



OPERATIONAL GUIDANCE NOTE

ECUADOR

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1. Introduction

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

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

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

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

- 1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the API on Article 8 ECHR.
- 1.4 With effect from 23 July 2003 Ecuador is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However if, following consideration, the claim from someone who is entitled to reside in Ecuador, made on or after 23 July 2003, is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

Source documents

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

2. Country assessment

- 2.1 Ecuador is a constitutional republic with a population of approximately 13 million.¹ Ecuador has a presidential system of democracy with presidential elections held every four years. The 1978 constitution (approved by referendum) provides for an executive and a legislature consisting of a unicameral 100-member Congress.²
- 2.2 In November 2002, voters elected Lucio Gutierrez, a former Army colonel who briefly took power in a coup in January 2000, in generally free and fair elections. Gutierrez's Patriotic Society Party forged an electoral alliance with the indigenous political arm, Pachakutik. President Gutierrez took office in January 2003 with the aim to implement a five point plan to tackle corruption and poverty, improve competitiveness and security and effectively manage international policy. In January 2004, however, the alliance with Pachakutik was formally broken and in October 2004 the Patriotic Society Party's poor showing at the regional and municipal elections led to calls from opposition political parties for Gutierrez's removal. In April 2005, following large scale protests in Quito, the resignation of the Chief of Police and the public withdrawal of support by the military, Congress voted to remove President Gutierrez. The main concern of the demonstrators was the removal on two occasions, of the Supreme Court and the 'politically endorsed' return of former President Abdala Bucaram. Vice-President Alfredo Palacio assumed the presidency to finish Gutierrez's term and since then the civilian authorities have generally maintained effective control of the security forces.³
- 2.3 Former President Gutierrez left Ecuador for Brazil and then Colombia, where he was granted political asylum. However, Gutierrez returned to Ecuador in October 2005 and was immediately arrested and imprisoned. Gutierrez was released by the Supreme Court in March 2006 and has stated that he intends to stand again for the Presidency in the Presidential and Congressional elections due to be held in October 2006.⁴
- 2.4 Ecuador is a signatory of the six major human rights instruments, has a human rights plan and a constitution that is one of the most advanced in terms of human rights principles in Latin America.⁵ The Government generally respected the human rights of its citizens in 2005, but there were reports of serious problems in some areas. During 2005, there were reports of unlawful killings, use of torture, abuse and excessive force by the security forces, often with impunity; arbitrary arrest, pre-trial detention and poor prison conditions; attacks on those publicly critical of former President Gutierrez; violence against women; pervasive discrimination against women, indigenous people, Afro-Ecuadorians, gay men and lesbians; trafficking in persons and sexual exploitation of minors; and widespread child labour.⁶
- 2.5 The judiciary is composed of the Supreme Court, superior circuit courts, other courts and tribunals that hear cases in accordance with the constitution and other laws, and the Judicature Council, which is charged with administering the court system and disciplining judges. There also are military and police tribunals that have the same status as circuit courts, as well as criminal, provincial, and cantonal (county) courts. The Supreme Court supervises the selection by open competition of all appellate judges. Following President Gutierrez's removal from office, in May 2005 Congress passed legislation to select a

¹ U.S. Department of State report on Human Rights Practices (USSD) – 2005 (Introduction)

² Foreign and Commonwealth Office (FCO) Country Profile 2006: Ecuador

³ Freedom House. Freedom in the World 2005: Ecuador, USSD 2005, FCO Country Profile 2006: Ecuador & British Broadcasting Corporation (BBC) News. Timeline: Ecuador

⁴ FCO Country Profile 2006: Ecuador & BBC News. Timeline: Ecuador

⁵ FCO Country Profile 2006: Ecuador

⁶ USSD 2005 (Introduction)

commission to designate a new Supreme Court and in November 2005 the new Supreme Court comprising of 31 judges was appointed in a process widely viewed as transparent. The Constitutional Tribunal has been dissolved since December 2004. While the law provides for an independent judiciary, during 2005 there were reports of corruption and denial of due process within the judicial system. In November 2005, the United Nations Committee against Torture also expressed concern that complaints of human rights violations by the security forces continued to be tried in police and military courts, which the committee believed was neither independent nor impartial.⁷

- 2.6** In 2005, the United Nations High Commissioner for Refugees (UNHCR) expressed concern about the humanitarian situation along the Ecuadorian-Colombian border as the number of refugees fleeing the internal armed conflict in Colombia grew considerably. In November 2005, UNHCR reported that 600 Colombians had arrived in San Lorenzo in one weekend and by February 2006 UNHCR estimated that a quarter of a million people had fled Colombia for Ecuador.⁸ The growing number of incursions from both Colombian guerrilla groups and their paramilitary enemies into Ecuadorian territory in 2005 also reportedly added to regional concern about the extent to which the civil war in Colombia would affect public safety and the survival of democratic institutions.⁹

3. Main categories of claims

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

⁷ Amnesty International (AI) Report 2006 - Americas: Ecuador, USSD 2005, FCO Country Profile 2006: Ecuador & BBC News. 'Ecuador swears in new top court' dated 30 November 2005

⁸ UNHCR - The UN Refugee Agency. 'Colombia/Ecuador: Visit of UNHCR's Assistant High Commissioner for Protection' dated 3 February 2006, UNHCR - The UN Refugee Agency. 'Colombia/Ecuador: Upsurge in fighting along border, many hundreds more displaced' dated 15 November 2005 & AI Report 2006 - Americas: Ecuador

⁹ Freedom House. Freedom in the World 2005: Ecuador

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

3.6 Fear of corrupt police officers/government officials

- 3.6.1** Some claimants will apply for asylum or make a human rights claim based on a fear of corrupt police officers or government officials. This may be for a variety of reasons, but is sometimes due to their support of indigenous political groups or political activism at university.
- 3.6.2 *Treatment.*** Corruption in all sectors of Ecuadorian society, especially within the Government, remains a problem and Ecuador was ranked 112 out of 146 countries surveyed in Transparency International's 2004 Corruption Perceptions Index (with 1 being the country where corruption is the least prevalent and 148 being the most corrupt on the list). During 2005, there were corruption investigations into former President Gutierrez's brother Gilmar Gutierrez, allegations of corruption amongst President Palacio's personal advisors, and continued investigations in a case involving the national police chief, several other police officials, and members of the army accused of collaborating with alien smugglers.¹⁰
- 3.6.3** While the law prohibits torture and similar forms of intimidation and punishment, there were reports in 2005 that police officers and members of the security forces were responsible for acts of excessive force, threats or even torture, often with impunity. In most cases reported to the Ecumenical Human Rights Commission (CEDHU), the security forces appeared to have abused such persons during investigations of ordinary street crime or because of a personal grudge. The law also prohibits incommunicado detention, but in 2005 a number of human rights organizations continued to report violations. Even when police obtained a written arrest order, those charged with determining the validity of detention often allowed frivolous charges to be brought, either because they were overworked or because the accuser bribed them. Human rights organizations have even alleged that the system was frequently used as a means of harassment in civil cases in which one party sought to have the other arrested on criminal charges.¹¹
- 3.6.4** Despite their growing political influence, indigenous people continue to suffer discrimination at many levels of society and are reportedly the frequent victims of abuse by military officers working in league with large landowners during disputes over land. Indigenous efforts to manage the flow of illegal lumber were also reportedly undermined by corrupt local officials during 2005. According to credible NGO reports, the police used excessive force on a number of occasions when handling student protests in 2005, often with apparent impunity or at least with minimal investigation into their actions.¹²
- 3.6.5 *Sufficiency of protection.*** The effectiveness of the National Police was reportedly uneven in 2005, in part, due to its insufficient training, supervision, and resources. A police internal affairs office investigates complaints against police officers and can refer cases to the police courts. However, the use of the police court system has been criticised for not pursuing cases or announcing verdicts and punishments, reinforcing the impression that police are immune from prosecution. Still, in 2005 the National Police worked with NGOs to provide human rights training for its officers and there exists an office of the ombudsman, with representatives in the indigenous communities, to focus on human rights problems raised by the general public.¹³ Therefore, although there is corruption and incompetence in the police force, the security forces and the judiciary, the Government is at least committed to developing a respect for human rights and has introduced measures to combat corruption. As such, there is no evidence to indicate that claimants would not be able to

¹⁰ USSD 2005 (Section 3), Freedom House. Freedom in the World 2005: Ecuador, FCO Country Profile 2006: Ecuador & AI Report 2006 - Americas: Ecuador

¹¹ USSD 2005 (Section 1)

¹² USSD 2005 (Section 2) & Freedom House. Freedom in the World 2005: Ecuador

¹³ USSD 2005 (Sections 1, 4 & 5)

seek redress from the authorities were they to face ill-treatment at the hands of corrupt officials.

3.6.6 Internal relocation. The law provides for freedom of movement within Ecuador and the Government generally respected this right in 2005.¹⁴ Therefore, claimants who fear ill-treatment at the hands of a corrupt police/government official will be able to internally relocate to another part of Ecuador where they are not known and will not be at risk of further harassment or ill-treatment from the respective official, and unless there are factors specific to the individual case it would not be unreasonable to expect them to do so.

3.6.7 Caselaw.

Veronica Lucia PASTAS CRESPO [2002] UKIAT 08100. The IAT found that although there is corruption and incompetence in the police force there is no evidence that there is not a sufficiency of protection for victims of criminal actions. Although in the cases of Lozado HX/51429/00 and Castro [2002] UKIAT 00199, the Secretary of State had conceded sufficient protection was not available, the Tribunal concluded that those appeals were distinguishable on their facts.

3.6.8 Conclusion. Claimants who are unable to demonstrate that they have been targeted by a corrupt police officer/government official for reason of one of the five Refugee Convention grounds will not have a well founded fear of persecution under the Convention and a grant of asylum would not be appropriate. Some claimants may be able to demonstrate that they have been targeted for a Convention reason such as on the grounds of their political opinion. For those claimants and for those who may be able to demonstrate a real risk of future mistreatment contrary to Article 2 and/or Article 3 of the ECHR, the authorities are willing to offer sufficient protection although the effectiveness of this protection may be limited by the actions of individual police officers/government officials. The availability of sufficient protection and internal relocation is also dependant upon the level of authority of the corrupt police officer/government official but, unless there are factors specific to the individual case, it would not be unreasonable to expect claimants to relocate internally. Therefore, claimants who apply on this basis are unlikely to qualify for a grant of asylum or Humanitarian Protection; such claims are likely to be clearly unfounded and should be certified.

3.7 Criminality

3.7.1 Some claimants will apply for asylum or make a human rights claim based on a fear of criminals/criminal gangs.

3.7.2 Treatment. Criminal kidnapping for profit continued to be a problem throughout Ecuador in 2005. There were also reports of extortion and threats of kidnapping of ranchers, farmers, and businessmen along the northern border with Colombia. By year's end police registered 92 individuals arrested for kidnapping; however, there were no reliable estimates of the total number of such extortions or kidnappings, often attributed to Colombian armed gangs, since many victims did not report the crimes for fear of retribution. Murder rates in Quito and Guayaquil have also risen in recent years, whilst Ecuador reportedly remains a significant transit country for cocaine originating in Colombia and Peru and an attractive location for cash-placement by drug traffickers laundering money.¹⁵

3.7.3 Sufficiency of protection. The effectiveness of the National Police was reportedly uneven in 2005, in part, due to its insufficient training, supervision, and resources. However, although there is corruption and incompetence in the police force, the security forces and the judiciary, there is no evidence to indicate that claimants would not be able to seek redress from the authorities were they to face ill-treatment at the hands of criminals or criminal gangs. Sufficiency of protection is therefore available.¹⁶

¹⁴ USSD 2005 (Section 2)

¹⁵ USSD 2005 (Section), CIA World Factbook 2006: Ecuador & FCO Country Profile 2006: Ecuador

¹⁶ USSD 2005 (Sections 1, 4 & 5)

3.7.4 Internal relocation. The law provides for freedom of movement within Ecuador and the Government generally respected this right in 2005.¹⁷ Therefore, claimants who fear ill-treatment at the hands of criminals/criminal gangs will be able to internally relocate to another part of Ecuador where they will not be at risk, and unless there are factors specific to the individual case it would not be unreasonable to expect them to do so.

3.7.5 Caselaw.

Veronica Lucia PASTAS CRESPO [2002] UKIAT 08100. The IAT found that although there is corruption and incompetence in the police force there is no evidence that there is not a sufficiency of protection for victims of criminal actions. Although in the cases of Lozado HX/51429/00 and Castro [2002] UKIAT 00199, the Secretary of State had conceded sufficient protection was not available, the Tribunal concluded that those appeals were distinguishable on their facts.

3.7.6 Conclusion. Criminality is a problem in Ecuador. However, for those claimants who fear ill-treatment, serious harassment or threats from criminals/a criminal gang, the authorities offer sufficient protection and the claimant also has the option of internal relocation which in most cases would be an effective and reasonable way to avoid such a threat. Therefore, claimants who apply on this basis are unlikely to qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded and should be certified

3.8 Fear of paramilitary/rebel groups

3.8.1 Some claimants may claim that they fear rebel or paramilitary groups that operate within Ecuador.

3.8.2 Treatment. In 2005, UNHCR expressed concern about the humanitarian situation along the Ecuadorian-Colombian border as the number of refugees fleeing the internal armed conflict in Colombia grew considerably. In November 2005, UNHCR reported that 600 Colombians had arrived in San Lorenzo in one weekend and by February 2006, UNHCR estimated that a quarter of a million people had fled Colombia for Ecuador.¹⁸ The growing number of incursions from both Colombian guerrilla groups and their paramilitary enemies into Ecuadorian territory in 2005 also reportedly added to regional concern about the extent to which the civil war in Colombia would affect public safety and the survival of democratic institutions.¹⁹

3.8.3 Sufficiency of protection. The effectiveness of the National Police was reportedly uneven in 2005, in part, due to its insufficient training, supervision, and resources. However, although there is corruption and incompetence in the police force, the security forces and the judiciary, there is no evidence to indicate that claimants would not be able to seek redress from the authorities were they to face ill-treatment at the hands of rebel or paramilitary groups that operate within Ecuador. Sufficiency of protection is therefore available.

3.8.4 Internal relocation. The law provides for freedom of movement within Ecuador and the Government generally respected this right in 2005.²⁰ Therefore, claimants who fear ill-treatment at the hands of rebel or paramilitary groups or who wish to flee the humanitarian situation along the Ecuadorian-Colombian border will be able to internally relocate to

¹⁷ USSD 2005 (Section 2)

¹⁸ UNHCR - The UN Refugee Agency. 'Colombia/Ecuador: Visit of UNHCR's Assistant High Commissioner for Protection' dated 3 February 2006, UNHCR - The UN Refugee Agency. 'Colombia/Ecuador: Upsurge in fighting along border, many hundreds more displaced' dated 15 November 2005 & AI Report 2006 - Americas: Ecuador

¹⁹ Freedom House. Freedom in the World 2005: Ecuador

²⁰ USSD 2005 (Section 2)

another part of Ecuador where they will not be at risk, and unless there are factors specific to the individual case it would not be unreasonable to expect them to do so.

3.8.5 Conclusion. There is no evidence to indicate that rebel or paramilitary groups operate on a large scale within Ecuador or pose a significant threat to its citizens. In addition, the authorities offer sufficient protection and the claimant also has the option of internal relocation which in most cases would be an effective and reasonable way to avoid such a threat. The grant of asylum or Humanitarian Protection in such cases is not appropriate and applications under this category are likely to be clearly unfounded and as such should be certified.

3.9 Prison conditions

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

3.9.2 Consideration. Conditions in prisons and detention centres were generally poor in 2005 and tended to be worse in the tropical coastal areas than in the temperate highlands. Overcrowding was reportedly a chronic problem in most facilities. According to the National Social Rehabilitation Board (CONAR), as of December 2005 12,394 prisoners nationwide were held in facilities built to hold 7,463. There were also reports that a number of prisons experienced serious outbreaks of disease during 2005, and medical care was often inadequate. The daily amount allocated for prison rations was one dollar per inmate. There were frequent reports during 2005 of strikes by prisoners in various detention centres and some inmates reportedly begun mutilating themselves to protest at their conditions.²¹

3.9.3 CONAR reported that 45 prisoners died in 2005, compared with 58 in 2004. Thirteen resulted from illness, 17 resulted from serious injury, 4 were suicides, and 11 did not have causes attributed. According to credible reports, in September 2005 prison guards shot and killed inmates Johnny Garcia, Luis Mora, Juan Cajape, and Jaime Sanchez in the Guayaquil prison. While the guards reportedly accused the inmates of attempting to escape, other inmates refuted this account and testified that the guards had beaten the four inmates before killing them. An investigation initiated by the attorney general was ongoing at year's end.²²

3.9.4 Conditions were reportedly better in the women's prison in Quito than in men's facilities during 2005. Pre-trial detainees were held with convicted prisoners. Although the Government permitted prison visits by independent human rights observers in most instances during 2005, it was reported that in some cases, human rights observers were not permitted to visit prisoners who had been placed in isolated cells after they allegedly had been beaten.²³

3.9.5 Conclusion. Whilst prison conditions in Ecuador are poor, conditions are unlikely to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Ecuador a grant of Humanitarian Protection will not generally be appropriate. Similarly, where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility, and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

²¹ USSD 2005 (Section 1) & BBC News. 'Ecuador responds to jail protests' dated 24 June 2005

²² USSD 2005 (Section 1)

²³ USSD 2005 (Section 1)

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave). Where the claim includes dependent family members consideration must also be given to the particular situation of those dependents in accordance with the API on Article 8 ECHR.
- 4.2** With particular reference to Ecuador the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave. and the API on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.
- 4.4 Medical treatment**
- 4.4.1** Claimants may claim they cannot return to Ecuador due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** In accordance with legislation introduced in 1998, the State safeguards the right to free health care for all persons and on no account can emergency care be refused in public or private establishments.²⁴ Amnesty International has reported, however, that during 2005 many women and children from marginalized communities still did not have access to health care guaranteed to them under 1998 legislation. In the same report, Amnesty International also noted that in some provinces health centre and hospital staff were reportedly not even aware of the legislation.²⁵
- 4.4.3** Mental health care is part of the primary health care system and is based on the policies of promotion, prevention, treatment and rehabilitation. However, the Government's mental health care programme is not widely implemented, mainly due to irregular funding, and treatment of severe mental disorders is not available at the primary level. According to the World Health Organisation, there were 2.1 psychiatrists, 0.5 psychiatric nurses and 29.1 psychologists working in the public sector per 100,000 of the population in 2005, though a large percentage of mental health care professionals work in the private sector. Essential therapeutic drugs are available in Ecuador.²⁶
- 4.4.4** UNAIDS has estimated that at the end of 2003 there were approximately 20,000 people living with HIV in Ecuador and the reported adult prevalence rate was 0.3 per cent. There is medical

²⁴ World Health Organisation (WHO) International Digest of Health Legislation – Ecuador: Political Constitution of the Republic of Ecuador. Adopted 5 June 1998

²⁵ (AI) Report 2006 – Americas: Ecuador

²⁶ WHO Mental Health Atlas 2005. Country Profile: Ecuador

treatment for HIV/AIDS in Ecuador and anti-retroviral drugs are available at a cost. However, in December 2004, Medics Sans Frontieres (MSF) reported that many Ecuadorians cannot obtain adequate medical treatment for HIV/AIDS because of insufficient resources, an inadequate number of qualified staff and limited political will. Nevertheless, a number of NGOs, including MSF, continue to work towards improving care for people with HIV/AIDS and providing access to anti-retroviral drugs.²⁷

4.4.5 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 Ecuadorian nationals may return voluntarily to any region of Ecuador at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Ecuador. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Ecuadorian nationals wishing to avail themselves of this opportunity for assisted return to Ecuador should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

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²⁷ UNAIDS - Joint United Nations Programme on HIV/AIDS: Ecuador, Medics Sans Frontieres (MSF). 'Ecuador: Pushing for more access to AIDS medicines' dated 12 May 2005, MSF. 'Ecuador: Getting care to those who need it' dated 6 December 2004 and FCO Country Profile 2006: Ecuador

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**Asylum and Appeals Policy Directorate
23 August 2006**