

**REFUGEE WOMEN AND  
DOMESTIC VIOLENCE:  
COUNTRY STUDIES**

**Colombia**

**A report by**

**Refugee Women's Resource Project**

**Asylum Aid**

**March 2002**

## Acknowledgements

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## **Explanatory note**

This is a section of *Refugee Women and Domestic Violence: Country Studies Part 2*, published by RWRP in March 2002. Part 1 of this report was published in September 2001. That report examined the situation in 5 countries – Albania, Bosnia & Herzegovina, China, Iran and Pakistan – and also included an introduction, which outlined the aims and objectives of the report and an overview of the issue of domestic violence in the context of refugee and asylum law.

The report from which this is an extract contains an additional 2 country studies – Colombia and Democratic Republic of Congo – as well as updates on the 5 previous country reports.

RWRP plans to publish additional country reports and updates at 6-monthly intervals.

Copies of Parts 1 and 2 of the report, provided in a ring binder to which this and subsequent issues can be added, can be obtained from RWRP at the address on the previous page at £10 each. Alternatively, the reports can be downloaded from our website.

Please note: we have highlighted in bold sections of the text which we consider may be particularly relevant for ease of reference.

**Refugee Women's Resource Project  
March 2002**

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# COLOMBIA

## 1. Introduction

### 1.1 Political background

The Republic of Colombia is a multi-party democracy, whose President, Andres Pastrana of the Conservative Party was elected in 1998. The Liberal Party controls the Legislature. The US State Department report for 2001 notes that ***“The civilian judiciary is largely independent of government influence; however, the suborning or intimidation of judges, witnesses, and prosecutors is common.”***<sup>1</sup>

The 40-year conflict to overthrow the Colombian Government continues; however, ***“Although the violence is deadly and large swaths of the countryside are under guerrilla influence, the movement lacks the military strength or popular support necessary to overthrow the government.”***<sup>2</sup>

The US State Department reports that, in 2001

*“The Government continued to face serious challenges to its control over the national territory, as longstanding and widespread internal armed conflict and rampant violence--both political and criminal--persisted. The principal participants in the conflict were government security forces, paramilitary groups, guerrillas, and narcotics traffickers”.*<sup>3</sup>

The 2000 US State Department report noted

*“The 2 major guerrilla groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), consist of an estimated 11,000 to 17,000 full-time combatants organized into more than 100 semiautonomous groups. The FARC and the ELN, along with other smaller groups, exercised a significant degree of territorial influence and initiated armed action in nearly 1,000 of the country's 1,085 municipalities during the year, which was approximately the same level as in 1999”.*<sup>4</sup>

This conflict has led to mass displacement of the civilian population. The Human Rights Watch 2001 report stated that

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<sup>1</sup> U.S. Department of State, (2002) *Country Reports on Human Rights Practices – 2001: Colombia*, Washington, Bureau of Democracy, Human Rights and Labor. Available at: [www.state.gov/g/drl/rls/hrrpt/2001/wha/8326.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8326.htm)

<sup>2</sup> CIA, (2001) *The World Factbook 2001*. Available at: [www.cia.gov/cia/publications/factbook](http://www.cia.gov/cia/publications/factbook)

<sup>3</sup> US Department of State, (2002) op. cit.

<sup>4</sup> US Department of State, (2001) *Country Reports on Human Rights Practices – 2000: Colombia*, Washington, Bureau of Democracy, Human Rights and Labor. Available at: [www.state.gov/g/drl/rls/hrrpt/2000/wha/741.htm](http://www.state.gov/g/drl/rls/hrrpt/2000/wha/741.htm)

***“Forced displacement continued to increase, with at least 300,000 Colombians reported displaced in 2001, the highest number ever in a single year. Increasingly, Colombians applied for exit visas to travel abroad and applied for political asylum in other countries.***

***“Kofi Asomani, the United Nations special coordinator on internal displacement of the Office for the Coordination of Humanitarian Affairs, visited Colombia in August and concluded that the conflict had "catastrophic consequences" for the civilian population. Despite government programs meant to assist the displaced, Asomani found that they continued to suffer extreme hardship, living in overcrowded and unsanitary conditions with limited access to basic services”.***<sup>5</sup>

## **1.2 Human rights practice**

There is widespread concern over the human rights situation in Colombia, expressed by all sources. **Human rights violations are perpetrated by all parties to the internal armed conflict, including government forces. The government itself is unwilling or unable to prevent human rights abuses** by its own security forces or the paramilitary organisations and armed opposition groups. **Impunity for perpetrators is the norm.**

The Amnesty International 2001 report states

***“The human rights crisis continued to deepen against a background of a spiralling armed conflict. The parties to the conflict intensified their military actions throughout the country in campaigns characterized by gross and systematic violations of human rights and international humanitarian law. The principal victims of political violence were civilians, particularly peasant farmers living in areas disputed between government forces and allied paramilitaries, and armed opposition groups. Human rights defenders, journalists, judicial officials, teachers, trade unionists and leaders of Afro-Colombian and indigenous communities were among those targeted. More than 4,000 people were victims of political killings, over 300 "disappeared", and an estimated 300,000 people were internally displaced. At least 1,500 people were kidnapped by armed opposition groups and paramilitary organizations; mass kidnaps of civilians continued. Torture - often involving mutilation - remained widespread, particularly as a prelude to murder by paramilitary groups. "Death squad"-style killings continued in urban areas. Children suffered serious human rights violations particularly in the context of the armed conflict. New evidence emerged of continuing collusion between the armed forces and illegal paramilitary groups. Progress continued in a limited number***

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<sup>5</sup> Human Rights Watch, (2002a) *World Report 2002: Colombia*, New York, Available at: <http://hrw.org/wr2k2/americas4.html>

*of judicial investigations, but impunity for human rights abuses remained the norm”.*<sup>6</sup>

Human rights abuses are perpetrated by all parties to the conflict. The US State Department commented that

*“The Government’s human rights record remained poor; there were continued efforts to improve the legal framework and institutional mechanisms, but implementation lagged, and serious problems remained in many areas. A small percentage of total human right abuses reported are attributed to state security forces; however, government security forces continued to commit serious abuses, including extrajudicial killings. Impunity remained a problem. Despite some prosecutions and convictions, the authorities rarely brought higher-ranking officers of the security forces and the police charged with human rights offenses to justice. Members of the security forces collaborated with paramilitary groups that committed abuses, in some instances allowing such groups to pass through roadblocks, sharing information, or providing them with supplies or ammunition. Despite increased government efforts to combat and capture members of paramilitary groups, security forces also often failed to take action to prevent paramilitary attacks. Paramilitary forces still find support among the military and police, as well as among local civilian populations in many areas”.*<sup>7</sup>

The report also noted that

*“NGO’s attributed a large majority of political killings, social cleansing killings, and forced disappearances to paramilitary groups... Throughout the country, paramilitary groups killed, tortured, and threatened civilians suspected of sympathizing with guerrillas in an orchestrated campaign to terrorize them into fleeing their homes, to deprive guerrillas of civilian support and allow paramilitary forces to challenge the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) for control of narcotics cultivations and strategically important territories”.*<sup>8</sup>

The Human Rights Watch 2001 report states that

*“In the first ten months of the year, the office of the Public Advocate (Defensoría del Pueblo) recorded ninety-two massacres, which they defined as the killing of three or more people at the same place and*

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<sup>6</sup> Amnesty International, (2001) *Annual Report 2001: Colombia*, London, Available at: [www.web.amnesty.org/web/ar2001.nsf/webamrcountries/COLOMBIA?OpenDocument](http://www.web.amnesty.org/web/ar2001.nsf/webamrcountries/COLOMBIA?OpenDocument)

<sup>7</sup> US Department of State, (2002) op. cit.

<sup>8</sup> US Department of State, (2002) op. cit.



**at the same time. Most were linked to paramilitary groups, followed by guerrillas.**

...

**“Overall, President Andrés Pastrana and his defense ministers failed to take effective action to establish control over the security forces and break their persistent ties to paramilitary groups. Even as President Pastrana publicly deplored atrocities, the high-ranking officers he commanded failed to take steps necessary to prevent killings by suspending security force members suspected of abuses, ensuring that their cases were handed over to civilian judicial authorities for investigation and prosecution, and pursuing and arresting paramilitary leaders.**

...

**“Mayors, municipal officials, governors, human rights groups, the Public Advocate's office and even some police detachments regularly informed the appropriate authorities about credible threats by paramilitaries or even massacres that were taking place. An early warning system paid for by the United States and administered by the office of the Public Advocate registered twenty separate warnings nationwide between June, when the system began to function, and September. But rarely did the government take effective action to prevent atrocities. Of the warnings that were received, eleven incidents resulted either in killings being committed or the continued, pronounced presence of armed groups that threatened civilians”.**<sup>9</sup>

Regarding impunity, Amnesty International's 2001 report notes that,

**“The Attorney General's Human Rights Unit investigated over 900 cases of violations of human rights and international humanitarian law. Significant progress was made in a number of cases. However, the vast majority of perpetrators of violations of human rights and international humanitarian law continued to evade accountability. Despite numerous outstanding arrest warrants, no attempt was made by the armed and security forces to capture paramilitary leaders responsible for widespread human rights violations. Paramilitary leaders arrested by civilian judicial investigators, routinely escaped from police or military detention. In defiance of the Constitutional Court, the military justice system continued to claim jurisdiction in cases in which senior armed forces officers were implicated”.**<sup>10</sup>

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<sup>9</sup> Human Rights Watch, (2002a) op. cit.

<sup>10</sup> Amnesty International, (2001) op. cit.

Although a law was enacted in July 2000 (after six failed attempts) criminalizing “disappearances’, genocide and forced displacement”, the Amnesty International 2001 report criticised this law for failing to provide that all heinous crimes be tried by civilian courts.<sup>11</sup> Human Rights Watch was also concerned with the powers of the military in investigations into human rights abuses, stating

***“The Security and National Defense Law that President Pastrana signed on August 13 threatened to reinforce impunity for human rights abuses. The law gave the security forces judicial police powers under certain circumstances and severely restricted the ability of civilian investigators to initiate disciplinary investigations against security force personnel for human rights violations committed during operations. Also, the law limited the obligation of the armed forces to inform judicial authorities about the detention of suspects, increasing the risk of torture”.***<sup>12</sup>

The impact of the February 2002 suspension of peace negotiations between the Government and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP), and the kidnappings of a Senator and a candidate in the forthcoming Presidential elections, on the overall human rights situation in Colombia, remains to be seen. **However, a Human Rights Watch press release expressed serious concerns that “paramilitary forces could inflict brutal reprisals against civilians” in the rebel controlled area.**<sup>13</sup>

### **1.3 Colombia and international legal instruments**

Colombia has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC).<sup>14</sup>

In addition, Colombia is a party to the American Convention on Human Rights “Pact of San Jose, Costa Rica” and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem do Para”.<sup>15</sup>

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<sup>11</sup> Amnesty International, (2001) op. cit.

<sup>12</sup> Human Rights Watch, (2002a) op. cit.

<sup>13</sup> Human Rights Watch, (2002b) *Colombia: Sudden End to Peace Negotiations Puts Civilians at Risk*, New York, February 21, 2002, Available at: <http://hrw.org/press/2002/02/colombia0221.htm>

<sup>14</sup> Office of the High Commissioner for Human Rights, *Status of Ratifications of the Principle International Human Rights Treaties*, as at February 2002, Available at: [www.unhchr.ch](http://www.unhchr.ch)

<sup>15</sup> Organization of American States, *Signatories and Ratifications of the Inter-American Treaties*, as at February 2002, Available at: [www.oas.org](http://www.oas.org)

Colombia has not yet submitted its fifth periodic report to the Committee on the Elimination of Discrimination Against Women, which was due in 1999. Its previous report, due in 1995, was submitted in 1997 and considered by the committee in 1999. Also outstanding are the 1997 and 2000 reports for the Committee Against Torture, and the 2000 reports for the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.<sup>16</sup>

## 1.4 Women's human rights

Article 13 of the 1991 Colombian Constitution states that

*“All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy.”<sup>17</sup>*

**Despite this equality enshrined in law, discrimination and human rights violations are widespread.** The Committee on the Elimination of Discrimination Against Women (the Committee) noted

*“that no systematic effort is being made to counter discriminatory cultural traditions and change sexist stereotypes and that the media continue to project stereotyped images of women.”<sup>18</sup>*

In 2000, a report for the UN High Commissioner for Human Rights found that **women received 28% less pay than men for the same work.<sup>19</sup> The unemployment rate for women was 24.5% during 1999 and 16.9% for men.<sup>20</sup>** The situation is worse for rural women. **Average earnings for rural women are just 58% of the amount earned by men.<sup>21</sup>** Women's participation in management and decision-making bodies is low and the Committee expressed its concern that there were no specific measures for promoting increased

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<sup>16</sup> Office of the High Commissioner for Human Rights, *Reporting Status*, as at February 2002, Available at: [www.unhchr.ch](http://www.unhchr.ch)

<sup>17</sup> Text of the Constitution of Colombia (1991) available in English at: [http://confinder.richmond.edu/columbia\\_const2.html](http://confinder.richmond.edu/columbia_const2.html), Original available in Spanish at: [www.georgetown.edu/pdba/Constitutions/Colombia/col91.html](http://www.georgetown.edu/pdba/Constitutions/Colombia/col91.html)

<sup>18</sup> Office of the High Commissioner for Human Rights, (1999) *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Colombia 04/02/99*, UN Doc. A/54/38, paras.337-401, Available at: [www.unhchr.ch](http://www.unhchr.ch), para 381

<sup>19</sup> US Department of State, (2002) op. cit.

<sup>20</sup> US Department of State, (2002) op. cit.

<sup>21</sup> Latin America and Caribbean Committee for the Defense of Women's Rights (CLADEM), (1998) *Alternative Report Presented to the Follow-up Committee on the Convention for the Elimination of All Forms of Discrimination Against Women – CEDAW*, Bogota, Available at: [www.cladem.org/Ingles/cedawcol.doc](http://www.cladem.org/Ingles/cedawcol.doc), p. 3

participation by women.<sup>22</sup> A report by the International Women's Rights Action Watch noted ***"Under Colombian law there is still no legal recourse for women who are subjected to sexual harassment in the workplace"***.<sup>23</sup>

While education is one of the areas where most progress has been made with regard to the position of women, there are problems remaining. There is inconsistency in the quality of education received by male and female students, and in higher education, women are significantly under represented in agriculture, mathematics, sciences and engineering.<sup>24</sup> **The Committee also expressed concern at the high level of school drop-out of girls and young women, suggesting it was linked to sexist stereotypes.**<sup>25</sup>

The US State Department report stated that ***"Rape and other acts of violence against women are pervasive in society, and like other crimes, seldom are prosecuted successfully"*** and described sexual harassment as a problem.<sup>26</sup> **Trafficking in women and girls is also a major problem.**

*"The DAS reported in 2000 that the country is one of the three most common countries of origin of trafficking victims in the Western Hemisphere; in 2000 an estimated 35,000 to 50,000 Colombian trafficking victims were overseas. The majority of women trafficked for prostitution reportedly go to the Netherlands, Spain, Japan, Singapore, and Hong Kong. A study carried out in Spain in 1999 by the Roman Catholic religious order the "Adoratrices" found that Colombian women constituted nearly half of all trafficking victims in that country. The Organization for Security and Cooperation in Europe issued a report on trafficking in persons in 1999 that stated that **women and girls from Colombia also are trafficked to North America.** According to press reports, **more than 50 percent of women from Colombia who enter Japan are trafficking victims forced to work as prostitutes"**.<sup>27</sup>*

The Committee addressed the issue of prostitution and trafficking in its concluding comments on Colombia's report, expressing its concern

***"...that, although national legislation condemns inhuman and degrading treatment, many women are forced to become prostitutes in order to survive and there is traffic in women. Preventive mechanisms are lacking and the State has little capacity to confront the national and***

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<sup>22</sup> CEDAW Concluding Observations, op. cit. para 383

<sup>23</sup> International Women's Rights Action Watch (IWRAP), (1997) *IWRAP Country Reports: Colombia*, Available at: [www.igc.org/iwraw/publications/countries/colombia.html](http://www.igc.org/iwraw/publications/countries/colombia.html)

<sup>24</sup> CLADEM, op. cit. p. 26

<sup>25</sup> CEDAW Concluding Observations, op. cit. para. 385

<sup>26</sup> US Department of State, (2002) op. cit. See Section 2 for a detailed examination of violence against women

<sup>27</sup> US Department of State, (2002) op. cit.

***international criminal organizations engaged in procurement, which operate with a high degree of impunity***.<sup>28</sup>

The Committee was particularly concerned with the situation of women in rural areas, stating that, in rural areas

***“...there is a considerable lag in basic services infrastructure, low health and education coverage, and lower quality of life for most of the population. These factors are an obstacle to integrating women in development and ending their difficult living conditions, which, together with violence, are responsible for rural women being one of the population groups that are most vulnerable and subject to discrimination***”.<sup>29</sup>

### **1.5 Women and conflict**

The conflict in Colombia has resulted in serious violations of women’s human rights and particular problems in women’s everyday lives. The Inter-American Commission on Human Rights (IACHR) reported in 1999 that not only was the internal armed conflict resulting in increasing numbers of women who are victims of internal displacement,<sup>30</sup> but that ***“there are numerous complaints regarding murders, injuries, unlawful deprivation of liberty, and intimidation by the various armed actors”***. It went on to state ***“every two days a woman dies in Colombia for political reasons”***.<sup>31</sup>

An Amnesty International Report, “Women in Colombia” reported that

*“Throughout this conflict, women have been the victims of human rights abuses for a variety of reasons: some because they are themselves politically active; others because of the political activity of their partners or relatives; and others simply because they live in areas where guerrilla forces are active and are automatically considered by the armed forces to be guerrilla sympathizers or supporters.*

...

***“Amnesty International has received persistent reports that in areas with a guerrilla presence, women who socialize with members of the armed forces and police have been harassed, threatened and in several cases killed by members of armed opposition groups.***

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<sup>28</sup> CEDAW Concluding Observations, op. cit. para. 377

<sup>29</sup> CEDAW Concluding Observations, op. cit. para. 397

<sup>30</sup> See section 5.1 for a detailed examination of women and internal displacement

<sup>31</sup> Inter-American Commission on Human Rights (IACHR), (1999) *Third Report on the Human Rights Situation in Colombia*, Available at: [www.oas.org](http://www.oas.org), Chapter XII, para. 35 and 38

***“Some guerrilla groups have resorted to the practice of abduction and forcible recruitment of young women from rural areas where they operate. Other women have been kidnapped and held hostage by guerrilla organizations something that has become increasingly widespread as ransom money has become one of the principal sources of income for guerrilla groups. Some kidnap victims, particularly women holding public office such as mayoresses and local councillors, are held hostage for political motives, either to pressurize them into implementing guerrilla proposals in their administrations or in an attempt to demand publicity for their policies. However, reliable statistics for the number of women kidnapped by armed political groups are difficult to compile”.***<sup>32</sup>

**Women are victims of violence and intimidation when they actively fight for their rights.** The Committee recommended that

*“...the Government step up security measures for all those who promote and defend human rights, especially in view of kidnappings and other acts that constitute an assault on physical integrity, with particular attention to the situation of women”.*<sup>33</sup>

**Women who work towards finding out the fate of their husbands, sons or other relatives and strive for justice after violations of the rights of their family members are also threatened.** Amnesty International noted that

*“Relatives of victims of human rights violations also face a serious risk of reprisal if they push for investigations and for those responsible to be brought to justice. In many cases relatives decide not to make complaints or testify because they feel that they are too vulnerable to acts of reprisal. **On numerous occasions relatives of victims have been threatened or even killed if they persisted with their struggle for justice”.***<sup>34</sup>

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<sup>32</sup> Amnesty International, (1995) *Women in Colombia: Breaking the Silence*, Available at: [www.amnesty.se/women/23ca.htm](http://www.amnesty.se/women/23ca.htm)

<sup>33</sup> CEDAW Concluding Observations, op. cit. para. 372

<sup>34</sup> Amnesty International, (1995) op. cit.



## 2. Domestic violence

There are few statistics on the prevalence of domestic violence in Colombia. Those that exist are not up to date. The World Health Organisation (WHO) and the United Nations Statistics Division, in their surveys of domestic violence worldwide, state that 19% of Colombian women have experienced domestic violence within an intimate relationship.<sup>35</sup> However, the sample of 6,097 women “included women who had never been in a relationship and therefore were not in exposed group”.<sup>36</sup>

The International Planned Parenthood Federation quotes a higher figure, stating

**“...41 percent of women in Colombia report having been physically abused in a current relationship (DHS 2000)”.**<sup>37</sup>

The 1999 report of the Special Rapporteur on violence against women, its causes and consequences stated

*“There were 51,451 cases of inter-family violence reported in 1996, in which 34,796 of the victims were spouses. Ninety-three per cent of the cases of spousal abuse were perpetrated against women.”*<sup>38</sup>

The Inter-American Commission on Human Rights reported in 1999, that

**“Despite legislative progress and the efforts of the public and private sectors, the official figures reveal that violence against women in Colombia continues to occur at alarming levels, with a tendency to worsen. Such is the case that, in 1993, the Institute of Legal Medicine of Colombia issued reports on 15,503 cases of non-fatal injuries due to family violence, reported in the departmental capitals. This figure climbed to 19,706 in 1994, and 23,288 in 1995.”**<sup>39</sup>

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<sup>35</sup> World Health Organisation, *Prevalence of Violence Against Women by an Intimate Male Partner*, Available at: [www.who.int/violence\\_injury\\_prevention/vaw/prevalence.htm](http://www.who.int/violence_injury_prevention/vaw/prevalence.htm) and United Nations Statistics Division, *The World's Women 2000: Trends and Statistics*, Available at: [www.un.org/depts/unsd/ww2000/table6c.htm](http://www.un.org/depts/unsd/ww2000/table6c.htm), both sources quote a study by Demographic and Health Surveys (DHS). Colombia. *Encuesta nacional de demografía y salud 1995*. PROFAMILIA and DHS/Institute for Resource Development and Macro International, 1995.

<sup>36</sup> World Health Organisation, op. cit.

<sup>37</sup> International Planned Parenthood Federation Western Hemisphere Region, *Gender-Based Violence*, Available at: [www.ippfwhr.org/whatwedo/gbv.html](http://www.ippfwhr.org/whatwedo/gbv.html)

<sup>38</sup> Report of the Special Rapporteur on Violence Against Women, its causes and consequences, (1999) *Violence against women in the family*, UN Doc. E/CN.4/1999/68 Available at: [www.unhchr.ch](http://www.unhchr.ch), para. 81

<sup>39</sup> IACHR, (1999) op. cit. para. 43



The Colombian government said, in its most recent report to CEDAW, that the problem of domestic violence was not investigated until the 1980s and acknowledged that research around the subject needed to be “*expanded and strengthened*”.<sup>40</sup> The statistics in the CEDAW report vary; however, all the research projects quoted agree that domestic violence is under-reported and that the figures found in the research are just a fraction of the real numbers. A 1995 survey found that

***“Of the married or cohabiting women surveyed, 52 per cent had been abused by their husbands, more than half insulted, and more than a third beaten.***

...

***“Of all the battered women, 27 per cent had reported the facts to the authorities; this figure is somewhat higher than the one found five years earlier in the 1990 survey, when only 11 per cent of the women victims of physical violence had reported it. Ten per cent visited a police station, eight per cent a family commission, and five per cent the Colombian Family Welfare Institute (ICBF).***

*“The reasons given by the women for not reporting the domestic violence included: belief that they could solve the problem without any help (31%), fear of retaliation (22%), and belief that the husband would change (17%).”*<sup>41</sup>

The Colombian Government report to CEDAW also addresses domestic violence in the section on women and health. It states that

*“With regard to domestic violence, which primarily affects women, 33 per cent of women living with a man say that they have suffered verbal violence, 19.3 per cent physical violence, and 5 per cent sexual violence. Factors such as marital status, place of residence and number of children do not cause any significant differences in the incidence of violence.*

***“The only factor having a clear impact is education, for almost 24 per cent of poorly educated women living with a man have suffered physical violence, whereas the figure for women with higher education is 7 per cent.***

...

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<sup>40</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), (1997) *Fourth Periodic Report*, UN Doc. CEDAW/C/COL/4, Available at: [www.un.org/womenwatch/daw/cedaw/columbia99.htm](http://www.un.org/womenwatch/daw/cedaw/columbia99.htm)

<sup>41</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

*“According to the data of the National Institute of Forensic Medicine, in cases of domestic violence in 1994 it issued about 12,000 reports on non-fatal bodily harm inflicted on women aged between 25 and 34, approximately 6,000 reports for the 35-44 age group, and some 4,000 reports for the 15-24 age group. These figures stand in sharp contrast with the figures for reports on men in the same circumstances, which did not exceed 1,000 for any age group.”<sup>42</sup>*

In its section on spouse abuse, the CEDAW report highlights

*“The National Reference Centre on Violence of the National Institute of Legal Medicine stated that in 1995 it received a total of 42,963 reports of domestic violence, 71 per cent of them concerning spouse abuse. Of this total, 95 per cent of the acts of violence were committed against women. This means a ratio of one man for every 18 women victims. Sixty-seven per cent of these women were aged between 18 and 34.*

*“It should be remembered, however, that these figures represent only the cases reported to the Institute in connection with legal proceedings; **the under-recording of domestic violence is very high.***

*“A comparison of the cases of bodily harm resulting from spouse abuse recorded by the Institute in 1993 and 1995 shows alarming increases of up to 819 per cent in Medellín and up to 241 per cent in Florencia. However, it is impossible to determine the extent to which these increases are due to a higher incidence of spouse abuse or to the fact that more cases are being reported.*

*“In 1995 the Institute surveyed one in every three victims reporting spouse abuse and receiving a report from the Institute, with a view to classifying these victims. It found that 95 per cent were women, 45 per cent aged between 25 and 30, 26 per cent with primary education, 59 per cent with secondary, and 11 per cent with at least one semester of university education; 60 per cent lived in open marriages and 31 per cent were married; 93 per cent had an average of two dependants; and only 13 per cent received medical treatment for their injuries.*

*“In 88 per cent of cases the injuries occurred in the victim's home, and 55 per cent of the attackers had been drinking alcohol prior to the attack. In 85 per cent of cases the victims had a history of injury by the same attacker.”<sup>43</sup>*

The US State Department reported that

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<sup>42</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>43</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

***“According to the Ombudsman's 2000 report, intrafamilial violence, sexual assault, and the murder of women were increasing problems. The governmental Institute for Family Welfare and the Presidential Adviser's Office for Youth, Women, and Family Affairs continued to report high levels of spousal and partner abuse throughout the country. Between January and August, the Institute for Forensic Medicine reported 19,066 cases of spousal abuse. There were 8,757 cases of domestic violence by other family members.***

...

***“The Institute commented that the crimes of domestic violence and rape are grossly underreported, citing its 1995 survey that indicated that as few as 5 percent of these crimes are reported, and that only 2 percent of victims receive a medical evaluation.”<sup>44</sup>***

The Inter American Commission on Human Rights noted

***“Sexual violence in Colombia is also a matter of special concern to the IACHR. In 1995, the Institute of Legal Medicine of Colombia issued 11,970 opinions in investigations of sexual crimes nationwide. Of the victims, 88% were women, for a rate of 34 women per 100,000 population. According to the information received, it is estimated that there are some 775 rapes of adolescents annually, and that the rate of rape for this age group is 3.5 per 1,000 women. Nonetheless, only 17% of the victims denounce such acts. It should be noted that of all such attacks on women over 20 years of age, 47% are by relatives.”<sup>45</sup>***

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<sup>44</sup> US Department of State, (2002) op. cit.

<sup>45</sup> IACHR, (1999) op. cit. Chapter XII, para. 45

### 3. Domestic violence and the law

#### 3.1 Domestic legal provisions

Article 42 of the Colombian Constitution states that

***“Family relations are based on the equality of rights and duties of the couple and on the mutual respect of all its members. Any form of violence in the family is considered destructive of its harmony and unity, and will be sanctioned according to law.”***<sup>46</sup>

Law 294 of 1996 gives effect to this prohibition on violence. It defines the members of the family unit who the law protects as

***“...the spouses (man and woman) or permanent partners; the father, the mother, the ascendants, descendants and other persons that remain in the family unit.”***<sup>47</sup>

It aims to end “*maltreatment or aggression*” and includes “*physical, psychic, sexual or psychological, harm or threats or injury*”. Once maltreatment has been determined, measures of protection may be imposed, for example issuing a restraining order or evicting the aggressor for the family residence.<sup>48</sup>

Law 294 also provides for punishment, stating that “*he who maltreats physically, psychically or sexually any member of his family nucleus, shall incur an a prison sentence from one (1) to two (2) years*”. If maltreatment results in physical or psychological damage to the family member, the sentence can be increased by up to a half.<sup>49</sup>

Another provision deals with “*maltreatment by means of liberty restriction*”, and means that forcible restriction of the freedom of movement of an adult within the family unit can be punished by between one and six months imprisonment or a fine. Penalties for any offence under Law 294 can be increased by up to a half, if the offence was “*committed in violation of a protection order*”.<sup>50</sup>

**Despite these provisions, the fourth Colombian State report to CEDAW acknowledged**

***“However, it is regrettable that the Law establishes a less severe penalty for sexual violence between spouses (six months to two years imprisonment) in comparison with the penalties provided in the Criminal Code for the crimes of sexual intercourse with violence***

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<sup>46</sup> Constitution of Colombia, (1991) op.cit.

<sup>47</sup> CLADEM, op. cit. p. 43

<sup>48</sup> CLADEM, op. cit. p. 43

<sup>49</sup> CLADEM, op. cit. p. 43

<sup>50</sup> CLADEM, op. cit. p. 44

***(two to eight years imprisonment) and other sexual acts with violence (one to three years).”<sup>51</sup>***

**There is a gap in the protection against sexual assault on partners afforded by Law 294. The law protects “spouses; individuals who currently cohabit or cohabited in the past; and women who have had a child with the perpetrator”. This means that partners, who are not cohabiting with the perpetrator, are not covered by the law, unless they are the mother of the perpetrator’s child.<sup>52</sup>**

The Special Rapporteur expressed interest in the provision concerning “maltreatment through restriction of freedom”; however, she was concerned that **“punishments are limited to one to six months’ imprisonment, indicating that such crimes may not be perceived to be serious”.**<sup>53</sup>

In its 2000 update, the Center for Reproductive Law and Policy (CRLP) noted

*“In the area of domestic violence, Law 575 of 2000 amended Law 294 of 1996 and gave family courts the power to order protection measures. If there is no family court, this power falls to the municipal court judge.*

...

*“The new Penal Code includes the domestic violence offenses created by the 1996 Law, in Chapter 1 of Title IV of crimes against the family. Punishable conduct was not modified, **but the new Penal Code clarifies that the law relating to domestic violence is only applicable in the absence of other offenses that carry a stiffer sentence.**”<sup>54</sup>*

The Canadian Immigration and Refugee Board, addressing Law 575, noted that

*“The newer law stipulates, among other things, a range of possible measures that an authority can issue to address a case of domestic violence, from penalties or treatment for an aggressor to protection measures for a victim.*

...

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<sup>51</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>52</sup> Canadian Immigration and Refugee Board, (2000) *REFINFO Query: Colombia: Individuals to whom Law No. 294 on domestic violence applies (1999-February 2000)*, COL33769.E February 8, 2000, Available at: [www.irb.gc.ca](http://www.irb.gc.ca)

<sup>53</sup> Report of the Special Rapporteur on Violence Against Women, its causes and consequences, (1999) op. cit. para. 80

<sup>54</sup> Center for Reproductive Law and Policy, (2000) *Excerpt draft translation from CRLP, Women of the World: the laws and policies affecting their reproductive lives, Latin America, Update 2000*, Original in Spanish available at: [www.crlp.org/pdf/colombia\\_sup\\_sp.pdf](http://www.crlp.org/pdf/colombia_sup_sp.pdf)

*“The Haz Paz program states that one of the key changes established by Law 575 is that Family Commissions can legally attend to cases of domestic violence and issue protection measures (Haz Paz 2000b). The ICBF adds that in the absence of a Family Commission, a Justice of the Peace or a municipal officer known as Promiscuo Municipal can legally address a case of domestic violence (ICBF 2000)”*<sup>55</sup>

In its concluding comments, the Committee expressed concern that

***“...there is currently before Congress a bill to decriminalize domestic violence at both the civil and criminal level, passing responsibility for dealing with these human rights violations to an administrative court.***

***“The Committee recommends that the bill be reassessed, since it represents a step backwards from the progress achieved by the country in legislative terms in tackling and confronting the problem of domestic violence and sexual abuse.”***<sup>56</sup>

We have been **unable to find** evidence to show whether or not this change occurred.

### **3.2 Sexual violence**

The IACHR expressed concern over the high level of sexual violence in Colombia. (See section 2) The Commission stated

***“...as in other cases, the Colombian State has proceeded to update its domestic legislation to address the problematic situation described. Under a recent change in Colombian legislation, the punishments for crimes against sexual liberty and human dignity have been increased. These crimes currently include the categories of rape, sexual abuse and statutory rape. The crime of violent sexual intercourse (acceso carnal violento) is titled rape and is punishable by four to 10 years in prison. In a positive move, Law 360/97 repealed the Criminal Code provision by which the criminal action for all of the offenses mentioned was extinguished if the perpetrator married the victim.”***<sup>57</sup>

The International Women’s Rights Action Watch highlighted

***“Colombian law contains a narrow definition of rape which excludes sexual violence not involving penetration. It also provides different***

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<sup>55</sup> Canadian Immigration and Refugee Board, (2001) *REFINFO Query: Colombia: Status of the application and enforcement of the law on domestic violence (Law 294 of 1996)*, COL37210.E July 11, 2001, Available at: [www.irb.gc.ca](http://www.irb.gc.ca)

<sup>56</sup> CEDAW Concluding Observations, op. cit. para. 375-376

<sup>57</sup> IACHR, (1999) op. cit. Chapter XII, para. 46

**penalties for rape outside the marriage relationship (1-3 years imprisonment) and within marriage (6 months-2 years imprisonment).** Since 1996, cases of conjugal rape can only be prosecuted at the request of the rape survivor. Education programs for rape prevention and services for the support of rape victims are apparently nonexistent.”<sup>58</sup>

The US State Department’s examination of the legal provisions on sexual violence stated

*“A 1997 law also made additional, substantial modifications to the Penal Code and introduced sentences of between 4 and 40 years for crimes against sexual freedom or human dignity, including rape, sex with a minor, sexual abuse, induction into prostitution, and child pornography. The law also repealed an old law that fully exonerated a rapist if he subsequently offered to marry the victim and she accepted. **However, there was little evidence that this legislation was enforced systematically. The reforms to the Penal Code approved in June reduced the maximum sentence for violent sexual assault from 20 to 15 years; the minimum sentence is 8 years.**”*<sup>59</sup>

All sources expressed concern over the status of abortion in Colombian law. A report by IRAW stated, *“In January 1997, Colombia’s Constitutional Court upheld the imprisonment of women for abortion, even in cases of rape and incest”*. The report quoted figures showing widespread use of abortion by Colombian women, despite its illegal status. According to the

*“...Universidad Externado de Colombia, at least one-third of Colombian women between 15 and 55 years old have had one induced abortion (this is considered to be a minimal estimate). Estimates indicate that four abortions are performed for every ten live births (women from 15 to 49 years of age).”*

...

***“The criminalization of abortion has a discriminatory effect on impoverished women: while women of higher socio-economic classes are able to obtain safe, though illegal, abortions, women of lower incomes are forced to seek dangerous backroom abortions.”***<sup>60</sup>

In its concluding comments, the Committee noted that abortion is the second cause of maternal deaths in Colombia. It stated

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<sup>58</sup> IRAW, (1997) op. cit.

<sup>59</sup> US Department of State, (2001) op. cit.

<sup>60</sup> IRAW, (1997) op. cit.

***“No exceptions are made to that prohibition, including where the mother's life is in danger or to safeguard her physical or mental health or in cases where the mother has been raped. The Committee is also concerned that women who seek treatment for induced abortions, women who seek an illegal abortion and the doctors who perform them are subject to prosecution. The Committee believes that legal provisions on abortion constitute a violation of the rights of women to health and life and of article 12 of the Convention”.***<sup>61</sup>

### **3.3 Constitutional law**

The Colombian Constitution states, in Article 93

*“International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority domestically.*

*“The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia.”*<sup>62</sup>

**The pre-eminence of International Human Rights treaties over domestic law was affirmed by the Colombian Government report to CEDAW.**

*“Thus, as an international treaty promoting women's right to equality the Convention, which was ratified by Law 51 of 1981, takes precedence in the juridical order. When a conflict of laws arises the Convention is given priority and it functions as the most important criterion for interpretation of the rights embodied in the Constitution.”*<sup>63</sup>

**Protection against violations of fundamental human rights can be sought through the action of *tutela*, described in Article 86 of the Constitution.**

*“Every person has the right to file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whomever acts in his/her name for the immediate protection of his/her fundamental constitutional rights when that person fears the latter may be violated by the action or omission of any public authority.*

*“The protection will consist of all orders issued by a judge enjoining others to act or refrain from acting. The order, which must be complied with immediately, may be challenged before a superior court judge, and in any*

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<sup>61</sup> CEDAW Concluding Observations, op. cit. para. 393

<sup>62</sup> Constitution of Colombia, (1991) op.cit.

<sup>63</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.



case the latter may send it to the Constitutional Court for possible revision.”<sup>64</sup>

When describing *tutela*, the report to CEDAW noted

**“Although it is a requirement for bringing such an action that the person affected has no other means of legal protection, its use is allowed as a temporary recourse to avoid irremediable harm.**

...

*“In exceptional cases actions of tutela can be brought against individuals in the circumstances specified in Decree 2591 of 1991 on the recourse of tutela. In some such cases women, or any other persons, may defend their rights against private education institutions on the ground that education is a public service, or against enterprises or other individuals when the plaintiff is a subordinate or defenceless.*

***This means of recourse has become in practice the main instrument for the protection of fundamental rights; it has proved its effectiveness and people turn to it because of the flexibility of the procedure; it has helped to generate a social awareness of such rights.***

...

*“The findings of a national study on the use of tutela in the period 1991-1993 provide eloquent testimony: during this period 22,658 actions were brought, 6,514 (28.8%) of them by women. **The five rights most frequently cited as violated were the rights of petition, education and employment, and due process, and the rights to life and equality.**”<sup>65</sup>*

The report to CEDAW also stated that

***“Actions of tutela have also become an important means of defence against domestic violence and is used by women in particular. In several such cases the Constitutional Court has decided that the women and/or their children are defenceless against the men and has ordered the police authorities to take the necessary measures of protection and supervise the behaviour of the defendants, who are prohibited from committing acts of violence.*”<sup>66</sup>**

See section 4.3 for a more detailed evaluation of the effectiveness of *tutela* as a tool for women seeking protection from domestic violence.

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<sup>64</sup> Constitution of Colombia, (1991) op.cit.

<sup>65</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>66</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.



## 4. The reality of seeking protection

### 4.1 Introduction

As stated in section 2.1, reporting of domestic violence is low. A 1995 study found that although levels of reporting had increased since 1990, only 27% of women suffering from domestic violence reported it to the authorities. Of that 27%, 10% reported the abuse to the police, 8% to a family commission and 5% to the Colombian Family Welfare Institute (ICBF).<sup>67</sup>

To what extent this reflects a view that, once reported, the mechanisms for providing protection are not effective, is unknown. However, the Inter-American Commission on Human Rights suggested that the State deals ineffectively with domestic violence, resulting in impunity for perpetrators. The IACHR stated

*"In Colombia, as in many other countries, **most acts of domestic violence are still considered to be a private matter**. Consequently, they are not reported, and it is not possible to determine the full extent of the problem. According to information received by the Commission, **less than half of battered women seek assistance, and only 9% of the women lodge a complaint with the authorities**. The Commission also received information according to which neither the State nor society is sufficiently sensitive to the need to tackle the problem of domestic violence. **Impunity for the perpetrators of acts of domestic violence against women is practically 100%**".<sup>68</sup>*

### 4.2 The police

All sources report violations of human rights that are perpetrated by the police. For example, the US State Department reported "*Members of the armed forces and the police committed serious violations of human rights*".<sup>69</sup> We were able to find no information on the extent to which women may be reluctant to report domestic violence to the police because of concerns over police behaviour. Neither could we find information on the extent of concerns over whether there is a potential for factors linked to the internal armed conflict, such as perceived political affiliations, to affect treatment by the police.

The US State Department report also noted that on average one person was killed every 20 minutes<sup>70</sup> and highlighted

*"The police and the Prosecutor General's office have insufficient resources to investigate most killings adequately. The Superior Judicial Council*

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<sup>67</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>68</sup> IACHR, (1999) op. cit. Chapter XII, para. 44

<sup>69</sup> US Department of State, (2002) op. cit.

<sup>70</sup> US Department of State, (2001) op. cit.

*estimated based on a 1997 survey that 63 percent of crimes go unreported and that 40 percent of all reported crimes go unpunished.”<sup>71</sup>*

**It would appear likely that insufficient police resources for dealing with most crimes, combined with the perception of domestic violence as a private matter, as stated above by the IACHR, is an important factor in the near 100% impunity for perpetrators of domestic violence reported by the IACHR.**

It is also important to note that **women are severely under-represented in the police and military.** Current figures for the number of women in the police are unavailable; however, the Colombian Government report to CEDAW stated that there were 1,909 women members of the police and 621 women in the military forces, equivalent to 1.7% of the total.<sup>72</sup> **This could have an impact on the willingness of women to report domestic violence, sexual abuse or rape to the police and their confidence in police action to tackle it,** especially given the IACHR statement, quoted above, that **the State is not “sufficiently sensitive to the need to tackle the problem of domestic violence”.**<sup>73</sup>

The State report to CEDAW notes *“Colombia has many women’s groups, associations, networks of organizations and non-governmental organizations (NGOs)”*, some independent and some State-sponsored. These range from research organisations to community based groups.<sup>74</sup> **Sources reported that the police and army are responsible for attacks and intimidation of human rights defenders.** Human Rights Watch stated

*“The security forces were also directly implicated in abuses. In May, it was revealed that a **combined police-army unit had illegally tapped over 2,000 telephone lines in the city of Medellín, many belonging to nongovernmental and human rights groups.**”<sup>75</sup>*

We could find no information on the extent to which women’s groups or organisations working with survivors of domestic violence are affected by this police and military intimidation of NGOs.

### **4.3 The judicial and legal system**

The US State Department outlined the judicial system, stating

*“The judiciary includes the Constitutional Court, Supreme Court of Justice, and the Council of State, the Superior Judicial Council, and lower courts...”*

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<sup>71</sup> US Department of State, (2002) op. cit.

<sup>72</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>73</sup> IACHR, (1999) op. cit. Chapter XII, para. 44

<sup>74</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>75</sup> Human Rights Watch, (2002a) op. cit.

*The Prosecutor General's office is an independent prosecutorial body that brings criminal cases before the courts.”*

However, it emphasised

***“The civilian judiciary is inefficient, severely overburdened by a large case backlog, and undermined by intimidation and the prevailing climate of impunity. This situation remains at the core of the country's human rights problems.”***<sup>76</sup>

Actions of *tutela* can be used to obtain a judicial guarantee of fundamental rights. The State report to CEDAW highlighted

*“The following are the practical advantages of tutela for the protection of fundamental rights:*

*\* Proceedings may be brought by any person, including children, without a lawyer or other legal intermediary.*

*\* The procedure is brief and is given priority, for the judge has a maximum period of 10 days in which to take a decision.*

*\* The decision must be complied with within the following 48 hours, and the judge can sanction a failure to comply by arrest and fines on the ground of contempt of court, without prejudice to any criminal liability.*

*\* Decisions can be appealed before the higher courts, and the Constitutional Court may review them.”*<sup>77</sup>

The report described progress Colombia had made including

*“Recourse by women to actions of tutela as a fairly effective and available means of protection against violence in the family”.*<sup>78</sup>

However, the reality is different. The State report to CEDAW acknowledged difficulties *“encountered in the efforts to eliminate sexist stereotypes”* including

***“The inability of the State to ensure application of the legislation punishing domestic violence, and the limited conception of the scope of possible action, which makes it difficult to tackle the problem in a comprehensive manner.”***<sup>79</sup>

The US State Department also highlighted that in mid 1999 *“the civilian judiciary suffered from a backlog of approximately 3,069,000 cases”* and

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<sup>76</sup> US Department of State, (2002) op. cit.

<sup>77</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>78</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>79</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

***“...approximately 223,000 writs for protection of fundamental rights ("tutelas") were before the Constitutional Court for its legally mandated review. At year's end, the CSJ reported that the judicial system was extremely overburdened; it received a total of 8.6 million suits in 1994-2000, of which 226,783 were criminal cases filed during 2000”.***<sup>80</sup>

In its concluding comments, the Committee expressed its concern

***“that, despite the efforts that have been made, the Government's ability to ensure compliance with the rules providing for punishment for domestic violence is restricted”.***

It then recommended, *“effective measures be taken to ensure compliance with the law”.*<sup>81</sup>

Law 294 of 1996 provides a mechanism for judges to protect women who are suffering from domestic violence.

*“Family- or civil-court judges can issue several forms of protective orders to address domestic violence. These include: orders removing someone from the home; orders for education and therapy; orders to pay damages; and orders providing police protection. The police also have mechanisms for assisting victims of abuse aimed at preventing repetition of abusive behavior”.*<sup>82</sup>

**The reality is that protection measures under Law 294 are less than effective.**

***“Unfortunately, however, these judicial and police measures are not adequately implemented, as evidenced by the high incidence of violent acts, police officials' lack of training, and the general unavailability of police officers to address domestic abuse issues. Furthermore, these measures do not actually protect victims from violence, and judges do not issue orders as quickly as necessary”.***<sup>83</sup>

**In addition, the legal requirement that the law on domestic violence can only be applied when there are no other offences that carry a greater penalty (see section 3.1) is likely to reinforce the existing view that domestic violence is not a serious offence.**

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<sup>80</sup> US Department of State, (2002) op. cit.

<sup>81</sup> CEDAW Concluding Observations, op. cit. para. 373-374

<sup>82</sup> Center for Reproductive Law and Policy (CRLP), (1999) *Women's Reproductive Rights in Colombia: A Shadow Report*, Available at: [www.crlp.org/pdf/SRcolumbia99en.pdf](http://www.crlp.org/pdf/SRcolumbia99en.pdf), p.20

<sup>83</sup> CRLP, (1999) op. cit. p.20

As with the police, **women are under-represented in the Judiciary.** The US State Department reported that

*“There is 1 female among the 23 Supreme Court justices, 1 woman among 9 Constitutional Court magistrates, and 2 among the 13 magistrates of the Superior Judicial Council.”<sup>84</sup>*

In the context of wider societal attitudes to domestic violence, the lack of women in the judiciary could have an influence on the treatment of domestic violence and sexual abuse cases by the courts. Similarly, it is liable to affect the perception of court treatment of domestic violence cases, thereby impacting on women’s confidence in the process and the numbers of women reporting abuses to the authorities.

#### **4.4 Other support services**

The 1999 report of the Special Rapporteur on Violence against Women stated

*“The Special Rapporteur is encouraged to note the establishment in 1996 of the National Directorate of Equity for Women, which is charged with creating policies to combat violence against women, generally, and domestic violence, specifically.”<sup>85</sup>*

The State report to CEDAW listed among the factors assisting the National Directorate/Office in its work

*“\* The existence of a basic body of knowledge about women and the obstacles to their advancement.*

*\* The experience of women's organizations and NGOs”.*

However, it noted among the difficulties hindering work

*“\* The shortage of human and financial resources, which affects the capacity of the National Office and its advisory organs to provide technical assistance to the sectoral agencies and delays the mainstreaming of women's needs and interests in policies and programmes for women.*

*\* The lack of personnel specializing in the issues of equality for women.*

*\* The fact that the National Office is an advisory and not an executive agency means that it and its subsidiary organs can merely make*

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<sup>84</sup> US Department of State, (2002) op. cit.

<sup>85</sup> Report of the Special Rapporteur on Violence Against Women, its causes and consequences, (1999) op. cit. para. 79. (The National Directorate of Equity for Women is described in the CEDAW report as the National Office for Equality for Women.)

*proposals and that the implementation of proposed activities depends exclusively on the attitude of other ministries and State agencies”.*<sup>86</sup>

The Committee, in its concluding comments recommended

*“...that the Government consider strengthening the role of the National Office for Equality for Women, by means of a national law raising its status to that of an autonomous body with all the requisite powers and resources to be able to exercise more effective influence in Colombian society”.*<sup>87</sup>

The State report to CEDAW also described the practical protection mechanism, outside the legal system, for women affected by domestic violence.

*“The family commissions were created by the Minors' Code as a special means of tackling the problem of domestic violence. They perform policing functions and are organized by the municipal councils as part of the family welfare system. They are conceived as the most appropriate means of combating this kind of violence, since they have the services of lawyers, psychologists, social workers and doctors who can give immediate attention to the victims of abuse and/or the perpetrators. They also perform functions of conciliation but only with respect to family maintenance payments.*

*“The Presidential Council on Youth, Women and the Family of the 1990-1994 Government created a programme to promote the family commissions, which, once it came into operation, dealt with the training of personnel, including support for the provision of equipment and management and information systems. As a result, the number of commissions increased from two in 1990 to 180 in 1994 for the whole country. **This programme was transferred to ICBF when the 1994-1998 Government entered office, but unfortunately it has lost its initial impetus and has ceased to be implemented. At present, there is no national body supervising the family commissions.**”*<sup>88</sup>

The CEDAW report also acknowledges, in its list of problems hindering progress, **“The shortage of human and financial resources preventing the proper functioning of the family commissions”.**<sup>89</sup>

The Committee also expressed concern over this in its concluding comments, stating

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<sup>86</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>87</sup> CEDAW Concluding Observations, op. cit. para. 366

<sup>88</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit. (ICBF is the Colombian Institute of Family Welfare)

<sup>89</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.



***“the family commissions do not have the necessary human or financial resources to carry out their mandate and there is no systematic supervision of their work by the relevant government body. As a result, efforts to help victims are inadequate. The Committee stresses that, since a human rights issue is involved, it is the Government's responsibility to act to reduce violence against women, investigate cases and give treatment and support to the victims of violence.***

*“The Committee recommends that effective measures be taken to ensure compliance with the law and that due attention be paid to the family commissions to enable them to carry out their functions”.*<sup>90</sup>

While legal provisions exist for protection and support of women affected by domestic violence, **the adequacy of that protection in reality is questionable.**

*“The law provides that as a temporary measure, judges can order housing for victims of domestic violence in half-way houses or shelters. Such orders, however, rarely occur because few shelters exist and most of these cater principally to minors. The shelters are usually administered by NGOs without government aid.”*<sup>91</sup>

International Women’s Rights Action Watch reports that

***“While the law represents a positive development, the practical effects have been negligible. NGOs report that violence and its consequences are the main cause of deaths of women 15-44 years old. They charge that the government has not followed through on its commitments to address the problem. According to Profamilia, this is a result of the lack of free or low-cost legal assistance, as well as the lack of government-sponsored shelters for battered women”.***<sup>92</sup>

The US State Department report examined services provided by the Colombian Institute of Family Welfare (ICBF), stating

***“The ICBF conducted programs and provided refuge and counseling for victims of spousal abuse; however, the level and amount of these services were dwarfed by the magnitude of the problem. For example, ICBF’s 530 family ombudsmen handle approximately 1,160 cases per year”.***<sup>93</sup>

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<sup>90</sup> CEDAW Concluding Observations, op. cit. para. 373-374

<sup>91</sup> CRLP, (1999) op. cit. p.20

<sup>92</sup> IWRAW, (1997) op. cit.

<sup>93</sup> US Department of State, (2002) op. cit.

## 5. The situation of separated or divorced women

### 5.1 The consequences of conflict and internal displacement

The armed conflict within Colombia has a substantial impact on a widespread area of the country. The US State Department reported in 2000

*“The FARC and the ELN, along with other smaller groups, exercised a significant degree of territorial influence and initiated armed action in nearly 1,000 of the country's 1,085 municipalities during the year, which was approximately the same level as in 1999”.*<sup>94</sup>

The conflict has resulted in large numbers of internally displaced people. Human Rights Watch stated

***“Forced displacement continued to increase, with at least 300,000 Colombians reported displaced in 2001, the highest number ever in a single year”.***<sup>95</sup>

The UN Representative of the Secretary-General on internally displaced persons said in a report on Colombia in 2000

***“...displacement in Colombia is not merely incidental to the armed conflict but is also a deliberate strategy of war. Indeed, rarely is there direct confrontation among armed groups (that is, the paramilitaries, guerrilla groups, and the armed forces/police). Rather, these armed groups attempt to settle their scores by attacking civilians suspected of being associated with the “other” side, and they do so with such severity as to leave those whose physical security is threatened with no choice but to flee.***

***“Yet, the threats to physical security which the displaced flee to escape often only follow them into the communities in which they seek refuge. The very fact of having fled typically only heightens suspicions of allegiance with a particular armed actor and intensifies the risk of being targeted. Stigmatized and fearing for their lives, many of the displaced seek safety in anonymity, attempting to blend into the communities of urban poor. Having abandoned their homes, property and livelihood for conditions of destitution and continued insecurity, they constitute an extremely vulnerable segment of society. At the same time, displaced persons have begun to organize to defend their rights, but the leaders of their organizations and those of the local non-governmental***

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<sup>94</sup> US Department of State, (2001) op. cit.

<sup>95</sup> Human Rights Watch, (2002a) op. cit.

*organizations who try to help them are increasingly being targeted and killed by armed groups”.*<sup>96</sup>

**Often people are displaced more than once and the internally displaced are some of the poorest in the country.**

*“Patterns of flight continue to be predominantly from rural to urban areas. Moreover, in a phenomenon known as “intra-urban displacement”, displacement to urban areas tends to occur incrementally, as continued threats to their physical security and inadequate responses to their assistance needs compel the displaced to flee from smaller cities to increasingly larger centres. A large number ultimately make their way to Bogotá... Within the cities, **the displaced tend to be concentrated in the slums and shanty towns, where they find themselves among the poorest of the urban poor”.***<sup>97</sup>

**Internal displacement has a disproportionately severe impact on women in Colombia.** The Representative of the Secretary-General on internally displaced persons noted that

***“Women and children continue to make up the vast majority – approximately 80 per cent - of the displaced. Some 58 percent of the internally displaced are women while 55 per cent are under 18 years of age... An estimated 36 to 39 per cent of displaced households are headed by women”.***<sup>98</sup>

The IACHR reported that

*“...data compiled by the Office of the Human Rights Ombudsman reveals that: **approximately 34,125 Colombian women are the heads of an equal number of homes displaced by the violence, with the responsibility of feeding, educating, and raising more than 170,000 boys and girls, and 74.60% of them are widows or were abandoned during the process of displacement.**”*<sup>99</sup>

In its concluding comments the Committee stated that it

*“...notes with concern the persistence of widespread violence as a result of the armed conflict in the country. **Women are the principal victims***

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<sup>96</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) *Profiles in displacement: Follow-up mission to Colombia*, UN Doc. E/CN.4/2000/83/Add.1, Available at: [www.unhcr.ch](http://www.unhcr.ch), para. 2-3

<sup>97</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 33

<sup>98</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 32

<sup>99</sup> IACHR, (1999) op. cit. Chapter XII, para. 36

***and there are tens of thousands of displaced women and female heads of household who lack the resources needed for their survival in a situation in which they are called upon to assume greater responsibilities, both reproductive and productive, towards their families and communities”.***<sup>100</sup>

## **5.2 Discrimination**

### **5.2.1 Introduction**

The Government report to CEDAW highlighted, as a factor impeding the implementation of the Convention

*“The persistence of moral prejudices against the various ways in which the institution of the family is now organized, despite the fact that the Constitution recognizes and protects such arrangements in Colombian society”.*<sup>101</sup>

**This discrimination for reasons of family situation occurs on a number of different fronts, against de facto marriages, civil as opposed to religious marriages and against the internally displaced. It also has a more severe impact on women.**

### **5.2.2 De facto marriages**

The State report to CEDAW noted that, in 1990

*“...legal recognition was accorded to de facto marriages, which had previously given rise to economic discrimination between men and women, and legislation was introduced to regulate the property of a man and woman living permanently together by establishing their equality of rights with respect to property acquired during the union”.*<sup>102</sup>

However, despite the equality of marriage and de facto partnerships in law, the report also stated

***“Discriminatory attitudes persist in practice towards couples who decide to live in a de facto marriage; such discrimination has a greater impact on the women and their children owing to the traditional culture which supports legal marriage and persecutes them for "immoral behaviour" when they decide to form natural unions”.***<sup>103</sup>

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<sup>100</sup> CEDAW Concluding Observations, op. cit. para. 358

<sup>101</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>102</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>103</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

### 5.2.3 Marriage and divorce

By law, marriage must be entered into with the full consent of the couple. Under the age of 18, permission must be given by the parents of the couple. The minimum age of marriage is 14 for boys and 12 for girls.<sup>104</sup> Forms of marriage are civil marriages or religious marriages. Since 1991, these forms have had equal status in law (see section 5.3 for further details). However, the CLADEM report stated **that the strong influence of Catholicism means that religious marriages are “given a higher value” than civil marriages.** This results in greater difficulties for women wishing to dissolve religious marriages for reasons of “*conjugal violence, irresponsibility, infidelity, or any other cause, since as a sacrament, the Church maintains it cannot be dissolved*”.<sup>105</sup>

**Discrimination exists against divorced and separated women.** In an Australian case, a divorced woman stated that in Colombian male-dominated society, **a single mother was a target for many types of harassment, including sexual violence.** She stated that single mothers are seen by men as “*simple to get*”, and gave examples of occasions where she could not get a job because she refused sexual relations with the employer. The court accepted that single mothers suffer discrimination in Colombia; however, on the facts of the case did not accept that the discrimination suffered amounted to persecution.<sup>106</sup>

### 5.2.4 Internally displaced persons

There is discrimination against internally displaced persons in many aspects of everyday life. **The mere fact of being displaced “tends to heighten suspicions of their sympathies towards one party to the conflict or another and thereby to intensify their risk of being targeted”.**<sup>107</sup> **Many women suffer this discrimination on two fronts, firstly because they are internally displaced and secondly as single or separated women.** As already stated, 36-39% of internally displaced households have a woman head.

Law 387 states that the Government is to provide three months of humanitarian assistance to the displaced; however, in practice large numbers do not receive assistance.<sup>108</sup> To access Government assistance, internally displaced persons must have “certification” documents. This is problematic for a number of reasons. Firstly, owing to suspicion of the displaced, many are afraid to request certification and admit to being displaced. Secondly, the process of receiving certification may require the displaced to provide identification documents that were lost during flight or do not exist. **Women are disproportionately**

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<sup>104</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>105</sup> CLADEM, (1998) op. cit. p.54

<sup>106</sup> Refugee Review Tribunal, (1998a) RRT Reference: N97/18553, 20 October 1998, Sydney, Australia, Available at: [www.austlii.edu.au/au/cases/cth/rrt](http://www.austlii.edu.au/au/cases/cth/rrt)

<sup>107</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 73

<sup>108</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para 79. In 1997 only 54% of internally displaced persons received some form of assistance.

**disadvantaged by the requirement of certification.** The report on Colombia by the Special Representative on internally displaced persons stated

***“According to official figures, only 17.64 per cent of internally displaced women possess some sort of personal documentation, compared with 60 per cent of men”.***<sup>109</sup>

**This has a severe impact on the ability of displaced women to access the limited humanitarian assistance available from the Government and could have especially serious consequences for displaced women who are head of household.**<sup>110</sup>

### **5.3 The consequences of divorce**

Divorce has been available for civil marriages since 1976 and for religious marriages since the law was amended in 1992. The State report to CEDAW noted

*“The grounds for divorce apply equally for men and women, and they were expanded to include the common consent of the spouses and their de facto physical separation for more than two years.*

***“However, the spouses are required to act through intermediaries in divorce proceedings; this increases the costs and makes access to justice more difficult, especially for poor couples.”***<sup>111</sup>

The report also stated that

*“...although the number of divorce petitions has increased since the new law came into force, this does not mean more conflict in the family but simply that a legal solution has been found to the previous situation of de facto separations, especially in the case of Catholic marriage.*

...

*“In fact, the commonest ground for divorce is de facto physical separation for more than two years, and 70 per cent of the petitions are for divorce by common consent, indicating that a large majority of couples prefer an amicable and pacific agreement, which had been impossible before the new legislation came into force.”*<sup>112</sup>

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<sup>109</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para 81

<sup>110</sup> See section 5.5 for more detailed information on the economic situation of internally displaced women.

<sup>111</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>112</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

However, CLADEM highlighted that

*“...many couples start a litigious process with the purpose of obtaining divorce and when they get to the part of “conciliation” demanded by law, this process changes from litigious into “an agreement”, so as to overcome paperwork and decrease costs”.*<sup>113</sup>

Overwhelmingly, the mother gets custody of the children after a divorce. According to the State report to CEDAW

***“82 per cent of the minor children of divorced couples are entrusted to the care of their mother, as against only 14 per cent entrusted to the father and four per cent to some other person”.***<sup>114</sup>

## 5.4 Property rights

The State report to CEDAW described the legal rights of women to property

***“...the law assigns the management of the household jointly to the husband and wife. Both may freely administer and dispose of their property, and in the event of termination of their cohabitation each is assigned half of the assets and liabilities of the marriage”.***<sup>115</sup>

However, the reality of the situation does not equal the legal provisions.

***“Even though the law established equal rights for the members of the couple, most of the real estate goods are in charge of men, and it is they who administrate them and dispose of them, even against the woman’s will”.***<sup>116</sup>

**In 1996 a law was introduced with the aim of providing women with more protection in property matters.**

*“Law 258 of 1996 stipulates, for the purposes of protecting the family home, that immovable property used as the family home may be alienated or encumbered only with the consent by signature of both spouses. The purpose of this legislation is to protect women, since for them the home constitutes an area of family stability. Therefore, the legislation has a positive effect by preventing a man from disposing of the home unilaterally and without considering the position of his wife.*

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<sup>113</sup> CLADEM, (1998) op. cit. p.59

<sup>114</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>115</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>116</sup> CLADEM, (1998) op. cit. p.58

*“However, it must be remembered that there are increasing numbers of women heads of household, and that in such cases this measure creates difficulties precisely because the woman is head of the household owing to the abdication of his responsibilities by her husband or companion, who would reap the benefit of the law. In such an eventuality, if a woman wishes to dispose of the property she may take legal proceedings to have its designation as the family home revoked”.<sup>117</sup>*

This **only** applies to the family home and **not** to other property thereby the law does

*“...not solve the problem of insolvency and bad investing of the family’s goods by the husband in detriment of his wife, since the double signature is requested only in real estate destined to family housing”.<sup>118</sup>*

Legally, since 1990,

*“...the economic situation of a woman living permanently with a man is equal to that of a married woman since she is entitled to half of the property of the de facto marriage in the event of its dissolution or the death of her companion”.<sup>119</sup>*

CLADEM noted that

*“...for the effect of this law it is necessary to prove the de facto union and that a judge declare its existence, so that the liquidation of goods can be performed. In marriage, the civil register proves its existence”.<sup>120</sup>*

## **5.5 Economic security**

### **5.5.1 Economic consequences of divorce or separation**

As stated in previous sections discrimination against women affects their economic situation. **Women receive significantly lower wages than men, their employment tends to be concentrated in “traditional” spheres and at lower levels of influence and the unemployment rate for women is higher than that of men. This, combined with additional discrimination associated with societal attitudes towards marital breakdown, leaves divorced or separated women in a disadvantaged economic position.**

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<sup>117</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>118</sup> CLADEM, (1998) op. cit. p.58

<sup>119</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>120</sup> CLADEM, (1998) op. cit. p.56



The CLADEM report quoted statistics giving the overall percentage of households headed by a woman as 25%. When looking only at poorer homes, this figure rises to 36%.<sup>121</sup>

As already stated, following divorce, women get custody of the children in 82% of cases. Theoretically, after divorce, the economic burden of supporting the children should be shared between both parents. However, the State report to CEDAW noted

*“...that the husbands frequently fail to comply with the order and move away from the home because they do not have custody of the children or have set up another home, and **that consequently the wives end up bearing the whole cost of maintaining and caring for the family.** They also pointed out that sometimes the weight of this burden leads a wife to accept a reconciliation against her will, a new and hasty relationship, or a situation which impairs her self-esteem. This prompts the conclusion that it is the men who retain power and control over the relationship by controlling the economic situation”.*<sup>122</sup>

The report also highlighted, as one of the difficulties impeding the implementation of the Convention,

*“The lack of effective machinery to enforce court decisions, in particular with respect to maintenance and family visits”.*<sup>123</sup>

### **5.5.2 Economic consequences of internal displacement**

**This situation of economic insecurity would be exacerbated if a woman were to return, not to her original place of residence, but to a part of Colombia where she would then be internally displaced.**

The UN Representative on internally displaced persons reported that

***“For the displaced, the search for work is further complicated by the stigma and suspicion associated with their situation and their frequent lack of education and urban job skills. The type of income-generating activities in which internally displaced persons engage tend to be low-paying, temporary jobs with few or little social benefits such as construction work for men and domestic work for women. **Sexual abuse suffered by housemaids is considered to be widespread.** Street vending of items such as food, trinkets or housewares is common among the displaced but brings only meagre earnings. **Large numbers of*****

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<sup>121</sup> CLADEM, (1998) op. cit. p.61

<sup>122</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>123</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

***displaced women and young girls reportedly find that they have no alternative but to resort to prostitution”.***<sup>124</sup>

For internally displaced women left with sole responsibility for their family, the lack of opportunities for employment in order for them to meet their subsistence needs has a devastating impact on their standard of living and the lives of their children.

The report of the UN representative on internally displaced persons stated

***“Internally displaced women noted health needs as among their main concerns. Without certification, they face difficulties in accessing public health-care services and even with it they report facing discrimination on account of their being displaced. Only 20 per cent of displaced children have access to medical assistance.***

...

***“Those displaced also noted that even when they have access to medical attention, they lack the money to buy medication.”***<sup>125</sup>

The exclusion of internally displaced women from employment opportunities has adverse consequences for their family’s future, often forcing their children to contribute to family survival instead of attending school.

***“Particularly glaring is the fact, reported by the Defensoría del Pueblo and confirmed by local and international NGOs, that only an estimated 15 per cent of internally displaced children receive some form of education. This low attendance rate is due to a number of factors. Internally displaced families find that they are not able to afford the cost of books and uniforms; though the amount may be small - the figure of \$5 or \$10 was mentioned - this is money that they simply do not have. Another explanation is that the desperate economic situation of the displaced compels a large number of displaced children to enter the informal labour market, including prostitution. A further impediment is the lack of teachers, who, it was noted above, are among the targets of “political cleansing”. The discrimination that internally displaced persons face also deters children from attending school: one woman recounted that her son was told by his teacher ‘no wonder you are so stupid - you are a displaced’.***<sup>126</sup>

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<sup>124</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 94

<sup>125</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 86-87

<sup>126</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 91

Internally displaced persons are often put under indirect pressure to return to their original area, with little or no consideration given as to whether it is safe for them to do so. The report of the UN representative on internally displaced persons stated

*“Regarding durable solutions for the internally displaced, it should be noted that the focus of government efforts to date has been on return, without adequate attention to the alternative of resettlement. Indeed, law 387 limits its discussion of durable solutions to return. On the question of voluntariness, it must be noted that the internally displaced generally are not being directly forced to return. However, they often are subject to indirect pressure from the authorities in their host community or feel compelled to return out of sheer desperation stemming from the insufficient protection and assistance they receive, which leaves them feeling that they have no choice but to return. Furthermore, in a number of cases internally displaced persons have been encouraged to return on the basis of assurances made by the authorities that their physical safety would be protected, only to discover, with tragic results, that this was not the case.*

...

*“The Representative was told of a number of cases where displaced communities had attempted to return to their places of origin, even though minimum conditions of security existed in these areas and the causes which had given rise to their displacement clearly had not been eliminated.*

...

*“Absent guarantees for their physical security, it is not uncommon for returning displaced persons to be displaced anew, a second, and sometimes a third time.”<sup>127</sup>*

The UN representative reported examples of 2 cases where displaced communities had returned to their original area and subsequently the leaders of the community were murdered by paramilitary groups as a warning to the rest of the community. The report stated

*“In both cases, the return processes had occurred in accordance with an agreement between the displaced and the Government which had committed itself in writing to guarantee the returnees’ safety.”<sup>128</sup>*

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<sup>127</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 98-99

<sup>128</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para 100

## 6 Case law

### 6.1 Australia

RRT Reference: V97/06529, 17 March 1998

The applicant was subjected to domestic violence by her husband. She approached the police on a number of occasions; however, they failed to take effective action to protect her. Subsequently she divorced and remarried. Her asylum claim was based on her persecution *“for reasons of her membership of a particular social group, that is, ‘women subjected to domestic violence in Colombia’*”. Her former husband continued to harass her; *“He had threatened her often and she believed that he would never leave her alone, even though she was no longer married to him and had been separated from him for years”*. By the time of the hearing, her second marriage had broken down.<sup>129</sup>

The adjudicator accepted that the treatment she had suffered amounted to persecution but stated that

*“The question of whether this was persecution for a Convention reason requires more debate. The leading Australian case on this vexed matter is that of Applicant A & Anor v MIEA & Anor, determined in the High Court on 24 February 1997. The Court observed that a particular social group may be “...a collection of persons who share a certain characteristic or element which unites them and enables them to be set apart from society at large. That is to say, not only must such persons exhibit some common element; the element must unite them, making those who share it a cognisable group within their society. Moreover the characteristic or element which unites the group cannot be a common fear of persecution. Rather the group must exist independently or, and not be defined by, the persecution.” (per Dawson J at 13 McHugh J at 38-39, Gummow J at 63-64)*

...

*“On some previous occasions, the Tribunal has determined that “women subject to domestic violence in X country” is a particular social group. That cannot stand in the light of the High Court judgement. The Court majority held that the element unifying the group cannot be a common fear of persecution. (see Dawson J at 13). This extracts subject to domestic violence’ from the particular social group as it is the domestic violence itself which is persecutory. This leaves variations on the group as women’, married women’ or women of X country’. There may be some countries where legislation or custom so defines women that they indeed do form a group. There are countries where women, by law, are not admitted to the*

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<sup>129</sup> Case summary by RWRP.

*political sphere and/or have no rights to property and self-identity. I am not satisfied that this is the case in Colombia. There are very real variations between women, based on class and wealth. Some women are more equal than others. Most legislation applies equally to women as to men. Both vote in elections. The Constitution specifically prohibits discrimination based on race, sex, religion, disability, language or social status. (see US Country Reports, op. Cit. 1997) The Constitution also requires the authorities "to guarantee adequate and effective participation by women at decision making levels of public administration. Even prior to implementation of the 1991 Constitution, the law had provided women with extensive civil rights." (p.403)*

*"I accept the submission made by the Applicant that the reality often falls far below the constitutional promises. However, for the purposes of deciding whether the Applicant is a member of a particular social group, the existence of non-discriminatory laws and regulations must be taken into account. The customs which defined women differently from men have been legislatively diminished in Colombia to the extent that I am satisfied that women do not constitute a group as interpreted in the above extracts from the High Court's opinion in Applicant A. It is insufficient that they have sex and gender in common.*

...

**"DECISION**

*The Tribunal affirms the decision not to grant a protection visa."*<sup>130</sup>

## **6.2 New Zealand**

While the asylum claim in the following extract is not based on gender-related persecution or domestic violence, it shows that gender was a factor in the decision that an internal flight alternative (IFA) was not a reasonable possibility.

***"Well-founded fear - genuine fear - real chance test satisfied***

***Persecution - the appellant's father regularly provided money and food to the Revolutionary Armed Forces of Columbia (FARC) - on one occasion he was unable to satisfy FARC demands and two of the appellant's sons took additional supplies to the appellant's father's home for them - FARC burnt down the home of the appellant's father, killing the appellant's mother, sister and sons - the appellant and the remainder of her family are on a FARC blacklist - the appellant fears death at the hands of FARC***

***For reasons of - political opinion - imputed political opinion***

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<sup>130</sup> Refugee Review Tribunal, (1998) RRT Reference: V97/06529, 17 March 1998, Sydney, Australia, Available at: [www.austlii.edu.au/au/cases/cth/rft](http://www.austlii.edu.au/au/cases/cth/rft)

***Internal flight alternative - meaningful protection not accessible - relocation not reasonable given the appellant's age, gender, health, social vulnerability and family situation***

***Women - the appellant's gender was one factor supporting the Authorities determination that relocation was not reasonable***

***Medical report - psychiatric/psychological report - post-traumatic stress disorder - consistent with the appellant's account***

***Columbia - extensive discussion of country information - consistent with the appellant's account***

***Columbia – allowed***<sup>131</sup>

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<sup>131</sup> New Zealand Refugee Law, (1999), Refugee Appeal No. 71564/99, 14 October 1999, New Zealand, Available at: [www.refugee.org.nz](http://www.refugee.org.nz)

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## Appendix A

### Home Office Country Information and Policy Unit, October 2001: Country Assessment, Colombia

#### **"5B. Human Rights: Specific Groups**

##### **i) Women**

**B.1** *The 1991 Colombian Constitution prohibits any form of discrimination against women and the authorities are required to "...guarantee adequate and effective participation by women at decision-making levels of public administration". However, discrimination persists in practice. Women in non-agricultural employment are paid 85% of what men in comparable employment are paid. The U.S. State Department Report for 1996 suggested that women applying for jobs must be able to demonstrate that they are better qualified than men for the same position if they are to be successful. A high proportion of those in very low paid jobs are women [3a].*

**B.2** *Rape and other violent crimes against women are common in Colombia and these offences are rarely prosecuted successfully. When prosecutions do proceed sentences for sexual abuse range from 6 months - 8 years, although these may be reduced as a result of 'good behaviour'. It must be noted, however, that police may not legally detain an individual for sex abuse unless it was committed in conjunction with other crimes. Until recently there was no provision for spousal abuse. In July 1996 a law was passed by President Samper (Law 294) relating to family violence. In this was a provision for action against acts of spousal sexual violence, introducing sentences of between 6 months and 2 years for offenders (section 25). [3a] Mistresses are not held to be protected under section 25, except in cases where the woman has had a child with the perpetrator. [20w] This law also allowed for immediate protection for victims of family violence from physical or psychological abuse, as well as for judicial authority to remove the abuser from the household. Protection under law 294 is extended from married couples or permanent partners (los conyuges o companeros permanentes), to male and female heads of household, regardless of whether or not they live in the same dwelling (el padre y madre de familia, aunque no convivan en un mismo hogar), to younger or older relatives, including adopted children, to all other persons who have become part of the family unit on a permanent basis (todas las demaas que de manera permanente se hallaren integrados a la unidad domestica). [3a,20w]*

**B.3.** *A 1997 law also made additional, substantial modifications to the Penal Code and introduced sentences of between 4 and 40 years for crimes against sexual freedom or human dignity, including: rape, sex with a minor, sexual abuse, induction into prostitution and child pornography. The law also repealed an old law that fully exonerated a rapist if he subsequently offered to marry the victim and she accepted. [3d]*

...

##### **v) Freedom to Travel/ Internal Flight**

**C.32.** *In general there are no restrictions on citizens' rights to travel either domestically or abroad. Travel may be restricted when police or military operations are in place in particular areas, however, and an outsider may only enter an Indian reserve by invitation [3b].*

**C.33.** *5,000 Colombians crossed the border into Venezuela to escape the threat of paramilitary violence in North Santander, including a first wave of around 2,200 in one week in June 1999. Later that month, the Colombian and Venezuelan governments agreed to establish a joint mechanism to prevent and handle any future exodus. They are*

expected to establish the mechanism with the help of appropriate agencies, including international humanitarian organisations.[15r]

**C.34.** It was reported in July 1999 that, for the first time and because of the escalating violence and deepening financial crisis, wealthy and middle-class Colombians are exiting the country in large numbers. The US Embassy in Bogota was described as inundated with visa applications. An estimated 65,000 Colombians left the country in the first 4 months of 1999.[15ad]

### **Internal Flight**

**C.35.** Colombia's topography splits the country into very distinct regions and the people in this relatively sparsely populated country (31.4 per sq. km) are closely identified with those regions [2a]. Many of those deemed to have been displaced simply leave their plots and/or villages and do not register with the authorities or NGOs out of a combination of fear and ignorance. There are parts of Colombia that may continue to be considered relatively safe (where there are no coca, oil or banana interests), but an individual may come to adverse attention merely by moving from one area to another. There are occasions when internal flight might solve an individual's problems but people do live in a state of fear and some of them may feel that they have little choice but to leave the country [7a].

**C.36.** The Colombian government has publicly recognised the gravity of the problem of displaced persons and is seeking solutions to it. However, it was reported on 29 November 1998 that almost a quarter of a million people were forced to flee their homes in the first nine months of 1998 to escape the political violence of Colombia's civil conflict. The report stated that this figure is equivalent to about 25 percent of the total number of displaced civilians officially reported in the last 10 years, making 1998 one of the worst years on record for internal refugees. The summary, which came from the independent Consultancy on Human Rights and Forced Displacement (Codhes), said that 241,312 people from 48,000 separate families had abandoned their homes by the end of September 1998. No comparison was given for the same period last year. It also claimed that Colombia's displaced people rarely live in refugee camps, except for brief periods immediately after leaving their homes, but stay with relatives elsewhere or flock to the shanty towns that ring Bogota and other large cities. [3d] The US State Department Report for 1998 stated that the total number of internally displaced citizens during 1995-98 probably exceeded 750,000. [3d]

**C.37.** Official and unofficial estimates of displaced people vary between 400,000 (official Colombian government estimate) to 1.6 million ( various human rights organisations) on differing bases [16b,31a]. Between 8 million to 11.5 million people have relocated over past 40 years, with a large unspecified contingent moving because of violence [16b,31a]. A private monitoring group, the Consultancy for Human Rights and Displacement, have quoted figures for 1999 as 288,000 people displaced by armed groups, with guerrillas blamed for 28 percent of cases, and unknown groups responsible for a further 16 percent. [11q] The government estimate of the homeless is of 700,000 people [16b].

**C.38.** The government operates a card scheme for benefits that is fully transferable around the country. However the UNHCR alleges that refugees are targeted on the basis of the card. They call for its abandonment and greater access for international organisations to assist in administering relief [31a,31c]. Likewise, refugee camps / organised areas are targeted as well, creating a flee to shanty towns - known as "rings of misery" - around large cities [31a]. The International Monetary Fund has reached an agreement with the government to alleviate the problem [31e].

**C.39.** *The UN World Food Program launched an appeal for internally displaced in Colombia, announced on 17 November and was due to start in February 2000, but has been delayed because lack of contributions. [16bu].*

**C.40.** *On 11 august 2000, the UNHCR opened an office, its fourth, in Putumayo Department. The Colombian and US governments estimate that as many as 10,000 refugees may flow through Putumayo and Caqueta Departments once the push into southern Colombia commences. [17ft]*

**C.41.** *In June 2000, Amnesty international produced a report into the displaced communities of Uraba and Medio Atrato region. The report investigated the dynamics at the heart of Colombian displacements, citing the example of the community of San Jose de Apartado, a group of 32 villages in Apartado municipality, Antioquia Department, and the communities of the Medio Atrato. [4j]*

**C.42.** *Law 387 of 1997 is the legislation recognising the Colombian Government's responsibility to prevent forced displacement, and to provide protection for the forcibly displaced. The report argues that the laws are poorly [sic] implemented, and little provision is given to the displaced, e.g. only 20 percent of displaced children had access to medical assistance and only 15 percent were registered for schooling. [4j]*

**C.43.** *The number of people displaced in the year 2000 was placed officially on 24 January [sic] 2001 as 126,000. Independent agencies put the figure at around 300,000. Sixty percent of the displacements were attributed to the actions of the paramilitaries. [18p]*

**C.44.** *One commentator has suggested that the desplazados (the displaced) are a challenging issue for the security forces as much as the government. Firstly, the external flows of Colombians are causing border control problems, and secondly, the security forces are being obliged to reform to ensure sufficiency of protection is extended to displaced populations as NGOs increasingly point to lapses and failures of protection, citing the massacres of Mapiripan (July 1997), Barrancabermeja (May 1998), and La Gabarra-Tibu (August 1999). [8d]"*