



OPERATIONAL GUIDANCE NOTE

COLOMBIA

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1. Introduction

- 1.1 This document summarises the general, political and human rights situation in Colombia and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Colombia Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights
 API on Article 8 ECHR

- 1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the API on Article 8 ECHR.

Source documents

- 1.4 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1 Executive power in Colombia is exercised by the President who is assisted by a Cabinet. Presidents have previously been elected for a single, non-renewable four-year term by

national elections, but on 19 October 2005, the Court finally ruled in favour of allowing presidential re-election. Legislative power is vested in two chambers, consisting of a Senate (102 members elected for four years) and the House of Representatives (165 members elected for four years). The country is divided up into 32 departments and one Capital District. The 1886 Constitution was reformed by a Constituent Assembly in 1991.¹

- 2.2** Two major political parties, the Conservatives and the Liberals, have traditionally dominated government, alternating in power (with a brief interlude of military rule in 1953-7) over the last 130 years. The 2002 elections, however, confirmed that the two traditional parties, the Liberals and the Conservatives, no longer totally dominate political life. Horacio Serpa, the official Liberal Party nominee, was the only 2002 Presidential candidate with a national machine behind him and his running mate was a declared Conservative. The winner was a dissident Liberal and right wing in outlook. The other candidates came from a mix of 'movements' and 'groupings'. However, for the first time there was a clearly identified candidate of the democratic left, Luis Eduardo Garzon. His movement was too recent to be classified as a party at the time, but the fact that a left winger ran (and survived) is one of the most encouraging signs to emerge from a convoluted electoral process. Luis Eduardo Garzon has since been elected as the Mayor of Bogota in the regional and municipal elections in October 2003. This has led many to believe that the democratic left can now be regarded as a viable alternative to the traditional parties.²
- 2.3** In the mid-1960s, two main guerrilla groups, the Revolutionary Armed Forces of Colombia (FARC) and National Liberation Army (ELN) were established. Successive Presidents have had to face the consequences of internal armed conflict. The previous President Andres Pastrana's programme focused on peace processes with all the guerrilla groups, the fight against corruption, fiscal and political reform, an expansion of the state's role in education and health, better income distribution and poverty reduction, and job creation. Under 'Plan Colombia' the previous Colombian Government produced a drugs strategy which included targets to reduce the cultivation, processing and distribution of drugs by half from 2000-2005. The strategy, now adopted by the current government, also reinforced existing judicial measures to hit drug traffickers and confiscate assets and tackles the interconnected problems of violence, social and economic inequality, and abuse of human rights.³
- 2.4** President Pastrana's peace process with the FARC was in increasing difficulty in the early part of 2002. It nearly came to an end in late January, but on 20 January 2002 was saved by an agreement to work urgently towards a ceasefire. Following that agreement, the FARC increased their attacks on security forces and the civilian population. The hijacking on 20 February 2002 of a domestic airline by the FARC, resulting in the kidnap of a Colombian Senator, led to the decision by President Pastrana on 20 February 2002 to end the peace process and terminate the demilitarised zone.⁴
- 2.5** President Alvaro Uribe was inaugurated on 7 August 2002. His stated focus upon taking office was security, drug interdiction and economic reforms in the form of a National Development Plan. The Plan includes reforms to the political system, justice and public administration. A Referendum on many of the key issues in this programme was held on 25 October 2003. It covered a wide range of topics from corruption, government finances and political reforms. The Referendum all but failed due partly to the complexity of its questions. However, the Government undertook to press on with its proposed reforms by way of normal legislative means.⁵

¹ Foreign and Commonwealth Office (FCO). Country Profile: Colombia & British Broadcasting Corporation (BBC) News. Timeline: Colombia

² FCO Country Profile: Colombia, BBC News. Timeline: Colombia & BBC News. Country Profile: Colombia

³ FCO Country Profile: Colombia & BBC News. Country Profile: Colombia

⁴ FCO Country Profile: Colombia, BBC News. Timeline: Colombia & BBC News. Country Profile: Colombia

⁵ FCO Country Profile: Colombia, BBC News. Timeline: Colombia & BBC News. Country Profile: Colombia

- 2.6** President Uribe secured a second four-year term in elections held on 28 May 2006, the first time for over a hundred years that a sitting President had been able to run for office for a second successive term. The President was formally inaugurated into his second term in office on 7 August 2006. Colombian Congressional elections took place on 12 March 2006, and President Uribe emerged with a substantial working majority in both Houses of Congress. A new (pro-Uribe) party came out ahead of the traditional Liberals and Conservatives in the polls, thereby breaking a mould that goes back almost a century.⁶
- 2.7** Security policy under President Uribe is based on a number of strands, including an increase in manpower and funding for the police and armed forces; the expansion of state presence to every municipality in the country; the establishment of units of 'peasant soldiers'; and a strategy (known as 'Plan Patriota') to challenge the FARC in its strongholds in the south of the country. The Government began discussions with the United Self-Defense Forces of Colombia (AUC) paramilitary group in July 2003 and on 18 April 2006, they announced that the demobilisation process of the AUC had been completed. Over 30,000 paramilitaries formally demobilised as part of the Law for Justice and Peace (LJP) process, handing over some 17,000 weapons, 117 vehicles, 3 helicopters, 59 urban properties and 24,000 hectares of land. The LJP gives generous concessions to illegal armed fighters who voluntarily decide to demobilise which has led its detractors to dub it the 'Law of Impunity' whilst others believe it strikes the right balance to obtain both justice and peace. In July 2006 a ruling in the Constitutional Court tightened up some of the provisions of the LJP, particularly those areas relating to the rights of victims.⁷
- 2.8** The human rights situation is poor but the Government's respect for human rights continues to improve, and improving trends in several human rights indicators continued in 2005. According to government statistics, killings decreased by 10% in 2005, terrorist massacres by nearly 4% (following a 50% reduction in the previous year), killings of trade union leaders by 67%, and forced displacements by over 27%. The number of homicides was, according to the Government, the lowest for 18 years.⁸
- 2.9** The internal armed conflict is estimated to have caused the deaths of more than 2,000 civilian deaths in 2004. Only about 10% of violent deaths in Colombia are linked to the conflict, but the country also suffers high levels of common criminality, much of it linked to the drug trade. Colombia has the world's worst record for kidnappings. Though numbers decreased in 2004 (1159 compared to 2200 in 2003) they remain alarmingly high. There were a reported 20,011 homicides in Colombia in 2004. There is a major humanitarian crisis in Colombia and an estimated 2-3 million people have been displaced from their homes, with Afro-Colombians, indigenous groups, women and children being particularly affected.⁹ Violence and extensive societal discrimination against women, child abuse, and child prostitution remained serious problems during 2005. Trafficking in women and girls for the purpose of sexual exploitation was a problem during 2005, as was societal discrimination against indigenous persons and minorities. Child labour was also a widespread problem in 2005.¹⁰
- 2.10** It was reported in 2005 that some members of the security forces continued to collaborate with the AUC, which committed serious abuses. Police, prison guards and military forces mistreated detainees during the year. Conditions in the overcrowded prisons were poor, particularly for prisoners without outside support. There were allegations of arbitrary arrests and detentions, and prolonged detention remained a fundamental problem. Although illegal, the police, military and prison guards sometimes mistreated and tortured detainees. Impunity remained a problem: despite prosecutions, and convictions of some members of the security forces, no high-ranking officers were convicted of human rights offences in

⁶ FCO Country Profile: Colombia, BBC News. Timeline: Colombia & BBC News. Country Profile: Colombia

⁷ FCO Country Profile: Colombia, BBC News Country Profile: Colombia, USSD 2005 (Sections 1 & 2), Amnesty International (AI) Annual Report 2006 & Human Rights Watch (HRW) World Report 2006: Colombia

⁸ USSD 2005 (Introduction)

⁹ FCO Country Profile: Colombia

¹⁰ USSD 2005 (Section 5)

2004, a trend which continued into 2005 when two investigations into massacres in which high ranking officers were implicated were closed. In 2005, the Government began a four year programme to reform the criminal justice system, with a new accusatory style criminal code which includes public trial by jury, presumption of innocence, access to lawyers, and rights of appeal. The new system was rolled out in Armenia, Bogota, Manizales and Pereira Departments during 2005.¹¹

- 2.11** There were reports in 2004 that the authorities sometimes infringed on citizens' privacy rights. During 2005 journalists continued to work in an atmosphere of threats and intimidation, primarily from terrorist groups, but also in some instances from corrupt local officials. Journalists practiced self-censorship to avoid reprisals. There are some restrictions on freedom of movement within narrowly defined geographic areas, generally because of security concerns. There were reports in 2005 that members of the security forces harassed members of human rights groups, a problem exacerbated by high-level government officials suggesting that human rights groups were promoting the interests of armed groups.¹²
- 2.12** Despite ongoing negotiations with the Government, paramilitaries continued through 2005 to commit massacres, killings, forced disappearances, kidnappings, torture and extortion. Paramilitaries often kidnapped and tortured suspected guerrilla sympathizers prior to executing them. Paramilitaries interfered with personal privacy in areas where they exercised de facto control, forcibly displaced thousands of innocent civilians and engaged in military operations that endangered civilian lives. Paramilitaries also threatened and attacked human rights workers and journalists who criticised their illegal activities and continued to employ child soldiers.¹³
- 2.13** After a period of reduced armed activity, FARC guerrillas stepped up the level of violent activity in 2005. Guerrillas, particularly the FARC, committed hundreds of intentional illegal killings and killed and injured hundreds of civilians in random terrorist bombings and landmine incidents. The FARC also continued to kidnap, torture, and murder off-duty members of the public security forces. The FARC engaged in a concerted campaign to destabilise municipal governments by killing local officials and threatening to execute others. The FARC and ELN kidnapped hundreds of civilians to help finance subversion and put political pressure on the Government. Guerrillas caused mass displacements both intentionally and as by-products of military offensives and engaged in widespread recruitment of child soldiers. The FARC and ELN announced a policy of strategic cooperation to combat the security forces and declared that neither group would enter peace negotiations with the Government. FARC and ELN terrorists threatened and attacked human rights activists. They also engaged in widespread recruitment of minors and used female conscripts as sex slaves.¹⁴
- 2.14** In December 2005, the Colombian Government met leaders of the ELN for exploratory peace talks over five days in Havana, Cuba. The ELN leaders denied they were suing for peace, but both sides met again in Cuba in February 2006 with the aim of agreeing an agenda for more formal peace talks. The FARC maintained their refusal to enter into formal peace talks with the Colombian Government during 2005 and 2006. However, in June 2006 it was reported that the FARC leadership expressed a desire to talk to President Uribe if he ended US-backed operations against them and demilitarised parts of the jungle territory. The FARC leadership also indicated that they might be willing to exchange hostages with the Government.¹⁵

¹¹ USSD 2005 (Introduction & Section 1), AI Annual Report 2006, AI Annual Report 2005 & HRW World Report 2006: Colombia

¹² USSD 2005 (Introduction), HRW World Report 2006: Colombia

¹³ USSD 2005 (Introduction); AI Annual Report 2006; HRW World Report 2006: Colombia

¹⁴ USSD 2005 (Introduction); AI Annual Report 2006; HRW World Report 2006: Colombia

¹⁵ BBC News 'FARC wants Colombia peace talks' dated 24 June 2006, BBC News 'Colombian rebels turn on allies' dated 12 June 2006, BBC News 'Colombian ELN rebels begin talks' dated 17 December 2005, BBC

3. **Main categories of claims**

- 3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Colombia. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5 All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 **Supporters of the FARC, ELN or AUC**

- 3.6.1 The vast majority of claimants say they are supporters or are perceived to be supporters of one of these rival guerrilla and paramilitary groups (the Revolutionary Armed Forces of Colombia - FARC, the National Liberation Army – ELN, or the Self-Defence Forces of Colombia - AUC) and as such fear reprisals from one of the other groups. Claimants usually allege that they will face ill treatment amounting to persecution, usually the threat of being kidnapped by one of the opposing groups, either for ransom, forced recruitment or due to their employment or social status. It is rare for anyone to claim that they are, or were, an actual member of one of these groups.
- 3.6.2 **Treatment.** Negotiations between the Colombian Government and the AUC, an army-backed paramilitary umbrella organisation, which began in July 2003, have led to the reported demobilisation of over 30,000 paramilitaries who have handed over some 17,000 weapons, 117 vehicles, 3 helicopters, 59 urban properties and 24,000 hectares of land. The Law for Justice & Peace (LJP) was approved by Congress and became the legal framework to accompany the demobilisation process, however, serious concerns remain about the process, principally over the issue of impunity, violations of the AUC ceasefire and continuing serious and widespread human rights violations by paramilitaries. The process has also raised fears that paramilitaries were being "recycled" into the conflict. In

July 2006 a ruling in the Constitutional Court tightened up some of the provisions of the LJP, particularly those areas relating to the rights of victims.¹⁶

- 3.6.3** Despite a fall in certain indicators of political violence such as kidnappings and massacres, reports of extrajudicial executions carried out directly by the armed forces increased in 2004. Cases of “disappearances” and torture remained high. Civilians were targeted by all sides in the armed conflict, the security forces, paramilitaries and armed opposition groups. In the first half of 2004, at least 1,400 civilians were killed or “disappeared”. During the year, around 1,250 people were kidnapped and 287,000 were forced to flee their homes. Hundreds of civilians were subjected to mass and often irregular detentions by the security forces. FARC increased violent activity levels in 2005.¹⁷
- 3.6.4** In 2005, the Colombian Government continued to make statements equating the defence of human rights with the promotion of “terrorism”. The FARC and ELN were responsible for serious and widespread breaches of international humanitarian law, including hostage-taking and the killing of civilians in 2004. In December 2004, the Colombian Government pardoned 23 prisoners belonging to the FARC, but the armed opposition group refused to release any of its hostages in return.¹⁸ In December 2005, President Uribe again announced that the Government was prepared to hold talks about exchanging the FARC'S estimated 60 hostages for jailed FARC rebels. However, in January 2006 the FARC ruled out an exchange of prisoners with the Government.¹⁹ In 2006, the FARC maintained their refusal to enter into formal peace talks with the Colombian Government. However, in June 2006 it was reported that the FARC leadership expressed a desire to talk to President Uribe if he ended US-backed operations against them and demilitarised parts of the jungle territory. The FARC leadership also indicated that they might be willing to exchange hostages with the Government.²⁰ Efforts to initiate peace talks with the ELN have continued and in December 2005 the Colombian Government met leaders of the ELN for exploratory peace talks over five days in Havana, Cuba. The ELN leaders denied they were suing for peace, but the sides met again in Cuba in February 2006 with the aim of agreeing an agenda for more formal peace talks.²¹
- 3.6.5** **Sufficiency of protection.** The state authorities are willing to offer protection to such individuals, however their capacity to actually provide it is very limited due to the Government's weak authority in many regions and inability to counter the influence of the FARC, ELN and AUC throughout the country. These guerrilla and paramilitary organisations operate nationwide and are well-resourced to dominate any areas in which they have a particular interest. The state therefore cannot currently offer sufficient protection from these groups.
- 3.6.6** **Internal relocation.** The United Nations High Commissioner for Refugees (UNHCR) has stated that it will be extremely difficult for an individual fleeing non-state agents of persecution to find an alternative area of relocation which could be considered as safe. In regard to areas under the control of the authorities, the network of the irregular armed groups along with their ability to pursue their targets would continue to pose a threat to the individuals concerned, while the authorities will not be in a position to extend their

¹⁶ FCO Country Profile; USSD 2005 (Sections 1 & 2), AI Annual Report 2006; HRW World Report 2006: Colombia & BBC News Country Profile: Colombia

¹⁷ USSD 2005 (Introduction & Section 1), AI Annual Report 2006, AI Annual Report 2005 & HRW World Report 2006: Colombia

¹⁸ USSD 2005 (Section 1); AI Report 2005; HRW World Report 2006: Colombia

¹⁹ BBC News. 'Colombia ready for hostage talks' dated 14 December 2005 & BBC News. 'Colombia rebels rule out exchange' dated 2 January 2006

²⁰ BBC News 'FARC wants Colombia peace talks' dated 24 June 2006, BBC News 'Colombian rebels turn on allies' dated 12 June 2006, BBC News 'Colombian ELN rebels begin talks' dated 17 December 2005, BBC News. 'Colombia plans new rebel meeting' dated 22 December 2005; Colombia lifts rebel arrest order 25 Feb 2006

²¹ BBC News. 'Colombian ELN rebels begin talks' dated 17 December 2005 & BBC News. 'Colombia plans new rebel meeting' dated 22 December 2005; Colombia lifts rebel arrest order 25 Feb 2006

protection to them.²² Claimants would not therefore be able to escape a real risk of mistreatment by internal relocation.

3.6.7 Conclusion. If the claimant provides convincing evidence that they have been kidnapped in the past and/or have encountered serious harassment or threats from either the FARC, ELN or AUC, and that treatment has been for political reasons, then the absence of adequate state protection or a viable internal relocation option means it is likely that they will be able to demonstrate a need for international protection within the terms of the 1951 Convention. The grant of asylum in such cases is therefore likely to be appropriate. Caseworkers should note that members of FARC, ELN and AUC have been responsible for serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for any of these groups and the evidence suggests he or she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

3.7 Criminology, extortion and blackmail

3.7.1 Some claimants will apply for asylum based on ill treatment amounting to persecution (usually blackmail and extortion) at the hands of FARC or other guerrillas.

3.7.2 The most common type of claim is being the victim of extortion and/or kidnapping. These types of claim are most often from landowners, particularly farmers. The applicant will usually state that the FARC has made the threats. Most often they claim that there has been one or more attempts made on their life. Also, they tend to claim that reports have been made to the police to no avail. Documentation is sometimes presented, and can take the form of threatening letters, which could be hand written, words/letters cut from newspapers to form sentences or letters written on computers. There is generally no common form. Police reports from Fiscalia are also often presented, and these will generally state that the incident has been reported. Newspaper articles are sometimes submitted.

3.7.3 Treatment. Though the paramilitary rather than guerrilla groups were the main perpetrators of kidnappings and extortion and in spite of a continued decline in their frequency, kidnappings and extortion of prominent rural leaders and businessmen by the FARC continued to be a serious problem in 2004. Politically motivated kidnappings for a ransom remained a major source of revenue for the main guerrilla groups in 2004, while in 2004, 2005 and 2006, the FARC continued to hold political hostages taken in previous years.²³

3.7.4 The number of kidnappings continued to decline in 2005, being 44% lower than in the previous year. But they remained a serious problem, both for ransom and for political reasons. According to the Government there were 800 kidnappings during the year of which 339 were for reasons of extortion. There were numerous reports that guerrillas killed kidnapping victims.²⁴

3.7.5 Sufficiency of protection. The state authorities are willing to offer protection to such individuals, however their capacity to actually provide it is very limited due to the Government's weak authority in many regions and inability to counter the influence of the FARC, ELN and AUC throughout the country. These guerrilla and paramilitary organisations operate nationwide and are well-resourced to dominate any areas in which they have a particular interest. The state therefore cannot currently offer sufficient protection from these groups.

²² United Nations High Commissioner for Refugees (UNHCR) International Protection Considerations Regarding Colombian Asylum Seekers and Refugees, March 2005 (page 44)

²³ USSD 2005 (Section 1), BBC News. 'Colombia rebels rule out exchange' dated 2 January 2006 & BBC News 'FARC wants Colombia peace talks' dated 24 June 2006

²⁴ USSD 2005 (Section 1)

3.7.6 Internal relocation. The UNHCR has stated that it will be extremely difficult for an individual fleeing non-state agents of persecution to find an alternative area of relocation which could be considered as safe. In regard to areas under the control of the authorities, the network of the irregular armed groups along with their ability to pursue their targets would continue to pose a threat to the individuals concerned, while the authorities will not be in a position to extend their protection to them.²⁵ Claimants would not therefore be able to escape a real risk mistreatment by internal relocation.

3.7.6 Caselaw.

Emilia Del Socorro Gutierrez Gomez [2000] 00TH02257. The Tribunal found that political opinion may be express or imputed. However, the Tribunal rejected the idea that even in countries such as Colombia where the boundaries between the political and the non-political have been fairly distorted by the conduct of the paramilitary bodies and drug cartels, every case where such a body persecutes someone must be on the account of an imputed political opinion. The Tribunal therefore concluded that evidence of imputed political opinion cannot consist solely of the general political purposes of the persecutor and that non-state guerrilla organisations (like FARC) for some if not much of the time may act for purely economic reasons. In addition, the Tribunal found that there is in general an insufficiency of protection in Colombia.

3.7.7 Conclusion. Some claimants may be able to demonstrate a real risk of mistreatment amounting to persecution or treatment contrary to Article 2 or Article 3 of the ECHR on return to Colombia, perhaps on the basis that they have been kidnapped in the past and/or have encountered acts of criminality, serious harassment or threats from either the FARC, ELN or AUC. In most cases the motivation for this treatment will be criminal and financial. Claimants who have not been targeted for political or imputed political opinion, or for another Convention reason, will not have a well founded fear of persecution under the Refugee Convention and therefore a grant of asylum will not be appropriate. In such cases the absence of adequate state protection or an internal relocation option means that a grant of Humanitarian Protection may be appropriate. The position of claimants who fear the FARC, ELN or AUC for non-political reasons was clarified by the Tribunal in the case of Gomez, summarised above.

3.8 Prison conditions

3.8.1 Claimants may claim that they cannot return to Colombia due to the fact that there is a serious risk they will be imprisoned on return and that prison conditions in Colombia are so poor as to amount to torture or inhuman treatment or punishment.

3.8.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.8.3 Consideration. With the exception of new facilities, prison conditions remained poor in 2005, especially for prisoners without significant outside support. Many prison guards and administrative staff were poorly trained or corrupt, although an NGO noted a decrease in corruption as training, supervision and accountability improved. Severe overcrowding and dangerous sanitary and health conditions were serious problems during the year.²⁶

3.8.4 The prison authorities spent an average of US\$2 per day per inmate on food in 2005 and many prisoners continued to be dependent on private sources to supplement their food.

²⁵ UNHCR International Protection Considerations Regarding Colombian Asylum Seekers and Refugees, March 2005 (page 44)

²⁶ USSD 2005 (Section 1)

The high-security prison in Valledupar in the Cesar, was the only penitentiary in the country certified as meeting international standards in 2004. Five other facilities were built to the standards, but the National Prison Institute (INPEC) decided it would be too costly to fund the auditing and certification processes for them. In other facilities, inmates pay to eat, drink, sleep on a mattress, wash clothes, or make telephone calls, and during 2004, many were forced to pay protection money to fellow inmates or corrupt prison guards.²⁷

- 3.8.5** Prison overcrowding was a serious problem during 2005, with over 69,000 prisoners in a system designed for fewer than 50,000. Other problems include water shortages and poor water quality, mistreatment by guards, poor food quality and medical provision. In the first half of 2005 there were 28 riots at various institutions as prisoners protested against the conditions in which they were held.²⁸
- 3.8.6** It was reported during the first half of 2005 that there were 20 violent deaths among inmates as a result of fights and rioting, although the prison authorities and 'The Committee in Solidarity with Political Prisoners' agreed that prison violence was on the decline, due in part at least to heightened professionalism among prison guards.²⁹
- 3.8.7** Male and female prisoners are separated in facilities that held both men and women. There are also dedicated women's prisons. Conditions at women's prisons are similar to those at men's. According to the Criminal Procedure Code, no one under the age of 18 may be held in a prison; juveniles are held in separate facilities operated by the Colombian Family Welfare Institute (ICBF). There are no separate facilities for pre-trial detainees, who made up nearly 60% of prison inmates in 2004. According to INPEC, 30,356 pre-trial detainees were held in overcrowded police jails in 2004. Failure on the part of many local military commanders and jail supervisors to keep mandatory detention records or follow notification procedures made accounting for all detainees difficult.³⁰
- 3.8.8** Incarcerated members of illegal armed groups who refused to renounce terrorist affiliations were held separately from members of rival groups and the general prison population during 2004. Authorities generally granted incarcerated leaders of these groups substantial autonomy to organise their respective prison wings and structure daily activities. To facilitate conditions for negotiations in 2004, the Government allowed some incarcerated leaders to use special communications equipment to maintain contact with terrorists still at large.³¹
- 3.8.9** **Conclusion.** Whilst prison conditions in Colombia are poor with severe overcrowding, lack of medical treatment and food and poor sanitation being particular problems, these conditions are unlikely to reach the minimum level of severity required to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Colombia, a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility, and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave). Where the claim includes dependent family members

²⁷ USSD 2005 (Section 1) & USSD 2004 (Section 1)

²⁸ USSD 2005 (Section 1)

²⁹ USSD 2005 (Section 1)

³⁰ USSD 2004 (Section 1)

³¹ USSD 2004 (Section 1)

consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.

4.2 With particular reference to Colombia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Colombia due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 The health sector in Colombia underwent considerable reform in the 1990s. Law 100 of 1993 established a social security system. The aim was to ensure universal health coverage through a mix of contributory and subsidised health schemes using both the public and private sectors. By the end of 2004, 14.7 million people were covered by the contributory scheme and 15.4 million under the subsidised programme. However, adequate funding remains a problem.³²

4.4.3 According to the Pan-American Health Organisation (PAHO) Country Health Profile 2002, the General Social Security and Health System guarantees access to essential drugs (from a list of some 350 medicines) through the Mandatory Health Plan (POS) for those insured under the contributory regime. There are certain restrictions for those under the subsidised regime and with no clearly defined criteria for those who are not affiliated with the system, although this last group receives prescribed medications for basic care.³³ The law requires the Government to provide medical care to children. However, medical facilities are not universally available, especially in rural areas.³⁴

4.4.4 As reported by Cancer Pain Release, it is estimated that cancer is the second cause of death in Colombia today after violence and accidental causes. In recent years, several palliative care and cancer pain relief programs have developed in Colombia creating an increase in the demand for opioids for pain control. The issue of drug availability for medical purposes is particularly sensitive for Colombia, a country highly affected by illicit drug traffic and the black market. As a result, strong legislation restricts the manufacture, importation, distribution and prescribing of opioids even for scientific and medical uses. However, a

³² FCO Country Profile: Colombia

³³ Pan-American Health Organisation (PAHO) Country Health Profile 2002: Colombia (page 7)

³⁴ USSD 2005 (Section 5)

number of steps have been taken at the national level, which have gradually facilitated opioid availability.³⁵

- 4.4.5** In January 2004, Colombia received 1.5 million doses of vaccines for yellow fever which affected three departments. The Ministry of Health declared a state of emergency and initiated massive vaccination efforts aimed at the population over one year of age in the affected areas, where almost 3 million people live.³⁶
- 4.4.6** There were 17,163 cases of HIV/AIDS registered between 1983 and March 1999, of which 11,381 corresponded to carriers of HIV infection and 5,782 to patients with AIDS; 85% were males. During the same period, 3,441 deaths were reported (90% in males). In 2000, it was estimated that 67,000 persons were carriers of HIV. It was estimated that 3,600 Colombians died of AIDS during 2003 and approximately 190,000 adults were believed to be living with HIV/AIDS during the year.³⁷ Sexual transmission is predominant. In June 2003, PAHO issued a list of anti-retroviral drugs and their prices, which were agreed in negotiations between ten Latin American countries.³⁸
- 4.4.7** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Colombian nationals may return voluntarily to any region of Colombia at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Colombia. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Colombian nationals wishing to avail themselves of this opportunity for assisted return to Colombia should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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18 September 2006**