



# OPERATIONAL GUIDANCE NOTE

## COLOMBIA

### CONTENTS

<b>1. Introduction</b>	<b>1.1 – 1.4</b>
<b>2. Country assessment</b>	<b>2.1 – 2.13</b>
<b>3. Main categories of claims</b>	<b>3.1 – 3.5</b>
Supporters of the FARC, ELN or AUC	3.6
Criminality, extortion and blackmail	3.7
Prison conditions	3.8
<b>4. Discretionary Leave</b>	<b>4.1 – 4.2</b>
Minors claiming in their own right	4.3
Medical treatment	4.4
<b>5. Returns</b>	<b>5.1 – 5.2</b>
<b>6. List of source documents</b>	

#### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Colombia and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Colombia Country of Origin Information at: [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. 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 Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

#### **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 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.<sup>1</sup>

- 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 these two traditional parties no longer totally dominate political life. Congress is now learning how to handle coalition politics following the success of a number of independent candidates, and representatives of political movements.<sup>2</sup>
- 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 the ongoing 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. In February 2002, President Pastrana broke off three years of peace talks with the FARC rebels.<sup>3</sup>
- 2.4** 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. President Uribe secured a second four-year term in elections held on 28 May 2006 and was formally inaugurated into his second term in office on 7 August 2006. Colombian congressional elections took place on 12 March 2006, in which 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. Regional and municipal elections took place in October 2007. The opposition Polo Democratico party won the mayorship in Bogota. However, President Uribe's party consolidated their position winning 17 out of 32 seats.<sup>4</sup>
- 2.5** 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. 35 thousand paramilitaries formally demobilised as part of the Law for Justice and Peace (LJP) process. 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 equilibrium required to obtain both justice and peace. In mid-May 2006 the Constitutional Court tightened up some of the provisions of the LJP,

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<sup>1</sup> Home Office Country of Origin Information Key Documents 2008: Colombia and Foreign and Commonwealth Office (FCO) Country Profile 2008: Colombia

<sup>2</sup> COI Key Documents 2008: Colombia & FCO Country Profile 2008: Colombia

<sup>3</sup> COI Key Documents 2008: Colombia, FCO Country Profile 2008: Colombia & British Broadcasting Corporation (BBC) News Timeline: Colombia

<sup>4</sup> COI Key Documents 2008: Colombia, FCO Country Profile 2008: Colombia, BBC News Timeline: Colombia & BBC News Country Profile: Colombia

particularly those areas relating to the rights of the victims. In September 2006, the Government issued a decree that partially implemented the court ruling, but also allowed the paramilitary leadership to avoid prison by serving reduced sentences on farms or at home instead.<sup>5</sup>

- 2.6** According to the U.S. Department of State, the Government's respect for human rights continued to improve in 2007. Government steps to improve the human rights and security situation in Colombia showed demonstrable results during the year and government statistics indicated that there were decreases in massacres (34 per cent) and kidnappings (29 per cent). The LJP process reportedly also helped clarify more than 3,000 crimes and led to the exhumation of 1,196 remains in 1,009 mass graves in 2007.<sup>6</sup>
- 2.7** Some serious problems remain, however, and in 2007 there were reports that the security forces continued to collaborate with paramilitary groups who refused to demobilise and who were responsible for serious human rights abuses. There were also reports of insubordinate military collaboration with new illegal groups which consisted of demobilised paramilitaries, common criminals and narcotics traffickers. Police, prison guards and military forces reportedly mistreated detainees during 2007, and there were allegations of extrajudicial killings and forced disappearances. Impunity remained a problem during the year.<sup>7</sup>
- 2.8** The LJP process has exposed corruption and paramilitary ties within the Government and the security forces. In 2007, President Uribe urged the Supreme Court to punish public officials found guilty and continued funding the Supreme Court's Investigative Unit, which investigates members of Congress and senior government officials. During the year, investigations by the Supreme Court and Prosecutor General's Office of links between politicians and paramilitary groups implicated 52 congressmen, 11 governors, and 19 mayors; 18 congressmen, 14 mayors, and two governors were in jail at year's end.<sup>8</sup>
- 2.9** Journalists continue to work in an atmosphere of threats and intimidation, primarily from terrorist and paramilitary groups, but also in some instances from the security forces or corrupt local officials. National and international non-governmental organisations (NGOs) reported in 2007 that local media representatives regularly practiced self-censorship because of threats of violence. Although government officials generally were cooperative and responsive to the views of human rights groups in 2007, some NGOs claimed that criticism from high-level officials, including President Uribe, put them at risk for retaliation by illegal armed groups. During the year, many domestic NGOs also contended that the Government arbitrarily arrested and detained human rights activists, particularly in high conflict areas.<sup>9</sup>
- 2.10** In 2007, the FARC and ELN reportedly continued to commit human rights abuses, including political killings; killings of off-duty members of the public security forces and local officials; forced disappearances; kidnappings; torture; massive forced displacements; intimidation of judges, prosecutors and witnesses; recruitment of child soldiers; and attacks against human rights activists, teachers and trade unionists. Although the AUC demobilisation reportedly led to a reduction in killings and other human rights abuses, paramilitaries who refused to demobilise and new illegal criminal groups continued to commit numerous unlawful acts and related abuses in 2007.<sup>10</sup>

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<sup>5</sup> COI Key Documents 2008: Colombia, FCO Country Profile 2008: Colombia & Human Rights Watch (HRW) World Report 2007: Colombia

<sup>6</sup> U.S. Department of State report on Human Rights Practices (USSD) 2007: Colombia (Introduction)

<sup>7</sup> USSD 2007: Colombia (Introduction & Section 1), HRW World Report 2008: Colombia & Amnesty International (AI) Report 2008: Colombia

<sup>8</sup> USSD 2007: Colombia (Introduction & Section 2), HRW World Report 2008: Colombia & AI Report 2008: Colombia

<sup>9</sup> USSD 2007: Colombia (Introduction, Section 1, Section 2 & Section 4), HRW World Report 2008: Colombia & AI Report 2008: Colombia

<sup>10</sup> USSD 2007: Colombia (Introduction & Section 1), HRW World Report 2008: Colombia & AI Report 2008

- 2.11** 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. In October 2006, the Government and the ELN announced the start of formal peace negotiations, which took place in Havana in April 2007. However, negotiations were suspended in August 2007 following disagreement over the terms of the ceasefire.<sup>11</sup>
- 2.12** The FARC maintained their refusal to enter into formal peace talks with the Colombian Government during 2005 and 2006. 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. However, talks on this issue were cancelled after a bombing in October 2006 for which the Government charged the FARC was responsible.<sup>12</sup>
- 2.13** In June 2007, the Government released dozens of jailed FARC rebels in the hope that the FARC would reciprocate by releasing hostages. The FARC leadership rejected this move however and stated again that they would only free hostages if the Government ended operations against them and established a demilitarised zone. In September 2007, Venezuelan President Hugo Chavez invited the FARC rebels for talks on a hostage release deal and in January 2008 he was involved in negotiating the release of two high profile hostages. However, President Chavez's role as mediator led to strained diplomatic relations between the Venezuelan and Colombian Governments. Diplomatic relations between Colombia and its neighbours reached crisis point in March 2008 when a Colombian cross-border raid into Ecuador killed the senior FARC rebel Raul Reyes. Ecuador and Venezuela cut ties with Colombia and sent troops to their borders, though diplomatic relations have since improved. In July 2008, the Colombian army rescued the FARC's highest-profile hostage, Ingrid Betancourt, who had been held in captivity for six years. Betancourt, a former Colombian presidential candidate, was among 15 hostages freed in an operation in the southern-central region of Guaviare.<sup>13</sup>

### **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 Asylum Instructions 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 Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason -

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<sup>11</sup> AI Report 2008: Colombia, HRW World Report 2007: Colombia, Freedom House: Countries at the Crossroads 2007 - Country Report: Colombia, BBC News 'Colombia backs ELN ceasefire plan' dated 18 April 2007, BBC News 'Colombia peace talks set to begin' dated 27 October 2006, BBC News 'Colombian ELN rebels begin talks' dated 17 December 2005, BBC News. 'Colombia plans new rebel meeting' dated 22 December 2005; BBC News 'Colombia lifts rebel arrest order' dated 25 Feb 2006

<sup>12</sup> HRW World Report 2007: Colombia, BBC News 'Colombian leader ends Farc talks' dated 20 October 2006, BBC News 'FARC wants Colombia peace talks' dated 24 June 2006, BBC News 'Colombian rebels turn on allies' dated 12 June 2006

<sup>13</sup> BBC News Timeline: Colombia, BBC News Country Profile: Colombia, BBC News 'Colombia and Ecuador restore ties' dated 6 June 2008 & BBC News 'Venezuela restores Colombia ties' dated 9 March 2008

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 Asylum Instruction on Considering the Asylum Claim).

- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant 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 the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:  
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Supporters of the FARC, ELN or AUC**
- 3.6.1** Many applicants may make an asylum and/or human rights claim on the basis that 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. Applicants 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.*** The Government began discussions with the AUC paramilitary group in July 2003 and on 18 April 2006 they announced that the demobilisation process of the AUC had been completed. 35 thousand paramilitaries formally demobilised as part of the Law for Justice and Peace (LJP) process. 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 equilibrium required to obtain both justice and peace. In mid-May 2006 the Constitutional Court tightened up some of the provisions of the LJP, particularly those areas relating to the rights of the victims.<sup>14</sup>
- 3.6.3** In terms of a fall in the number of massacres, killings, and kidnappings, the situation has improved since 2002 under President Uribe's security policy and as a result of the demobilisation process of the AUC. Government statistics indicated that during 2007 there were decreases in massacres (34 per cent) and kidnappings (29 per cent). However, paramilitaries who refused to demobilise and new criminal groups reportedly continued to commit numerous unlawful acts and related abuses during 2007, including: political killings and kidnappings; physical violence; forced displacement; intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; recruitment and use of child soldiers; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists.<sup>15</sup>
- 3.6.4** In 2007, the FARC and ELN reportedly continued to commit human rights abuses, including political killings; killings of off-duty members of the public security forces and local officials; forced disappearances; kidnappings; torture; massive forced displacements; intimidation of

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<sup>14</sup> COI Key Documents 2008: Colombia, FCO Country Profile 2008: Colombia & Human Rights Watch (HRW) World Report 2007: Colombia

<sup>15</sup> USSD 2007: Colombia (Introduction & Section 1), HRW World Report 2008: Colombia & AI Report 2008: Colombia

judges, prosecutors and witnesses; recruitment of child soldiers; and attacks against human rights activists, teachers and trade unionists. The Colombian Government entered into formal peace negotiations with ELN in April 2007, but they were suspended in August 2007 following disagreement over the terms of the ceasefire.<sup>16</sup>

- 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 limited due to the Government's weak authority in some regions and inability to counter the influence in parts of the country of the FARC, ELN, and paramilitaries who refuse to demobilise. Whilst the new illegal groups lack the organisation, reach and military capacity of the former AUC, guerrilla organisations continue to operate nationwide and are well-resourced to dominate areas in which they see a particular interest. The state therefore cannot currently offer sufficient protection from these groups.
- 3.6.6 Internal relocation.** Ongoing military operations and the occupation of certain rural areas restrict freedom of movement in conflict areas. New illegal groups, paramilitaries that refuse to demobilise, and FARC and ELN guerrillas continue to establish illegal checkpoints on rural highways, but enhanced government security presence along major highways has reduced the number of kidnappings.<sup>17</sup>
- 3.6.7** Careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of the FARC, ELN or former paramilitaries who refuse to demobilise. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of Colombia where they would not be at real risk and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.6.8 Conclusion.** If the applicant provides convincing evidence that for political reasons they have been kidnapped in the past and/or have encountered serious harassment or threats from either the FARC, ELN or former AUC paramilitaries who refuse to demobilise and internal relocation is not a viable option, then the absence of adequate state protection 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.
- 3.6.9** Case owners should note that members of FARC, ELN and the AUC have been responsible for serious human rights abuses. If it is accepted that an applicant 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 case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

### **3.7 Criminality, extortion and blackmail**

- 3.7.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution (usually blackmail and extortion) at the hands of the FARC or other guerrilla groups.
- 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

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<sup>16</sup> USSD 2007: Colombia (Introduction & Section 1), HRW World Report 2008: Colombia, AI Report 2008: Colombia & BBC News 'Colombia backs ELN ceasefire plan' dated 18 April 2007

<sup>17</sup> USSD 2007: Colombia (Section 2)

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** Although kidnapping, both for ransom and for political reasons, continued to diminish in 2007, it remained a serious problem. Kidnapping for ransom reportedly remained a major source of revenue for both the FARC and ELN in 2007 and the FARC continued to hold political hostages taken in previous years.<sup>18</sup>
- 3.7.4** Government statistics from 2007 indicated that there was a 29 per cent decrease in the number of kidnappings. The National Foundation for the Defense of Personal Liberty (Fondelibertad) reported that during 2007 guerrilla groups kidnapped 149 persons (38 per cent of those in which a perpetrator was identified), the FARC 121 persons, and ELN 28 persons. Fondelibertad also reported that new illegal groups were responsible for kidnappings during the year, though numbers were not differentiated from kidnappings due to common crime, since the government statistics considered new illegal groups as criminals. There were numerous reports in 2007 that guerrilla groups killed kidnapping victims.<sup>19</sup>
- 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 limited due to the Government's weak authority in some regions and inability to counter the influence in parts of the country of the FARC, ELN, and paramilitaries who refuse to demobilise. Whilst the new illegal groups lack the organisation, reach and military capacity of the former AUC, guerrilla organisations continue to operate nationwide and are well-resourced to dominate areas in which they see a particular interest.<sup>20</sup> The state therefore cannot currently offer sufficient protection from these groups.
- 3.7.6** **Internal relocation.** Ongoing military operations and the occupation of certain rural areas restrict freedom of movement in conflict areas. New illegal groups, paramilitaries that refuse to demobilise, and FARC and ELN guerrillas continue to establish illegal checkpoints on rural highways, but enhanced government security presence along major highways has reduced the number of kidnappings.<sup>21</sup>
- 3.7.7** Careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of the FARC, ELN or former paramilitaries who refuse to demobilise. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of Colombia where they would not be at real risk and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.7.8** **Case law.**

**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.

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<sup>18</sup> USSD 2007: Colombia (Section 1)

<sup>19</sup> USSD 2007: Colombia (Introduction & Section 1)

<sup>20</sup> USSD 2007: Colombia (Introduction & Section 1), HRW World Report 2008: Colombia & AI Report 2008: Colombia

<sup>21</sup> USSD 2007: Colombia (Section 2)

**3.7.9 Conclusion.** Some applicants 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 former AUC paramilitaries who refuse to demobilise. In most cases, the motivation for this treatment will be criminal and financial. Applicants 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 cases where internal relocation is not a viable option, the absence of adequate state protection means that a grant of Humanitarian Protection may be appropriate. The position of applicants who fear the FARC, ELN or paramilitary groups for non-political reasons was clarified by the Tribunal in the case of Gomez, summarised above.

### **3.8 Prison conditions**

**3.8.1** Applicants may claim that they cannot return to Colombia due to the fact that there is a serious risk that 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** With the exception of new facilities, prison conditions remained poor in 2007, especially for prisoners without significant outside support. According to the U.S. Department of State, overcrowding, lack of security, corruption, and an insufficient budget remained serious problems in the prison system during 2007. Many of the National Prison Institute's 8,881 prison guards and administrative staff were reportedly poorly trained, and as of September 2007, more than 62,600 prisoners were held in facilities designed to hold fewer than 52,600. However, the NGO Committee in Solidarity with Political Prisoners (CSPP) noted a continued decrease in corruption in the prison system during 2007, a result of improved training, increased supervision, and more accountability for prison guards.<sup>22</sup>

**3.8.4** An October 2007 report by the Inspector General's Office on Combita Prison found violations of health standards, such as a lack of potable water and a proliferation of insects and rodents. The National Prison Institute (INPEC) spent \$2.23 dollars per day on each inmate for food and private sources continued to supplement food rations of many prisoners. CSPP reported in 2007 that there were 315 patients per doctor in the prisons.<sup>23</sup>

**3.8.5** INPEC reported that during the first seven months of 2007 there were 7 violent deaths among inmates related to fighting and rioting. There were 11 riots at various penal institutions during the same period. In 2007, the Prosecutor General's Office continued to investigate allegations that some prison guards routinely used excessive force and treated inmates brutally. According to the Supreme Judicial Council, there were no judgments for excessive force made against prison guards during the year.<sup>24</sup>

**3.8.6** In 2007, the Government permitted independent monitoring of prison conditions by local and international human rights groups. The FARC and ELN reportedly continued to deny the International Committee of the Red Cross (ICRC) access to police and military hostages.<sup>25</sup>

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<sup>22</sup> USSD 2007: Colombia (Section 1)

<sup>23</sup> USSD 2007: Colombia (Section 1)

<sup>24</sup> USSD 2007: Colombia (Section 1)

<sup>25</sup> USSD 2007: Colombia (Section 1)



**3.8.7 Conclusion.** Whilst prison conditions in Colombia are poor, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants 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 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 Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions 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 Asylum Instructions on Discretionary Leave and the Asylum Instructions 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 for minors with no family in Colombia.

**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 favorable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Applicants 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.<sup>26</sup>

**4.4.3** According to the Pan-American Health Organisation (PAHO) Country Health Profile, 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

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<sup>26</sup> FCO Country Profile 2008: Colombia

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.<sup>27</sup> The law requires the Government to provide medical care to children. However, medical facilities were not universally available in 2007, especially in rural areas.<sup>28</sup>

- 4.4.4** 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. 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.<sup>29</sup>
- 4.4.5** Colombia has a mental health policy based on advocacy, promotion, prevention, treatment, and rehabilitation. However, mental health is not part of the primary health care system and actual treatment of severe mental disorders is not available at the primary level. Therapeutic drugs are generally available.<sup>30</sup>
- 4.4.6** Where a case owner considers that the circumstances of the individual applicant and the situation in Colombia 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 European Union letter 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 (VARRP) implemented on behalf of the UK Border Agency by the International Organization 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 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

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<sup>27</sup> Pan-American Health Organisation (PAHO) Country Profile: Colombia

<sup>28</sup> USSD 2007: Colombia (Section 5)

<sup>29</sup> Central Intelligence Agency World Factbook 2008: Colombia, PAHO Country Profile: Colombia & PAHO: 'Antiretroviral prices agreed in the negotiations of 10 Latin American countries' (June 2003)

<sup>30</sup> World Health Organisation Mental Health Atlas 2005: Colombia

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