMMARY

[Trafficking is the]...recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted by UN General Assembly (November 15, 2000) (entered into force, December 25, 2003).

More than 40 years of internal armed conflict have ravaged Colombia, leaving hundreds of thousands dead, millions displaced and countless others who have suffered violations of their human rights, including human trafficking. The war has been a significant factor leading to the growth in this form of modern day slavery. While difficult to ascertain the scope of the problem, it is estimated 45,000 to 50,000 Colombians are trafficked each year, the majority of them women and children.

The Women's Commission for Refugee Women and Children conducted a fact-finding mission to Ecuador and Colombia to assess the protection and assistance challenges faced by Colombian refugees who have fled into neighboring Ecuador and internally displaced Colombians who have sought refuge inside Colombia. It found that a lack of adequate protection and assistance puts displaced Colombian women and children at grave risk of further human rights abuses, including trafficking. War and persecution create a lawless environment that provides fertile ground for criminal elements to exploit civilians caught in the crossfire.

Experts believe that at least 15 percent of trafficked Colombians were first internally displaced within Colombia. Traffickers take advantage of people who are compelled to migrate by the lack of safety and stability in their home communities and who are moving out of fear and desperation.

Other factors that fuel trafficking in Colombia are also directly linked to the armed conflict. International criminal rings have a strong presence in Colombia, engaging not only in human trafficking but also other forms of illicit trade, including narco-trafficking and arms trafficking. Colombia's economy has suffered because of the war, with an estimated 60-65 percent of Colombians living below the poverty line. Displaced families struggle to support themselves, particularly when the male head of household has been lost in the war. Women and children suffer high levels of sexual violence, including domestic violence. Seeking an escape from such problems, displaced women and children become easy prey for traffickers who lure them with false promises of a new life in a foreign country.

The Colombian government has been criticized for its failure to adequately protect citizens who are affected by the armed conflict and forcibly displaced from their homes and communities. While it has enacted laws to protect internally displaced persons (IDPs), it has not made their assistance and protection a priority as it has sought to defeat the insurgency. Rural areas are particularly impacted by the ongoing fighting between government forces, guerrilla forces and the paramilitary.

At the same time, Colombia has been recognized for its aggressive anti-trafficking efforts. It has passed comprehensive anti-trafficking laws that address prevention, prosecution and protection of victims as its centerpiece. It has implemented innovative strategies to raise public awareness about trafficking, offered repatriation and reintegration assistance to trafficked persons identified abroad and sought to bring traffickers to justice. In its annual assessment of countries' anti-trafficking efforts, the United States has designated Colombia a Tier 1 country, the highest classification possible, and the only Latin American country to receive such a high rating.

Concern remains, however, that these efforts inadequately consider the push factors that put people at risk of trafficking. Trafficked persons cannot be automatically returned to their places of origin if conditions there remain dangerous and unsustainable.

Colombians who cross international borders are also at risk of trafficking. Ecuador historically has been relatively welcoming to Colombian refugees. However, a growing intolerance of migration by the Ecuadorian government has resulted in the border between Ecuador and Colombia becoming increasingly difficult for refugees to cross. Ecuador has imposed new documentation requirements on Colombians who wish to enter the country at recognized crossing points, a requirement with which rural, impoverished Colombians escaping war and persecution in their homeland have difficulty complying. Corruption among Ecuadorian officials is high, including among border police. Refugees therefore are increasingly resorting to the assistance of third parties, such as smugglers, to make it across the border undetected. Such assistance can easily become abusive and lead to trafficking.

Those Colombians who manage to enter Ecuador live on the fringes of Ecuadorian society. It is increasingly difficult to obtain asylum in Ecuador due to new evidentiary and legal standards. Approval rates for Colombian asylum applicants dropped from 87 percent in 2000 to 30 percent in 2004. Those whose asylum applications are pending, who have been denied asylum or who never apply for asylum work illegally in Ecuador in the informal economy. All Colombians—even those who are recognized as refugees—face high levels of discrimination in Ecuador. Women face the double burden of discrimination based not only on their nationality but also on their gender.

As a result of these employment barriers, Colombians are at grave risk of work site abuses. Significant numbers of refugee women, particularly those who are single or serve as heads of household, end up in commercial sex work. Others take jobs in private homes as maids, nannies and launderers. Jobs in these sectors easily become exploitative, and may lead to trafficking.

Colombian refugees in Ecuador also have difficulties enrolling their children in schools. Because of discrimination and high school fees, many Colombian children do not attend school and end up working to help support their families.

Durable solutions for Colombian refugees are elusive. Return to Colombia is unsafe. Local integration is not always viable in Ecuador. Third country resettlement is available to few, and not to the United States, which is the world's largest resettlement country. This is due to legal barriers that equate any assistance that refugees provide to the Colombian guerrillas or paramilitary—even when provided under severe duress as much of such “assistance” is—as support for terrorists.

The United States has designated Ecuador a Tier 3 country, the lowest classification possible, in its anti-trafficking efforts. Ecuador has no comprehensive anti-trafficking laws. It has not supported assistance programs for trafficking victims and no traffickers have been prosecuted.

The Women's Commission mission confirmed the lack of concrete focus on trafficking in Ecuador in its field assessment. That failure, combined with the Ecuadorian government's increased emphasis on migration control and the subsistent lifestyle that Colombians lead in Ecuador, creates a fertile environment conducive to trafficking. Subsequent research inside Colombia validated this concern. UN agencies, nongovernmental organizations (NGOS) and others confirmed that Colombians are trafficked into Ecuador for commercial sex work and other forms of forced labor.

Trafficking is a complex problem that is exacerbated by armed conflict. Traffickers find easy prey in people who are desperate to escape war and persecution, who are marginalized in their host communities and are in search of a safer, more stable life. The Women's Commission for Refugee Women and Children offers the following key recommendations to policy makers on how best to address trafficking as a burgeoning human rights problem:

- The international community must adopt a rights-based approach that addresses the root causes of trafficking and develop educational materials to aid NGOs and others working with Colombian refugees which can assist in identifying both risk factors and trafficked victims within the refugee or displaced communities. Programs that protect, assist and empower refugees, particularly women and children, must take steps to combat trafficking of persons who have been displaced by armed conflict and persecution.
- Return of trafficked persons cannot be promoted without due consideration for the life and well-being of the individual. The return of previously displaced persons, for example, requires careful consideration with regards to whether such return is safe, dignified and sustainable. Just as the durable solutions of local integration, third country resettlement and return that is safe, voluntary and dignified are promoted for refugees, so too should durable solutions for trafficked persons be sought.
- The protection of the internally displaced within Colombia and Colombians who have sought refuge in other countries must be ensured. Without adequate protection, displaced women and children will face continued human rights violations, including trafficking.

BACKGROUND

THE WOMEN'S COMMISSION ASSESSMENT

The Women's Commission for Refugee Women and Children (Women's Commission) sent a fact-finding mission to Ecuador and Colombia from October 18-31, 2004 to evaluate the vulnerability of displaced Colombian women and children to trafficking and the response of the international community, governments in the region and local NGOs to such trafficking. The assessment focused on protection gaps that put Colombian refugees and IDPs at risk of trafficking. It also addressed the legal and social measures in place to prevent, deter and combat trafficking. The mission conducted interviews with Colombian refugees and IDPs, NGOs, United Nations (UN) agencies, the International Organization for Migration (IOM), social service agencies, health care providers and government officials.

This assessment is part of a global study by the Women's Commission to explore the nexus between refugee protection and trafficking. To be completed in 2006, the assessment will offer concrete recommendations to policy makers on how to prevent and respond to trafficking in displaced populations, taking into account the needs and rights of trafficked persons who have a well-founded fear of persecution or armed conflict in their homelands.

INTERNATIONAL AND REGIONAL LAWS RELATING TO THE PROTECTION OF REFUGEES, IDPS AND TRAFFICKED PERSONS

International Refugee Law

After World War II, the international community joined together to establish international standards for the protection of refugees. This effort resulted in a treaty known as the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol to the Convention (the Refugee Convention).¹

The Refugee Convention imposes on countries the obligation to protect any individual found to have a well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group.² To be considered a refugee, the individual must be outside her country of nationality or country of habitual residence.³ The Convention also prohibits the expulsion or return of refugees to a country where their lives or freedom would be threatened on the basis of these five criteria. This is known as the principle of *non-refoulement*.⁴

Regional international law instruments (e.g., the OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa and the Cartagena Declaration) have opened the door

¹ United Nations Convention Relating to the Status of Refugees, 189 UN Treaty Series 137 (opened for signature July 28, 1951); United Nations Protocol Relating to the Status of Refugees, 606 UN Treaty Series 267 (opened for signature January 31, 1967) (hereinafter Refugee Convention).

² Refugee Convention, art. 1.

³ Ibid.

⁴ Refugee Convention, art. 33.

to a more expansive definition of “refugee” that includes victims of armed conflict, thus removing the need to prove individualized persecution on the basis of the five grounds defined in the 1951 Convention. States have also developed their own domestic jurisprudence that interprets the refugee definition, which varies in the analysis of all the elements of the definition, including the need to prove a nexus between the abuse experienced and the five delineated grounds.

The Refugee Convention has been widely ratified, with 145 states party to either or both the Convention and the Protocol as of May 2005, including both Colombia and Ecuador.⁵ The office of the UN High Commissioner for Refugees (UNHCR), as well as experts in the refugee field, consider the principle of *non-refoulement* to be customary international law, and thus binding on all countries, even if they are not a party to the treaty.⁶

Refugee protection is generally interpreted in the context of human rights law. As human rights standards have evolved over the years, the refugee definition has often been interpreted to cover violations of such rights. This has been true, for example, in cases involving gender- or age-related persecution.⁷

A similar trend has occurred in the consideration of trafficking as a human rights violation. Some countries have granted asylum to trafficked persons, an important acknowledgment of this growing human rights violation.⁸ UNHCR has also taken the position that trafficking may constitute a form of persecution that merits refugee protection if the country of origin is unable or unwilling to offer protection against such harm.⁹

Protection of Internally Displaced Persons

Not all persons forced to leave their homes and communities as a result of armed conflict or human rights abuses actually cross an international border and thus become refugees under international law. In fact, the majority do not. People who flee for similar reasons as refugees but remain within their country of nationality or residence are known as internally displaced persons

⁵ www.unhcr.ch

⁶ See UNHCR, Agenda for Protection, Document a/AC.96/965/add.1 (endorsed by UNHCR Executive Committee, October 2002) (noting that the applicability of the principle of *non-refoulement* is embedded in international law); see also Conclusion No. 25, Executive Committee, UNHCR (1982) (noting that the principle of *non-refoulement* is progressively acquiring the character of a peremptory rule of international law); Summary Conclusions, Global Consultations Expert Roundtable, UNHCR and Lauterpacht Research Centre for International Law (July 2001) (concluding that *non-refoulement* is a principle of customary international law and applies to refugees irrespective of their formal recognition), found in Erika Feller, Volker Turk and Frances Nicholson, *Refugee Protection in International Law* (2003).

⁷ Alice Edwards, “Age and Gender Dimensions in International Refugee Law,” found in Erika Feller, Volker Turk and Frances Nicholson, *Refugee Protection in International Law* (2003).

⁸ See, e.g., *In the Matter of J-M-*, Executive Office for Immigration Review (1996) (granting Chinese trafficked person asylum); Immigration and Refugee Board of Canada, Case V5-02904 (1997) (noting that international refugee protection would be a hollow concept if it did not offer protection to Ukrainian trafficked person).

⁹ UNHCR, *Guidelines on International Protection: Gender-Related Persecution* (2002).

(IDPs). They number approximately 21.3 million worldwide, as compared to a global refugee total of about 11.5 million.¹⁰

Despite their significant numbers, the protection of IDPs is less defined under international law than that of refugees. This is due in part to the complex legal and political challenges to national sovereignty that their protection raises; what is clearly not disputed under international law is the understanding that states themselves carry the primary responsibility for protection of their citizens. However, the reality is that the governments of many countries that experience internal displacement are either actively involved in the persecution of IDPs or are unable or unwilling to protect them for other reasons.

In 1998, therefore, at the request of the UN General Assembly and the UN Human Rights Commission, the UN Secretary-General's Special Representative on Internally Displaced Persons developed the *Guiding Principles on Internal Displacement* (Guiding Principles).¹¹ This groundbreaking document sets forth the rights of IDPs and the obligations of governments to protect those rights. While not binding *per se* on governments, the Guiding Principles provide a critical framework for both defining and promoting IDP protection and for restating human rights and humanitarian laws that apply to IDPs.¹² The principles are not to be applied only by states, but by everyone, including irregular armed groups.

Under the Guiding Principles, IDPs are defined as:

*...persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.*¹³

The Guiding Principles then delineate the rights of IDPs with the starting point that IDPs should enjoy equally the same rights and freedoms under international and domestic laws that are enjoyed by other persons in their country.¹⁴ They establish the right of IDPs to request and receive protection from national authorities, and the duty of such authorities to provide protection.¹⁵ The special needs of children, especially those that are unaccompanied; expectant mothers; mothers with young children; female heads of household; persons with disabilities; and elderly persons are entitled to protection required by their condition and to treatment that accounts for their needs.¹⁶

¹⁰ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹¹ Guiding Principles on Internal Displacement, available at ochaonline.un.org.

¹² Norwegian Refugee Council, Workshop on the Guiding Principles on Internally Displaced Persons, "Module Two: Legal Origins and International Obligations" (1999).

¹³ Guiding Principles on Internal Displacement, introduction.

¹⁴ Guiding Principles on Internal Displacement, principle 1.

¹⁵ Guiding Principles on Internal Displacement, principle 3.

¹⁶ Guiding Principles on Internal Displacement, principle 4.

The Guiding Principles define the right of individuals to be protected against arbitrary displacement.¹⁷ They define the right to seek safety in another part of the country and the right to be protected against forced return or resettlement anywhere that they would be at risk.¹⁸

The Guiding Principles also define to the rights of IDPs to be protected against various human rights violations, including genocide, summary execution and forced disappearances.¹⁹ They defend the right to liberty,²⁰ dignity and physical, mental and moral integrity.²¹ They call for protection of IDPs against rape; mutilation; torture; cruel, inhuman or degrading treatment; and outrages against personal dignity, including gender-based violence, forced prostitution and indecent assault.²² They protect against child recruitment into armed groups.²³ They underscore the right to respect for family life and family unity.²⁴ They defend the right to education.²⁵ They also call for the protection of IDPs against slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation or forced child labor.²⁶

While they do not *per se* create new rights, the Guiding Principles are comprehensive in their citation of human rights principles defined under international human rights and humanitarian law. They are also distinct from the Refugee Convention in their recognition of the rights of populations at risk, including women and children. This includes the specific bar against contemporary forms of slavery, which can be interpreted to include human trafficking even though it is not explicitly mentioned.

Regional Refugee Law

In 1984, a group of government officials and jurists from Latin America gathered at a Colloquium on the International Protection of Refugees in Central America, Mexico and Panama held in Cartagena, Colombia. This prestigious gathering issued a groundbreaking document known as the Cartagena Declaration, which established a critical set of regional principles of refugee protection that are widely embraced by Latin American countries.

The Cartagena Declaration notably goes beyond the Refugee Convention in its definition of a refugee. It contains the elements of the international definition and then enlarges it to include:

...persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive

¹⁷ Guiding Principles on Internal Displacement, principle 6.

¹⁸ Guiding Principles on Internal Displacement, principle 15.

¹⁹ Guiding Principles on Internal Displacement, principle 10.

²⁰ Guiding Principles on Internal Displacement, principle 12.

²¹ Guiding Principles on Internal Displacement, principle 11.

²² *Ibid.*

²³ Guiding Principles on Internal Displacement, principle 13.

²⁴ Guiding Principles on Internal Displacement, principle 17.

²⁵ Guiding Principles on Internal Displacement, principle 23.

²⁶ Guiding Principles on Internal Displacement, principle 11.

*violation of human rights or other circumstances which have seriously disturbed public order.*²⁷

The declaration also acknowledges concern for the situation of IDPs and calls upon states and international organizations to offer protection and assistance to such individuals.²⁸

In November 2004, representatives from 18 Latin American governments adopted a plan of action grounded in the principles of the Cartagena Declaration to address the situation of refugees in the region, particularly the humanitarian needs of refugees fleeing violence in Colombia. Known as the Mexico Plan of Action, the agreement proposes steps to promote the self-sufficiency and local integration of refugees, especially through social and economic development in border areas. It also supports the development of a resettlement system in Latin America.

International Anti-trafficking Law

The international community has addressed trafficking in various international instruments. This includes a particular focus on the impact of trafficking on women and children, who constitute the vast majority of trafficked persons.

The Convention on the Rights of the Child requires states to take steps to prevent the abduction, sale or trafficking of children for any purpose.²⁹ It also calls upon states to protect children from all forms of sexual exploitation and abuse.³⁰

The Convention on the Elimination of All Forms of Discrimination Against Women requires states to institute measures to suppress all forms of trafficking in women. It also calls upon them to prevent exploitative prostitution,³¹ and to ensure healthy and safe working conditions for women.³²

In November 2000, the UN General Assembly adopted the Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children, to the Convention Against Transnational Crime (the Trafficking Protocol).³³ The protocol entered into force on December 25, 2003. As delineated in Article 2, the purpose of the Trafficking Protocol is to prevent and combat trafficking in persons, with special attention to women and children; to protect and assist

²⁷ Cartagena Declaration, conclusion 3.

²⁸ Cartagena Declaration, conclusion 9.

²⁹ Article 34, Convention on the Rights of the Child, opened for signature November 20, 1989, entered into force September 2, 1990.

³⁰ Article 35, Convention on the Rights of the Child, entered into force September 2, 1990.

³¹ Article 6, Convention on the Elimination of All Forms of Discrimination Against Women, entered into force September 3, 1981.

³² Article 11, Convention on the Elimination of All Forms of Discrimination Against Women, entered into force September 3, 1981.

³³ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted by UN General Assembly (November 15, 2000) (entered into force, December 25, 2003) (hereinafter Trafficking Protocol).

victims of trafficking, with full respect for their human rights; and to promote cooperation among countries that have ratified the protocol in order to achieve those objectives.

At the time this report went to print, 117 countries had signed the Trafficking Protocol, and 76 had fully ratified it. Both Colombia and Ecuador are parties to the protocol.³⁴

The Trafficking Protocol lays out the first internationally accepted definition of trafficking as:

...the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.³⁵

Furthermore, the Protocol clarifies that the consent of a person to trafficking is irrelevant if threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person is used.³⁶ It also states that the recruitment, transportation, transfer, harboring or receipt of a child under age 18 for exploitation is trafficking even if it does not involve any of the means defined.³⁷

The Trafficking Protocol requires that countries facilitate the safe return of their trafficked nationals and residents.³⁸ It also requires the receiving country that is returning a trafficked person to do so with due regard for the safety of the trafficked person and the status of any relevant legal proceeding related to the trafficking.³⁹ The protocol mandates that governments, to the extent possible, strengthen border controls to detect and prevent trafficking.⁴⁰ This includes training immigration and other law enforcement officials to prevent trafficking, to prosecute traffickers and to protect the rights of trafficked persons.⁴¹

Human rights organizations and experts have criticized the Trafficking Protocol for its relatively weak language on the rights and assistance needs of trafficking victims.⁴² For example, the protocol requires a state party to protect the confidentiality of trafficked persons *in appropriate*

³⁴ United Nations Office on Drugs and Crime, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, www.unodc.org.

³⁵ Trafficking Protocol, art. 3(a).

³⁶ Trafficking Protocol, art. 3(b).

³⁷ Trafficking Protocol, art. 3(c)-3(d).

³⁸ Trafficking Protocol, art. 8.

³⁹ Ibid.

⁴⁰ Trafficking Protocol, art. 11.

⁴¹ Trafficking Protocol, art. 10.

⁴² See, e.g., Ann D. Jordan, International Human Rights Law Group, *The Annotated Guide to the Complete UN Trafficking Protocol* (May 2002); Anne Gallagher, "Trafficking, Smuggling, and Human Rights: Tricks and Treaties," *Forced Migration Review* #12, February 2002; also Interview with Bandana Pattanaik, Global Alliance Against Trafficking in Women (April 26, 2004).

cases and to the extent possible under its domestic laws. It urges a state party *to consider* implementing programs to address the physical, psychological and social recovery of victims, especially provision of appropriate housing, counseling, medical care, material assistance and employment, educational and training opportunities. It encourages a state *to endeavor* to address the physical safety of victims, and *to consider* adopting measures to permit victims to remain temporarily or permanently in their territories. Finally, it notes that return of trafficked persons *shall preferably be voluntary.*

This language is non-binding rather than mandatory in nature. This weakness in part reflects the fact that the protocol was negotiated under the auspices of the UN Crime Commission, a body whose mandate is grounded in law enforcement rather than human rights.⁴³ However, regardless of whether they are a party to the Trafficking Protocol, countries are obligated under international human rights instruments to protect the rights of trafficked persons. Article 14 of the Trafficking Protocol, moreover, contains a savings clause that notes that the protocol should not be interpreted to undermine state obligations under human rights, humanitarian or refugee law, including the principle of *non-refoulement.*

⁴³ Ann D. Jordan, International Human Rights Law Group, *The Annotated Guide to the Complete UN Trafficking Protocol* (May 2002).

INTERNAL ARMED CONFLICT AND HUMAN RIGHTS VIOLATIONS IN COLOMBIA

A democratic republic, Colombia has suffered more than four decades of internal armed conflict that has been characterized by widespread violence and significant human rights problems. Since 1964 the government has been engaged in a brutal war with leftist guerrilla forces and have struggled to control pervasive narco-trafficking. In the past decade, the conflict has been further exacerbated by the growing presence of right-wing paramilitary organizations employed by wealthy landowners and drug traffickers to protect themselves. The Colombian military and national police have also perpetrated violence and abuses against civilians, including extrajudicial killings and disappearances.⁴⁴

The results of the war have been devastating. An estimated 200,000 people, most of them civilians, have been killed since the conflict began,⁴⁵ with more than 40,000 casualties in the past decade alone.⁴⁶ In 2004, the death toll was between 3,000 and 4,000, including combat casualties, political murders and forced disappearances.⁴⁷

The U.S. Committee for Refugees and Immigrants has estimated that over 3 million Colombians have been displaced by the war. The vast majority, 2.9 million, are internally displaced, while approximately 264,000 Colombians have sought refuge in other countries. Colombia's internally displaced population now ranks as the second highest in the world, surpassed only by Sudan.⁴⁸

The two principal guerrilla movements are the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and the *Ejercito de Liberacion Nacional* (ELN). The paramilitary groups operate through a national association, the *Autodefensas Unidas de Colombia* (AUC). All three are heavily dependent on the drug trade for financing. The guerrilla forces also fund themselves through kidnappings;⁴⁹ Colombia reportedly has one of the highest rates of kidnapping in the world,⁵⁰ although some sources claim that the rate is now dropping due to increased security.⁵¹

⁴⁴ For more background, see UNHCR's "International Protection Considerations Regarding Colombian Asylum-seekers and Refugees," March 2005, <http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opedoc.pdf?tbl=RSDLEGAL&id=422c832e4&page=publ>

⁴⁵ Kintto Lucas, "Ecuador-Colombia: Effects of Armed Conflict Spill Across Border," Inter Press Service Agency (July 7, 2005).

⁴⁶ Women's Commission for Refugee Women and Children, *Unseen Millions: the Catastrophe of Internal Displacement in Colombia* (March 2002).

⁴⁷ U.S. Department of State, Country Reports on Human Rights Practices (2004).

⁴⁸ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

⁴⁹ U.S. Department of State, Country Reports on Human Rights Practices (2004).

⁵⁰ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Resource Information Services (January 3, 2000).

⁵¹ See, e.g., U.S. Department of State, Country Reports on Human Rights Practices (2004) (stating that kidnapping rates dropped by 42 percent in 2004).

The conflict in Colombia is vicious, with all sides guilty of violations of international humanitarian law and human rights law.⁵² Such acts are often carried out with total impunity. Rural peasants caught in the crossfire of the fighting often pay the heaviest toll.

The FARC and ELN have been accused of killing and abducting civilians, hostage-taking, cruel and inhumane treatment of captured combatants, forced displacement of civilians, use of weapons that cause avoidable civilian casualties, including terrorist bombings and landmines, and attacks on medical facilities.⁵³ The FARC has attempted to destabilize local governments by killing or threatening municipal officials. In addition, both guerrilla forces have been accused of widespread use of child soldiers, who constitute up to one-third of some units, and sexual slavery.⁵⁴

The AUC has carried out indiscriminate massacres, killing hundreds of civilians at a time, including those it suspects have collaborated with guerrilla forces.⁵⁵ It has also engaged in political murders, including of labor leaders and suspected guerrilla sympathizers, who are often tortured before being killed. It has used child soldiers as young as eight years old and threatened and attacked human rights workers and journalists.⁵⁶ Paramilitary forces have also often forcibly displaced civilians. Human Rights Watch and other human rights groups have documented ties between the Colombian military and the AUC.⁵⁷

The Colombian government and the various guerrilla factions have sporadically engaged in peace talks without meaningful success. In 1999, then-President Andres Pastrana agreed to a demilitarized zone in the south, which failed to lead to peace and some believe actually may have enabled the guerrillas to grow in strength. The demilitarized zone was eliminated in February 2002. By 2002, the three-year long peace negotiations between the government and FARC had broken down.

In the presidential election of 2002, voters expressed their growing frustration with the government's failure to end the civil conflict and ongoing economic problems in the country by electing independent candidate Alvaro Uribe. Rather than promising to pursue peace talks as his predecessor did, Uribe grounded his campaign in a promise of escalated military action against

⁵² International Committee of the Red Cross, "Colombia: Armed Conflict Continues to be Marked by Serious IHL Violations" (June 7, 2004).

⁵³ Human Rights Watch, Letter to Manuel Marulanda, FARC (July 10, 2001); U.S. Department of State, Country Reports on Human Rights Practices (2004).

⁵⁴ U.S. Department of State, Country Reports on Human Rights Practices (2004); Human Rights Watch, "Child Soldiers Used by All Sides in Colombia's Armed Conflict" (October 8, 1998); Human Rights Watch, "You'll Learn Not to Cry" (September 2003).

⁵⁵ Women's Commission for Refugee Women and Children, *Unseen Millions: the Catastrophe of Internal Displacement in Colombia* (March 2002).

⁵⁶ U.S. Department of State, Country Reports on Human Rights Practices (2004); Human Rights Watch, "Child Soldiers Used by All Sides in Colombia's Armed Conflict" (October 8, 1998).

⁵⁷ Human Rights Watch, *The 'Sixth Division' Military-paramilitary Ties and U.S. Policy in Colombia* (October 2001).

both the guerrilla movements and the paramilitary.⁵⁸ This proposed effort would include doubling the number of government forces and the National Police.⁵⁹

Uribe continued his almost exclusive focus on military action once he assumed the presidency. He has engaged in an intense effort to defeat the FARC, the largest of the guerrilla forces.

In early 2005, however, the FARC had ramped up its attacks on both the Colombian military and civilians. It also seemed to be exercising greater influence over the ELN. Even if the Uribe government were successful in defeating the guerrillas, it still would face tremendous challenges in addressing the inequities that persist in rural areas of Colombia, including the failure to support the rule of law and severe economic and development challenges. For example, it is estimated that 64 percent of Colombians live in poverty,⁶⁰ with rural areas suffering the highest levels of economic deprivation.

In a controversial move, Uribe also sought legislation, known as the *Justice and Peace Law*, that would allow the demobilization and reintegration of the AUC. Despite a cease fire agreed to by the AUC in December 2002, the paramilitary continued to kill thousands of civilians, stepped up its kidnappings and grew stronger both politically and economically.⁶¹ Some dissident paramilitary groups never agreed to the cease fire.⁶²

Increased security under the Uribe government has brought a decrease in some human rights violations, particularly in urban areas. However, its military onslaught against the guerrillas and the AUC has also led to dramatic increases in displacement of civilians in rural areas. In February 2005, the Consultoria para los Derechos Humanos y El Desplazamiento (CODHES), the leading NGO monitoring the situation of Colombian displaced, reported an increase in confrontations in the war, affecting 18 of the country's 32 departments.⁶³ The escalation of violence was leading to new displacements in some areas, while in others, civilians were actually being restricted to their communities by armed elements in order to serve as human shields, to restrict the flow of goods or to grow coca. While these restrictions were more often applied by the guerrillas and the paramilitary, government forces were also responsible for the imposition of economic blockades that restricted the movement of people,⁶⁴ a violation of international humanitarian and human rights law.

Also controversial is the Uribe government's use of community-based soldiers. Some NGOs assert that their presence has attracted violent confrontations with the guerrilla forces and an increase in human rights violations.⁶⁵

⁵⁸ "Colombia's Uribe Wins Presidential Election," *People's Daily* (May 27, 2002); "Colombian Presidential Favorite Enthuses International Investors," available at www.brady.com/bbs/colombia/100003-0.html.

⁵⁹ "Colombian Presidential Favorite Enthuses International Investors," available at <http://www.brady.com/bbs/colombia/100003-0.html>.

⁶⁰ The World Bank Group, *World Development Indicators* (April 2005).

⁶¹ International Crisis Group, "Colombia: Presidential Politics and Peace Prospects" (June 16, 2005).

⁶² U.S. Department of State, *Country Reports on Human Rights Practices* (2004).

⁶³ UN Humanitarian Situation Room, *Colombia Report* (February 2005), available at www.reliefweb.int.

⁶⁴ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

⁶⁵ Interview with Maria Maria (October 25, 2004).

Armed conflict has also led to other types of rights violations against civilians, including freedom of expression and assembly.⁶⁶ Human rights activists are subjected to threats, attacks, disappearances and murder. Arbitrary detention of individuals suspected of working with the insurgency movements are increasing under the Uribe government. Threats against journalists by armed elements and corrupt local officials are regular. Trade unionists and others are deterred from engaging in peaceful assemblies due to frequent threats to their safety. Furthermore, President Uribe has also explored amending the Colombian constitution so that he can extend his term in office, a questionable move that could threaten democratic institutions in the country.

Further exacerbating the conflict in Colombia is the increasingly active role played by the U.S. government. Since 2000, the United State has provided massive military aid to the Colombian government in the form of arms, security equipment and training.⁶⁷ This effort, known as Plan Colombia, was initiated by President Pastrana in 1999 with the primary aim of ending narco-trafficking and the insurgency that profits from it. It has led to approximately \$4 billion in U.S. funding.⁶⁸ The United States has failed to provide comparable resources for the promotion of human rights and good governance in Colombia.

Despite the high level of investment, it is doubtful whether Plan Colombia is achieving its goal;⁶⁹ Colombian drug traffickers still supply 90 percent of the cocaine and 50 percent of the heroin consumed in the United States.⁷⁰ Meanwhile, coca fumigation efforts funded by U.S. aid are clearly resulting in the displacement of more Colombian civilians.

Aside from the human rights abuses tied to armed conflict, Colombian women and children often face widespread discrimination and human rights abuses based on gender or age or both.⁷¹ This includes high levels of sexual violence, including rape. One health survey estimated that 85 percent of violent acts in Colombia are committed against women, and in 45 percent of these cases the woman knows her perpetrator, indicating high levels of domestic violence.⁷² Child abuse, sexual exploitation and sexual abuse of children are also prevalent.

Approximately 25 percent of children between ages 6 and 15 do not attend school, despite the fact that primary education is universal, compulsory and free. However, many rural families cannot afford the ancillary costs of enrolling their children in school, including matriculation fees, books, school supplies and transportation costs.⁷³

⁶⁶ U.S. Department of State, Country Reports on Human Rights Practices (2004).

⁶⁷ Amnesty International, *Colombia: Human Rights Under Attack* (March 2005).

⁶⁸ Washington Office on Latin America, *Blueprint for a New Colombia Policy* (March 2005).

⁶⁹ Ibid.

⁷⁰ www.infoplease.com.

⁷¹ Amnesty International, *Scarred Bodies* (October 2004).

⁷² Interview with Instituto de Investigaciones de la Universidad Nacional de Colombia, Bogotá, Colombia (October 26, 2004).

⁷³ U.S. Department of State, Country Reports on Human Rights Practices (2004).

THE SITUATION OF INTERNALLY DISPLACED COLOMBIANS

LAWS TO ADDRESS PROTECTION OF IDPS

Colombian laws addressing the rights and protection needs of IDPs have been described as the most progressive in the world.⁷⁴ Law 387, enacted in 1997, spells out measures to prevent displacement and to protect and assist IDPs, and delegates specific responsibilities to various government agencies at the national and municipal levels.

Law 387 defines IDPs in a manner similar to the Guiding Principles on Internal Displacement, although it excludes coverage of individuals displaced by natural disasters or development projects. It creates a post for a presidential counselor on displacement. It defines certain rights for IDPs, including the right to receive international aid, the right to enjoy basic civil rights, the right not to be discriminated against because of one's displacement, the right to family unity, the right to a durable solution to displacement, the right to return to the community of origin, the right not to be displaced and the obligation of the government to promote equality and social justice among all Colombians.⁷⁵

Law 387 establishes the right to emergency aid for three months with the possibility of an additional three months of assistance under exceptional circumstances. It also calls upon the government to help people return to their communities with guarantees for their safety and economic security. The law also created a national plan to address displacement, the *Sistema Nacional de Atencion Integral a la Poblacion Desplazada por la Violencia* (National System for Integrated Attention to the Population Displaced by Violence), to be implemented through a National Council and committees at the municipal, district and department levels.

Law 387, however, has remained largely symbolic and virtually unenforced. This is in part due to a lack of resources, which was underscored by a presidential decree issued in 2000 that made protection and assistance to IDPs contingent on the availability of funding. It is also attributable to the fact that the Uribe government has placed a high priority on bringing an end to the country's decades-long civil conflict, an effort that has often carried a heavy price for Colombian civilians displaced by the conflict. In 2004, the Colombian Constitutional Court issued a decision declaring the lack of adequate protection and assistance to IDPs unconstitutional and urging the Colombian government to develop an effective response to displacement with the available resources.⁷⁶

Even for those IDPs who are considered eligible for and seek assistance from the government, the response is often unsatisfactory. IDPs must first register with the Red de Solidaridad Social

⁷⁴ The Brookings Institution, Global IDP Project, *Internal Displacement in the Americas* (March 2005); available at www.idpproject.org.

⁷⁵ The Brookings Institute, Global IDP Project, "Law 387/1997 Provides Measure to Prevent Displacement, Protect and Assist the Displaced," available at www.db.idpproject.org.

⁷⁶ Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004); The Brookings Institution, Global IDP Project, *Internal Displacement in the Americas* (March 2005); available at www.idpproject.org.

(RSS), the government agency charged with coordinating IDP assistance, to be considered for government aid. The registration process has been described as cumbersome and time-consuming, as well as difficult for IDPs who were not displaced during massive events to prove they qualify for assistance.⁷⁷ Those who are displaced by fumigation are not considered IDPs at all.⁷⁸ Since households are registered under the name of the head of household, women are at grave risk if their husband disappears or dies.⁷⁹

THE DEMOGRAPHICS OF THE IDP POPULATION IN COLOMBIA

The number of Colombians who remain displaced inside Colombia far exceeds the number who are able to cross international borders in search of refuge. The U.S. Committee for Refugee and Immigrants reported in 2004 that internal displacement of Colombian civilians had climbed to the second highest level in the world, with a total of approximately 2.9 million IDPs. This number includes 288,000 newly displaced.⁸⁰

It is important to note that the number of Colombian IDPs is difficult to ascertain, with significant variation between numbers provided by NGOs and the Colombian government, with NGOs tending to provide higher estimates.⁸¹ RSS, the government agency that coordinates aid to IDPs, bases its data on the number of IDPs who actually register with the government. This number tends only to capture those displaced in groups and does not acknowledge the many IDPs who are either too fearful to register with the government or fail to meet the government's rigorous registration criteria.⁸² The Colombian government and the NGOs agree that under-registration means that the government's estimate fails to account for almost 35 percent of the IDP population.⁸³ It also does not count IDPs who are forced to relocate because of the government's fumigation policy aimed at eradicating coca crops, estimated to be around 200,000 in the department of Choco alone.⁸⁴

Approximately 74 percent of the IDP population are women and children under age 18.⁸⁵ The majority are also poor from rural areas and 22 percent are indigenous or Afro-Colombian.⁸⁶ Most IDPs flee to urban areas, with the capital city of Bogotá receiving the majority. IDPs hope they can find employment as well as protection by blending into a large urban area.

⁷⁷ Women's Commission for Refugee Women and Children, *Unseen Millions: the Catastrophe of Internal Displacement in Colombia* (March 2002) (citing the UN Senior Inter-Agency Network on Internal Displacement).

⁷⁸ Interview with CODHES, Bogotá, Colombia (October 26, 2004).

⁷⁹ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

⁸⁰ Ibid.

⁸¹ The Global IDP Project, Brookings Institute, "Clarifications on Government and NGO IDP Figures" (2005); U.S. Department of State, Country Reports on Human Rights Practices (2004).

⁸² U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

⁸³ The Global IDP Project, Brookings Institute, "Clarifications on Government and NGO IDP Figures" (2005).

⁸⁴ The Global IDP Project, Brookings Institute, "Clarifications on Government and NGO IDP Figures" (2005); U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

⁸⁵ U.S. Department of State, Country Reports on Human Rights Practices (2004) (citing estimate provided by the UN High Commissioner for Refugees).

⁸⁶ U.S. Department of State, Country Reports on Human Rights Practices (2004).

The vast majority of Colombian IDPs come from rural areas where military confrontations between the guerrillas, paramilitaries and government forces are concentrated. In 2004, the areas with the highest rates of displacement occurred in Catatumbo, eastern Antioquia and Montes de Maria. Other regions experiencing high displacement include Choco, Sierra Nevada de Santa Marta, Caqueta, Tolima, Huila, Putumayo, Valle de Cauca and Sucre.⁸⁷ Many of these areas are concentrated in the north, south and coastal regions.

LIVING CONDITIONS FOR COLOMBIAN IDPS

Like their refugee counterparts, Colombian IDPs face significant protection problems. They often live on the fringes of Colombian society, eking out a subsistent existence. Living conditions for Colombian IDPs are extremely poor, despite progressive domestic legislation that calls for protection of and assistance to the displaced.

Even for those IDPs who are registered with the government, in a two-year timeframe from 2002 to 2004 it was estimated that only 50 percent were receiving assistance and that 80 percent were living in extreme poverty.⁸⁸ International aid accounts for 60 percent of the assistance provided.

Colombian IDPs lack employment opportunities. If they do find employment, their wages are often low because they are competing with the local population for jobs.⁸⁹ As a result, many women resort to prostitution in order to support themselves and their families. As is the case with their refugee counterparts in Ecuador, prostitution often results from relationships the women form with men who purportedly offer them protection, assistance and acceptance. Such relationships may form between girls as young as 14 to 17 years old and men in their 40s.⁹⁰

Domestic servitude is also common among poor women and girls. Victims are either not paid at all, or receive only a fraction of their wages. This makes it impossible for them to leave their “employers.” However, UNIFEM reported that the nexus between domestic servitude and displacement has not been explored.⁹¹

IDP women interviewed by the mission complained of the lack of food assistance. They reported that rations of rice, lentils, flour, oil and other basics that are supposed to last the community for three months are used up within three to six weeks.⁹²

As a result, the women reported that they have to seek alternative sources of income to support their families. They may find employment on local farms or try to grow their own vegetable

⁸⁷ UN Humanitarian Situation Room, Colombia Report (March 2005) (citing statistics from CODHES).

⁸⁸ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

⁸⁹ Interview with Maria Maria, Bogotá, Colombia (October 25, 2004).

⁹⁰ Ibid.

⁹¹ Interview with UNIFEM, Bogotá, Colombia (October 25, 2004).

⁹² Interview with IDP women, Bogotá, Colombia (October 26, 2004); Interview with CODHES, Bogotá, Colombia (October 26, 2004).

crops to round out the supplies.⁹³ Some supplement their incomes by selling handicrafts. Others work in businesses such as shops.⁹⁴

The women reported that they were worried about young people in their communities. A mother reported that her 15-year-old son who worked in a shop was denied the wages promised to him by his employer.⁹⁵ In another case, a woman reported that a 13-year-old girl had been sexually exploited and abused by the owner of the land they were farming. The man forced the young girl to live in his house where he raped her. It is estimated that rape of adolescent girls occurs at a rate of 2.5 for every 1,000 young women, and that 20,000 to 35,000 children have been forced into commercial sex work.⁹⁶

Children, typically ages 12 through 15, are also forcibly recruited to serve in the guerrilla and paramilitary forces. They are then frequently used as assassins. They may also be forced to participate in narco-trafficking.⁹⁷ It is estimated that there are between 11,000 and 14,000 child soldiers in Colombia.⁹⁸

Health care, education and shelter needs of IDPs have been seriously neglected. Only registered IDPs received public health care. Whereas at one time health care was provided only for diseases the government regarded as related to their displacement, a new decree (Decree 2131 of 2003, art. 3) only excludes treatment for purely esthetic reasons.⁹⁹ Reproductive health care is not included. More than half of displaced children were not provided an education. Less than 9 percent of IDPs who applied for housing assistance had actually received any. The procedure for receiving subsidies for land purchase was slow and inaccessible.¹⁰⁰

The Uribe government is promoting return of IDPs to their communities in an effort to illustrate to the international community that peace is growing near. It is providing incentives, such as the building of housing and schools, to encourage IDPs to go home. In some cases, it is also withholding assistance to IDPs who resist return, raising serious concerns about the “voluntariness” of the return.¹⁰¹ In actuality, it is estimated that only 10 percent of IDPs believe that conditions in their communities are safe enough for return. UNHCR has stated that conditions are not conducive to return in a voluntary, safe and dignified manner.¹⁰² Despite this, the Colombian government has set as its goal the return of 30,000 families to their communities by 2006.¹⁰³

⁹³ Interview with IDP women, Bogotá, Colombia (October 26, 2004).

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Watchlist on Children and Armed Conflict, *Colombia's War on Children* (February 2004).

⁹⁷ Interview with CODHES, Bogotá, Colombia (October 26, 2004).

⁹⁸ Watchlist on Children and Armed Conflict, *Colombia's War on Children* (February 2004).

⁹⁹ <http://www.acnur.org/biblioteca/pdf/2439.pdf>.

¹⁰⁰ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹⁰¹ Interview with CODHES, Bogotá, Colombia (October 26, 2004); Interview with UNHCR, Bogotá, Colombia (October 27, 2004).

¹⁰² U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005). See also Refugees International Bulletin, “Colombia: Alternatives to Coerced Returns Needed for Internally Displaced” (October 11, 2005).

¹⁰³ Interview with UNHCR, Bogotá, Colombia (October 27, 2004).

THE SITUATION OF TRAFFICKED PERSONS IN COLOMBIA

ANTI-TRAFFICKING LAWS IN COLOMBIA

The Colombian Political Constitution of 1991 embraces numerous human rights that apply to the protection of trafficked women and children.¹⁰⁴ It forbids the forced disappearance, torture or cruel, inhumane or degrading treatment of persons.¹⁰⁵ It prohibits slavery, servitude and trafficking.¹⁰⁶ It protects equal rights and opportunities for women,¹⁰⁷ and it calls for the special protection of children's rights¹⁰⁸ and a guarantee of the rights of adolescents.¹⁰⁹ The latter includes free public education for children ages 6 to 18.

The Children's Code elaborates on the rights that children enjoy under Colombian law, and establishes services and programs to protect those rights. The domestic laws of Colombia also codify protections available under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.¹¹⁰ This includes protection against physical, sexual and psychological violence in both the public and private spheres,¹¹¹ and the right to live free from such violence.¹¹²

The penal code of Colombia prohibits all forms of human trafficking. It states:

Anyone who promotes, induces, compels, facilitates, finances, collaborates or participates in the trafficking of a person within national territory or to the exterior subjecting them to any form of violence, threat, deceit, with the intention of exploitation, for the purpose of prostitution, pornography, indebted servitude, begging, forced labor, servile matrimony or slavery with the purpose of obtaining economic advantage or any other benefit, for oneself or another person will result in 13 to 23 years in prison and a fine of between 800 and 1,500 times the minimum monthly wage¹¹³ at the time of sentencing.¹¹⁴

Colombian law also decrees the creation of an Interagency Committee for the Fight Against Trafficking of Women, Girls and Boys.¹¹⁵ The committee meets every two months to exchange information on coordinating anti-trafficking strategies. The Ministries of Social Protection,

¹⁰⁴ Constitucion Politica de Colombia de 1991.

¹⁰⁵ Constitucion Politica de Colombia de 1991, Capitulo I, Articulo 12.

¹⁰⁶ Constitucion Politica de Colombia de 1991, Capitulo I, Articulo 17.

¹⁰⁷ Constitucion Politica de Colombia de 1991, Capitulo I, Articulo 43.

¹⁰⁸ Constitucion Politica de Colombia de 1991, Capitulo I, Articulo 44.

¹⁰⁹ Constitucion Politica de Colombia de 1991, Capitulo I, Articulo 45.

¹¹⁰ Decreto 1276 de Mayo 1997.

¹¹¹ Decreto 1276 de Mayo 1997, Capitulo I, Articulo 2.

¹¹² Decreto 1276 de Mayo 1997, Capitulo II, Articulo 3.

¹¹³ The minimum monthly wage in 2005 is 381,500 Colombian pesos, equivalent to approximately US\$166. Email from UNHCR Colombia (October 28, 2005).

¹¹⁴ Ley 747 de 2002, amending Ley 599 de 2000, Articulo 188A.

¹¹⁵ Decreto 1974 de 1996.

Foreign Affairs, Interior and Justice participate in the task force, as does the office of the Attorney General and the National Police.¹¹⁶

Colombia is ranked Tier 1 by the U.S. government, the highest rating possible for its performance in addressing trafficking. In fact, Colombia is the only country in Latin America to be included in this category.¹¹⁷ Tier 1 is reserved for countries that are in full compliance with the minimum standards defined in the Trafficking Victims Protection Act of 2000 (TVPA).¹¹⁸

Colombia's Tier 1 ranking is grounded in its enactment of comprehensive anti-trafficking laws. In 2004, this law was used to initiate 20 new charges and at least 16 prosecutions against traffickers. Over all, more than 300 trafficking cases are pending. Penalties for trafficking can be up to 23 years imprisonment with additional years possible when the case involves children under age 12 or other aggravating circumstances.¹¹⁹

Prostitution is legal in Colombia in designated "tolerance zones." The U.S. Department of State, in its annual human rights report, has noted that internal displacement has contributed to the widespread commercial sex industry in the country.¹²⁰

THE SCOPE OF TRAFFICKING IN COLOMBIA AND ITS RELATIONSHIP TO INTERNAL DISPLACEMENT

Colombia is a major source and transit country for trafficking. It is estimated that 45,000-50,000 Colombians, most women and girls, are involved in commercial sex work overseas. Principal destination sites for trafficked Colombians are Japan, Spain, Hong Kong, Panama, Chile and Ecuador.¹²¹ The U.S. Department of State has suggested that a large percentage are trafficked.¹²² IOM has estimated that 90 percent of trafficked Colombians are victims of sex trafficking, while others end up in situations of domestic servitude or abusive agricultural work.¹²³ Internal trafficking, including the forced recruitment of young people into the guerrilla and paramilitary forces, is also prevalent.¹²⁴ Children are also trafficked to work in the drug trade. They may also be placed in domestic servitude or forced to work in mines or factories.¹²⁵

As in any other country, however, the extent of trafficking in Colombia is extremely difficult to determine. It is also difficult to verify whether trafficking is on the rise or actually decreasing. IOM is working with Colombian law enforcement authorities in an attempt to collect better data.¹²⁶

¹¹⁶ Interview with Ministry of Foreign Affairs, Government of Colombia, Bogotá, Colombia (October 28, 2004).

¹¹⁷ U.S. Department of State, Trafficking in Persons Report (2005).

¹¹⁸ U.S. Department of State, Trafficking in Persons Report (2003).

¹¹⁹ U.S. Department of State, Trafficking in Persons Report (2005).

¹²⁰ U.S. Department of State, "Country Reports on Human Rights Practices" (2004).

¹²¹ U.S. Department of State, Trafficking in Persons Report (2005).

¹²² U.S. Department of State, Trafficking in Persons Report (2005).

¹²³ Interview with IOM, Bogotá, Colombia (October 26, 2004).

¹²⁴ Interview with International Organization for Migration, Bogotá, Colombia (October 26, 2004).

¹²⁵ Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004).

¹²⁶ Interview with IOM, Bogotá, Colombia (October 26, 2004).

There is little doubt that armed conflict and the pervasive violence and lawlessness in many parts of Colombia fuel human trafficking. While the phenomenon is little understood, it is strongly suspected that there are strong links between narco-trafficking, arms trafficking and human trafficking.¹²⁷ The same organized criminal networks that engage in one form of illicit trade have typically branched into others, as all forms are highly lucrative and the chances of being caught are relatively low.

Colombian nationals often serve as a front for organized criminal rings, which are sometimes based in Colombia and sometimes overseas, such as the Japanese *yakuza*. Often, the front person is known to the victim, either through family or community ties. Some who serve as a go-between were actually trafficked themselves in the past. They pay off their debt to the trafficker by recruiting other victims. Traffickers rely on these informal connections between the front person and the intended victim in order to establish trust with the victim and so persuade them to migrate.¹²⁸

Traffickers also recruit victims through newspapers and the Internet by falsely promising overseas employment.¹²⁹ An NGO reported that traffickers commonly place advertisements in Colombian newspapers that falsely claim to be able to arrange work visas in the United States or marriages to U.S. citizen men. The traffickers lure the women through advertisements that promise jobs as nannies, models and actresses, and then force them into exploitative conditions, including prostitution.¹³⁰ The Ministry of Social Protection, through its child welfare office known as ICBF, has targeted misuse of the Internet for sexual exploitation of children, including those perpetrators seeking to traffic children.¹³¹

The Embassy of the United States, UNHCR and the IOM estimate that approximately 15 percent of trafficked Colombians have first experienced internal displacement before being trafficked.¹³² Representatives of the Colombian government agree that displacement may render a person vulnerable to trafficking.¹³³

Their marginalized status in Colombian society and the many protection challenges they face render IDPs particularly susceptible to trafficking. Lack of adequate assistance, employment or education opportunities and high levels of violence and persecution are factors that can lead to trafficking. Moreover, traffickers often take advantage of migration movements that are already under way; if a person is desperate to migrate, she is often easy prey for traffickers. Traffickers have also forced their potential victims to cooperate by threatening to report their whereabouts to

¹²⁷ U.S. Department of State, *Trafficking in Persons Report* (2005).

¹²⁸ Interview with IOM, Bogotá, Colombia (October 26, 2004).

¹²⁹ *Ibid.*

¹³⁰ Interview with CODHES, Bogotá, Colombia (October 26, 2004); Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004).

¹³¹ Interview with ICBF, Ministry of Social Protection, Government of Colombia, Bogotá, Colombia (October 28, 2004).

¹³² Interview with IOM, Bogotá, Colombia (October 26, 2004); Interview with UNHCR, Bogotá, Colombia (October 27, 2004).

¹³³ Interview with Ministry of Foreign Affairs, Government of Colombia, Bogotá, Colombia (October 28, 2004).

the guerrillas or paramilitary.¹³⁴ As one NGO representative put it: “Armed conflict in Colombia has propelled the problem of trafficking forward.”¹³⁵

UNHCR reported that it has been exploring the nexus between displacement and trafficking in Colombia. This goal was included in its 2005 Country Operations Plan, the annual strategic plan developed by UNHCR offices around the world. At the time of the mission, UNHCR staff had interviewed 20 women, three of whom had reported they had knowledge of trafficking experiences.¹³⁶

Other factors rendering Colombian women and children vulnerable to trafficking include poverty and sexual violence. Domestic violence is likely the most significant factor leading to trafficking.¹³⁷ Women who are single heads of household also seem more vulnerable to trafficking.¹³⁸ There is little doubt that these problems are also fueled by the armed conflict.

An NGO dedicated to combating trafficking also noted that visa restrictions imposed on Colombians by countries of destination are making it increasingly difficult for Colombians to travel. She noted: “For the common person in Colombia, migration implies seeking assistance from a middleman. That can be when trafficking occurs.”¹³⁹

THE RESPONSE TO TRAFFICKING IN COLOMBIANS

Colombia has also made efforts to assist its nationals who have been trafficked abroad. This includes repatriation and reintegration assistance under the auspices of IOM or NGOs.¹⁴⁰

However, repatriation assistance does not necessarily take into account the ability of the trafficked person to return to their community. This is troubling in the cases of women and children who were first internally displaced before being trafficked, as it is likely that the conditions that provoked their flight in the first place are still present, making return unsafe and unsustainable. The absence of state protection in such areas may put the lives of returnees at risk.¹⁴¹ Alternatively, they may be rendered vulnerable to additional abuses by their traffickers, particularly if their traffickers used family or community members to establish contact with the person the first time; in such cases, the trafficker may be made aware of the person’s return and attempt to re-traffic the victim or to retaliate against her for escaping.¹⁴²

Trafficked persons who are repatriated are asked to sign a document confirming that the return is voluntary, and in at least one case a woman who was trafficked to Italy was allowed to remain in

¹³⁴ Interview with IOM, Bogotá, Colombia (October 26, 2004).

¹³⁵ Interview with the Hope Foundation, Bogotá, Colombia (October 29, 2004).

¹³⁶ Interview with UNHCR, Bogotá, Colombia (October 27, 2004).

¹³⁷ Interview with IOM, Bogotá, Colombia (October 26, 2004); Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004).

¹³⁸ Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004).

¹³⁹ Interview with the Hope Foundation, Bogotá, Colombia (October 29, 2004).

¹⁴⁰ U.S. Department of State, *Trafficking in Persons Report* (2005).

¹⁴¹ Interview with UNHCR, Bogotá, Colombia (October 27, 2004).

¹⁴² *Ibid.*

Italy.¹⁴³ However, no independent assessment of conditions in their home community or their possible eligibility for refugee status are made.

Government representatives agreed that return may not always be the best solution for trafficked persons. However, they observed that donor states frequently want return to be mandatory due to their concerns about migration. They noted that this was a source of debate during negotiations of the Trafficking Protocol (see above).¹⁴⁴ One NGO that addresses trafficking in Colombia observed: “Countries of destination often have their own agenda. Countries of origin may need to adopt a different strategy to prevent trafficking than countries of destination.”¹⁴⁵

The Colombian government, working in partnership with NGOs, has also engaged in prevention campaigns. This includes public awareness campaigns, information exchange between agencies and training. Some of these efforts have been innovative in their approach. For example, an NGO has set up kiosks at the major airports where a person can seek information about trafficking and obtain a phone number of a Colombian embassy or consulate to call in case of an emergency. In 2003 this effort resulted in the identification of 12 cases of trafficking, most involving young women.¹⁴⁶ The government has also reached out to the travel industry to educate such agencies on how to identify potential situations of trafficking.¹⁴⁷

IOM has also launched a national trafficking prevention campaign. This effort has included sponsorship of television spots and posters to educate the public. IOM also maintains a call-in line, which received 9,000 calls in 2003, resulting in the identification of 102 trafficking cases and the prevention of 156 more.¹⁴⁸

Ironically, the fact that the U.S. government has designated Colombia as a Tier 1 country may actually hurt the country’s ability to combat trafficking. Under the Trafficking Victims Protection Act, countries that are performing well are not targeted for U.S. government assistance to support their anti-trafficking efforts. Such funding is dedicated to countries with lower rankings, the performance of which the U.S. government is attempting to improve.¹⁴⁹

At the time of the mission, the Colombian legislature was considering additional laws to reinforce anti-trafficking efforts in the country. The bill would enhance protections for trafficked persons, especially children; increase government coordination; and provide more material assistance to trafficked persons in the form of health care and training. It would also provide witness protection to trafficking victims who testify against their traffickers, and exempt children

¹⁴³ Interview with IOM, Bogotá, Colombia (October 26, 2004).

¹⁴⁴ Interview with Ministry of Foreign Affairs, Government of Colombia, Bogotá, Colombia (October 28, 2004).

¹⁴⁵ Interview with the Hope Foundation, Bogotá, Colombia (October 29, 2004).

¹⁴⁶ Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004); Interview with the Hope Foundation, Bogotá, Colombia (October 28, 2004).

¹⁴⁷ U.S. Department of State, Trafficking in Persons Report (2005).

¹⁴⁸ Interview with IOM, Bogotá, Colombia (October 26, 2004).

¹⁴⁹ Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004).

from having to cooperate in such prosecutions.¹⁵⁰ The legislation was being actively considered, and trafficking experts expected it to pass.¹⁵¹

Law 985 of 2005, passed on August 26, states in article 7 that immediate assistance should be provided to all victims of trafficking, including return to their place of origin, security, housing, health care, psychological care, material care and legal advice. Other assistance, such as vocational training and employment assistance, is also available, but only if the victim denounces the crime before the competent authorities.¹⁵² Victims may be reluctant to cooperate if they fear that family members would be at risk, which is precisely one of the means used by traffickers to retaliate against persons who cooperate.

Representatives from the Colombian government who were interviewed by the mission emphasized that a law enforcement approach toward trafficking is insufficient to address the problem. They supported the increased focus on victims' rights that the draft legislation embodied, believing that a holistic response to trafficking is essential. They also supported the approach in the legislation that did not make eligibility for assistance contingent on cooperation with law enforcement authorities. They also resisted the tendency to confuse the problem of trafficking with prostitution, seeing them as two distinct challenges deserving different responses.¹⁵³

Colombia is also developing ways to coordinate its anti-trafficking program with governments of other countries in the region. For example, it signed a memorandum of cooperation with the Dominican Republic, a significant transit and destination site for trafficked Colombians.¹⁵⁴

¹⁵⁰ Interview with IOM, Bogotá, Colombia (October 26, 2004). A continuing weakness in Colombia's legislative response to trafficking, however, is the approach to forced recruitment, which many believe is a form of internal trafficking. Colombia's anti-trafficking laws do not acknowledge forced recruitment as trafficking. Instead, a separate section of the penal code addresses forced recruitment and establishes lower criminal penalties for it than those that apply to trafficking. Interview with the Hope Foundation, Bogotá, Colombia (October 29, 2004).

¹⁵¹ Interview with the Hope Foundation, Bogotá, Colombia (October 29, 2004).

¹⁵² <http://www.secretariassenado.gov.co/leyes/L0985005.HTM>

¹⁵³ Interview with Ministry of Foreign Affairs, Government of Colombia, Bogotá, Colombia (October 28, 2004).

¹⁵⁴ Interview with Ministry of Foreign Affairs, Government of Colombia, Bogotá, Colombia (October 28, 2004); Interview with U.S. Embassy, Bogotá, Colombia (October 27, 2004).

THE SITUATION OF COLOMBIAN REFUGEES IN ECUADOR

ECUADORIAN ASYLUM LAW

Ecuador acceded to the Refugee Convention in 1955. It has enacted national laws implementing its obligations under the 1951 Convention, which have been described as the most progressive legislation in Latin America.¹⁵⁵ Asylum seekers arriving in Ecuador must initiate the asylum process by registering with the UNHCR. UNHCR or a partner agency then conducts a preliminary interview with the applicant.¹⁵⁶

The applicant may then be referred to the National Eligibility Commission for an actual decision on her asylum claim. This process typically takes 6-12 months. Denials can be appealed for a second review.

The acceptance rate for Colombians seeking asylum in Ecuador has dropped in recent years. In 2000, 87 percent of all cases were granted. By 2003 the rate had fallen to 43 percent, and in 2004 this rate was halved to 22 percent.¹⁵⁷

While their asylum determinations are pending, the Ecuadorian Ministry of Foreign Affairs issues asylum seekers provisional identity documents, which are renewable every 90 days and allow the person to remain in the country until a decision is reached on his claim. Refugees who have been granted status are issued one-year, renewable identity documents and visas.¹⁵⁸

THE DEMOGRAPHICS OF COLOMBIANS IN ECUADOR

Ecuador, which neighbors Colombia to the south, hosts the second highest number of Colombian asylum seekers and refugees in the world. In 2004, Colombian refugees and asylum seekers in Ecuador numbered approximately 44,800. This accounted for all but 300 of the total refugee population residing in Ecuador.¹⁵⁹

From 2003 to 2004, the number of Colombians applying for asylum almost doubled.¹⁶⁰ In 2004, almost 8,000 new refugees and asylum seekers arrived in Ecuador, 95 percent of them Colombian, and applied for refugee status.¹⁶¹

The UNHCR sub-office in Ibarra, Ecuador reports that 61 percent of the Colombians crossing the border are male and 39 percent are female. Approximately 12 percent of the female arrivals are heads of household accompanied by children, and 16 percent are women arriving alone, who may be single, widowed or separated from their immediate family. Boys under the age of 18

¹⁵⁵ Refugees International, "Ecuador: International Support Needed for Colombian Refugees" (April 21, 2004).

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹⁵⁹ Ibid.

¹⁶⁰ Refugees International, "Ecuador: International Support Needed for Colombian Refugees" (April 21, 2004).

¹⁶¹ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

constitute approximately 55 percent of the male population, whereas girls under the age of 18 constitute about 45 percent of the female population.¹⁶²

The UNHCR sub-office in Lago Agrio reported having registered 225 female heads of household and 38 pregnant women at the time of the Women's Commission's mission. It had also registered 52 separated or unaccompanied children. The majority of these children were in their teens.¹⁶³

Arriving refugees report experiencing persecution at the hands of all armed elements in Colombia. According to the UNHCR sub-office in Ibarra, the majority, 53 percent, report that they were persecuted by the FARC, ELN or other guerrilla forces. Approximately 21 percent report abuses by paramilitary forces. A small percentage, about 4 percent, were persecuted by narco-traffickers. Finally, 22 percent report that they are not sure who was persecuting them but that they fled skirmishes between different armed elements.¹⁶⁴

The UNHCR sub-office in Lago Agrio reported that 14 percent of the refugees it sees are fleeing general violence. Approximately 14.4 percent are fleeing forced recruitment. About 50 percent are fleeing other forms of persecution.¹⁶⁵

BORDER FLOWS

There are only four official crossing points from Colombia into Ecuador along the northern border, which is approximately 590 kilometers long. Colombians typically cross by bus or boat. The border area is rugged, dominated by dense jungle. Many Colombians will slip across the border undetected by avoiding the official border stations.¹⁶⁶ In other cases, Colombian officers staffing the posts will allow them to cross without checking their documents. This may be because the official takes pity on the person or because he demands a bribe and then allows the person to cross.¹⁶⁷ Ecuador has the highest level of corruption among public officials of any country in Latin America, and bribery of border officials is common due to their low wages.¹⁶⁸

¹⁶² Interview with Office of the UN High Commissioner for Refugees, Ibarra Sub-office (October 19, 2004).

¹⁶³ Interview with Office of the UN High Commissioner for Refugees, Lago Agrio Sub-office (October 21, 2004).

¹⁶⁴ Interview with Office of the UN High Commissioner for Refugees, Ibarra Sub-office (October 19, 2004).

¹⁶⁵ Interview with Office of the UN High Commissioner for Refugees, Lago Agrio Sub-office (October 21, 2004).

¹⁶⁶ Interview with Pastore, Lago Agrio, Ecuador (October 22, 2004).

¹⁶⁷ Interview with refugee women residing in Ibarra, Ecuador (October 19, 2004).

¹⁶⁸ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

Maria,* a refugee woman who lives in Ibarra, reported that she experienced many difficulties when crossing the border into Ecuador. She told the mission:

I can't tell you everything. It hurts a lot to remember. I had a lot of problems crossing the border. I suffered a lot morally. I'm concerned about my mental health. I brought three of my children with me, but I didn't know what happened to my oldest son who I left behind in Colombia. No one was able to find him, not even the Red Cross.

Maria then reported that she finally decided to return to Colombia to find her son herself. She continued:

My son, who is eleven years old, finally called me and told me where he was. He had been held by the paramilitary for a year. When I went to get him, I had to spend three days in a paramilitary camp. I pretended that I was in love with the commander in order to get my son back. They gave me a pass to leave and we returned to Ecuador. But the paramilitary found us. They are calling me here, and gave us a date to come back. I will have to go back with my children, or they will hunt us down.

UNHCR reported that it had arranged for Maria and her children to resettle to a third country where they would be safe from further persecution by the paramilitary.

* Throughout this report, the names of displaced women and children have been changed to protect their identities.

Historically, Ecuador has had a relatively generous approach to allowing Colombians to cross the border to escape the civil conflict. However, in recent years, the Ecuadorian government has increasingly placed new restrictions on Colombians seeking to enter the country and made it more difficult for those in the country to remain.¹⁶⁹ This tightening is a response to increasing insecurity along the border and a fear that the war will spill over into Ecuadorian territory, as well as Ecuador's weakening domestic economy.¹⁷⁰

Colombians now must present a *pasado judicial*, an official record of a clean criminal history issued by the Colombian authorities, in order to cross the border. Such documents are difficult for rural Colombians to obtain, as they are only available in large urban areas that are difficult, dangerous and time consuming for rural Colombians to access. There is also a fee associated with obtaining the pass, which is prohibitively expensive for poor Colombian peasants.¹⁷¹

¹⁶⁹ Interview with CODHES, Bogotá, Colombia (October 26, 2004).

¹⁷⁰ Kintto Lucas, "Ecuador-Colombia: Effects of Armed Conflict Spill Across the Border," Inter Press Service News Agency (July 7, 2005); Refugees International, "Ecuador: International Support Needed for Colombian Refugees" (April 21, 2004).

¹⁷¹ Interview with Office of the UN High Commissioner for Refugees, Ibarra Sub-office (October 19, 2004); Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004); Interview with UNHCR Sub-office, Lago Agrio (October 21, 2004); Interview with CODHES, Bogotá, Colombia (October 26, 2004); see also U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

As a result of this requirement, the UNHCR sub-office in Ibarra reported seeing a significant drop in the number of registered asylum seekers.¹⁷² Over all, the number of asylum seekers registering with the Ecuadorian government dropped from 960 a month in 2003 to fewer than 600 in 2004.¹⁷³

However, the drop in registrations may be artificial; the number of Colombians crossing the border may not actually be decreasing, but rather, more who enter are simply avoiding detection by circumventing the formal crossing points and once in Ecuador remaining in undocumented status.¹⁷⁴ The new requirement could also lead to an increase in the use of fraudulent documents, for which there is already a large market in Ecuador.¹⁷⁵ Many Colombians prefer to remain undocumented in any case, as there is a heavy presence of Colombian guerrilla and paramilitary on the Ecuadorian side of the border and the Colombians fear reprisal from them.¹⁷⁶

“We had no choice but to come to Ecuador. Because of the violence and the massacres, people are desperate to get out of Colombia. We didn’t know where to go in Ecuador. We came with no idea what to expect.”

Interview with refugee woman residing in Ibarra, Ecuador (October 19, 2004).

ACCESS TO ASYLUM

In addition to applying new documentation requirements to cross the border, in recent years the Ecuadorian government has stopped applying the broader definition of a refugee under the Cartagena Declaration, which includes individuals fleeing generalized violence, in favor of the more restrictive international definition, which only covers those fleeing persecution on the basis of race, religion, nationality, membership in a particular social group or political opinion (see page 4). As a result, the asylum recognition rate dropped dramatically from 87 percent in 2000 to 30 percent in 2004.¹⁷⁷

The Eligibility Commission, which decides asylum cases, also required more extensive documentation to prove a case. Furthermore, it barred more applicants on the basis of prior minor crimes, for assisting guerrilla forces even if under duress and for having failed to seek an internal flight alternative.¹⁷⁸

In a further indication that Ecuador was becoming less tolerant of refugees crossing the border, in 2004 the government contravened its obligations both under the Refugee Convention and its

¹⁷² Interview with Office of the UN High Commissioner for Refugees, Ibarra Sub-office (October 19, 2004).

¹⁷³ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹⁷⁴ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004); Interview with Documentation Center (October 20, 2004).

¹⁷⁵ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004); Interview with Documentation Center (October 20, 2004).

¹⁷⁶ Interview with CODHES, Bogotá, Colombia (October 26, 2004).

¹⁷⁷ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005); see also Refugees International, “Ecuador: International Support Needed for Colombian Refugees” (April 21, 2004).

¹⁷⁸ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

domestic laws by forcibly returning 11 Colombians. This included nine people whose cases were on appeal, and two whose cases had never been heard.¹⁷⁹

It must be noted that thousands more Colombians reside in Ecuador but remain undocumented and never apply for refugee status due to their ongoing fear of armed elements that are prevalent in border areas on both sides of the border.¹⁸⁰ The U.S. Committee for Refugees and Immigrants reported that at the end of 2004, Ecuador hosted 10,100 registered refugees and asylum seekers, but unofficially hosted 34,900 Colombians in need of international protection.¹⁸¹ Refugees International has estimated that 300,000 “migrants” from Colombia are dispersed throughout Ecuador.¹⁸² Regardless of their status, many Colombians who have fled armed conflict and persecution in their homeland live on the fringes of Ecuadorian society.

LIVING CONDITIONS FOR COLOMBIANS LIVING IN ECUADOR

Employment

In contrast to many developing countries around the world, Ecuador does not confine refugees to camps. Instead, those individuals who cross the border in search of protection gravitate toward urban areas, with a concentration along the border.

Once granted refugee status, Colombians are allowed to work legally in Ecuador. However, those who are still in the process of seeking asylum, whose claims have been denied or who never apply at all are forced to work illegally. In April 2004, Ecuador began to crack down on unauthorized laborers, subjecting them to deportation and fining their employers. As a result, in a matter of months deportations increased tenfold from 58 in January 2004 to 581 in July 2004.¹⁸³

Regardless of whether they have been granted status or not, Colombians face significant discrimination in Ecuador; some refugees interviewed by the mission reported that discrimination is their biggest challenge. Even recognized refugees have difficulty finding employment.¹⁸⁴ Colombians are perceived by Ecuadorians as competing for jobs.¹⁸⁵

When Colombians do find employment, they face significant wage disparities and are typically only paid a fraction of what their Ecuadorian co-workers earn. Single women and women heads of household face the most difficulty supporting themselves, facing both discrimination and sexual harassment.¹⁸⁶

¹⁷⁹ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹⁸⁰ Refugees International, “Ecuador: International Support Needed for Colombian Refugees” (April 21, 2004).

¹⁸¹ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹⁸² Refugees International, “Ecuador: International Support Needed for Colombian Refugees” (April 21, 2004).

¹⁸³ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹⁸⁴ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

¹⁸⁵ Refugees International, “Ecuador: International Support Needed for Colombian Refugees” (April 21, 2004).

¹⁸⁶ Refugees International, “Ecuador: International Support Needed for Colombian Refugees” (April 21, 2004); Hebrew Immigrant Aid Society, “Protection for Colombian Refugees” (August 2004; updated April 2005).

Women interviewed by the mission reported that when they cannot find other forms of employment, they frequently resort to sex work. Prostitution is particularly prevalent in Lago Agrio, which is located approximately 20 kilometers from the Colombian border. It is known for its night life, as men from the nearby oil industry as well as men who are members of the Colombian guerrilla forces and paramilitaries travel there to rest, drink, party and spend money entertaining themselves. In a town with only 26,000 residents, there are reportedly 200 bars and nightclubs that serve as fronts for prostitution.¹⁸⁷ It is estimated that as many as 50 to 60 percent of sex workers in Lago Agrio are Colombian.¹⁸⁸ Prostitution is particularly on the rise among young girls ages 14 to 17.¹⁸⁹

Colombian women reportedly have a reputation in Ecuador as being “easy,” a stereotype that is unfounded and offensive to the Colombian women interviewed by the mission. This misconception, however, appears to exacerbate the prostitution of Colombian women as Ecuadorian men find them attractive and often assume that they are sex workers.¹⁹⁰

In some cases, the women become involved with Ecuadorian men as a source of support and protection, a relationship which then develops into prostitution.¹⁹¹ Isobel noted: “In many cases, these men offer protection in exchange for sexual favors. The men are actually associated with the brothels.” A social service agency working with the migrant population reported that it is often the first person who offers the women assistance by employing them or finding them an apartment who sexually exploits them. They also noted that women who had experienced sexual violence by armed forces in Colombia before they fled the country are often the ones who end up sexually exploited in Ecuador later.¹⁹²

The women agreed that for some women, prostitution is the only option. As one observed: “We have to eat, so we have no choice.” They were concerned that their children were subsisting on potatoes, rice and beans, and rarely consume fruit, eggs and milk.

Other women find employment by selling things on the street, working in restaurants, caring for other families’ children or cleaning private homes. Jobs are found by answering newspaper advertisements or through word of mouth.

Women reported that they are taken advantage of by their employers. Domestic servitude of Colombian women is reportedly common.¹⁹³ Even for those who are paid, wage disparities are significant; women reported often being paid a third of what their Ecuadorian co-workers are paid. One woman who was employed as a restaurant cook reported that she only earned the equivalent of U.S. \$2.00 a day. Another woman who does laundry for other families said that she

¹⁸⁷ Interview with Pastorela, Lago Agrio, Ecuador (October 22, 2004).

¹⁸⁸ Interview with UNHCR sub-office in Lago Agrio, Ecuador (October 21, 2004).

¹⁸⁹ Interview with Corporacion Juvenil Cropeco (October 20, 2004).

¹⁹⁰ Interview with Hebrew Immigrant Aid Society (October 19, 2004).

¹⁹¹ Interview with Hebrew Immigrant Aid Society (October 19, 2004); Interview with Corporacion Juvenil Cropeco (October 20, 2004); Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

¹⁹² Interview with Hebrew Immigrant Aid Society (October 19, 2004).

¹⁹³ Ibid.

earned U.S. \$3.00 to \$4.00 a day. Women in the informal economy frequently do not receive time off and may work in dangerous or unsafe conditions.¹⁹⁴

“It’s the worst thing to be discriminated against. We came here because we were suffering and escaping danger. The Ecuadorians think we are here for economic reasons. It’s not true.”

Interview with refugee woman residing in Ibarra, Ecuador (October 19, 2004).

Shelter

Housing is also difficult for Colombian refugees, particularly single women or women heads of household, to find. Many landlords refuse to rent to Colombians, or will demand sexual favors in exchange for an apartment. Others will charge Colombians higher rents than Ecuadorian tenants.¹⁹⁵ One woman reported that she slept in a cardboard box when she first arrived because she could not find adequate shelter.

Education

Refugee children’s access to education is also problematic. Under Ecuadorian law, refugee children are guaranteed an education. However, in practice, schools often deny them admission. Moreover, those without documentation are not eligible to attend.¹⁹⁶

Expenses associated with school are also prohibitively high. UNHCR offers partial stipends to support the education of one child per family but these do not cover full tuition even for that one child.¹⁹⁷ On average, school can cost U.S. \$80-100 per student, which includes registration fees, uniforms, books and supplies.¹⁹⁸ One woman interviewed by the mission reported that her children do not attend school because she cannot afford shoes or bus fares for them.¹⁹⁹ Another woman who had three daughters reported that UNHCR assisted the family with the tuition for her oldest child. However, she was anxious to obtain scholarship monies so that her daughter could continue her studies.²⁰⁰

Some Colombian children who do attend school fail to graduate. Instead, they drop out in order to work and support their families.²⁰¹

¹⁹⁴ Ibid.

¹⁹⁵ Refugees International, “Ecuador: International Support Needed for Colombian Refugees” (April 21, 2004).

¹⁹⁶ Interview with Corporacion Juven itud Cropeco (October 20, 2004).

¹⁹⁷ U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005).

¹⁹⁸ Interview with Corporacion Juven itud Cropeco (October 20, 2004).

¹⁹⁹ Interview with refugee woman in Ibarra, Ecuador (October 19, 2004).

²⁰⁰ Interview with refugee woman in Lago Agrio, Ecuador (October 21, 2004).

²⁰¹ Interview with Pastoral Migratoria Diocesis de Ibarra (October 19, 2004).

Police Harassment

Refugee women reported incidents in which they have been harassed by Ecuadorian police and border officials. This included being forced to pay bribes in order to get across the border.

One woman residing in Ibarra reported that a drunk policeman broke into her room one night demanding that she go drinking with him. Women reported that if you are asked by policemen to show your identity documentation and are not able to produce such papers, you may be fined or asked for sexual favors. The women observed: “The documents are to protect your rights, but if you don’t know your rights, you are taken advantage of.” One woman reported that she waited a year for the government to issue her registration documents.²⁰²

INTERNATIONAL AND LOCAL ASSISTANCE TO COLOMBIAN REFUGEES AND MIGRANTS

UNHCR provides three months of emergency assistance to registered asylum seekers, although this is insufficient to sustain the applicant through the asylum process, which averages six months or longer before completion. Such assistance can be extended under extenuating circumstances.²⁰³

Of particular concern to UNHCR is the situation of unaccompanied children in Lago Agrio. It concedes that there is little follow-up to their situation. There is an orphanage, but it only accepts children under age 12. Older children are placed with families, and UNHCR is concerned that the children remain vulnerable.²⁰⁴

Social service agencies assist refugees with shelter, food, basic necessities, education and skills training. In contrast to UNHCR, which is limited under its mandate to assisting refugees and asylum seekers, such agencies extend aid to all migrants, including rejected asylum seekers and the undocumented.

Pastorale Migratoria Diocesis de Ibarra is one of eight Catholic offices in Ecuador that assist the migrant community. It emphasizes skills training for women in knitting, jewelry making, tailoring and embroidery in order to keep the women occupied and “to keep their minds off their problems.”²⁰⁵ It also helps fund local schools to facilitate their willingness to accept Colombian students.

²⁰² Interview with refugee women in Ibarra, Ecuador (October 19, 2004).

²⁰³ Refugees International, “Ecuador: International Support Needed for Colombian Refugees” (April 21, 2004); U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005). UNHCR also supported a program to integrate Colombian refugees and asylum seekers and to assist their host communities, which addressed legal aid, education, health, water and sanitation, skills training and income generation and micro-credit projects.

²⁰⁴ Interview with UNHCR, Quito Office (October 22, 2004).

²⁰⁵ Interview with Pastorale Migratoria Diocesis de Ibarra (October 19, 2004).

When I came to Ecuador, I had bad luck, because I was robbed of everything along the way. My husband and children experienced hunger, cold and fear. I was pregnant and almost lost the baby. I had nothing to eat during the first three months of my pregnancy. We could not afford an apartment. Because we were Colombian, people said that we were thieves. We suffered.

Other Colombians told us about UNHCR and Pastorage [a social service NGO]. I had no money for the bus, so I walked for hours to get to Ibarra. I was weak and faint from hunger. I was pregnant. I broke down and cried, and someone bought me a coffee and pastry.

Finally, a priest helped me. He gave me a blanket so I could cover my children. I was interviewed by Pastorage. They gave me a room to stay in. They gave me two mattresses, dishes, blankets and money for clothes.... We appreciate the help we have been given, but it isn't enough."

Interview with refugee woman residing in Ibarra, Ecuador (October 19, 2004).

;THE NEED FOR DURABLE SOLUTIONS: COLOMBIAN REFUGEES BLOCKED FROM U.S. RESETTLEMENT

The international framework for refugee protection is grounded in three durable solutions: safe, voluntary and dignified return; local integration in the country of first asylum and resettlement to a third country. Conditions in Colombia clearly do not lend themselves to the safe return of Colombian refugees. Moreover, given the tenuous economic and social conditions for Colombian refugees residing in Ecuador, local integration is not a viable response for many. This renders third country resettlement a life-saving option for a critical number.

A significant percentage of Colombians who are granted refugee status in Ecuador are referred for resettlement to third countries. In Ibarra, for example, UNHCR reported that of the 80 cases it had reviewed in the past six months, 40 were referred for resettlement. The majority were women heads of household with young children. Country-wide, UNHCR promotes resettlement for approximately 10 percent of the refugee population.

The majority of Colombian refugees referred for resettlement are sent to Canada, Chile and Brazil, with additional small numbers going to European countries. In the past, refugees were also referred to the United States, by far the world's largest resettlement country. However, since passage of the USA Patriot Act by the U.S. Congress, any Colombian deemed to have assisted the FARC, ELN or AUC is likely to be rejected for resettlement.*

Under the new law, anyone who is found to have provided "material support" to a terrorist organization—which the United States considers the Colombian insurgency groups to be—is barred from admission to the United States.** The practical application of this provision is extremely troubling, given that most Colombians, including women and children, assist the guerrillas or paramilitaries under severe duress, which often includes threats of harm, torture or death to oneself or a loved one. However, the U.S. authorities have chosen to interpret the law as not allowing exceptions. UNHCR estimates that 80 percent of its caseload have involuntarily assisted the guerrillas or paramilitaries.

As a result, the UNHCR office in Ecuador reported that it has largely discontinued referring cases for resettlement to the United States, preferring instead to work with countries with more open policies. UNHCR particularly pointed to the need for resettlement opportunities for women at risk, who represent approximately 30 percent of the resettlement caseload. Even prior to implementation of the Patriot Act, the United States had not systematically implemented a women at risk program. Most such cases are referred to Canada, which does have a formal program for women facing harm because of their gender. However, processing to Canada can take several months due to cumbersome medical and security screenings.

Despite the urgent need to find a humane solution for Colombian women, children and their families who have been traumatized and remain at risk of further human rights abuses, doors to the United States are effectively closed to their resettlement. Ironically, this is due to the overly broad application of a policy designed to combat terrorists but used instead to undermine the protection of their victims.

* Refugee Council U.S.A., Letter to Secretary Tom Ridge, U.S. Department of Homeland Security (November 15, 2004).

** Immigration and Nationality Act, section 212(a)(3)(B)(iv)(VI).

THE SITUATION OF TRAFFICKED PERSONS IN ECUADOR

ANTI-TRAFFICKING LAWS IN ECUADOR

Ecuador has not adopted comprehensive anti-trafficking legislation that addresses prevention, prosecution of traffickers or protection of trafficked persons. However, the Political Constitution of the Republic of Ecuador prohibits all forms of slavery, servitude and human trafficking,²⁰⁶ and the constitution forbids the deprivation of liberty²⁰⁷ and cruel punishment, torture and inhuman, degrading or violent treatment, especially against populations at risk, such as women, children and adolescents.²⁰⁸

The Code of Childhood and Adolescence protects against the maltreatment, abuse, sexual exploitation, trafficking and neglect of children and adolescents.²⁰⁹ The Penal Code elaborates on sex crimes specifically. It forbids the corruption of minors for purposes of prostitution, prohibits the promotion or facilitation of the prostitution of another person and the exploitation of the earnings obtained by a person in prostitution. Finally, it prohibits promoting or facilitating the entry or exit into the country or the movement within Ecuador of a person for the purpose of prostitution. Prostitution itself, however, is legal in Ecuador.

In 2004, a presidential decree recognized trafficking as a problem in Ecuador and established an interagency team to address it.²¹⁰ Moreover, a push for comprehensive anti-trafficking legislation was underway at the time of the mission. The Ecuadorian legislature was discussing anti-trafficking proposals that would outlaw trafficking, provide for prosecution of traffickers and offer protection and assistance to trafficked persons. This would include legal aid, health care and financial assistance to victims. There was also progress by the interagency commission on trafficking toward developing a national plan to combat trafficking. A lack of financial resources and logistical problems with coordinating efforts by various government agencies, however, remained serious challenges to moving the plan and the legislation forward.²¹¹

THE SCOPE OF TRAFFICKING IN ECUADOR

The failure to adopt a comprehensive approach to trafficking has generated criticism from the United States, which since passage of the Trafficking Victims Protection Act of 2000 (TVPA) has ranked countries on their performance in combating trafficking.

In its 2005 *Trafficking in Persons Report*, the U.S. Department of State placed Ecuador in its Tier 3 category, the lowest ranking possible. Tier 3 is reserved for countries that do not fully comply with the minimum standards laid out in the Trafficking Victims Protection Act and are

²⁰⁶ Constitución Política de la República del Ecuador, Título III Capítulo 2, Article 23, No. 4.

²⁰⁷ Constitución Política de la República del Ecuador, Título III Capítulo 2, Article 23, No. 3.

²⁰⁸ Constitución Política de la República del Ecuador, Título III Capítulo 2, Article 23, No. 2.

²⁰⁹ Código de la Niñez y Adolescencia, Codificación No. 2002-100.R.O. 737, Enero 3, 2003, Título IV.

²¹⁰ U.S. Department of State, *Trafficking in Persons Report* (2005).

²¹¹ Interview with CONAMU (October 20, 2004).

not making significant efforts to do so. The minimum standards defined by the Act require the country under review to: 1) prohibit trafficking and punish acts of trafficking; 2) prescribe punishment for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, involving rape or kidnapping, or that causes death) commensurate with that for grave crimes, such as forcible sexual assault; 3) prescribe punishment for the knowing commission of any act of trafficking that is sufficiently stringent to deter and that adequately reflects the offense's heinous nature; and 4) make serious and sustained efforts to eliminate trafficking.²¹²

In ranking Ecuador Tier 3, the Department of State noted that Ecuador had failed to make significant law enforcement efforts against trafficking. There have been no prosecutions or convictions of traffickers. Greater effort was made to control human smuggling than human trafficking.²¹³

Significantly, the Ecuadorian government failed to fund any program to assist trafficked persons. Children picked up in raids on brothels and other sites where sexual exploitation occurs were not offered assistance other than return to their families or referral to NGOs when return was not possible. Finally, the State Department noted that no specific prevention measures were implemented.²¹⁴

Ecuador serves as a source, transit and destination country for trafficking. Ecuadorian nationals themselves are trafficked to Spain, Italy and other Latin American countries, as well as internally from rural areas to urban areas inside Ecuador.²¹⁵ Colombians are trafficked across the border into Ecuador, including teenage girls and women who enter prostitution.²¹⁶

However, the extent of trafficking of Colombian women and children into Ecuador has not been ascertained. To the extent that trafficking is addressed by the Ecuadorian government, it tends to focus on trafficking of Ecuadorian nationals. The government also tends to focus on sex trafficking of children, rather than taking a comprehensive approach that looks at trafficking in other demographic groups, such as women, or other forms of trafficking, such as for domestic servitude or agricultural labor. There is also a tendency in Ecuador to confuse trafficking with smuggling, which involves cases in which a person voluntarily migrates with the assistance of

²¹² U.S. Department of State, Trafficking in Persons Report (2003). The Trafficking Victims Protection Act allows the U.S. government to apply sanctions to Tier 3 countries including the withholding of non-humanitarian, non-trade assistance. Such governments would also face U.S. opposition to assistance (except for humanitarian, trade-related and certain development-related assistance) from international financial institutions such as the International Monetary Fund and the World Bank. Sanctions can be waived if the President of the United States determines that the provision of such assistance to the government would promote the purposes of the statute or is otherwise in the national interest of the United States. They can also be waived if necessary to avoid significant adverse effects on vulnerable populations, including women and children. Sanctions also would not apply if the President finds before the imposition of sanctions that a government has come into compliance with the minimum standards or is making significant efforts to bring itself into compliance. U.S. Department of State, Trafficking in Persons Report (2005).

²¹³ U.S. Department of State, Trafficking in Persons Report (2005).

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

another person and fraud, force, deception or coercion are not used (although in some cases, smuggling becomes trafficking when one of these elements is employed).²¹⁷

Despite the absence of concrete knowledge about trafficking of Colombians into Ecuador, the mission found that the protection challenges confronted by Colombian refugees, asylum seekers and migrants may put Colombians at risk of trafficking into Ecuador. Such factors include increased border control measures recently implemented by the Ecuadorian government, including requiring a *pasado judicial* to cross. It is widely acknowledged that tightening of borders often directly results in refugees and migrants seeking assistance from third parties to avoid detection as they cross international borders. This easily can lead to trafficking and other forms of exploitation. The fact that Colombians may respond to the new requirement by crossing in remote areas of the border region rather than at official crossing points raises the concern that trafficking may become more prevalent. Corruption among Ecuadorian authorities, including border officials, also creates an environment conducive to trafficking.²¹⁸

Colombians who enter Ecuador without documents will generally avoid registering to apply for asylum. Even if they cross the border with the required documents, many choose to remain unregistered anyway, fearing that making their presence in Ecuador known will attract retaliation from Colombian guerrilla or paramilitary elements.

While remaining undocumented may protect them from abuses from the insurgency, ironically it may make them more vulnerable to exploitation, including trafficking.²¹⁹ Their lack of legal status makes it difficult to report exploitation or abuses to Ecuadorian authorities. It also makes Colombians desirable targets for trafficking, as they are more easily controlled by traffickers. Recent drops in asylum grant rates may exacerbate this problem, as rejected asylum seekers are likely to slip into the shadows of Ecuadorian society in the hope that they will remain undetected by the authorities. They, too, will likely become easy prey for traffickers.²²⁰

Moreover, Colombians, especially women, face significant discrimination in Ecuador. This forces them to enter into the informal economy, including sex work. It also often forces them to seek protection from Ecuadorian men, who then frequently exploit them. Border towns such as Lago Agrio already have extremely high levels of lawlessness and prostitution, and Colombian women and children often end up as sex workers.

Colombian children have difficulty obtaining an education due to discrimination or prohibitively high school costs. As a result, they often work instead to help support their families. Child labor is often associated with trafficking.

Finally, Colombians fleeing violence and persecution have often already experienced sexual violence. The stigma attached to this may render it more difficult for them to seek the emotional

²¹⁷ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004); Interview with Documentation Center (October 20, 2004).

²¹⁸ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

²¹⁹ Interview with CODHES, Bogotá, Colombia (October 20, 2004).

²²⁰ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

support of family members. Moreover, they may have feelings of low self-esteem, which also makes them vulnerable to recruitment by traffickers.²²¹

Underscoring the critical need to address the trafficking of Colombians to Ecuador more systematically was a report in early 2003 that there were 15 to 20 possible cases of trafficking along the border.²²² IOM in Bogotá, Colombia also reported that it was following four cases, two involving children, of Colombians trafficked to Ecuador.²²³

In addition, UNHCR was aware of Colombian women brought to Ecuador to work as prostitutes who were then forced to apply for asylum by the person facilitating their prostitution. It was unclear, however, whether the women had come voluntarily to Ecuador to engage in sex work or if they had been trafficked. When UNHCR interviewed the women after they were detained in an Ecuadorian prison, it was clear that they were afraid to talk other than to indicate that they were persecuted in Colombia. They were detained with a man who appeared to frighten them, making UNHCR suspicious that they had been trafficked and that the man was forcing them to apply for asylum so that they would be released from jail. After their release, the women disappeared into the community and UNHCR never saw them again.²²⁴

Given the lack of meaningful focus on trafficking by the Ecuadorian authorities, it is unlikely that protection and assistance to trafficked Colombians will become a priority any time soon, at least without pressure from the international community.

ANTI-TRAFFICKING PROGRAMS SUPPORTED BY INTERNATIONAL AGENCIES AND NGOS

There are some efforts under way to train Ecuadorian officials on how to identify and assist trafficked persons, as well as efforts to encourage cross-border cooperation with neighboring countries such as Colombia, to prevent and deter trafficking. These efforts include training for the Children's Unit within the Ecuadorian police, which is supported by the International Labor Organization in partnership with the Ecuadorian government.

The U.S. Agency for International Development (USAID) and the U.S. Department of State have also made grants to local NGOs to assist trafficked persons.²²⁵ Some Ecuadorian agencies, however, expressed concern that the U.S. government has emphasized law enforcement over victim protection in its interventions with the Ecuadorian government.²²⁶ The U.S. Department of State's Trafficking in Persons Report, for example, notes that the Ecuadorian authorities did not detain children picked up in brothel raids. The U.S. government has also encouraged using trafficking victims as witnesses against their traffickers.

²²¹ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

²²² Interview with UNHCR, Quito, Ecuador (October 22, 2004).

²²³ Interview with IOM, Bogotá, Colombia (October 26, 2004).

²²⁴ Interview with UNHCR, Quito, Ecuador (October 22, 2004).

²²⁵ Interview with U.S. Embassy, Quito, Ecuador (October 20, 2004).

²²⁶ Interview with CONAMU (October 20, 2004); Interview with Documentation Center (October 20, 2004).

Social welfare agencies believe the more appropriate approach is to address trafficking from a human rights perspective that promotes family reunification and emphasizes providing trafficked persons with rehabilitation services and alternative means to support themselves.²²⁷ One agency representative observed: “This movement towards a police model is a violation of the rights of trafficked persons. We need funding to combat trafficking, but we cannot accept the U.S. approach as the way to proceed. As a result, we are seeking alternative sources of support.”²²⁸

Another agency was concerned that the U.S. government has a tendency to confuse sex work with trafficking. They observed: “It’s not the same thing.” This observation tends to be borne out by the 2005 Trafficking in Persons Report, which notes that more than 5,000 children are exploited in prostitution in Ecuador without noting that not all such children are trafficked *per se*.²²⁹ This approach leads to the penalization of sex workers and the neglect of other forms of trafficking, such as that leading to domestic servitude and exploitative labor.

One agency noted that when they requested funding from USAID, it was made conditional on the victims cooperating with the police. She believed that this was because the U.S. government is more concerned about trafficked persons from Colombia ending up in the United States than it is about the rights and protection needs of trafficked persons. She concluded: “The United States doesn’t want to inherit the problem. It’s afraid that Ecuador will act as a bridge for Colombians migrating to the U.S. It’s much the same dialogue that has occurred in the context of drug trafficking.” Another agency agreed, noting: “The U.S. may be exaggerating its concern about trafficking, because of its concern about migration and sex work.”²³⁰

Social service agencies outlined three programs they would like to implement for trafficked persons. These are integration of trafficked women through the provision of shelter and other services; raising public awareness of trafficking through education campaigns; and providing formal and informal education to trafficked persons.²³¹ Others noted that there is a tremendous need for better data and documentation as well, which could then inform programming to assist trafficked persons.²³²

²²⁷ Interview with CONAMU (October 20, 2004).

²²⁸ Ibid.

²²⁹ U.S. Department of State, Trafficking in Persons Report (2005).

²³⁰ Interview with Documentation Center (October 20, 2004).

²³¹ Interview with CONAMU (October 20, 2004).

²³² Interview with Documentation Center (October 20, 2004).

CONCLUSIONS AND RECOMMENDATIONS

COLOMBIA AND ECUADOR

The international community has increasingly recognized trafficking as a gross human rights violation. However, effective responses to trafficking must recognize the underlying causes of trafficking. While poverty and lack of economic opportunity are key factors, armed conflict and human rights problems also play a significant role in fueling trafficking. Women and children who have been forced to migrate in search of protection are easy targets for traffickers wishing to exploit them.

- There is an urgent need for a rights-based approach that addresses the root causes of trafficking. Programs to protect, assist and empower refugees, particularly women and children, must acknowledge that displaced communities may be at risk of trafficking and take steps to address these risks.
- Tools to monitor, assess and respond to trafficking must be developed and used in refugee settings.
- Agencies that are charged with protecting and assisting refugees, including UNHCR and its implementing partners, must train their staff to recognize trafficking and to respond appropriately.
- Trafficking of persons who are in refugee-like circumstances must be considered within the international refugee framework, which promotes the durable solutions of local integration, third country resettlement or safe, dignified and voluntary return to the home country.

Policy makers often view return of trafficked persons as necessary to deter and prevent future trafficking. Little regard is given to whether the conditions to which the person is returning are safe. An assessment of such conditions is particularly urgent in cases of Colombians who have been forcibly displaced, either internally in Colombia or across international borders, before being trafficked.

- Before any Colombian who has been trafficked is returned to his or her community, an assessment of any potential asylum claim must be conducted.
- Trafficked Colombians who would face harm or danger if returned should be considered for local integration in their host country or third country resettlement.
- Part of this risk assessment must be a consideration of whether the trafficking victim will be at risk of re-trafficking if repatriated.

Displaced children are particularly at risk of trafficking. The lack of protection provided to them and most especially their lack of access to education exacerbates this vulnerability.

- Unaccompanied and separated children must receive protection and assistance that adequately considers their unique vulnerability and addresses their best interests.
- Education must be provided to all internally displaced, refugee and migrant children as both a critical form of protection and as a fundamental human right.

- Child labor in all its forms must be addressed to prevent child exploitation and trafficking.

A coordinated, multi-sectoral approach is essential to preventing and responding to trafficking. This includes all levels of law enforcement, migration control, the judiciary, health care and education. It also requires the concerted involvement of UN and multilateral organizations dedicated to refugee and migrant protection and assistance.

- The governments of Colombia and Ecuador, as well as the international community, should support cross-sectoral training of professionals on how to identify, support and protect trafficking victims. Such trainings should be conducted regularly, both to reach new staff in all sectors and to ensure follow-up training.
- Basic tools, including questionnaires and public awareness materials, should be developed and provided regularly to any sectoral staff who might encounter a trafficking victim.
- Law enforcement, migration and military officials should receive human rights training and be held accountable for any violations of human rights, including trafficking. Corruption and fraud among such officials must be dealt with swiftly and effectively through a zero-tolerance approach.

COLOMBIA

Colombia has endured more than four decades of internal armed conflict, which has devastated the lives of millions of Colombians. Millions have been internally displaced, and hundreds of thousands of others have sought refuge in other countries. The causes of the war are multiple and complex, and any resolution to the conflict must fully embrace a recognition of the rights and needs of the communities that it has impacted. Human rights problems such as trafficking will remain long after the war in the absence of sustainable development and the promotion of human rights. The United States has played, and will continue to play, a critical role in assisting Colombia to find peace and security.

- The United States should provide substantial humanitarian assistance to Colombia, including to Colombian IDPs and refugees. Such funding cannot be tied to military assistance provided through Plan Colombia.
- Special attention must be paid to the humanitarian needs of women and children who are most at risk of human rights abuses such as trafficking due to their lack of power and resources. Single women and women-headed households must be a particular focus within such programming.
- Such assistance should be coordinated with local Colombian NGOs, particularly women's and youth organizations.

Colombia has adopted progressive laws on the protection of IDPs. However, the Colombian government must do much more to fulfill its obligation to protect and assist all civilians affected by the armed conflict, especially women and children. Failure to address their rights and needs puts them at risk of human trafficking and other abuses.

- The Colombian government must fully comply with the Guiding Principles on Internal Displacement, its international treaty obligations and the decision of the Colombian Constitutional Court, which ordered it to increase its protection and assistance to IDPs.
- The Colombian government must reform the IDP registration process to facilitate registration and assistance to all IDPs, not just those affected by massive displacements.
- Efforts to defeat the insurgency and to disarm the paramilitary must not come at the price of justice and security for Colombian civilians. The Colombian government must take preventive measures to avoid further displacements, and ensure that human rights violators are fully prosecuted.
- The Colombian government must refrain from promoting the return of IDP families when conditions in their communities make return unsafe and unsustainable.

The Colombian government and Colombian NGOs should be commended for their systematic, comprehensive and often innovative efforts to combat trafficking. They should serve as a model for the region and the international community. Ironically, the United States has done little to support these efforts, despite its overseas focus on the trafficking problem.

- Colombia must sustain a holistic rights-based approach to trafficking that prioritizes victim protection.
- The Colombian government, in partnership with the United States, UN agencies and NGOs, should conduct a more systematic analysis of the links between internal displacement and trafficking, and develop and implement effective strategies to prevent such trafficking.
- The special needs of women and children must be incorporated into Colombia's anti-trafficking efforts, including an understanding of the unique rights violations faced by women and children in times of war.
- The United States should provide substantial funding to support the anti-trafficking efforts of Colombian NGOs and the Colombian government.

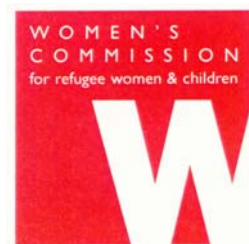
ECUADOR

Ecuador has historically welcomed Colombian refugees who cross its border in search of protection. Recently, however, it has adopted restrictive measures to prevent further refugee flows and to limit access to protection under its asylum laws. These measures have rendered the lives of Colombian refugees residing in Ecuador even more precarious, and thus at potentially greater risk of trafficking. Colombians who lack the documentation required to enter Ecuador lawfully are more likely to rely on third parties to facilitate their travel, a situation that can lead to trafficking. Colombians who live without status in Ecuador face discrimination, harassment, employment barriers, housing problems and lack of educational opportunities. They also live in fear of the Ecuadorian authorities, as they are vulnerable to arrest and deportation. These factors may put them at risk of trafficking.

- Ecuador should refrain from imposing burdensome documentation requirements on Colombian refugees who are often unable to access such documents.
- Ecuador should return to a generous interpretation of its asylum laws, including application of the definition of a refugee under the Cartagena Declaration, which allows protection of those fleeing generalized violence.
- Ecuador must refrain from contravening its obligations under the Refugee Convention and avoid deporting Colombians who are still awaiting decisions on their asylum claims.
- Ecuador should facilitate the lawful employment of Colombian asylum seekers and prevent work site abuses.
- Ecuador should facilitate access to education for Colombian children and address the problem of child labor.
- The international community, including the United States, must support Ecuador in its acceptance of Colombian refugees through international financial assistance.

Ecuador has failed significantly in addressing its growing trafficking problem, which affects not only Ecuadorian nationals but also Colombians residing in Ecuador, especially women and children. It lacks comprehensive anti-trafficking legislation, as well as a programmatic response that incorporates prevention, prosecution and victim protection.

- Ecuador must expeditiously enact anti-trafficking legislation and dedicate resources to its implementation.
- Such legislation should embrace a rights-based approach that has victim protection as its centerpiece.
- Resources must be dedicated to support implementation of anti-trafficking programs, which should address the special needs and rights of women and children. Such programming should be carried out in partnership with international agencies such as UNHCR and IOM, as well as international and local NGOs, especially women and youth organizations.



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