

# OPERATIONAL GUIDANCE NOTE

## COLOMBIA

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#### **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. Caseowners 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, caseowners 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 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.<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 the two traditional parties, the Liberals and the Conservatives, 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 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.<sup>3</sup>
- 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.<sup>4</sup>
- 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.<sup>5</sup>
- 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.<sup>6</sup>

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<sup>1</sup> Home Office Country of Origin Information Key Documents: Colombia, Foreign and Commonwealth Office (FCO) Country Profile 2007: Colombia & British Broadcasting Corporation (BBC) News. Timeline: Colombia

<sup>2</sup> COI Key Documents: Colombia & FCO Country Profile 2007: Colombia

<sup>3</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia & BBC News. Country Profile: Colombia

<sup>4</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia, BBC News. Timeline: Colombia & BBC News. Country Profile: Colombia

<sup>5</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia, BBC News. Timeline: Colombia & BBC News. Country Profile: Colombia

<sup>6</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia, BBC News. Timeline: Colombia & BBC News. Country Profile: Colombia

- 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. 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>7</sup>
- 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 2006. Government statistics indicated that during 2006 there were decreases in the homicide rate (5 percent), massacres (23 percent), kidnappings (14 percent), and forced displacement (20 percent). According to the Government, the murder rate in 2006 was the lowest in two decades.<sup>8</sup>
- 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. In terms of a fall in the number of massacres, homicides and kidnappings, the situation has improved since 2002 under President Uribe's Democratic Security Policy, and more recently as a result of the demobilisation process of the AUC. According to the Government, the number of kidnappings fell to 200 in 2006 from 329 the previous year. Police Chief General Jorge Daniel Castro also reported that a total of 17,206 people suffered violent deaths in 2006, 517 fewer than in 2005. 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.<sup>9</sup> Violence and extensive societal discrimination against women, child abuse, and child prostitution remained serious problems during 2006. Trafficking in women and girls for the purpose of sexual exploitation was a problem during 2006, as was societal discrimination against indigenous persons and minorities. Child labour was also a widespread problem in 2006.<sup>10</sup>
- 2.10** It was reported in 2006 that some members of the security forces continued to collaborate with paramilitary groups, 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 in 2006. In 2005, the Government began a four year programme to reform the criminal justice system, with a new accusatory style criminal

<sup>7</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia, BBC News Country Profile: Colombia, U.S. Department of State report on Human Rights Practices (USSD) - 2006: Colombia (Sections 1 & 2), Amnesty International (AI) Annual Report 2006 & Human Rights Watch (HRW) World Report 2007: Colombia

<sup>8</sup> USSD 2006: Colombia (Introduction) & BBC News 'Colombia murders at 20-year low' dated 2 January 2007

<sup>9</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia, HRW World Report 2007: Colombia, BBC News 'Colombia murders at 20-year low' dated 2 January 2007 & USSD 2006: Colombia

<sup>10</sup> USSD 2006: Colombia (Section 5)

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.<sup>11</sup>

- 2.11** The Justice and Peace Law process has exposed corruption and paramilitary ties within the Government and in 2006 there were a series of allegations and revelations concerning public official and Congressmen links with illegal armed groups. President Uribe has publicly urged the Supreme Court to pursue all leads and punish public officials found guilty. In 2006, the president increased funding for the Supreme Court, which investigates members of Congress and senior government officials, to allow it to have its own investigative unit. President Uribe has also stated that the accusations related to the conduct of individuals, not institutions, and Congress continued to function normally.<sup>12</sup>
- 2.12** There were reports in 2006 that the authorities sometimes infringed on citizens' privacy rights. Journalists continue to work in an atmosphere of threats and intimidation, primarily from terrorist groups, but also in some instances from corrupt local officials. In 2006, 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. Although government officials generally were cooperative and responsive to the views of human rights groups in 2006, some NGOs claimed that criticism from high-level officials, including President Uribe, put them at risk for retaliation by illegal armed groups. Many domestic NGOs also contended that the Government arbitrarily arrested and detained human rights activists, particularly in high conflict areas.<sup>13</sup>
- 2.13** Despite ongoing negotiations with the Government, paramilitaries continue to commit massacres, killings, forced disappearances, kidnappings and torture. In 2006, paramilitaries often kidnapped and tortured suspected guerrilla sympathizers prior to executing them. In the same year, paramilitaries interfered with personal privacy in areas where they exercised de facto control, forcibly displaced 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.<sup>14</sup>
- 2.14** After a period of reduced armed activity, FARC guerrillas stepped up the level of violent activity in 2005 and 2006. Guerrillas, particularly the FARC, committed intentional illegal killings and killed and injured 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 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.<sup>15</sup>
- 2.15** 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

<sup>11</sup> USSD 2006: Colombia (Introduction & Section 1), USSD 2005 (Introduction & Section 1), AI Annual Report 2006, AI Annual Report 2005, HRW World Report 2007: Colombia & HRW World Report 2006: Colombia

<sup>12</sup> USSD 2006: Colombia (Section 3)

<sup>13</sup> USSD 2006: Colombia (Introduction, Section 1, Section 2 & Section 4), HRW World Report 2007: Colombia & HRW World Report 2006: Colombia

<sup>14</sup> USSD 2006: Colombia (Introduction), AI Annual Report 2006, HRW World Report 2007: Colombia & HRW World Report 2006: Colombia

<sup>15</sup> USSD 2006: Colombia (Introduction), USSD 2005 (Introduction), AI Annual Report 2006; HRW World Report 2006: Colombia

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. 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>16</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 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 Asylum Instructions 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. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the IND website at:  
<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 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

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<sup>16</sup> HRW World Report 2007: 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 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, 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

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.<sup>17</sup>
- 3.6.3** 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. In terms of a fall in the number of massacres, homicides and kidnappings, the situation has improved since 2002 under President Uribe's Democratic Security Policy, and more recently as a result of the demobilisation process of the AUC. According to the Government, the number of kidnappings fell to 200 in 2006 from 329 the previous year. Police Chief General Jorge Daniel Castro also reported that a total of 17,206 people suffered violent deaths in 2006, 517 fewer than in 2005.<sup>18</sup>
- 3.6.4** Despite ongoing negotiations with the Government, paramilitaries continue to commit massacres, killings, forced disappearances, kidnappings, torture and extortion. In 2006, paramilitaries often kidnapped and tortured suspected guerrilla sympathizers prior to executing them. In the same year, paramilitaries interfered with personal privacy in areas where they exercised de facto control, forcibly displaced 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.<sup>19</sup>
- 3.6.5** 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 2005 and 2006. The FARC and ELN also 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. In December 2005, President Uribe announced that the Government was prepared to hold talks about exchanging the FARC'S estimated 60 hostages for jailed FARC rebels. In 2006, the FARC leadership 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. In October 2006, the Government and the ELN announced the start of formal peace negotiations, which took place in Havana in April 2007.<sup>20</sup>

<sup>17</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia, USSD 2006: Colombia (Introduction & Sections 1 & 2), AI Annual Report 2006, HRW World Report 2007: Colombia, HRW World Report 2006: Colombia & BBC News Country Profile: Colombia

<sup>18</sup> COI Key Documents: Colombia, FCO Country Profile 2007: Colombia, HRW World Report 2007:

Colombia, BBC News 'Colombia murders at 20-year low' dated 2 January 2007 & USSD 2006: Colombia

<sup>19</sup> COI Key Documents: Colombia, USSD 2006: Colombia (Introduction), AI Annual Report 2006, HRW World Report 2007: Colombia & HRW World Report 2006: Colombia

<sup>20</sup> COI Key Documents: Colombia, HRW World Report 2007: Colombia, HRW World Report 2006: Colombia, USSD 2006: Colombia (Introduction & Section 1), USSD 2005: Colombia (Introduction & Section 1), BBC News 'Colombia backs ELN ceasefire plan' dated 18 April 2007, BBC News 'Colombia peace talks set to

- 3.6.6 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 in many parts of the country. These guerrilla and paramilitary organisations operate nationwide and are well-resourced to dominate any areas in which they see a particular interest. The state therefore cannot currently offer sufficient protection from these groups.
- 3.6.7 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 protection to them.<sup>21</sup> Claimants would not therefore be able to escape a real risk of mistreatment by internal relocation.
- 3.6.8 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. Caseowners should note that members of FARC, ELN and AUC have been responsible for serious human rights abuses. 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 caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners 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 claimants will apply for asylum based on ill-treatment amounting to persecution (usually blackmail and extortion) at the hands of the 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

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begin' dated 27 October 2006, 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, BBC News 'Colombian ELN rebels begin talks' dated 17 December 2005, BBC News. 'Colombia plans new rebel meeting' dated 22 December 2005

<sup>21</sup> United Nations High Commissioner for Refugees (UNHCR) International Protection Considerations Regarding Colombian Asylum Seekers and Refugees, March 2005 (page 44)

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.<sup>22</sup>

**3.7.4** According to the Government, the number of kidnappings fell to 200 in 2006 from 329 the previous year. However, they remain a serious problem, both for ransom and for political reasons. In 2006, there were reports that guerrillas killed kidnapping victims.<sup>23</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 very limited due to the Government's weak authority in many regions and inability to counter the influence of the FARC, ELN and AUC in many parts of 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.

**3.7.6** **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.<sup>24</sup> Claimants would not therefore be able to escape a real risk mistreatment by internal relocation.

**3.7.7** **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.

**3.7.8** **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**

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<sup>22</sup> USSD 2006: Colombia (Section 1), USSD 2005: Colombia (Section 1), BBC News 'Colombian leader ends Farc talks' dated 20 October 2006, BBC News. 'Colombia rebels rule out exchange' dated 2 January 2006 & BBC News 'FARC wants Colombia peace talks' dated 24 June 2006

<sup>23</sup> USSD 2006: Colombia (Section 1) & BBC News 'Colombia murders at 20-year low' dated 2 January 2007

<sup>24</sup> UNHCR International Protection Considerations Regarding Colombian Asylum Seekers and Refugees, March 2005 (page 44)



- 3.8.1** Claimants 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** **Consideration.** With the exception of new facilities, prison conditions remained poor in 2006, 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.<sup>25</sup>
- 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. Prison overcrowding is a serious problem and as of July 2006 there were more than 62,000 prisoners in a system designed for fewer than 52,000. Other problems include water shortages and poor water quality, mistreatment by guards, poor food quality and medical provision. From January 2006 to August 2006, there were 11 riots at various institutions which were sparked principally by inmates' internal fights; demands regarding working rights, food, and health care; and rebellion against prison discipline.<sup>26</sup>
- 3.8.5** It was reported that during the first eight months of 2006 there were 9 violent deaths among inmates as a result of fights and rioting. In 2006, the Prosecutor General's Office continued to investigate allegations that some prison guards routinely used excessive force and treated inmates brutally. However, there was no information available on prosecutions.<sup>27</sup>
- 3.8.6** **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 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

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<sup>25</sup> USSD 2006: Colombia (Section 1)

<sup>26</sup> USSD 2006: Colombia (Section 1)

<sup>27</sup> USSD 2006: Colombia (Section 1)

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.

**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 as set out in relevant Asylum Instructions.

### **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.<sup>28</sup>

**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.<sup>29</sup> The law requires the Government to provide medical care to children. However, medical facilities are not universally available, especially in rural areas.<sup>30</sup>

**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 number of steps have been taken at the national level, which have gradually facilitated opioid availability.<sup>31</sup>

**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

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<sup>28</sup> COI Key Documents: Colombia & FCO Country Profile 2007: Colombia

<sup>29</sup> Pan-American Health Organisation (PAHO) Country Health Profile 2002: Colombia (page 7)

<sup>30</sup> USSD 2006: Colombia (Section 5)

<sup>31</sup> World Health Organisation (WHO): Cancer Pain Release. 'Colombia: Palliative Care Program Grows National in Scope'

initiated massive vaccination efforts aimed at the population over one year of age in the affected areas, where almost 3 million people live.<sup>32</sup>

- 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.<sup>33</sup> 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>34</sup>
- 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 caseowner 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](http://www.iomlondon.org).

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