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Colombia: government "peace process" cements injustice for IDPs

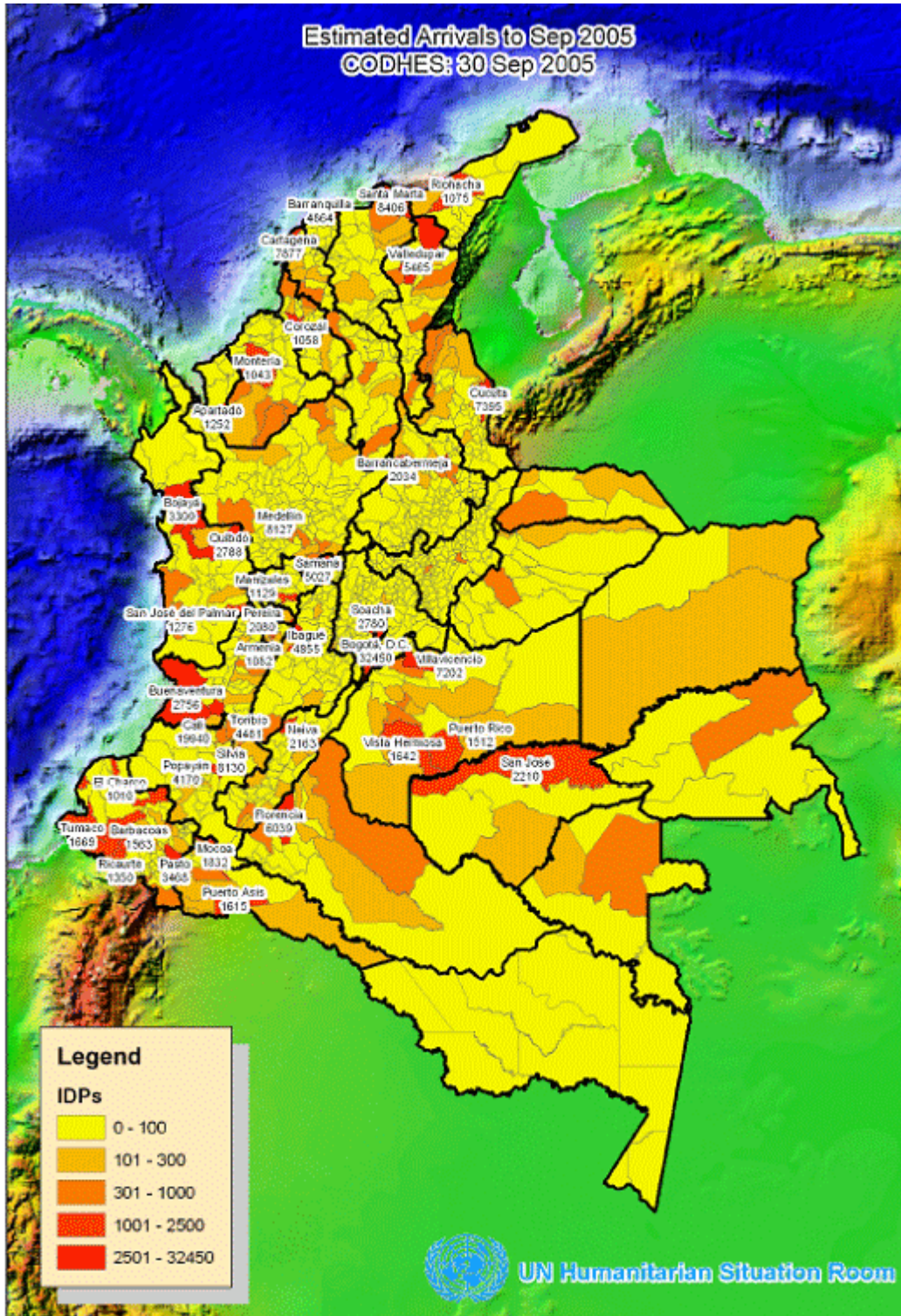


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Map of Internal Displacement in Colombia



Source: CODHES, September 2005

Executive summary

Forced displacement in Colombia is primarily a way to seize agricultural land from peasants and small farmers, and only to a lesser degree the unintended consequence of fighting between warring parties. Much of the violence is deliberately aimed at civilians to dislodge them from their homes and lands. It is a struggle that has been going on for centuries, but now involves national and international commercial interests, part of an internal war pitting the government and paramilitary forces against two guerrilla groups and a related war on drugs.

More than 3.5 million out of the country's 40 million people have been displaced during the last two decades, according to CODHES, an authoritative non-governmental source. The authorities' figure is only 1.8 million, mainly because they only started systematic registration of internally displaced people (IDPs) in 2000 and do not recognise the CODHES figures from 1985 to 2000. Almost one million people have been displaced since the government of President Álvaro Uribe took office in 2002, according to both sources, although their figures have started diverging over the past two years; the government figures show around 160,000 people newly displaced in 2005, whereas CODHES recorded more than 300,000 new IDPs. Both figures are in any case indicative of a significant escalation of the conflict since 2002, tremendous suffering, imbedded violence, and social, political and economic exclusion in a deeply fragmented country. Massacres, attacks and intimidation of civilian population by the armed groups, particularly in rural areas continue to be reported. None of the IDPs in Colombia live in camps but there are areas where the majority of the inhabitants are IDPs. Typically, they flee from rural areas to shantytowns around larger towns and struggle to make a living. However, increasing control by paramilitary groups and crime-related violence often force the IDPs to flee again within the urban areas.

IDPs generally have less access to health care, education, nutrition, water and sanitation facilities than the rest of the population, including the poor resident population in the shantytowns. Paradoxically, Colombia has both one of the highest IDP populations in the world and probably the most advanced legislation to protect them. Since it took office in 2002, the Uribe government has pursued a policy of "democratic security", which aims at cracking down on guerrilla groups by, among other things, involving civilians in counter-insurgency activities, arming peasant soldiers and setting up networks of informants. These "security" measures have implicated civilians in the armed conflict and contributed to the stigmatisation of people, particularly human rights defenders and community leaders who have been forced to flee the conflict-ridden areas. Partly as a result many IDPs do not claim status as such, seeking instead anonymity in the areas of displacement. President Uribe's comfortable victory in the presidential elections on 28 May 2006 is largely attributed to improved security in urban areas where homicide and kidnappings rates have dropped significantly during his first tenure. However, around 55 per cent of the electorate refrained from voting, reflecting little faith in the democratic institutions.

In January 2004, the Constitutional Court's declared the government's IDP response unconstitutional. In direct response, the government committed the equivalent of more than \$2 billion for the protection and assistance of IDPs for the period 2005-2010 in October 2005. The government had as of May 2006, with the hesitant support of the international community, demobilised more than 30,000 paramilitaries within a controversial legal framework. The Justice and Peace Law endorsed by the Congress in June 2005 and declared partly unconstitutional by the Constitutional Court in May 2006, has been an important element of this framework. Critics of the Justice and Peace Law have claimed that it leaves crimes against humanity and violations of international humanitarian law unpunished, that it does not seek to establish the historical truth nor aim at identifying and holding the sponsors of paramilitarism accountable for their crimes, and that it violates the victims' right to justice and reparation. The armed groups, notably paramilitary groups in alliance with drug-traffickers, control millions of hectares of land, much of it grabbed from people they displaced by committing massive human rights violations. While the Constitutional Court's verdict was a serious legal blow to the demobilisation process, the practical consequences are less clear. The process had nearly come to an end by the time of the verdict in May 2006 and the government has reassured paramilitary leaders that it will not have retroactive effect. The demobilisation process is part of the government's legitimate efforts to restore law and order in the country, but the Constitutional Court's verdict gives credit to concerns that the Justice and Peace Law may leave the political, economic and social structures controlled by the paramilitaries intact, effectively preventing IDPs from returning home in the foreseeable future.

Key recommendations

To the government of Colombia

- Recognise the ongoing conflict in Colombia as an internal armed conflict as defined under international humanitarian law.
- Ensure the protection of civilians from arbitrary displacement and other human rights violations in line with national legislation, international human rights standards and international humanitarian law.
- Revise the policy of "democratic security" so as to ensure the protection of civilians from being drawn into the conflict, in line with the principle of distinction between combatants and non-combatants under international humanitarian law.
- Recognise the historic, political, social and economic origins of the conflict as a precondition for addressing the internal displacement situation in a comprehensive and sustainable way.
- Take steps to investigate the responsibility of state agents and paramilitary groups for arbitrary displacements and other human rights violations as documented by the

Inter-American Commission on Human Rights and other international and national organisations, including the Ombudsman's office.

- Take effective measures to dismantle the paramilitary groups' political, economical and social power.
- Ensure that effective mechanisms are put in place for the restitution of land and assets illegally seized by former members of paramilitary groups, or that adequate compensation is provided to IDPs and other victims of the conflict where restitution is not possible.
- Design and implement sustainable development programmes in remote rural areas where coca production has fuelled the conflict and exacerbated the displacement of local populations.
- Fully implement the measures set out in the Constitutional Court's decision of January 2004 aimed at preventing internal displacement, protecting and assisting IDPs during displacement, and providing durable solutions.
- Comprehensively implement the decision of the Constitutional Court of 18 May 2006 to ensure the rights of IDPs and other victims of the conflict to truth, justice and reparation.
- Engage IDP and other civil society organisations in a dialogue on peaceful means to end the conflict.
- Renew and support the mandate of the UN High Commissioner for Human Rights in Colombia for observing respect for human rights and international humanitarian law and providing advice and technical assistance to the government and civil society.
- Implement the recommendations included in the London Declaration of July 2003, the Cartagena Declaration of February 2005, the High Commissioner for Human Rights' annual reports, and the reports of the Representative of the UN Secretary-General on the Human Rights of IDPs of November 1999 and June 2006.

To the G-24 group

- Condition further support to the government of Colombia on the effective implementation of the recommendations of the London Declaration of July 2003, the Cartagena Declaration of February 2005, the High Commissioner for Human Rights' annual reports, and the reports of the Representative of the UN Secretary-General on the Human Rights of IDPs of November 1999 and June 2006.

- Provide support, including financial assistance, to Colombian civil society organisations defending the rights of IDPs and other victims of the conflict.
- Supports efforts to alleviate the humanitarian crisis faced by IDPs.
- Support the UN High Commissioner for Human Rights and the UN High Commissioner for Refugees in their efforts to protect and assist IDPs and other victims of the conflict
- Encourage the Colombian government to renew the mandate of the UN High Commissioner for Human Rights in Colombia for observing respect for human rights and international humanitarian law and providing advice and technical assistance to the government and civil society.

To share-holders of companies operating in Colombian conflict zones

- Take steps to investigate if companies are cooperating with agents of displacement and perpetrators of other human rights violations.
- Divest from and stop investing in companies cooperating with agents of displacement and perpetrators of other human rights violations.

To the International Criminal Court

- Initiate investigations of crimes within its jurisdiction on own initiative pursuant to article 15 of the Rome Statute.

Background: unequal land distribution causes conflict and displacement¹

The Colombian state which emerged after independence from Spain in 1810 has never been strong and large tracts of the country remain up to the present beyond the reach of state institutions. A powerful regional and national oligarchy, mostly of Spanish descent, has both taken advantage of these weak state structures and resisted attempts to strengthen them. The Spanish conquistadores and their descendants created, with the hesitant support of the monarchy in their homeland, a semi-feudal social system focusing increasingly on land possession and cattle ranching as the mines ceased to yield as much as they had done during the first century after the conquest.²

In the late 1840s, these elites formed the Liberal and Conservative parties which have ever since dominated most of the state structures and public life. Whereas the Conservative

¹ Outline based on Livingstone, 2003; ACCORD, November 2004

² UNDP, September 2003

party aimed at a stronger centralised Roman Catholic state, the Liberal Party wanted it to be secular and federal.³ The two parties have fought each other, occasionally with extreme violence, since their inception. The semi-feudal system and the corresponding vertical loyalties allowed for the mobilisation of the lower classes, particularly the peasants (*campesinos*), to commit atrocities against other peasants loyal to the opposing party. The most violent of these bi-partisan conflicts, "the war of 1,000 days" from 1899 to 1902, resulted in the death of an estimated 100,000 people, as peasants massacred and persecuted each other according to party affiliation.

The elites' emphasis on land and the prestige attributed to it often went hand in hand with violent repression of social movements, union and peasant leaders, political dissidents and the exploitation of mine workers. This has historically resulted in population movements from the central highlands to the peripheries, in many respects a precursor to the current internal displacement movements.

Until well into the 20th century, the process of colonisation had not been completed; free land or land occupied by indigenous communities outside the formal colonised agricultural sector still provided a political, social and economic safety valve for the marginalised, excluded or persecuted parts of society. This was the case during a period of massive political violence, triggered by the assassination in 1948 of a presidential candidate from the Liberal party who had gone too far in challenging the power structures of both the Liberal and Conservative parties.⁴ An estimated 200,000 people were killed and hundreds of thousands more were displaced during the following years. This crisis, referred to as "the violence", ended when the two parties reached a power-sharing agreement and formed a "National Front" in 1957.

The "violence" sparked massive population movements to the periphery of the country, in some cases to areas inhabited by indigenous communities or descendants of African slaves, commonly referred to as Afro-Colombians. For example, thousands of people fled to Sierra Nevada in the Caribbean north, forcing indigenous communities from the best land.⁵ The National Front lasted until 1974 and represented a continuation of the political and economic hegemony of the elites. The concentration of land ownership continued, forcing more and more peasants and marginalised people to the periphery of the country, to areas where few if any state institutions were effective.

Today, Colombia figures among the countries in the world with the most unequal distribution of land, a situation that has been both the objective and the result of armed conflicts and displacements; 0.4 per cent of landowners own 61 per cent of rural land.⁶ More than 50 per cent of the population live below the poverty line, according to government statistics, with rural areas particularly hard hit.⁷ Comprehensive agrarian reform, which would

³ Livingstone 2003, pp. 37-39

⁴ Livingstone, 2003, p. 41

⁵ Maldonado, 1999

⁶ Instituto Geográfico Agustín Codazzi, 19 March 2004

⁷ WB, 2006, p. 23; March 2002, p. 2

improve their situation, has been blocked by an increasingly powerful alliance of government officials, the national army, landowners and their paramilitary protectors.

The current IDP situation has thus to be seen in the context of a historical movement of expansion by the land-owning elites, an agrarian and structural problem, complicated and compounded since the 1970s by drug-trafficking and the presence of large international corporations. But, as compared to previous population movements, people forced to abandon their homes in the current unrest have less space and fewer opportunities in the geographical periphery of the country. Firstly, the continuing expansion of the large land holdings and the state's increased control of the territory have reduced the areas available for internal colonisation; secondly, agricultural market liberalism has opened up the national market to cheap imported food; thirdly, Colombia as one of the world's largest coffee exporters has been particularly vulnerable to fluctuating prices on the world market; fourthly, lack of infrastructure – especially transport links connecting the rural areas with national and international markets – has rendered economic activity unsustainable in many areas. Largely as a result, a majority of the people forced from their homes in the current phase of the conflict have sought protection and anonymity in towns and in slums around the major cities.

In 2002, a right-wing coalition led by Álvaro Uribe was voted in on a tough programme to restore government authority throughout the country after the failure of peace negotiations between the previous administration and the main guerrilla group. President Uribe was re-elected in May 2006 with over 60 per cent of the votes, following his coalition's equally clear victory in parliamentary election two months earlier. While turn-out was unusually low in both elections, and there were reports of fraud, particularly in areas controlled by paramilitary groups, the government's comfortable victories are largely attributed to its success in improving security in urban areas where kidnappings and homicide rates have dropped during its tenure.

Guerrilla war fuelled by drug production

The guerrilla groups currently fighting the government emerged largely in response to the "violence" in the 1950s, repression by the National Front in the 1960s and structural inequalities. Many of the founders of the Colombian Revolutionary Armed Forces – People's Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, or FARC-EP) – the most powerful of the remaining guerrilla groups – were people who fled the partisan violence to so-called "independent republics" in Cundinamarca, southern Tolima, and Huila. The central government launched heavy-handed military attacks on these "independent republics", forcing the separatists to flee again to the eastern plains and northern part of the Amazon jungle at the beginning of the 1960s. The FARC-EP originated chiefly among the forcibly displaced in these extremely isolated areas. The guerrilla groups have

thus had a strong popular support base, which is one of the main reasons why they have managed to sustain the armed struggle against the government for more than 40 years.⁸

Another major factor sustaining the guerrilla war was the introduction of coca in the late 1980s and 1990s. Until then, lack of access to the formal state-protected market economy in the central highlands led farmers to engage in subsistence farming with its attendant exposure to climatic risks and socio-economic hardship. The introduction of coca radically changed the farmers' socio-economic outlook and strengthened the guerrillas. Firstly, profits from coca cultivation attracted a massive movement of urban poor and landless peasants from the central highlands to the guerrilla-controlled areas to clear the forest and establish small coca farms. Secondly, the FARC-EP started taxing the cultivation of coca in exchange for offering quasi-state services, such as health, education and justice, in an alliance of convenience with the drug-traffickers who processed and commercialised the coca, literally creating a "state within the state". Thirdly, the tax revenues made it possible for the guerrillas to boost their destructive power and they soon controlled up to 40 per cent of Colombian territory, posing an increasingly serious threat to the state and the land-owning elites. However, the guerrillas' alliance with the drug-traffickers did not last long as the latter successively invested their enormous profits mainly in cattle ranches and land, which rendered them increasingly indistinguishable from the guerrillas' traditional enemies – the land-owning elites. The guerrillas started kidnapping drug-traffickers and land-owners for ransom in the 1980s, taking the conflict closer to the central areas.

In 1985, the FARC-EP supported the foundation of a political party, the "Union Patriótica", in response to attempts by President Belisario Betancourt's government to engage in a dialogue with the guerrillas. However, up to 3,000 of the party's members or affiliates, including two presidential candidates, were killed by paramilitary groups with the support of members of the army and the bi-partisan establishment in the years that followed. This fuelled deep-rooted suspicions among the guerrillas about any possibility of resolving the conflict through regular political channels. The FARC-EP has currently an estimated 17,000 fighters in its ranks and a ten-point programme that calls for land distribution, and social benefits and political power for poor and landless peasants.

The National Liberation Army (Ejército Nacional de Liberación – ELN), the other main guerrilla group, emerged chiefly among students, unionists and the urban middle-class in response to political and economic exclusion by the National Front. One of their main war strategies has been attacking and destroying infrastructure owned or managed by multinational corporations, particularly in the north-eastern region bordering Venezuela. They reportedly control around 3,000 fighters, using kidnapping of civilians and extortion from oil companies as their main sources of revenue, avoiding taxing drug production until the 1990s. The government reinitiated peace talks with the guerrilla group in 2005, but as of May 2006, the negotiations were still in an exploratory phase.⁹

⁸ Lair, 2000, p. 94

⁹ Alto Comisionado para la Paz, May 2006

Whereas both the ELN and the FARC-EP claim to fight for political and social equity, they have lost significant political clout because of the methods they have used, such as massacres of civilians, assassinations, kidnapping for ransom or political gain, torture, extortion, forced confinement and forced recruitment. The drug production and trafficking has also significantly altered the guerrillas' motivations to keep on fighting and boomeranged by undermining popular support in areas under their control. Coca farmers are reportedly increasingly indifferent to the political and ideological discourse of the guerrillas as long they can make a living out of their crop. The loosening of the ties between the guerrillas and the coca farmers has paved the way for the paramilitary groups, who in many cases have simply replaced the guerrillas as the de facto authorities. Landless peasants can be hired to pick coca leaves and sell them to both left-wing guerrillas and their right-wing opponents, thereby fuelling a cycle of violence without end; the armed groups routinely seek revenge on populations who have stayed in an area controlled by the enemy, with ensuing forced displacements and human rights violations. By way of example, the majority of the Colombian coca farmers seeking refuge in neighbouring Ecuador at the beginning of 2006 are fleeing the guerrillas in Putumayo region, according to UN sources.¹⁰ While both the FARC-EP and ELN emerged in response to structural inequalities, drug trafficking has now permeated all sides of the conflict, rendering it increasingly hard for outsiders to distinguish means from objectives.¹¹

Paramilitaries as integral part of counter-insurgency strategy

The paramilitary groups have roots as far back as the "violence" of the 1950s as an integral part of the army's counter-insurgency strategy. In response to intense international scrutiny of the human rights record of both the army and the government, civilian auxiliary forces were legalised in 1965 and 1968 and further strengthened in the late 1970s and especially the early 1980s.¹² Well-documented reports of disappearances and the systematic use of torture of political prisoners by the national army during President Julio Cesar Turbay Ayala's term in power (1978-1982) triggered international criticism; this led the army leadership to camouflage and conceal the military's direct involvement in gross human rights violations by delegating much of the "dirty work" to informal groups of armed civilians they would train, coordinate and equip. The paramilitaries provided the army – and government – with two key elements: a brutally effective auxiliary force which could target civilians perceived as guerrilla supporters, and the means to dissociate themselves from the crimes committed, thereby averting international criticism.

Colombia is a resource-rich country which has attracted large amounts of international investment from many of the largest companies in the world.¹³ In the 1980s, the paramilitary forces became the hub of an alliance between the land-owning elites and some of these

¹⁰ Interview with UNHCR Official, 10 February 2006

¹¹ Pecaute, 2000

¹² AFADDES, 9 September 2005, pp. 8-9; National Security Archive, 16 October 2005

¹³ Coinvertir, December 2005

large foreign corporations in response to what was perceived as the inability of a weak state to defend their interests.

The guerrillas on the other hand accuse the companies of collaborating with the government and of siphoning off national resources, and see them as legitimate military targets. Company infrastructures and installations have therefore been attacked and destroyed repeatedly throughout the conflict. The Caño Limón-Coveñas oil pipeline linking the oil fields bordering Venezuela to the Caribbean coast, for example, has been attacked over 900 times in its 16 years of existence, with tremendous economic costs for its US co-owners Occidental Petroleum and the state and suffering for the workers.¹⁴ In addition to having had their installations and infrastructure destroyed, foreign companies' officials are also subject to recurrent extortion and kidnappings by the guerrillas.

Other resources such as timber, mines, hydroelectric power, coal and African palm have also attracted multi-national companies, as well the guerrillas to fight their presence. Particular interest has been devoted to the south of Bolivar, which has one of the most important gold deposits in the world, Norte de Santander, where an estimated 90 per cent of the coal extracted from huge deposits is exported to the US, and the region of Tolima, which contains enormous gold and precious metal deposits. Other regions of interest for multinational companies are Putumayo, with huge natural gas reserves, Chocó, with bountiful mining, forestry, energy, and marine resources, and Casanare with oil reserves.¹⁵

However, while defending the interests of the state and the companies operating in these districts, the paramilitaries have committed the majority of the human rights violations reported in the past few years; they are notorious for extreme brutality, involving massacres, torture, kidnappings, extortion and massive displacements of civilians.¹⁶ These violations have been committed mainly as part of an explicit strategy to separate the guerrillas from their perceived popular support base and gain control over land, natural resources and strategic roads. This largely explains the strong co-relation between internal displacement and the presence of multinational companies in Colombia. The regions richest in natural resources are also the ones most prone to internal displacement.

According to data collected by one of the most prominent human rights organisations in Colombia, paramilitary groups were responsible for at least 12,398 extrajudicial executions, 1,339 acts of torture and 2,121 forced disappearances between 1988 and 2003.¹⁷ They have also engaged in what has been referred to as "social cleansing", namely the murder and intimidation of people they disapproved of, such as drug addicts, homosexuals, prostitutes, the homeless, beggars and alcoholics, as well as killing trade union leaders.¹⁸ In 2005, 70 union workers were assassinated, and 260 received death threats, mainly from

¹⁴ Semana, March 2006; Living on earth, 2004

¹⁵ Proexport Colombia, 3 March 2006 ; Democracy Now, 9 March 1999

¹⁶ CERAC, 3 November 2005

¹⁷ CINEP, 2004

¹⁸ CODHES, 28 April 2003; AI, 30 June 1997

paramilitary groups, according to a Colombian workers union.¹⁹ The paramilitaries' strategy of separating the civilian population from the guerrillas has forced many small farmers and members of indigenous and Afro-Colombian communities to abandon or sell their land and assets at low prices as a direct consequence of threats, massacres, killings and torture. The brutality has even included cutting up people alive with chainsaws.²⁰

The state's responsibility for these groups and the atrocities carried out by them has been clearly demonstrated and denounced by a number of national and international organisations, including the Inter-American Commission on Human Rights, which stated in 1999:

"The Commission must conclude that the State has played an important role in the development of the paramilitary groups and has not adequately combated those groups. The State is thus responsible, in a global sense, for the existence of the paramilitaries and therefore faces responsibility for the actions carried out by those groups."²¹

In the same vein, Human Rights Watch wrote in September 2001: "[...]the relationships [...]involve active coordination during military operations between government and paramilitary units; communication via radios, cellular telephones, and beepers; the sharing of intelligence, including the names of suspected guerrilla collaborators; the sharing of fighters, including active-duty soldiers serving in paramilitary units and paramilitary commanders lodging on military bases; the sharing of vehicles, including army trucks used to transport paramilitary fighters; coordination of army roadblocks, which routinely let heavily-armed paramilitary fighters pass; and payments made from paramilitaries to military officers for their support."²²

In November 2004, President Uribe said: "We can no longer have a country [threatened] by guerrillas or defended by paramilitaries groups. We need central control".²³

The president's statement with its apparent admission of collusion between the state and the paramilitary groups takes on renewed significance and importance as the government embarked on a nationwide demobilisation process – particularly targeting the paramilitaries, or "self-defence groups" – in an apparent combined effort to pacify the country, establish central control and curb international criticism.

Demobilisation and the Justice and Peace Law

While in principle open for paramilitaries and guerrillas alike, it is almost exclusively the former who have benefited from the demobilisation process which was elaborated and

¹⁹ CUT, 31 March 2006; Cuellar, 2005

²⁰ IPS, 28 March 2006

²¹ OAS, 26 February 1999, paragraph 303. Other reports demonstrating the state's links to paramilitary groups include; Amnesty International, August 2005; International Crisis Group, 16 September 2003; Human Rights Watch, September 2001.

²² Human Rights Watch, September 2001

²³ BBC, 18 November 2004

granted a legal framework through Law 782 of 2002, Decree 128 of 2003, and Decree 4760 of 2005 which partially regulates Law 975 of the same year, or the so-called Justice and Peace Law.²⁴ The National Reparation and Reconciliation Commission says it has demobilised 30,000 paramilitary combatants²⁵ as of April 2006, while the government reports to have captured more than 12,000 members of these groups between 2002 and 2005, however, without explaining how or if this has affected the demobilisation process.²⁶ Since the declaration of a ceasefire in 2002, paramilitaries have been responsible for over 2,500 killings outside combat,²⁷ as well as major displacements, massacres, disappearances, continued territorial expansion and institutional and economic consolidation in flagrant violation of the government's conditions for sustaining the demobilisation process.²⁸ Moreover, IDPs have been forced to abandon between one and four millions of hectares of land since 1985,²⁹ large tracts of it grabbed and controlled by the perpetrators who have been demobilised within this legal framework. Paramilitary groups have since the beginning of the demobilisation process strengthened alliances with the political establishment, particularly the Democratic Colombia Party of President Uribe, in César, Sucre, Magdalena, Atlántico, Guajira, Bolívar and Antioquia y Valle provinces and infiltrated the National Intelligence Service (Departamento Administrativo de Seguridad) according to Colombian newspapers.³⁰

The demobilisation process and its legal framework have been severely criticised by national and international organisations for failing to dismantle the paramilitaries' political and economical power and for violating the victims' right to truth, justice and reparation.³¹

Some observers, including the Inter-American Commission on Human Rights³², are particularly concerned over Decree 128 of 2003 which exposes to prosecution only those who admit their crimes or have criminal investigations opened against them. As combatants wishing to demobilise have no incentives to confess their crimes and since many victims are afraid of denouncing perpetrators or lack faith in the judicial process, this in practice it means that most of the crimes will not be investigated and prosecuted. As a result many of the victims, including millions of IDPs, will not be able to exercise their right to truth, justice and restitution of properties or reparation.

²⁴ GoC, 25 July 2005

²⁵ Alto Comisionado para la Paz, 17 April 2006

²⁶ Commission on Human Rights, 27 March 2006

²⁷ Amnesty International, 1 August 2005

²⁸ CCJ, 30 June 2005.

²⁹ The Comptroller General's Office (Contraloría de la Nación) estimate ranges from one to two million hectares, whereas CODHES figures amount to more than four million hectares. The discrepancy is largely due to use of different IDP numbers and different estimations of land abandoned by every IDP household. By way of example, the Comptroller General office's two figures, one and two million hectares of land, are based on an average of five and ten hectares of land abandoned by every IDP household. Contraloría de la Nación, December 2004.

³⁰ El Universal, 31 January 2006; La Semana, "Cuando renunciara?", February 2006

³¹ IACHR, 2 May 2006; Human Rights Watch, 1 August 2005; Amnesty International, 1 September 2005; ASFADDES, 2 September 2005

³² Inter-American Commission on Human Rights, 15 September 2005

While the Decree 128 has passed relatively unnoticed, the Justice and Peace Law of June 2005 has triggered criticism from a wide range of organisations, including the Constitutional Court which declared parts of the law unconstitutional in May 2006.³³ The Justice and Peace Law was endorsed by the Congress in June 2005 as a legal framework of the already ongoing demobilisation process.

The principle of reduced sentences in exchange of "voluntary confessions" is a key element in the Law and the demobilisations process, in addition to voluntary return of illegally acquired assets. Separate tribunals have been set up to investigate crimes and bring perpetrators to justice.

The government also established a Reparation and Reconciliation Commission consisting of 13 members appointed by the president for a period of eight years.³⁴ Among the main tasks of the Commission is the adjudication of claims for material reparation and the dispersal of assets returned by demobilised combatants, public funds allocated by the government and domestic or international donations. Claims concerning illegal expropriations or forced sales of land and assets at unfair prices are transmitted to the General Prosecutor's Office (La Fiscalía General de la Nación) for investigation.

In addition, the government has set up institutional mechanisms to prevent and investigate grabbing of land in cases of displacement, along with initiatives to establish an inventory of land in areas under dispute.

Criticism of the demobilisation process and its legal framework include concern over the fact that only a small number of combatants – some 600 out of the more than 30,000, or around two per cent – will be tried by the tribunals established under the Justice and Peace Law.³⁵ Even if convicted, perpetrators of grave human rights violations, war crimes and crimes against humanity, including extortion, massacres, assassinations and torture, only face prison sentences of up to eight years if they confess their crimes, the maximum sentence set by the Law for such cases. Another concern is that the victims are not allowed to be heard during the judicial proceedings, which means that the investigations and verdicts have to rely on confessions by the accused combatants. Efforts to promote truth and reconciliation will also be limited. Allegations of state complicity with the paramilitaries will not be subject of the investigations, which represents a set-back for the truth and reconciliation process.

As membership in paramilitary groups is considered a political crime under the Justice and Peace Law, combatants are protected from extradition to foreign courts by the Colombian Constitution. The dismantling of paramilitary groups is hampered by the Law allowing paramilitary leaders to receive demobilisation benefits regardless of whether their units are still active or not.

³³ Constitutional Court, 18 May 2006

³⁴ BBC, 4 October 2005

³⁵ Alto Comisionado para la Paz, 17 April 2006

The return of land and property illegally acquired by paramilitaries is severely complicated by the practice of using front men, or *testaferros*, for such transactions. Front men are only subjected to an investigation under the Justice and Peace Law if the prosecutor determines so.³⁶ Although at least one million hectares of land was abandoned by the displaced according to conservative estimates, as of April 2006 only 24,000 hectares of land alleged to be illegally seized by members of armed groups were being investigated under the new Law.

The institutional mechanisms to prevent and investigate grabbing of land have proved inadequate considering the magnitude and complexity of the problem and the interests involved. Legal provisions designed to freeze or invalidate transactions on lands in cases of imminent displacement or in the wake of displacement have never been correctly implemented by local authorities. In addition, legal mechanisms providing for the invalidation of property titles acquired illegally have proved cumbersome, slow and generally inefficient. While the Inspector General's Office (La Procuraduría General de la Nación) has made significant efforts in partnership with different international agencies to train prosecutors in rural areas to protect lands and assets of displaced persons, their efforts have had limited results and even been directly obstructed by a bill presented to the Congress in March 2005 which makes it easier for occupiers of illegally acquired land to legalise it.³⁷

Investigators in the tribunals set up by the Law have only ten months³⁸ to disentangle extremely complex property issues and identify witnesses who in many cases would have to risk their lives to testify against individuals within the paramilitary structure.³⁹ Moreover, the tribunals bear the responsibility both to investigate and try the combatants, two functions that are normally separated to guarantee impartiality.

While the Reparation and Reconciliation Commission is expected to strengthen the victims' rights, it does not have sufficient resources to carry out all its tasks properly. The Commission has only 13 members, whereas in comparison, the truth commissions in South Africa, Guatemala and Peru had several hundred members each.⁴⁰ It is also considered partial as all the members are appointed by the president. Two seats in the Commission were reserved for victims' organisations, but scepticism has remained high and prominent victims' organisations have declined to be part of the Commission.⁴¹

Considering that there are very limited incentives for former combatants to confess their crimes, that sanctions are not proportionate to the crimes and that the mandate of the Reparation and Reconciliation Commission does not include investigating the links between the state apparatus and paramilitary groups, paramilitary structures are likely to remain intact or re-emerge. This is also suggested by the Organisation of American States' Mission to Support the Peace Process' in its report of March 2006.⁴²

³⁶ El Tiempo, 3 January 2006; OHCHR, 6 January 2006

³⁷ CCJ, 21 October 2005

³⁸ CCJ, 7 February 2006

³⁹ ICJ, September 2005, CCJ, 29 July 2005

⁴⁰ Radio Nederland, 5 October 2005; ICJ, September 2005

⁴¹ Actualidad Colombiana, 22 March 2006

⁴² OAS, 1 March 2006

The Colombian Constitutional Court declared parts of the Justice and Peace Law unconstitutional in May 2006, giving credit to some of the objections against the Law outlined above.⁴³ The verdict protects the victims' right to truth, justice and reparation, emphasising that demobilised combatants' voluntary confessions should encompass the whole truth about their crimes to benefit from the Law. The verdict also protects the victims' right to be heard in the judicial process. It also instructs that paramilitary units should answer collectively with all their personal assets or resources for crimes committed by individual members.

Still, it appears unlikely that the Constitutional Court verdict, which came at a time when the demobilisation process was nearing its end, will be fully implemented. The government has reassured paramilitary leaders that the verdict will not be applied retroactively and the demobilisation process may therefore proceed without ending the paramilitaries' economic power and political influence. It remains to be seen if the verdict will have positive consequences for the victims' right to compensation, restitution or reparation.

Military pressure and aerial spraying worsen IDP situation

While the government says its fight against the guerrillas has been successful, claiming that between 2002 and 2005 it reduced the yearly numbers of forced displacements from 424,000 to 160,000, of massacres from 115 to 48, and of kidnappings from 2,800 to 800⁴⁴, there are doubts as to whether the government's claims to have reduced the violence reflect the complexity of the conflict and the security situation. In its annual report of 20 January 2006, the Office of the UN High Commissioner for Human Rights said the government statistics method was such that it was "unable to adequately identify indicators referring to murders of protected persons within the context of the internal armed conflict, so as to differentiate them from deaths caused by common crime."⁴⁵

Since President Uribe took office in 2002, the conflict has continued with numerous assassinations, cases of torture and massive displacements – particularly in Putumayo and Nariño in the south, Chocó in the Pacific west, and Guajira and Cesar on the Caribbean coast in the north, according to national and international human rights organisations.⁴⁶ The Colombian non-governmental organisation CODHES, which monitors displacements and human rights violations, reported an escalation of the conflict from 2004 to 2005. Almost one million people have been forced from their homes since 2002 – more than 300,000 in 2005 alone, it said.

The Office of the UN High Commissioner on Human Rights reported a number of violations of the right to freedom of movement in 2005 by all the armed groups. In March 2006,

⁴³ Constitutional Court, 18 May 2006

⁴⁴ GoC, 27 March 2006, p.4; 4 April 2006

⁴⁵ UNHCHR, 20 January 2006, p 24

⁴⁶ CCHS, 22 December 2005; CODHES, 26 October 2005; UNOHCHR, 20 January 2006

the FARC-EP prevented several hundred farmers from fleeing Pogué on the Bojayá river, and paramilitaries were reported to have established checkpoints in the village of Corazón de Jesús and later of Caimanero (Chocó), threatening the inhabitants in order to extort information about the guerrillas.⁴⁷

The UN's Working Group on Enforced or Involuntary Disappearances reported after a visit in July 2005 that the armed groups, particularly the paramilitaries, were continuing to cause terror and displacement often with the aim of grabbing land from the victims. The paramilitary perpetrators of disappearances and displacements were also reported to maintain "social contacts with representatives of the authorities and of the armed forces."⁴⁸



A Colombian soldier checks the bag of a woman during combats between the Colombian army and FARC rebels in Toribo, Cauca province. (Photo: Reuters/Eduardo Monoiz, courtesy www.altertnet.org)

The guerrillas on the other hand seem to be bent on demonstrating that the government's military strategy has failed. Most of the guerrillas' destructive power reportedly remains intact and heavy fighting has been reported in many parts of the country along with widespread breaches of international humanitarian law.⁴⁹ The number of cases of torture, sexual violence, forced disappearances and extra-judicial executions has increased in 2005, mainly outside urban centres.⁵⁰

As part of its "Plan Colombia" – originally aimed at ending the armed conflict through a range of measures but later narrowed down under US influence to strengthening the military and fighting drug trafficking – the Colombian government has embarked on a massive campaign of indiscriminate aerial chemical spraying of illicit crops which has forced thousands of farmers to flee their homes since 1999, particularly in the western Amazon region traditionally controlled by the guerrillas and where the state has hardly ever had any presence. The spraying indiscriminately damages illicit crops, as well as food crops, wells

⁴⁷ UNHCHR, pp.17, 91-92

⁴⁸ WGEID, 17 January 2006

⁴⁹ UNHCR, 30 May 2006; UNHCHR, 28 February 2005, p. 21

⁵⁰ UNHCHR, 20 January 2006; AI, 1 February 2005; CCJ, 3 March 2005; UNCHR, 28 February 2005

and farm animals and thus threatens the livelihoods of affected populations. Moreover, the affected farmers are often perceived as collaborators of the guerrillas and reportedly treated accordingly by the local authorities or paramilitary groups. By way of example, in mid-May 2006, aerial spraying of illicit crops triggered demonstrations by affected farmers in Pasto, the regional capital of Nariño in southern Colombia. In the meantime, heavy fighting for control of the drug-production and trafficking erupted in their homes areas between paramilitary groups and leftist guerrillas. The paramilitary group engaged in the fighting warned that some of the demonstrators would be killed if they returned.⁵¹

Since the spraying takes place in conflict zones, there are few official assessments of the consequences, and the institutional mechanisms for compensating farmers claiming to have had their farm sprayed without justification appear to be dysfunctional. Only \$18,500 was paid to farmers who had filed complaints to the authorities between 2000 and 2004.⁵²

While the spraying has reduced illegal cultivation in some areas, the total area where narcotics are grown has, according to an official US report, not changed since 2002; this is mainly because drug farming is increasingly spreading to neighbouring regions and countries.⁵³ "Plan Colombia" focused on eradicating the illicit crops, not on making the local agriculture competitive, against the much cheaper imports.⁵⁴ The spraying has worsened socio-economic conditions in the guerrilla-controlled areas where enormous distances from markets and the absence of infrastructure already make farming precarious, and thus helped drive farmers off the land.

The displaced farmers are left with few alternatives. Some continue planting coca crops in even more remote areas, others join the guerrillas or paramilitary forces or flee to urban centres where they live in violent slums among hundreds of thousands of other displaced people, stigmatised as supporters or sympathisers of the guerrillas.

Another main component of the government's counter-insurgency strategy has been its policy of "democratic security", consisting principally of increasing the military presence, involving the civilian population in fighting the guerrillas, and intensifying the aerial spraying of illicit crops under "Plan Colombia". The government has recruited some 15,000 peasant soldiers and established a network of over one million paid informants as part of the policy.⁵⁵ As a result, the distinction between civilians and combatants – a central element of international humanitarian law – has been increasingly blurred. The government also granted police powers to the military without judicial oversight, thus exposing civilians to unchecked abuses by the armed forces. The latter measure was declared unconstitutional by the Colombian Constitutional Court in 2005, but seemingly without any practical consequences.

⁵¹ UNHCR, 30 May 2006

⁵² LAWG, March 2004; PANNA, April 2004

⁵³ The US Office of National Drug Control Policy, 14 April 2006; ICG, 27 January 2005

⁵⁴ LAWG, March 2004

⁵⁵ PCS, May 2003

The government says it has accompanied the return of more than 19,000 families between 2003 and May 2005, but figures are contested. The Inspector General's Office had only registered the return of 8,000 families in the same period.⁵⁶ UNHCR is also concerned that the structural causes of the violence have not been overcome in the return areas. The government's return programme has in any case not prevented continued massive displacements. The efforts to quell the insurgency and remove the guerrillas' main source of income have in some cases contributed to the displacements, as demonstrated in the region of Meta in the first months of the 2006. Several thousand people have been displaced as a result of an unprecedented manual coca eradication campaign which the government initiated in January. The campaign was launched soon after the killing of 29 soldiers by FARC guerrillas in the commune of "Vista Hermosa" at the end of 2005. The campaign has involved thousands of police, an estimated 6,000 soldiers from the national army, almost 1,000 "eradicators" and a new paramilitary group, "Bloque Meta", consisting of recently demobilised fighters from "Bloque Centaurus".⁵⁷

Diverging IDP numbers

There is a huge discrepancy between official and non-official IDP numbers reflecting different approaches to durable solutions, the nature of the conflict and to what constitutes the end of displacement. While the ongoing discussion on definitions and numbers is important, particularly in view of the state's obligation to compensate victims and bring the perpetrators of land grabbing and human rights violations to justice, the Constitutional Court in its T-25 sentence of January 2004 ordered the state to grant assistance and protection to all IDPs, independently of official recognition.

The Colombian NGO CODHES has recorded a total of 3.7 million internally displaced in Colombia since 1985. The government's current estimate is much lower, at 1.75 million, largely due to the fact that it started registering IDPs systematically only in 2000. CODHES registered about 1.8 million IDPs between 1985 and 1999, whereas the government in the same period registered only 79,000. However, from 2000, the year the government improved its registration procedures, there is much less discrepancy. CODHES registered around 1.8 million between 2000 and October 2005, against 1.6 million recorded by the government.

The lower government figure can be explained by the reluctance of many IDPs to officially register for fear of persecution, the rise in individual displacements less visible than mass displacements, and the increasing number of cases rejected by the government, including intra-urban displacements and people displaced by aerial spraying.⁵⁸ In addition, IDPs have up to one year from the event of their displacement to declare their status and be included in the registry; as a result, the yearly government statistics continue to rise throughout the year following displacement. The government's 2005 figures, standing at 160,000

⁵⁶ Procuraduría General de la Nación, 22 February 2006

⁵⁷ Interview with international aid worker, 10 February 2006; CCJ, 21 February 2006

⁵⁸ CODHES, 1 April 2005; Actualidad Colombiana, 26 May 2003

as of April 2006, may therefore increase throughout the year, as was the case in 2000 and 2003.⁵⁹

There is an ongoing discussion on how to determine when internal displacement ends in the Colombian context. According to Law 387 of 1997, displacement ends when the displaced person's socio-economic conditions have been re-established. Consequently, the government argues that the IDPs should be categorised according to needs during the first three years of displacement and gradually be excluded from the register altogether as they would no longer be in particular need of emergency assistance or protection.⁶⁰

This position evades the question of the state's responsibility towards IDPs, registered and non-registered alike, on fundamental issues such as restitution and reparation and highlights the challenges of addressing durable solutions in the middle of an armed conflict. Similarly, it reflects a political will to respond only to the humanitarian needs of those registered as IDPs. The government's reluctance to recognise a large share of the IDP population and the purely humanitarian nature of the response to the registered IDPs raise concerns.

CODHES argues that to decide when displacement ends is a political question, and not so much a problem of methodology or criteria. It is indeed hard to analytically distinguish political motivations from methodological criteria in deciding who is an IDP. In the regions of Chocó and Norte de Santander, for example, the government confirmed that over half of the applicants were refused IDP status. The same is true for people arriving in Bogotá.⁶¹ Local authorities have also been suspicious of IDPs' sincerity, claiming they give false declarations to receive emergency assistance, whereas at the same time under-reporting out of fear of being perceived as sympathisers with some of the armed groups is acknowledged as a major problem by both government and non-government institutions.⁶²

Number of IDPs (1985-2005)

Year	CODHES	GoC SUR
1985–94	720,000	4786
1995	89,000	247
1996	181,000	2,570
1997	257,000	11,099
1998	308,000	34,460
1999	288,000	29,139

⁵⁹ Accion Social, February 2006; CODHES, 26 October 2005

⁶⁰ El Tiempo, 26 May 2003

⁶¹ CODHES, 1 May 2005

⁶² IDMC interviews 2 and 4 November 2005; Contraloría General, December 2004; CODHES December 2005

2000	317,375	329,981
2001	341,925	373,663
2002	412,553	422,957
2003	207,607	219,431
2004	287,581	145,995
2005	310,237	159,534
Total Cumulated	3,720,278 ⁶³	1,752,033 ⁶⁴

Who are the IDPs and where do they flee?

A majority of the IDPs flee the countryside where they were engaged in small-scale farming as owners or as landless day-labourers. The absence of clear-cut frontlines and the presence of armed groups nearly everywhere make it extremely difficult to escape the conflict, which is reflected in the number of affected municipalities; 96 per cent of the country's more than 1,000 municipalities have experienced forced displacement. But some regions are worse affected than others. Official numbers show that between 2000 and 2003 almost 60 per cent of the displaced originated from Antioquia, Bolívar, Magdalena, César, Sucre, Putumayo and Chocó, which as indicated above are also regions of particular commercial interest.⁶⁵

Many IDPs are forced to flee several times, typically starting with the initial flight from their land to the nearest municipal centre, and from there to larger provincial towns, before ending up in shantytowns in regional capitals or in Bogotá, lacking food, access to health services and adequate housing.

The regional capitals receive an estimated 39 per cent of the displaced, with Bogotá taking the rest – almost 600,000 according to the city's planning department.⁶⁶ Medellín in the eastern Antioquia department was the second largest recipient of IDPs with Florence, the capital of the region of Caquetá as the third in 2004.⁶⁷ Other regions such as Catatumbo, Arauca and Sierra Nevada de Santa Marta in the north were also seeing thousands of IDPs seeking protection and anonymity in the urban centres.⁶⁸

However, instead of finding safety in the cities, IDPs have been increasingly exposed to crime and violence that forces them to flee again, notably from Medellín, Cali, Barranquilla, Bogotá, Cartagena, Cúcuta and Bucaramanga. The increased presence of armed groups in urban centres has created complex networks of organised crime and IDPs are

⁶³ CODHES, 24 February 2006

⁶⁴ Accion Social, 20 April 2006

⁶⁵ Contraloría General de la Nación, 2004, p. 105

⁶⁶ El Tiempo, 11 January 2006; El Mundo, 28 December 2004

⁶⁷ UN CT, 31 January 2005

⁶⁸ CODHES, 1 May 2005

some of the primary victims. The principal agents of intra-urban displacement are paramilitary-backed militias.⁶⁹ Intra-urban displacements are not recognised by the authorities because the people affected are not considered to have fled beyond their "habitual place of residence". By the same token, these IDPs are denied access to humanitarian assistance.

The IDPs in Colombia do not represent a homogenous ethnic, political or social group, though Afro-Colombian and indigenous communities are proportionally more exposed to assassinations and displacements than other groups.⁷⁰ Some of these groups are at serious risk of extinction according to the UN Special Rapporteur on Indigenous People.

Virtually all of the 84 indigenous groups living in Colombia have been affected by displacement and over 200 Kankuamo indigenous leaders, the largest indigenous group, have been killed since 2002.⁷¹ Afro-Colombian and indigenous people represent about a third of IDPs, even though they make up only 11 per cent of the country's total population.⁷² These communities have been repeatedly exposed to armed conflict, as they tend to live in territories of commercial interest or where there is potential for drug production and other illegal activities.

A survey of 2004 concluded that minority groups were also the worst affected by aerial spraying of illicit crops: it found that in 2002 nearly half of all the municipalities affected by aerial spraying were inhabited by indigenous and Afro-Colombian people.⁷³

The social ties binding these communities together are strong and vulnerable at the same time; their way of life is strongly linked to their ancestral lands and suffers irreparable damage when they are forced to flee.⁷⁴ The most threatened peoples are Awa, Kofan, Siona, Paez, Coreguaje, Carijona, Guayabero, Muinane-Bora, Pasto, Embera and Witoto in the departments of Putumayo, Caqueta and Guaviare where clashes involving logging, oil drilling and mining interests have fuelled violent repression of indigenous people.

Almost 30 per cent of indigenous IDP households are headed by women.⁷⁵ Many of the women fled after their husbands were killed by the armed groups, leaving them particularly vulnerable to sexual violence and harassment, on top of being alone in providing food and care for their children.⁷⁶

Violations of rights to food, education and health

The conflict has generated a protracted humanitarian crisis which affects the majority of the internally displaced people socio-economically, emotionally and socially. Their situa-

⁶⁹ Actualidad Colombiana, 1 January 2003

⁷⁰ Foreign Policy Studies, 8 June 2005

⁷¹ IDD, 9 February 2005

⁷² UNHCR, March 2005

⁷³ CODHES, 1 June 2004

⁷⁴ UNHCHR, 10 November 2004

⁷⁵ ICRC, May 2005

⁷⁶ Amnesty International, October 2004

tion is particularly precarious in a country where more than 50 per cent of the population lives below the poverty line and where the pervasive nature of the conflict makes it hard to find physical protection and stability, even in urban areas where the majority end up. An inter-agency report of December 2005 covering six severely affected regions shows that IDPs are generally worse off than the poorest urban host communities when it comes to rights to food, health, education and housing.⁷⁷ A Médecins Sans Frontières (MSF) report of April 2006 found that the IDPs' mental health is severely affected by the conflict and that violence tends to lead to more violence. Many IDPs (37 per cent) have witnessed the killing of parents, children or siblings, contributing to long-term emotional disorders and social disintegration.⁷⁸ The IDPs' emotional and social state and poor access to food, health care, education and housing are further aggravated by the fact that most of them have been uprooted from an agricultural subsistence-oriented economy to a market economy in urban centres where their professional skills are largely rendered irrelevant, with ensuing difficulties in accessing the labour market and providing for their own livelihoods.⁷⁹ As a result of the abrupt character of the displacements – which in 96 per cent of cases have been triggered by direct threats, massacres and/or fighting – the IDPs are left with little or no time to prepare for their flight and bring with them valuable assets that may ease their life during displacement.⁸⁰ The difficulty they have in entering the labour market and stabilising socio-economically is clearly reflected in the average monthly IDP household income, which is slightly more than the equivalent of \$100, or 65 per cent of the legal minimum wage.

The equivalent of \$60 or slightly more than half of the average income is spent on food, while most of the rest is spent on housing and public services like water, electricity and gas.⁸¹ This leaves only six and three per cent on health and education respectively.

Two-thirds of IDPs live in inadequate housing with no access to basic sanitation.⁸² About 70 per cent of IDPs have two or more unmet basic needs, including housing, access to services, living conditions, school enrolment and economic dependency, compared to 10 per cent among the poorest urban dwellers.⁸³ As a result, over half of displaced households report anaemia, which stunts the growth and learning capacity of children.⁸⁴

Only 22 per cent of IDPs receive medical attention, in spite of the fact that registered IDPs are entitled by law to free and unlimited access to health care and medicines.⁸⁵ In practice,

⁷⁷ WFP, European Commission, WHO, December 2005

⁷⁸ These findings confirm and substantiate the conclusions of the Constitutional Court sentence of January 2004 and several other reports, including by government institutions; Human Rights Watch, 14 October 2005; ICRC, 22 April 2005; WHO, PAHO, 7 April 2005; WFP, ICRC, 27 December 2004; Ombudsman's Office, *Duodécimo Informe del Defensor del Pueblo ante el Congreso de la República*, Bogotá, 2005

⁷⁹ ICRC, 22 April 2005, p.6

⁸⁰ MSF, April 2006; Contraloría General de la Nación, December 2004

⁸¹ WFP, ICRC, 27 December 2004, p.11

⁸² ICRC, 22 April 2005; WFP, 16 June 2003

⁸³ WFP, ICRC, 27 December 2004, p.10

⁸⁴ WFP, ICRC, 27 December 2004

⁸⁵ Marie Stopes International, etc, 13 February 2003

hospitals commonly refuse to treat IDPs because they are often not reimbursed for the costs of the services provided due to administrative inefficiencies. As a result, about half of the displaced do not seek medical assistance due to lack of money.⁸⁶ In addition, access to medical care is hindered because most IDPs lack identification papers – a requirement for receiving medical aid. A survey found that morbidity among IDPs is six times the national average.⁸⁷

Although women and girls represent nearly half of the displaced population, there is no comprehensive policy to address their specific gender and reproductive health needs.⁸⁸ Nearly one-third of displaced women have had either miscarriages or stillbirths, and only 63 per cent received treatment. Despite the fact that some 52 per cent of displaced women reported having suffered physical violence and about 36 per cent have been sexually abused, according to the Ministry of Social Protection, gender-based violence remains largely unaddressed.⁸⁹

More than one million Colombian children have had to flee their homes with their families; some 300,000 of these displaced children do not have access to the national education system, often because of the costs incurred by the materials required, such as school uniforms, school books and transportation.



Displaced Embera-Catios Indian girl in Cazuca near Bogota, Columbia. (Photo: Reuters/Eliana Aponte, courtesy www.altertnet.org)

⁸⁶ IOM, 6 June 2002

⁸⁷ WFP, 16 June 2003, p.9

⁸⁸ UNCHR, 24 February 2003

⁸⁹ AI, 13 October 2004; UNCHR, 28 February 2005

National response

Colombia is host to the second-largest IDP population in the world and has at the same time adopted one of the most advanced legislations to address their protection and assistance needs. However, practically all reports on the Internally Displaced People, including a paradigmatic sentence by the Colombian Constitutional Court, emphasise the staggering discrepancy between the expressed intentions of the government and the implementation of its policies.

One of the key instruments governing national policies on internal displacement is Law 387 of 1997 which emphasises the authorities' responsibility to prevent forced displacement, protect and assist IDPs during displacement and search for durable solutions. As noted above, more than one million people have been forced from their homes only in the last three years of the conflict, more than 940,000 according to the government's own figures, making it hard to claim any success in preventing internal displacement.

Government humanitarian assistance to IDPs is restricted to the first three months after registration, prolonged in exceptional cases to six months. It includes food rations and cooking utensils. However, even this limited aid covered only one-third of emergency needs, and the majority of new IDPs (57 per cent) received no assistance in 2004, according to a UNHCR report.⁹⁰ The recommendation of the Office of the UN High Commissioner for Human Rights to extend the time limit on assistance and the one-year deadline set for IDP registration has been ignored. While the emergency response has improved, according to UNHCR, very little attention is still paid to post-emergency situations and the search for durable solutions.⁹¹

The body charged with responding to the problem of internal displacement at national level, as established by Law 387 (1997), is the National System of Attention to People Displaced by Violence (SNAIPD). It is composed of 14 government ministries and other public, private, and community organisations covering various areas such as agriculture, social security, health, and education. The Social Solidarity Network (RSS), created in 1999 (renamed Social Action in 2005), manages the SNAIPD, coordinates and oversees assistance to IDPs and those at risk of displacement, and plans and delivers services to IDPs officially registered.⁹²

Still, the country faces a critical human rights situation that forces people to flee on a daily basis. The Colombian government has been unable to comply with its human rights commitments and fully implement the UN Human Rights Commission's recommendations made in 2004. While the government reported a major improvement in its 2004 and 2005 human rights record, the UN High Commissioner for Human Rights warned that official human rights monitoring institutions use definitions of indicators incompatible with inter-

⁹⁰ UNHCR, March 2004 p.1

⁹¹ UNHCR, 1 December 2004

⁹² UNCHR, 24 February 2003, pp. 90-92; 1 December 2004

national standards and that “no official statistical system exists in Colombia that adequately covers violations and breaches in accordance with international instruments”.⁹³

Without proposing alternative solutions, the current administration has also attempted to reduce the capacity of the Representative of the Ombudsman’s Office (Personería) at the municipal level which is mandated to assist IDPs and protect their legal rights. The Colombian Institute of Agrarian Reform and National Institute of Urban Reform, in charge of programmes to facilitate IDPs’ access to land and housing respectively, were merged without clear redistribution of their tasks.⁹⁴

While the administration reported considerable progress in the fight against illegal armed groups, and in regaining control over large parts of national territory, anti-terrorist legislation and other measures adopted to attain these goals have been declared unconstitutional by the Constitutional Court, including the amendment made by the government to the Constitution with the view to granting judicial powers to the armed forces. A number of other measures were declared unconstitutional by the Court in November 2002, such as suppressing judicial supervision of detentions, restricting freedom of movement, allowing systematic searches, simplified arrest procedures, and interference with privacy.⁹⁵

In January 2004, the Constitutional Court concluded in a sentence called T-25 that the lack of protection and attention given to displaced people and communities at risk of displacement constituted an unconstitutional state of affairs. This ruling has made the court the most important and authoritative supervisor of the government’s compliance with its own policies and laws and may be used as an example for other countries. The ruling reflected serious structural deficiencies attributable to state bodies basing its findings on lack of compliance with the 1997 Law 387, the high number of complaints brought before the Courts by IDPs, and the deterioration of their situation due to omissions in public policy, all of which resulted in the violation of the rights of IDPs.⁹⁶ The Court ordered the government to reformulate its public policy, to assign adequate resources to the maximum of its capacities, to take concrete action to prevent forced displacement, and to guarantee protection of the rights of IDPs. In response to the Court verdict, the National Plan of Integral Attention to People Displaced by Violence was launched in February 2005, through Decree 250 (2005). The plan outlined government strategies to prevent displacement and to assist about 1.5 million officially registered IDPs in accordance with Law 387.

In direct response to the Court decision, the government committed in November 2005 the equivalent of more than \$2 billion for the protection and assistance of IDPs for the period 2005-2010. A number of agencies and ministries have submitted their reports to the Court which is, as of June 2006, in the process of evaluating the government’s compliance with Sentence T-25. While the commitment of November 2005 has been warmly welcomed by

⁹³ UNCHR, 28 February 2005, p.67

⁹⁴ CCJ, 4 February 2004

⁹⁵ UNCHR, 24 February 2003, pp.7-11; 45

⁹⁶ ODHACO, 28 January 2005

IDP organisations, the funds may prove insufficient unless the government shows the political will to address the structural injustices that triggered the conflict.

Colombian NGOs

Social movements or civil society organisations defending the rights of internally displaced people or other victims are in many cases as old as the displacements and the conflict itself. Hundreds of national and grass-roots NGOs have been created to defend the civil, political, economic, social and cultural rights of the victims of the conflict, advocate for better government assistance, and promote long-term solutions, capacity-building and integration of IDPs in host communities. Local human rights and humanitarian agencies have been increasingly active in providing IDPs with legal advice, psychosocial support, food and medical assistance with limited resources. Many of the organisations have made consistent use of national and international legal instruments to restore the rights of the victims and holding the state to account for its legal commitments towards the affected population. Local non-governmental human rights and IDP organisations have prepared petitions to the Colombian Constitutional Court and the Inter-American Human Rights Court, accusing the state of not honouring its responsibility to assist and protect IDPs in compliance with national and international standards. The Constitutional Court verdict of May 2006 which declared the Justice and Peace Law unconstitutional is a direct result of concerted efforts by Colombian non-governmental organisations. More than 30 social and human rights organisations together with 73 individuals were behind the petition.⁹⁷

Working conditions for many, if not most of the social and human rights organisations are extremely difficult not only because of a lack of resources, but primarily because their work runs counter to the interests of the armed organisations, mirroring in many respects the complexity and nature of the conflict itself. Defending the interests of IDPs or other victims of conflict beyond a purely humanitarian response is often perceived as an attack on the perpetrators of displacements or other rights violations and their hold on land and resources acquired illegally in the course of the conflict. Consequently, organisations defending the victims, and more specifically IDPs' right to return and have their land restored to them, have been among the primary targets of armed groups. Hundreds of leaders of human rights organisations and displaced communities have been assassinated throughout the conflict and attacks and threats remain major obstacles to their work and to their very existence. The current phase of the conflict has lasted for more than 40 years and many civil society organisations have distanced themselves from the armed actors, guerrillas and paramilitary groups alike by advocating for non-violence. This strategy undermines the legitimacy of the armed groups which often react with threats, assassinations and forced displacement.

Moreover, IDP leaders and representatives of other organisations defending the rights of the victims of the conflict are often perceived and stigmatised as guerrilla sympathisers by the government. In June 2004, the president accused Colombian and foreign human rights

⁹⁷ ASFADDES, 9 September 2005, pp. 1, 25

defenders of being guilty of complicity with terrorism.⁹⁸ The work of IDP and victims organisations has been further undermined by a constitutional amendment of December 2003 which confers on the army the right to search houses, seize assets, make arrests and intercept communications without judicial warrants. These measures have fuelled the reign of fear, suspicion and mistrust among IDP leaders and their supporters, and thereby weakened substantially their strength to stand up for those they represent.

As a result of these repressive policies and hostile attitudes, human rights defenders and IDP organisations are by and large bereft of any genuine dialogue with the state as the institution bearing the primary responsibility for protecting and assisting the IDPs. The options are few; some struggle to maintain neutrality, attempting to distance themselves from the conflict and the warring parties, including the security forces and representatives of the state. Others are using the state's own institutions to defend their interests, exemplified by the Constitutional Court rulings of January 2004 and May 2006.

The IDP organisations' strategies are largely based on advocating for the recognition of the existence of an armed conflict and the recognition of the existence of its victims. The controversy over IDP numbers between the government and CODHES, as outlined above, is an example of the importance and difficulties of such a task. Without a common understanding of the nature of the conflict and a common recognition of who is an IDP and who is not, it is hard to conceive of a comprehensive response shared and accepted by both the government and the IDP organisations.

Indigenous and Afro-Colombian organisations achieved a significant victory with the 1991 Constitution which granted them extensive political and administrative rights in so-called "resguardos" or indigenous territories, covering large tracts of the country.⁹⁹ The Constitution grants these communities legal responsibility for land-use, social programmes, health care and education with the financial support of the state. However, control of land and natural resources is an inherent part of the conflict and their rights are violated massively. Although they only make up around two per cent, or 800,000, of the total population, an estimated eight per cent of the IDPs are indigenous people.¹⁰⁰ Indigenous and Afro-Colombian leaders and communities have been victims of massacres, threats and torture primarily as part of a combined strategy to gain control over their land and resources and undermine their capacity to resist and organise themselves. One of the resistance strategies has been to set up humanitarian zones to assert their rights not be involved in the armed conflict or associated with some of the warring parties, but with mixed results.¹⁰¹

Colombian human rights defenders and IDP organisations are articulate defenders of their own rights, but severely limited by lack of funds, lack of state support and attacks on their leaders.

⁹⁸ GoC, 16 June 2004

⁹⁹ World Bank,

¹⁰⁰ UNHCR, 22 April 2005

¹⁰¹ AI, 6 February 2006

International humanitarian response

While the government response to the problem of IDPs remains inadequate and under-resourced, the international humanitarian response has not been commensurate with the scale of the crisis. The UN has sought to promote an inter-agency coordinated response to IDPs with a first Humanitarian Plan of Action (HPA) launched in November 2002. This plan, with a budget of \$80 million, however, fell short of raising the expected support. A second plan was developed jointly by the United Nations, members of civil society and the government of Colombia, amounting to around \$185 million for 2005. While projects have already started, disagreements about the content of the HPA have risen, as the government has refused to be explicit about the ongoing armed conflict and humanitarian emergency, referring instead to "terrorist violence"; it has also rejected the previously agreed human rights focus of the Plan. The Plan was ultimately launched in early 2005 as a government document, not officially endorsed by the UN.

Given the discrepancy between government and NGO figures, the OCHA's Internal Displacement Division recommended in January 2005 that the registration standards be re-defined to include the displaced people currently not granted official IDP status, as well as those who flee within the same city or as a result of spraying of coca plantations.¹⁰²

UNHCR in Colombia is mandated primarily to increase the capacity of national institutions and civil society to strengthen IDP protection and to raise standards through technical assistance. In coordination with the National Registrar, it has delivered documents to tens of thousands of IDPs, thus facilitating their access to public services and government assistance. UNHCR also monitors and supports programmes of return and resettlement, when implemented according to the basic principles of voluntariness, dignity and security. The agency has also established free legal aid centres in coordination with the Ombudsman's Office. It has expanded its presence in the slums of the capital, the main destination for internally displaced people¹⁰³. For example, a *casa de los derechos* ("house of rights") was recently opened in Altos de Cazuca, a shanty town on the outskirts of Bogotá where IDPs represent 40 per cent of the population.¹⁰⁴

UN activities focusing on prevention and post-emergency assistance complement the work of the International Committee of the Red Cross (ICRC), which covers most of the emergency response, in coordination with the Colombian Red Cross and the RSS. The ICRC has the largest presence in the country of any international organisation with 17 field offices. This makes possible a rapid emergency response and regular contact with all armed groups. In addition to emergency assistance programmes, the ICRC implements training and advocacy projects to promote respect for international humanitarian law.

The government has sought to silence international organisations voicing concern over the consequences of its policies on the civilian population. While national human rights or-

¹⁰² IDD, 9 February 2005

¹⁰³ UNHCR, 3 December 2004

¹⁰⁴ UNHCR, 30 September 2005

organisations have increasingly undergone mass arrests and arbitrary detention since 2002, international organisations, and in particular UN organisations and representatives, have been threatened with expulsion or revocation of their mandates.¹⁰⁵

The mandate of the UN Secretary-General's Special Envoy, James Lemoyne, was not renewed in 2005 after he criticised the government's security policy. Lemoyne was the focal point for the United Nations system in Colombia tasked with mobilising international assistance for social, humanitarian, human rights, drug control and peace-building activities in Colombia.¹⁰⁶ The representative of the UN High Commissioner for Human Rights in Colombia, another critical voice, left in January 2006.¹⁰⁷

The government has also sought to control the language used by international agencies and foreign diplomats. It sent guidelines to foreign ambassadors and representatives of foreign agencies in June 2005 discouraging the use of terms such as "armed conflict", "non-state actors", "civil protection", "peace communities", "peace territories" or "humanitarian space". The government also discouraged international agencies from undertaking "so-called 'humanitarian activities'".¹⁰⁸

UN agencies' space for undertaking advocacy and protection activities in favour of IDPs has consequently been greatly reduced. Even UNHCR's lead role in providing protection and assistance to IDPs appears to be under threat as the International Organisation for Migration (IOM) – an organisation lacking a protection mandate and protection expertise – received a \$100 million grant from the US Agency for International Development (USAID) in late 2005 for the provision of assistance to IDPs and other vulnerable groups for the next five years in partnership with the Pan-American Development Foundation.¹⁰⁹

The "peace process" cements injustice for IDPs

The demobilisation programme and the accompanying legal framework have highlighted the challenges of reconciling the victims' rights to truth, justice and reparation with the quest for peace. The Uribe government has demobilised 30,000 paramilitary combatants, but, contrary to other demobilisation programmes involving amnesty for the perpetrators, this process takes place in the middle of an armed conflict and targets in practice solely one armed group, and one which has never fought the state institutions.¹¹⁰ At the same time, the armed conflict between the government and what is probably one of the oldest and strongest guerrilla armies in the world goes on at full tilt, with tremendous suffering for the hundreds of thousands of people being displaced every year.

¹⁰⁵ OHCHR, 17 August 2005

¹⁰⁶ El Espectador, 25 April 2005

¹⁰⁷ OHCHR, 24 January 2006

¹⁰⁸ El Alto Comisionado para la Paz, 14 June 2005

¹⁰⁹ IOM, 7 October 2005

¹¹⁰ See president Uribe's statement above, supra note 23.

The government denies that there is a humanitarian crisis or an armed conflict, depicts the conflict as a "war on terror", and avoids any references to the links between the state and the paramilitaries. This is done in an apparent attempt to evade international obligations to protect the civilian population from being involved in the conflict, divert attention from the underlying causes of the conflict, and avoid investigations in the state's relationship with the paramilitaries.

While the humanitarian response may by itself be inadequate, it is taking place in the middle of an armed conflict and its failings may therefore be less attributed to lack of resources and capacity than to the ongoing violence and its underlying causes.

As demonstrated earlier, forced displacement is intrinsically and historically linked to the emergence of the guerrilla movements and their adversaries, the paramilitary groups. These in turn are linked to structural socio-economic injustices that have benefited the national land-owning elites for centuries. Paramilitary structures emerged from these elites and are currently, through the Justice and Peace Law, granted complete or partial impunity, allowing them easy access to public political and economic life.

By not engaging the paramilitary groups in a comprehensive and exhaustive truth and reconciliation process including justice for the victims, the state's links to the paramilitaries and the rationale behind displacement strategies will not be discussed in the framework of the peace and demobilisation process. This puts into question the government's commitment to finding durable solutions for the IDPs, as return and reintegration or compensation for the displaced depend on confessions by paramilitaries who have committed crimes and the return of illegally acquired assets.

As mentioned earlier, displacements are not primarily an unintended consequence of the fighting, but a deliberate strategy to uproot people from their homes. The overwhelming majority of the IDPs have fled rural areas and been forced to abandon their land and livelihoods. It is unlikely that this land will be returned to the IDPs. The fact that information on only a tiny percentage of the land abandoned by the IDPs has been handed over to the authorities for investigation within the Justice and Peace Law is an unambiguous indication of the poor prospects the IDPs face of having their rights restored. Durable solutions for the IDPs, such as their return and reintegration, would inevitably challenge paramilitary structures and shake important parts of the state apparatus.

Paramilitary structures are increasingly gaining political momentum in many parts of the country, notably in César, Sucre, Magdalena, Atlántico, Guajira, Bolívar and Antioquia. This has long-term and devastating effects for any prospects of a durable solution for millions of IDPs. The legal framework which has accompanied the demobilisation process lets the perpetrators legalise land and assets they have seized from the IDPs, effectively preventing them from returning to their homes in any foreseeable future.

Note: For more detailed information on the internal displacement situation in Colombia, please visit the [Colombia country page](#) on the IDMC's online IDP database

Testimony 1: IDP woman in Cúcuta

“I am a widow with six children, and I have been displaced in Cúcuta in the César region by the Caribbean since 2002. I fled a village in Norte de Santander after my husband was killed by paramilitaries. In the village, me and my husband had land and a house of our own and I used to sell food while my husband cultivated land for land-owners and accompanied cattle from the ranches to the slaughterhouse. I believe other people are occupying the house we lived in, but I cannot claim it back or ask for compensation from the state as we did not have a title. Houses with titles were distributed to IDPs in Cúcuta while I was out of town to get documentation proving my status as a victim of the violence. When I came back, I got a house to live in through the government’s Social Action programme, but without proper title and, after three months staying in the house, the legal owners evicted me and my children at night. I am currently squatting on a plot provided by the United Pentecostal Church, but cannot afford to construct a house on it. I work on a construction site from 1 to 6 pm every day, mixing cement, and earn around 200,000 pesos a month [the equivalent of around \$88]. My eldest son is mentally handicapped; my second son is 22 years old and sells second-hand fridges and old furniture; my eldest daughter studies on Saturdays and works during the week selling stuffed pies and potatoes on the street that I have cooked at home; two younger girls attend school and I have to pay for their school uniforms, school notebooks and transportation. My youngest son is 14 years old and does not want to go to school. He was threatened by someone who said they would kill him in the same manner his father had been killed, because they said he had stolen something. I do not pay for medical treatment but I have a permanent headache, my kidneys and legs are hurting, but the doctors have only given me some tablets and vitamins. I would like a full check-up but I don’t think they would give it to me.”

Testimony 2: IDP from Catatumbo

I fled the Catatumbo region (Norte de Santander) in 2002, with my wife and our eight-year-old daughter. All the violence by the different armed groups forced us to leave our 103-hectare farm, even though we had not received any personal threats. We came directly from our farm and settled down in Cúcuta.

We received some assistance from the RSS. [Government agency in charge of coordinating response to IDPs, now called Social Action] Through the RSS, my wife and I could follow training courses in the SENA [National Learning Service]. After a course in micro-business development, I specialised in small species' breeding and decided with 11 of my classmates, [all displaced persons from the Catatumbo region], to establish a small business for the breeding and the commercialisation of such species. We obtained 55 million pesos (\$25,000) of funding from FINAGRO [A national fund for the financing of the agricultural sector] for the realisation of our project.

The big problem was to obtain land from the INCORA [the national institute for agrarian reform, now INCODER] to establish the business. We followed the procedure, and proposed plots of land to be bought and transferred to us by INCORA in exchange for the land we had abandoned in our home region. However, the plots we found were never well-suited for the operation according to the Institute. We spent several million pesos in finding plots and obtained the necessary documents and brought the owners to the Institute, but all our proposals were rejected, and we have become very frustrated after many months of waiting.

I think there is a lack of clarity concerning the rules of who is entitled to land plots. Priority is not always given to the displaced; I only learned several months after starting my research for land in exchange of the land I abandoned that INCORA refuses to buy plots which are less than 80 per cent productive; and the institute has up to now refused to give me and my partners a large single plot instead of many smaller individual.

I also have all the relevant titles and documents proving that I am the owner of the farm in Catatumbo, but, since I did not pay property tax after we were forced to leave it in 2002, INCORA will only offer me 10 hectares of land in exchange.

The question of the location of the plot has also been very problematic for us. My partners and I want to establish our business near Cúcuta to have access to a market for our products, limit transportation costs and let our children go to school. Unfortunately, the billion pesos INCODER received this year to buy land around Cúcuta has to be spent on lands in the Catatumbo region, where the security situation is still very dangerous and the difficulties of shipping the products to the cities makes it very hard for all the farmers in the area.

Several of my partners lost hope and abandoned the project. Some of them returned to Catatumbo and were killed. Only four of the initial 11 displaced partners still struggle to

obtain land. I am very frustrated and tired. I have always striven to remain independent and make my own living without asking anyone for help, but I am still treated as a beggar. I do not ask for charity but only for respect of my rights. I think the different state entities providing assistance to the displaced should work jointly since, for the moment, the money invested in my rehabilitation and training is being lost and my working capacity is overlooked.

Now I have virtually no income. I live with my wife and daughter in a six-square-metre room we rent in the house of my brother-in-law. I own a small house I built in a poor area of Cúcuta that we rent out for 80,000 pesos (\$35) a month, but this prevents me from having free housing scheme of the RSS.

My wife and I still follow courses in the SENA. But since we receive no support for the costs incurred in the studies, we can only afford the bus fare one way and walk 76 blocks back home every day. I do not want to become a street-seller as most of the displaced do because I know it would not be sustainable and I would feel diminished, but sometimes I have to and I also smuggle clothes and belts into Venezuela.

I am very worried for the mental health of our daughter. I fear she will suffer stigmatisation as I do because she is poor and they may think she is a parasite. In principle, school is free for displaced children by law, but still I have to pay 27,000 pesos (\$12) for attendance and cleaning every year. Children without uniforms are also expelled from the school. I have managed up to now to cover school-related costs but my family's situation is very precarious and uncertain.

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Note: All documents used in this report are directly accessible on the [List of Sources](#) page of the Colombia country page.

About the Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC), established in 1998 by the Norwegian Refugee Council, is the leading international body monitoring conflict-induced internal displacement worldwide.

Through its work, the IDMC contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

At the request of the United Nations, the Geneva-based Centre runs an online database providing comprehensive information and analysis on internal displacement in some 50 countries.

Based on its monitoring and data collection activities, the Centre advocates for durable solutions to the plight of the internally displaced in line with international standards.

The Internal Displacement Monitoring Centre also carries out training activities to enhance the capacity of local actors to respond to the needs of internally displaced people. In its work, the Centre cooperates with and provides support to local and national civil society initiatives.

For more information, visit the IDMC website and the database at www.internal-displacement.org.

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