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# **COLOMBIA:**

## **INTERNAL DISPLACEMENT – POLICIES AND PROBLEMS**

**A Writenet Report by Natalia Springer**

**commissioned by United Nations High Commissioner for Refugees,  
Status Determination and Protection Information Section (DIPS)**

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## Acronyms

AUC	Autodefensas Unidas de Colombia – United Self-Defense Units of Colombia
CNR	Comisión Nacional de Reparación y Reconciliación – National Reconciliation and Reparation Commission
CODHES	Consultoría para los Derechos Humanos y el Desplazamiento – Consultancy for Human Rights and Displacement
COHRE	Centre on Housing Rights and Evictions
CONPES	Consejo Nacional de Política Económica y Social – National Council for Economic and Social Policy
DAS	Departamento Administrativo de Seguridad – Administrative Security Department
ELN	Ejército de Liberación Nacional – National Liberation Army
EPL	Ejército Popular de Liberación – Popular Liberation Army
FARC	Fuerzas Armadas Revolucionarias de Colombia – Revolutionary Armed Forces of Colombia
GDP	Gross Domestic Product
INCODER	Instituto Colombiano de Desarrollo Rural – Colombian Institute for Rural Development
INCORA	Instituto Colombiano de Reforma Agraria – Colombian Institute for Agrarian Reform
M-19	Movimiento 19 de Abril – 19th of April Movement
OCHA	(UN) Office for the Coordination of Humanitarian Affairs
ONIC	Organización Nacional Indígena de Colombia – National Indigenous Organization of Colombia
RSS	Red de Seguridad Social – Social Security Network
RUP	Registro Único de Predios – Unified Property Register
SNAIPD	Sistema Nacional de Atención Integral a la Población Desplazada – National System of Comprehensive Assistance to the Displaced Population
SUR	Sistema Única de Registro – Unified Registration System
UAO	Unidad de Atención y Orientación – Attention and Orientation Unit

## Executive Summary

The year 2006 is a decisive one for Colombia. The presidential and congressional elections provided opportunities for the people to assess the performance of the Uribe government and a large majority of voters have not only renewed the mandate of the President but also of the political forces supporting him in Congress. This double victory has given Uribe a broader manoeuvring space to address the manifold problems which persist in Colombia, in spite of some measurable improvements achieved during his first term. Paramount among these challenges is achieving a sustainable pacification by redefining the negotiations with the paramilitaries, reforming the current process of demobilization and reintegration of former combatants and starting a peace process with the guerrilla. In apparent recognition of this opportunity, the government has substantially modified its stance in recent months, showing itself more open to effective negotiations, including over a humanitarian exchange, with the insurgents. This will not be easy, as the narcotics industry and trade as well as other illicit businesses continue to provide major incentives to armed actors motivating them to struggle for control over territory and strategic routes.

While the FARC guerrilla's tactics appear to have changed insofar as they refrained from actively sabotaging the elections this year, they remain adamant that they will not negotiate with a government they consider illegitimate. The FARC are also intensifying their campaign against the smaller ELN, which has already entered into talks with the Uribe administration. The Armed Forces on their part are continuing their counter-insurgency operations which cost billions of dollars every year and have produced only limited results so far. The large-scale demobilization of paramilitary groups has had a positive impact on the development of political violence, including a decrease in internal displacement figures. However, there is a real danger that this effect might not be permanent, due to a lack of coherent government policies, as well as growing anarchization of the violence in several parts of the country. Demobilized paramilitaries can easily be reactivated to form criminal gangs, death squads, hit men or guerrillas, especially if they have no viable alternatives. In such a scenario, the conflict could rapidly return to its former brutality, including particularly violent means such as massacres targeting the long-suffering civilian population. More displacement and large humanitarian emergencies would be the inevitable consequence.

The situation with regard to the properties of IDPs remains very worrying. It is estimated that about four million hectares of land have been abandoned by forcibly displaced people, amounting to three times the quantity of territory redistributed in all public agrarian reforms since 1961. More than 90% of IDP households have simply abandoned their homes, while the rest have sold under pressure or coercion from armed actors who invaded their properties and threatened them openly. The state has gradually made some mechanisms available for the temporary protection of abandoned IDP properties, but they are ineffective and overwhelmed by the magnitude of the crisis. A Unified Property Registry, indispensable for protecting displaced owners, was only set up in 2005. The government agency charged with attending to rural property issues, INCODER, is understaffed and clearly lacks funds; its whole budget for rural investment in 2004 covered only one percent of estimated IDP needs. The results with regard to the distribution of land have been minimal in coverage and impact and remain concentrated on small pilot projects. Too often, victims of forced displacement are left to themselves to see how they can salvage anything from their lost properties, which

quite frequently become part of large agro-industrial development schemes backed by paramilitary firepower and official silence. The government of President Alvaro Uribe appears unable so far to assemble an effective and credible state policy to address this issue, as it has dedicated most of its resources to humanitarian emergency response, which has in fact improved considerably. Nevertheless, this limited focus has gone at the expense of finding long-term solutions for IDPs (resettlement or return).

Measures ostensibly designed as solutions instead compound the problem. A case in point, the “Justice and Peace” law adopted in 2005, has provided for strictly limited compensation for victims, while leaving untouched those who make a handsome profit by taking over abandoned IDP properties. In a positive development, the Constitutional Court, in a recent ruling, has remedied some of the most glaring defects of this law, by declaring some parts unconstitutional. Especially important for the issue of reclaiming lost property are the following: a broader definition of victims/claimants, an extension of civil liability to all members of an illegal group which is found guilty of committing violations, and the striking down of limitations to the duties of restitution and reparation to the victims. This decision has to be seen in the context of the increasingly active role the Constitutional Court has assumed in the control of government IDP policy. A landmark ruling (T-025-2004) has been the source of many improvements observed over the last two and a half years. Under pressure from the Court, the government has also promised on 29 November 2005 that it would substantially increase the budget for IDP support, which should rise to 818,000 million pesos (US\$ 362.16 million) in 2006, with an undertaking that a total of 5,100 billion pesos (US\$ 2.26 billion) will be spent over the next five years. Many of the Court’s orders addressing what it has termed an “unconstitutional state of affairs” still need to be implemented, however. Other government agencies, such as the Attorney General’s Office (*Procuraduría General*) which often takes the lead in controlling (and criticizing) government action, also work to improve the critical situation of internal displacement in Colombia.

International actors are of crucial importance in alleviating the effects of the Colombian displacement tragedy, not only by being responsible for the provision of a large part of the humanitarian assistance available to IDPs, but also by setting standards (in particular the Pinheiro principles) by which the government’s performance can be evaluated.

## 1 Introduction

The Republic of Colombia occupies the north-west corner of South America, has a population of 42.95 million, and borders on Panama, Ecuador, Peru, Brazil and Venezuela. It is the only South American country with access to both the Caribbean and the Pacific Ocean. The country has historically been characterized by a low level of national integration and strong regional autonomy, which found visible expression in contending urban centres like Bogotá, the political capital, Medellín, the economic hub, Cali in the Valle del Cauca, and the important port city of Barranquilla on the Caribbean coast. None of these rivalling regions has been able to clearly establish its hegemony over the others, and the numerous civil wars of the nineteenth century further accentuated the differences.

In the first half of the twentieth century, a fragile elite consensus enabled the country to modernize its socio-economic structures, but this consensus broke down in the late 1940s. What followed was a period of extreme partisan violence (*La Violencia*) which cost the lives of an estimated 200,000 Colombians. This was also the first time that the social order in rural areas broke down under the impact of partisan terror and an official scorched earth policy, which forced thousands of peasants to abandon their lands or sell them at prices far below their value.<sup>1</sup> It has been estimated that around 393,000 farms were abandoned (40% of the total), and some two million people (more than 20% of the rural population) were forcibly displaced between 1948 and 1966.<sup>2</sup> These displaced peasants either moved on to distant zones of new colonization or joined the slum dwellers and unemployed in the urban periphery. One of the lasting consequences of the *Violencia* was a considerable redistribution of land, from which businessmen, members of armed vigilante groups and other intermediaries were able to profit.<sup>3</sup> Another durable legacy of this episode was the creation of memories of hate, desire for vengeance and lasting distrust among the victims and their descendants.<sup>4</sup>

After a relatively peaceful interlude under successive bipartisan Liberal-Conservative Frente Nacional (National Front) governments (1958-1974), which restored elite consensus and contributed to social and economic development, armed conflict returned with the appearance of left-wing insurgent groups. These included Fuerzas Armadas Revolucionarias de Colombia (FARC – Revolutionary Armed Forces of Colombia), Ejército de Liberación Nacional (ELN – National Liberation Army) and Ejército Popular de Liberación (EPL – Popular Liberation Army). Later, additional guerrilla groups such as Movimiento 19 de Abril (M-19 – 19th of April Movement) and the indigenous-based Movimiento Armado Quintín Lame (Quintín Lame Armed Movement), were founded, and right-wing paramilitary groups sprang up to fight against the insurgency. These were later, in 1997, to join under the umbrella name of Autodefensas Unidas de Colombia (United Self-Defense Units of Colombia – AUC). In

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<sup>1</sup> Sánchez, G., *The Violence: An Interpretative Synthesis*, in C. Bergquist, R. Peñaranda and G. Sánchez (eds.), *Violence in Colombia*, Wilmington: Scholarly Resources Books, 1992

<sup>2</sup> Oquist, P., *Violence, Conflict, and Politics in Colombia*, New York: Academic Press, 1980

<sup>3</sup> Ortiz Sarmiento, C.M., *Estado y subversión en Colombia: La violencia en el Quindío Años 50*, Bogotá: Fono Editorial CEREC, 1985, pp. 309-321

<sup>4</sup> Sánchez, G., *Guerras, memoria e historia*, Bogotá: Instituto Colombiano de Antropología e Historia, 2003

spite of the demobilization of some of these armed actors in the early nineties, the war has intensified dramatically over the last 20 years, and the irregular combat groups have grown in size, resources and military strength. Concomitantly with a weak and ineffective state response and the increasing brutality of the violence, the conflict has deteriorated and grave violations of human rights and international humanitarian law have become common. The escalating fighting has produced what is widely recognized as one of the worst humanitarian emergencies in the world, characterized by massive forced displacement. Already in 1999, international organizations were asserting that the phenomenon of internal displacement had reached such proportions in Colombia as to constitute a humanitarian catastrophe.<sup>5</sup>

## **2 Recent Events and Developments in the Armed Conflict**

### **2.1 The Armed Conflict and Human Rights Violations**

It is difficult to overestimate the cost of Colombia's decades-long internal conflict. Many thousands have been killed, millions displaced and at least a million people, many among them the most educated, enterprising citizens, have left Colombia permanently. By some estimates, the armed conflict is reducing annual GDP growth by at least two percentage points, and the lack of trust keeps private investment much below the country's potential.<sup>6</sup>

When they were first organized in the 1960s, the Colombian guerrilla groups had clearly identified social and ideological goals and a socialist and agrarian reform programme, which however became blurred over time. The conflict became more complicated with the involvement of the illicit narcotics business and the rise of new participants. It now involves multiple actors, with varying multi-faceted scenarios, and is highly regionalized. The guerrillas represent a national project but with strong regional connections, while the attempt to fuse the regional paramilitary groups into the national AUC under the leadership of Carlos Castaño has failed and is now becoming increasingly irrelevant with the formal dissolution of most of these groups. While the urban centres have generally been considered as "islands of legitimacy", where state institutions and public services are relatively coherent and effective, illegal armed actors have brought large "niches of factional power" under their control, the paramilitaries in the North, the guerrillas in the South-East and South-West. The rest of Colombia is territory in contention, and subject to the predatory activities of armed actors, such as extortion, money laundering, smuggling, counterfeiting, trafficking in drugs, arms and persons, kidnapping, sabotage and robbery.<sup>7</sup>

Although the armed conflict has spread to almost all municipalities, the geography of violence has been strongly localized, with some departments, regions and towns much

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<sup>5</sup> Organization of American States, *Tercer Informe de la Comisión Interamericana de Derechos Humanos sobre la situación de los derechos humanos en Colombia*, Bogotá: Comisión Colombiana de Juristas, 1999, p. 213

<sup>6</sup> Giugale, M., Lafourcade, O., and Luff, C. (eds.), *Colombia: The Economic Foundations for Peace*, Washington: World Bank, 2002

<sup>7</sup> Palacios, M., *Between Legitimacy and Violence: Colombia's Three Countries*, *Harvard Review of Latin America*, Spring 2003, pp. 18-20

more affected than others.<sup>8</sup> The most important factors which drove the expansion of the armed confrontation in the countryside so far have been the interaction of the strategies and politico-military plans of each group, the different degree to which each region was vulnerable to armed conflict and the direction of the contending forces' search for revenue.<sup>9</sup>

In terms of strategy, the state security forces have traditionally maintained a defensive posture, trying to keep the insurgency away from the economic and political centres, while leaving the sparsely populated colonization zones to the guerrilla. Under the government of Alvaro Uribe, the Army has reversed this posture and launched a number of major offensive operations, such as under the US-supported "Patriot Plan". The paramilitary "self-defence" groups, which appeared in the early 1980s, started a terror offensive in the 1990s against guerrilla-controlled territory in the periphery, effectively weakening the insurgents' power base by attacking the civilian population. After forcing out all "suspicious" inhabitants, the paramilitaries have typically set up their own model of "armed colonization" and land redistribution in the "conquered" rural municipalities (Córdoba, Urabá, Magdalena Medio).<sup>10</sup> The ELN in particular has suffered serious setbacks through these tactics, and is currently negotiating with the government over a possible settlement. It remains to be seen if the recent demobilization of the paramilitary groups will be permanent and what will happen to their territories.<sup>11</sup> The strongest guerrilla group, the FARC, which participated in several unsuccessful peace talks with previous governments, began expanding its military activity towards the centre of the country from the late 1990s, starting out from its strongholds in the southern and south-eastern colonization zones.<sup>12</sup> The guerrilla's operations aim at consolidating their hold on their traditional territories and supply routes, encroaching on and pillaging the more developed areas of central Colombia, disrupting communications and energy supply lines and recovering territory lost to the paramilitaries.<sup>13</sup> In response to recent security force offensives, the FARC have regrouped and now put emphasis on smaller, though no less effective ambushes, mine-laying and sabotage operations.<sup>14</sup>

The degree to which Colombian municipalities are vulnerable to armed violence is not directly related to poverty, but empirical analyses show a clearly positive correlation between inequality and violence. This applies especially to rural areas where sudden

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<sup>8</sup> Gaitán Daza, F., Una indagación sobre las causas de la violencia en Colombia, in M. Deas and F. Gaitán Daza, *Dos ensayos especulativos sobre la Violencia en Colombia*, Bogotá: FONADE, 1995

<sup>9</sup> See, United Nations Development Programme, *Colombia's Conflict: Pointers on the Road to Peace, National Report on Human Development for Colombia 2003*, Bogotá: UNDP, 2003, pp. 65-6

<sup>10</sup> León, J., *País de plomo: Crónicas de guerra*, Bogotá: Aguilar, 2005

<sup>11</sup> International Crisis Group, *Demobilising the Paramilitaries in Colombia: An Achievable Goal?* Bogotá, 5 August 2004

<sup>12</sup> Echandía Castilla, C., Evolución reciente del conflicto armado en Colombia: La guerrilla, in J. Arocha, F. Cubides and M. Jimeno (eds.), *Las violencias: Inclusión creciente*, Bogotá: Universidad Nacional, Centro de Estudios Sociales, 1998, pp. 35-65

<sup>13</sup> Rabasa, A. and Chalk, P., *Colombian Labyrinth: The Synergy of Drugs and Insurgency and its Implications for Regional Stability*, Santa Monica: RAND Corporation, 2001; Corporación Observatorio para la Paz, *Las verdaderas intenciones de las FARC*, Bogotá: Intermedio Editores, 1999

<sup>14</sup> Rangel, A., La sostenibilidad militar de la seguridad. Paper presented at Foro Sostenibilidad de la Seguridad Democrática, Bogotá, 23 February 2005



unequally distributed economic growth and social transformation create sharp contrasts between the newly rich and the poor, while state institutions fail to regulate the ensuing conflicts. This phenomenon can be observed in frontier and colonization zones, with booming – often illicit – economies (resource extraction, smuggling), precarious landholding, and a growing population migrating in from other parts of the country and potentially with high gains at stake. In such a situation homicide rates are found to rise sharply.<sup>15</sup> In other words, the state is unable (in the case of legal bonanzas) or unwilling (in the case of illegal ones) to assume its role as mediator. The resulting power vacuum then attracts other actors (guerrilla, paramilitaries or criminals), who step in and violently compete among themselves for power. Therefore, armed groups act not only as violent intruders in the regions, but also as creators and enforcers of alternative social models, which draw in the population and address social conflicts through authoritarian forms of dispute resolution.<sup>16</sup>

The third factor driving the conflict is the revenue-seeking behaviour of the illegal armed groups<sup>17</sup>. War is a costly activity which forces all sides constantly to search for new sources of income. A resource-rich economy such as Colombia's facilitates this task, and regional economic upswings like those associated with oil in Arauca, coca in Putumayo, Guaviare and Caquetá, bananas in Urabá, coal in César and opium poppy in the Andean Cordilleras have been used by the different illegal armed actors to sustain their operations.<sup>18</sup> The counter-strategy of the Colombian security forces has been to combat these revenue-seeking activities by attempting to demolish the basis for the parallel economies, e.g. through the aerial coca eradication programme in zones under guerrilla control.<sup>19</sup>

The current armed conflict thus is both a continuation of Colombian history and a new phenomenon. Long-standing socio-economic conflicts over land and resources waged by different regional forces, who always valued local power above any abstract concept of a nation, overlap and intersect with more recent urban conflicts, where the elites suppress the marginalized sectors, and with a conflict between organized crime and the state.<sup>20</sup> In this many-faceted violent struggle for power and profit, regional and local factors often play a more important role than national considerations.<sup>21</sup> There may be specific ways in which the armed actors interact with the local population, there might be overlapping local and regional conflicts, and even the definition of the enemy may

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<sup>15</sup> Bejarano, J.A. *et al.*, *Colombia: Inseguridad, violencia y desempeño económico en las áreas rurales*, Bogotá: FONADE, 1997

<sup>16</sup> Aguilera Peña, M., La justicia guerrillera y la población civil 1964-1999, *Bulletin de l'Institut Francais des études andines*, Vol. 29, No. 3, 2000, pp. 435-61

<sup>17</sup> Collier, P., Doing Well out of War: An Economic Perspective, in M. Berdal and D.M. Malone (eds.), *Greed and Grievance: Economic Agendas in Civil Wars*, Boulder CO: Lynne Rienner, 2000

<sup>18</sup> Rangel, A., *Colombia: guerra irregular en el final del siglo*, Bogotá: Tercer Mundo Editores, 1998

<sup>19</sup> Zuluaga Nieto, J., La guerra interna y el desplazamiento forzado, M. Nubia Bello (ed), *Desplazamiento forzado: dinámicas de guerra, exclusión y desarraigo*, Bogotá: Universidad Nacional de Colombia, 2004

<sup>20</sup> Fischer, T., La constante guerra civil en Colombia in P. Waldmann and F. Reinares (eds.), *Sociedades en guerra civil*, Barcelona: Paidós, 1999

<sup>21</sup> Livingstone, G., *Inside Colombia: Drugs, Democracy, and War*, New Brunswick: Rutgers University Press, 2004

vary from region to region.<sup>22</sup> These geographical differences are important in order to account for the conflict dynamics and the resulting pattern of human rights violations, as well as plan adequate solutions.

Human rights violations in Colombia do not only occur in the context of the armed conflict, but there is a close connection between much of the registered violence and the ongoing fighting. The use of terrorist tactics by paramilitaries and guerrillas has brutalized the conflict, and the extent of civilian casualties has tended to increase in parallel.<sup>23</sup> It has been well established that all parties, including the Colombian Armed Forces, share responsibility for human rights violations and violations of international humanitarian law.<sup>24</sup> As noted by the United Nations High Commissioner on Human Rights, the human rights situation continues to be critical. Frequent occurrence of torture and disappearances, increasing numbers of extrajudicial executions attributed to members of the security forces, arrests and mass searches carried out without a proper legal basis, continuing links between public officials and the illegal armed groups, particularly the paramilitaries, persistent breaches of international humanitarian law by paramilitaries and guerrilla groups, in particular multiple homicides and hostage-taking, indiscriminate attacks on the civilian population, massacres, acts of terrorism, forced displacements, use of antipersonnel mines, recruitment of minors, slavery, and acts of sexual violence are some of the most egregious reported breaches.<sup>25</sup>

Nevertheless, in spite of many problems, the ongoing negotiations between the government and the paramilitaries have had beneficial results. Taking out of circulation thousands of combatants and weapons has produced a reduction in the amount of registered violence, including of internal displacement. The fact that the demobilization of the great majority of paramilitary groups has not brought violence to a standstill, shows that it is being fuelled by numerous other factors as well, such as guerrilla violations and violent crime. The government now needs to implement a strategy to consolidate the gains from paramilitary demobilization, while at the same time finding a sustainable solution for the other violent actors which are still in operation. The first will require a substantial change of government policy regarding the process with the AUC, which has been deeply flawed and has not yet reached the point where its gains are irreversible. If measures to put it back on track are not urgently introduced, paramilitary violence may rebound, become anarchic or transform itself into organized crime.<sup>26</sup> As to the second aspect, President Uribe has recently sent some encouraging signals to the FARC leadership, showing interest in serious negotiations, including on a humanitarian “prisoner exchange”, something which had been anathema to the

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<sup>22</sup> González, F.E., Bolívar, I.J. and Vázquez, T., *Violencia política en Colombia: De la nación fragmentada a la construcción del Estado*, Bogotá: CINEP, 2003

<sup>23</sup> Vargas Meza, R., The FARC, the War and the Crisis of the State, *NACLA Report on the Americas*, Vol. 31, No. 5, March/April 1998; Restrepo, J.A. and Spagat, M., *El Conflicto Colombiano: ¿Hacia dónde va?* Bogotá: Centro de Recursos para el Análisis del Conflicto, 2005

<sup>24</sup> Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law*, New York, 1998

<sup>25</sup> United Nations, Commission on Human Rights, Report of the High Commissioner for Human Rights on the Situation of Human Rights in Colombia, E/CN.4/2005/10, 28 February 2005

<sup>26</sup> See, Springer, N. *Desactivar la Guerra: Alternativas audaces para consolidar la paz*, Bogotá: Aguilar, 2005

government until some months ago. The guerrillas' response has been equally surprising, signalling a readiness to talk under certain conditions, after having long rejected any suggestion of direct negotiations with President Uribe.<sup>27</sup>

## 2.2 Large-scale Humanitarian Crisis

The civilian population has been a primary objective in the war for territorial control. Civilian inhabitants of conflict zones find themselves converted into targets for coercion and violence by different armed actors. The picture is complicated by the fact that many armed groups operate their own civilian support networks, made up of informers, declared and undeclared sympathizers, traders and administrators. This has generated a general atmosphere of insecurity, with shifting frontiers and alignments, in which all armed actors show a high degree of mistrust, which not infrequently leads to internal purges of real or suspected infiltrators and traitors.<sup>28</sup>

Against this background it is perhaps not surprising that the various armed actors have frequently declared that all inhabitants of a certain area or zone are guerrilla, or paramilitary, "supporters" and proceeded with large-scale expulsions. Terror has been used as a calculated war strategy aimed at evicting potentially hostile elements and creating a homogenous "socially cleansed" area, thus facilitating control and inhibiting the enemy's attempts to regain a foothold.<sup>29</sup> Practices such as attacks against civilian targets, hostage taking, public killings, torture and massacres, and other forms of violence or specific threats against the rural population are part of this process and directly responsible for the involuntary displacement of thousands. In disregarding the essential humanitarian principle of distinction between combatants and non-combatants, all armed actors ignore that the overwhelming majority of the people so targeted are not in any way implicated in the conflict.<sup>30</sup> None of the conflicting parties respects this rule.

In addition to the forced displacement which occurs as a "deliberate strategy of war",<sup>31</sup> people also abandon their homes for reasons which are more incidental to the armed conflict, such as fear of getting caught in the cross-fire, a desire to escape from being blackmailed or kidnapped (including forced recruitment), frustration with the lack of opportunities or desertion from an irregular armed group. There is also a growing number of secondary displacements from one town or city to another for a variety of reasons, among them the lack of security.

The accumulated effect of these developments has converted Colombia into the country with the largest population of concern to UNHCR in the world. In a recent visit, Assistant High Commissioner Judy Cheng-Hopkins expressed concern that more people leave their homes every year to flee the violence. The situation was "extremely

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<sup>27</sup> BBC News, FARC 'Wants Colombia Peace Talks', 25 June 2006, <http://news.bbc.co.uk/2/hi/americas/5112418.stm> [accessed June 2006]

<sup>28</sup> See testimonies in González Uribe, G., *Los niños de la guerra*, Bogotá: Planeta 2002 and in Yo sobreviví la masacre de Tacueyó, *Semana* [Bogotá], 5 December 2005

<sup>29</sup> Pécaut, D., *Guerra contra la sociedad*, Bogotá: Espasa Hoy-Planeta, 2001

<sup>30</sup> Agence France Presse, Colombian Rebels Empty a Township of its 5,000 Inhabitants, 1 November 2002

<sup>31</sup> Deng, F., Statement by the Representative of the United Nations Secretary-General on Internally Displaced Persons. Presented at International Seminar on Displacement: Conflict, Peace and Development, organized by CODHES, Bogotá, 30 May 2000

worrying”, she said, “especially because the numbers show no sign of abating”. But the UN official also recognized recent improvements in state response capacity and believed the country could turn the corner. “Colombia is a middle-income country, with strong state institutions. With the help of the international community, Colombia has the means to get out of this humanitarian tragedy that has gone on for so long”, she said.<sup>32</sup>

The vast majority of IDPs originate from rural areas, and their destination is usually a town, a larger urban centre or a metropolis like Bogotá. No matter what the circumstances, each instance of displacement involves traumatic episodes of suffering and pain, which motivate people to abandon everything, including their life plans and sense of security, for an uncertain future.<sup>33</sup> Since 1985 the conflict has created over three million displaced, almost 7% of the current population.<sup>34</sup>

### 2.3 State Response Capacity

The different manners and forms of internal displacement reflect the irregular and dispersed territorial evolution of the conflict. It is important to differentiate between massive displacement of entire communities, which often takes place in remote parts of the country with difficult access, and the slow and trickling stream of individual and family IDPs into the larger urban areas.<sup>35</sup> Almost all Colombian municipalities are affected by forced displacement, either expelling or receiving IDPs. The sheer magnitude of the problem would be a major challenge for the response capacities of any state and more so for Colombia, a historically weak state whose official organs are underrepresented in many parts of the countryside and in the urban periphery.<sup>36</sup>

The impact on receiving communities is highly variable. It is clearly different for intermediate departmental capitals, like Sincelejo (Sucre) with around 230,000 inhabitants or Valledupar (César) with approximately 270,000, to have to accommodate between 50,000 and 70,000 IDPs over the last ten years than it is for metropolis like Bogotá (7.6 million) or Medellín (3.0 million) to receive 80,000 to 100,000 over the same period. More dramatic still is the situation of Florencia (112,000), El Carmen (79,000) or Quibdó (73,000), which have registered 30,000-35,000 IDPs each.<sup>37</sup> It is hardly surprising that the local first responders to an IDP crisis (mayors, ombudsmen, and police commanders) are often overwhelmed by the inflow of displaced people and need to apply immediately to national and international agencies to come to their aid.

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<sup>32</sup> United Nations High Commissioner for Refugees, UNHCR Official Says Colombia Can Ease Humanitarian Tragedy with Help, 13 June 2006 (news stories), <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=448ecd7a4> [accessed June 2006]

<sup>33</sup> See Molano, A., *Desterrados: Crónicas del desarraigo*, Bogotá: El Ancora, 2001

<sup>34</sup> International Displacement Monitoring Centre, *Global Statistics*, [http://www.internal-displacement.org/8025708F004CE90B/\(httpPages\)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000](http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000) [accessed February 2006]; CODHES, Se reabre el debate sobre el desplazamiento forzado en Colombia, 30 November 2005 (press statement)

<sup>35</sup> Meertens, D. *Colombia: Internally Displaced Persons and the Conditions for Socio-Economic Integration*, Writenet for UNHCR, October 2002

<sup>36</sup> Rangel, La sostenibilidad, makes the point that El Salvador at the height of its civil war had twice as many soldiers per 100,000 inhabitants as Colombia and that Bolivia currently has more policemen relative to population than Colombia

<sup>37</sup> For statistics of displacement see, Colombia, Office of the President, Sistema Único de Registro, *Informe*, 2 December 2005; background population figures from Instituto Geográfico Agustín Codazzi, *Atlas de Colombia*, 5th ed., Bogotá, 2002

In the large urban centres privately-run humanitarian or Church institutions have often been the first to receive the newly arrived IDPs, trying to provide them at least with provisional shelter and emergency food aid until they can be relocated.<sup>38</sup> Only recently, the RSS (Red de Seguridad Social – Social Security Network) has begun opening new Attention and Orientation Units (Unidades de Atención y Orientación, UAO) for IDPs in the urban periphery of the large cities. As of June 2004, 23 of these units were operational.<sup>39</sup> Only half of all officially registered internally displaced people actually receive public emergency humanitarian aid, and in the majority of cases only for a maximum of three months.<sup>40</sup> In addition this figure ignores all those who have never entered the system at all, because of fear, lack of information or other reasons, e.g. the attitude of some officials who attempt to attribute their relocation to economic reasons rather than to the armed conflict.<sup>41</sup>

In spite of the fact that displacement was already a mass phenomenon by the early 1990s, state institutions initially showed great reluctance to take action on behalf of the affected population. Only in July 1997 Congress finally passed legislation to address the issue. This was Law 387 of 1997 “for the prevention of forced displacement and the support, protection and socioeconomic stabilization of the population displaced by the violence”.<sup>42</sup> Law 387 also defined who could benefit from such assistance and proceeded to establish a National System of Comprehensive Assistance to the Displaced Population (SNAIPD).<sup>43</sup> However, the “system” originally consisted only in the requirement that all public and private entities active in IDP support come together and integrate their efforts, while no specific coordination mechanisms were envisaged. The law compounded the problem by creating several new institutions, observatories and information systems with unclear competencies and division of labour, among them an advisory National Council for Comprehensive Assistance to the Displaced Population, a Fund for the Comprehensive Assistance to the Displaced Population and decentralized committees at the municipal, district and departmental levels, intended to respond directly to immediate humanitarian emergencies.<sup>44</sup> Finally, and controversially, Article 15 of the law established that IDPs are entitled to emergency humanitarian assistance for a maximum of three months.<sup>45</sup>

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<sup>38</sup> Director of a Catholic temporary reception centre for displaced people, Bogotá. Personal interview, 26 December 2003

<sup>39</sup> United Nations High Commissioner for Refugees, *Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia: Agosto 2002 – Agosto 2004*, Bogotá, 2005, p. 173

<sup>40</sup> Human Rights Watch, *Colombia: Displaced and Discarded: The Plight of Internally Displaced Persons in Bogotá and Cartagena*, New York, October 2005

<sup>41</sup> CODHES, La política del avestruz, *Boletín*, No. 58, 1 May 2005

<sup>42</sup> Colombia, Congress, Ley 387 de 1997, 18 July 1997, *Diario Oficial*, No. 43,091, 24 July 1997

<sup>43</sup> For the specific definitions, see, Colombia, Red de Solidaridad Social, *Cifras sobre el desplazamiento forzado en Colombia*, Bogotá, 2002

<sup>44</sup> CODHES, ¿Una Ley para desplazados?, in its *Un país que huye: Desplazamiento y violencia en una nación fragmentada*, Bogotá: CODHES; UNICEF, 1999, pp. 171-3

<sup>45</sup> Vidal, R., Análisis de los aspectos operativos de la Ley 387 de 1997 in C. Tassara *et al.* (eds.), *El desplazamiento por la violencia en Colombia: Experiencias, análisis y posibles estrategias de atención en el departamento de Antioquia*, Bogotá: CISP, 2000

On the positive side, the law constituted a first official recognition that internal displacement was a problem of enormous magnitude and that the state was responsible both to prevent further displacement and to provide assistance to those who had been displaced. Unfortunately, the practical implementation of these goals proved exceedingly difficult, as IDP figures skyrocketed. Under President Andrés Pastrana (1998-2002), the government recognized that the existing institutions were unable to cope with internal displacement. IDP support was reorganized through CONPES (Consejo Nacional de Política Económica y Social – National Council for Economic and Social Policy) Document 3057 of November 1999 and Decree 2569 of 12 December 2000, which concentrated the task of coordination and strategic planning in the Presidency's Red de Seguridad Social (RSS) and created the Sistema Único de Registro (SUR – Unified Registration System). The decentralized committees envisaged by Law 387 of 1997 were replaced by new structures called *mesas permanentes de trabajo* (“permanent working tables”) in major urban centres.<sup>46</sup>

Notwithstanding these positive steps, IDP policy under Pastrana remained severely underfunded, inefficient in preventing further displacement, precarious in attending to the displaced communities' needs and hopelessly behind events.<sup>47</sup> During the period 2000-2003, the maximum coverage reached by public service institutions for the IDP population was only 30.9%.<sup>48</sup> 2002 marked an all-time high in people, who had to abandon their homes because of the violence, 412,553, according to CODHES.<sup>49</sup>

Soon after assuming office, the government of Alvaro Uribe Vélez published its National Development Plan 2002-2006, which identified internal displacement “due to its magnitude and characteristics, as the principal humanitarian problem facing Colombia as a consequence of the armed conflict”.<sup>50</sup> Accordingly, the administration pledged to reinforce the prevention of displacement, better protect the population at risk, improve emergency response capacities (nutrition, shelter, health), create the conditions for return and strengthen the SNAIPD. In spite of this unequivocal commitment, which was also enacted into law (Law 812 of 2003), IDP policy remained handicapped by a restricted focus on meeting the immediate needs of the affected population, and even within these parameters, many sectors (housing, job creation, education, health care) showed serious deficiencies.<sup>51</sup>

The lack of a central government authority responsible for all IDP matters continues to be a problem, with the consequence that “nobody feels responsible”.<sup>52</sup> There has also been criticism that government policy remains informed by the approach that internal

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<sup>46</sup> Centro de Investigación y Educación Popular, *El desplazamiento forzado en Colombia durante el gobierno de Pastrana: Tendencias del fenómeno y análisis de las políticas públicas*, Bogotá, 2001

<sup>47</sup> CODHES, Sin rumbo: La política de Pastrana frente al desplazamiento forzado, *Boletín*, No. 32, 7 September 2000

<sup>48</sup> Colombia, Contraloría General de la República, La política pública sobre desplazamiento forzado en Colombia: ¿Sólo buenas intenciones?, *Economía Colombiana*, No. 307, 2005, pp. 104-13

<sup>49</sup> CODHES, Comportamiento de desplazamiento, 1985-2005, por año, Bogotá, December 2005

<sup>50</sup> Colombia, Office of the President, *Bases del Plan Nacional de Desarrollo 2002-2006*, Bogotá, 2003, p. 78, <http://www.presidencia.gov.co/planacio/> [accessed February 2006]

<sup>51</sup> United Nations High Commissioner for Refugees, *Balance de la política pública de prevención*

<sup>52</sup> Human Rights Watch, *Colombia: Displaced and Discarded*

displacement is a “mysterious” and “inexplicable” event, which happens to unfortunate and isolated individuals who have to be taken care of, for a short period of time and in a paternalistic and fragmentary way.<sup>53</sup> Numbers for the first two years of the Uribe government show that 200,000 families received emergency humanitarian assistance, while only 40,000 were permanently resettled or returned.<sup>54</sup> On the other hand, the coverage of emergency assistance has substantially improved.

In 2004, the Constitutional Court, petitioned by hundreds of IDPs, who alleged that their constitutionally guaranteed rights were being violated through deficient or absent state action, proceeded to undertake a comprehensive revision of government policy in this matter. The result of this probe was the ruling T-025 of 2004, handed down on 22 January 2004, which pointed to severe structural faults in public provision for IDPs, came to the conclusion that the situation was manifestly unconstitutional and proceeded to prescribe a number of binding remedies, which will be analysed below.<sup>55</sup> This decision forced the government’s hand, and produced a number of important initiatives, among them the presentation of the National Plan for Comprehensive Assistance to the Displaced Population. Nevertheless, the Court was dissatisfied with the pace and scope of the reforms and in the course of 2005 issued several supplementary orders to different entities which were requested to increase their efforts.<sup>56</sup> This pressure has quickened the pace of reform, and also led to the government promise on 29 November 2005 that it would substantially increase the budget for IDP support, which should rise to 818,000 million pesos (US\$ 362.16 million) in 2006, with an undertaking that a total of 5,100 billion pesos (US\$ 2.26 billion) will be spent over the next five years.<sup>57</sup>

#### **2.4 The Plight of IDPs and Refugees**

The exposed and unprotected condition of the IDP population leaves them in a situation of extreme vulnerability. Psychosocial and sociological studies have identified the following consequences of displacement by violence.<sup>58</sup>

- Short and medium-term effects: stress, anxiety, paranoia, loss of self esteem, depression, anger, feelings of impotence, desire for vengeance, psychosomatic illnesses, confusion, and despair.
- Long-term effects: worsening of living conditions, loss of regional/local identity, deculturization, destruction of traditional forms of organization, unemployment, family disintegration, increase of social barriers, change of traditional family roles,

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<sup>53</sup> Villota M., M.E., El desplazamiento: un calvario que no termina, *Revista En Nombre de ...*, No. 2, May 2005

<sup>54</sup> United Nations High Commissioner for Refugees, *Balance de la política pública de prevención*, p.164

<sup>55</sup> See, Colombia, Constitutional Court, *Sentencia T-025 de 2004*, 22 January 2004

<sup>56</sup> Colombia, Constitutional Court, Tercera Sala de Revisión, Órdenes finales para el cumplimiento de la sentencia T-025-2004, 13 September 2005 (press statement)

<sup>57</sup> Presupuesto: Por fin, buenas noticias, *Semana* [Bogotá], 5 December 2005, pp.82-3

<sup>58</sup> See Nubia Bello, M., Martín Cardinal, E. and Giovanni Arias, F. (eds.), *Efectos psicosociales y culturales del desplazamiento*, Bogotá: Universidad Nacional de Colombia, 2000; Cervellin, S. and Uribe, F., *Desplazados: Aproximación psicosocial y abordaje terapéutico*, Bogotá: Secretariado Nacional de Pastoral Social de la Conferencia Episcopal de Colombia, 2000



transformation of rural landholding patterns, rupture of social and affective networks, alienation, loss of credibility of public institutions, political disenfranchisement.<sup>59</sup>

Most IDPs suffer a total loss of their status as citizens. Not only are they forced to leave almost all their personal belongings behind, often the result of many years of hard work, and see their individual life projects destroyed, but in addition their collective forms of organization, participation and identity are disrupted. The experience of violence creates a profound trauma which is compounded by the general indifference or even hostility shown by the rest of society. A fact noted by many observers is the apparent paradox of the near-complete “invisibility” of hundreds of thousands of internally displaced people in Colombia. In a country which has invented a special discourse to neutralize or deny the proximity of war, they are the most visible expression of the excessive violence reigning in the countryside, and as such their existence is collectively denied, their experience negated and they themselves treated as “persons who live in another world”.<sup>60</sup> This pathological attitude of many fellow-citizens often forces IDPs to hide their condition as victims of forced displacement in order to avoid being victimized anew, this time by social stigmatization and discrimination.<sup>61</sup>

Generally, the socio-economic situation of displaced people is much worse than for the Colombian poor in general. It has also been well established that displacement disproportionately affects Afro-Colombians and indigenous people, who already are among the country’s poorest.<sup>62</sup> The following statistics clearly show some of the devastating effects of forced displacement on the affected population:

- 48.9% of IDPs are unemployed, and the informal economy represents their only chance for survival;
- 46% of IDP families live in overcrowded and unhealthy rooms, 21% in high-risk or invasion zones;
- 50% of IDP households live in makeshift quarters constructed with scraps of cloth, cardboard or wood;
- 21% of displaced families do not have a bathroom in their homes;<sup>63</sup>
- only 34% of displaced households have access to basic health services;
- over 10% of IDPs are illiterate, 37% failed to complete primary school, and only 3.9% finish their secondary education;
- 77% of children who attended school in their areas of origin do not return to school after suffering displacement, instead having to work to support their families.<sup>64</sup>

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<sup>59</sup> See also Colombia, Defensoría del Pueblo, *Informe Defensorial sobre el Desplazamiento Forzado por la Violencia en Colombia*, Bogotá, 2002

<sup>60</sup> Blair, E., *Muertes violentas: La teatralización del exceso*, Medellín: INER; Editorial Universidad de Antioquia, 2005

<sup>61</sup> Women’s Commission for Refugee Women and Children, *Millones no vistos: La Catástrofe del Desplazamiento Interno en Colombia*, New York, March 2002, [http://www.womenscommission.org/pdf/co2\\_es.pdf](http://www.womenscommission.org/pdf/co2_es.pdf) [accessed February 2006]

<sup>62</sup> United Nations High Commissioner for Refugees, Colombia: Growing Impact of Forced Displacement, Geneva, 25 April 2005 (press statement)

<sup>63</sup> Human Rights Watch, *Colombia: Displaced and Discarded*

<sup>64</sup> CODHES and UNICEF, “*Esta guerra no es nuestra*”: Niños y desplazamiento forzado en Colombia, Bogotá, 2000



Those who have suffered displacement by violence have not only been taken out of their social environment and robbed of their personal and local networks, many of them have also been victimized, tortured, beaten, violated or have had a family member killed or abducted. The majority of family units have broken up, which leaves many homes with female heads of household. The breakdown of security, of memory even, stands at the centre of their experience.<sup>65</sup>

As already mentioned, internal displacement mostly originates in the rural areas and moves towards the cities, in particular Bogotá, where it is estimated that 35% of all the Colombian displaced population live, although estimates of total numbers vary widely, from a little over 100,000 according to the official IDP register SUR to more than one million according to NGOs and the Catholic Church.<sup>66</sup> The displaced people from the countryside see themselves forced to gain a living in a hostile and un-cooperative environment, unable to meet their basic needs, and unable to return to their homes due to the continuing armed conflict.

Coupled with dire living conditions another problem commonly presents itself. Due to the dispersed and individual nature of their displacement, the organization of IDPs into associations or other forms of collective action is frequently very difficult. Those organizations that exist are also often precariously constituted or divided among themselves, making it easier for the state to ignore or downplay their importance as spokespeople for IDP concerns.<sup>67</sup> At the local and municipal level, politicians do not usually much care for recently arrived displaced people who possess no identity papers and are not entered on the electoral register. Attending to their needs brings no votes, and local studies show that even cities like Cartagena do not have a policy or budget for supporting IDPs.<sup>68</sup>

### 3 Displacement Trends

#### 3.1 Observations on the Chronology of Displacement

The magnitude of recent internal displacement in Colombia is staggering. Since 2002, when displacement hit a five-year peak, at least 1.26 million people have been forced out of their homes and communities. That is, over 2.9 percent of Colombia's total population of 43 million have been forcibly displaced in the last four years alone. Calculating only the figure for President Uribe's first three years in office (August 2002-August 2005), the number would be around 950,000, or over 300,000 persons per year on average.<sup>69</sup>

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<sup>65</sup> Pécaut, D., A propósito de los desplazados en Colombia, *Revista Estudios Políticos* [Medellín], No.14, January-July 1999

<sup>66</sup> Medios para la Paz, *Personas en situación de desplazamiento forzado*, Bogotá, 2005, <http://www.mediosparalapaz.org/index.php?idcategoria=44> [accessed February 2006]

<sup>67</sup> González Perdomo, A., El papel de las políticas públicas en el fortalecimiento de las capacidades organizacionales en la población desplazada. Paper presented at the Second Foro Social Colombia, Bogotá, 4 December 2004

<sup>68</sup> CODHES, No hay pero ciego que el que no quiere ver: Una mirada al desplazamiento forzado y la crisis humanitaria y social en Cartagena, *Boletín*, No. 62, 24 October 2005

<sup>69</sup> For overall figures cited in this and following paragraphs, see CODHES, *Comportamiento de desplazamiento, 1985-2005, por año*, Bogotá, December 2005, [http://www.codhes.org/cifra/GraficoTendencias1985\\_2005.jpg](http://www.codhes.org/cifra/GraficoTendencias1985_2005.jpg) [accessed February 2006]

While the decade 1986-1995 was characterized by a forced displacement rate fluctuating around a relatively steady average of 72,800 persons annually, the following decade has seen a dramatic escalation of displacement. The lowest value, at the beginning of the year 1996, was already 2.5 times higher than the previous 10-year average. During the first three years 1996-1998, more people were forcibly displaced than during the whole previous decade. The yearly average for the decade which just ended was 289,000 displaced people, a four-fold increase over the previous 10 years.

Within the period 1996-2005, two marked peaks (308,000 and 412,553 IDPs, respectively) were observed in the years of the last two presidential elections, 1998 and 2002. After these events, a decrease of internal displacement, which was very pronounced in the case of 2003, could be observed, followed by renewed growth of the phenomenon. This renewed increase indicates that the root causes of forced displacement have not been significantly weakened yet and the government rhetoric about a definitive turn-around may well be premature. The provisional IDP figures for 2005 seem to indicate that the crisis situation is worsening measurably. The numbers have again reached the extreme levels seen during the presidency of Andrés Pastrana. Over 250,000 persons were forcibly displaced from their homes in the first nine months of 2005, a 23% increase over the same period in 2004.<sup>70</sup>

In this context, it should be mentioned that the statistics for forced displacement calculated by the leading Colombian human rights NGO CODHES (Consultoría para los Derechos Humanos y el Desplazamiento – Consultancy for Human Rights and Displacement), which are based on estimates, have not been universally recognized. The government maintains that the number of registered IDPs continues to decrease and has currently reached its lowest level since 1999.<sup>71</sup> The figures reported by the government-operated RSS count only those IDPs who actually register to apply for official assistance, which not all victims of displacement chose to do. In an interesting development, however, the final RSS data on actually registered IDPs in recent years corroborate the NGO estimate, or lie even slightly higher.<sup>72</sup>

### **3.2 Regional Variations: Expelling and Receiving Communities**

In spite of these clear national trends, and in accordance with the clarifications made earlier on the local nature of the conflict, one also has to look at forced displacement from a regional angle. The following map shows accumulated registered IDPs according to place of arrival in September 2005.<sup>73</sup> It has to be kept in mind that the situation changes constantly and displacement patterns vary as the armed conflict evolves in the regions.

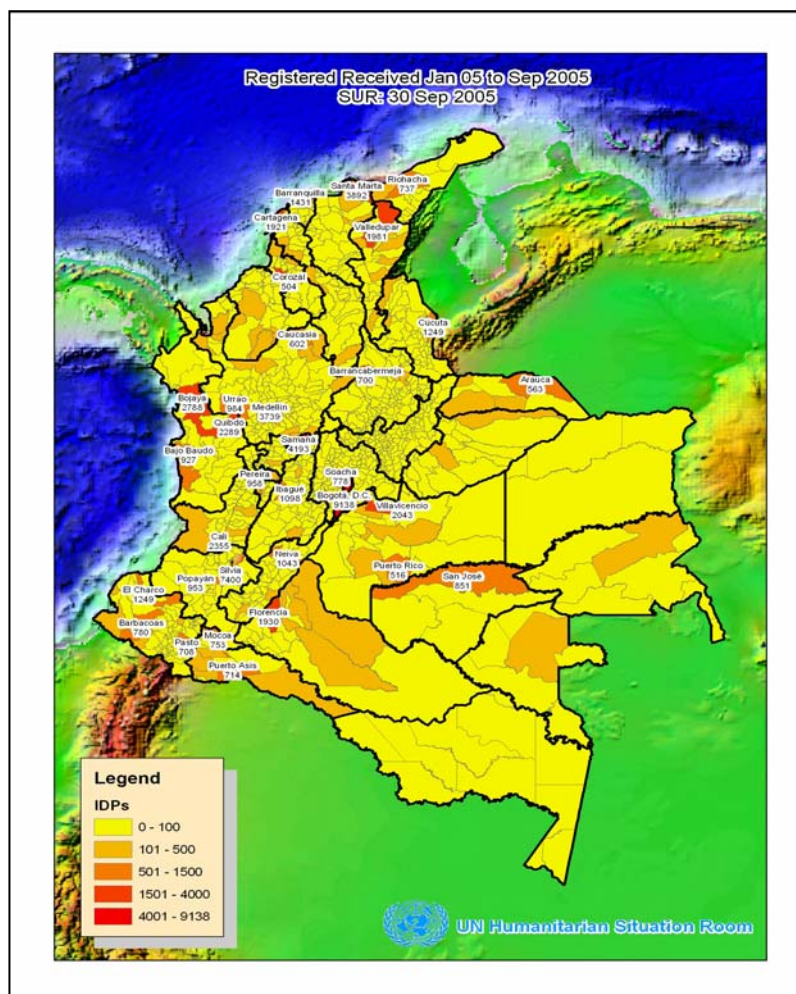
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<sup>70</sup> Figures quoted from CODHES, Los 'límites' de la seguridad en las fronteras, *Boletín*, No. 65, 10 November 2005

<sup>71</sup> Human Rights Watch, *Colombia: Displaced and Discarded*

<sup>72</sup> Colombia, Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, *Desplazamiento forzado*, Bogotá, 2005, <http://www.derechoshumanos.gov.co/observatorio/indicadores/2005/septiembre/desplazamiento.pdf> [accessed February 2006]; for an explicit comparison of the two sets of figures see Ibáñez, A.M. and Querubín, P., *Acceso a tierras y desplazamiento forzado en Colombia*, Bogotá: Universidad de los Andes, May 2004

<sup>73</sup> United Nations Office for the Coordination of Humanitarian Affairs, Sala de Situación Humanitaria Colombia, *Analytical Map: Desplazados recibidos III trimestre 2005 (SUR)*, [http://www.colombiassh.org/archivos/archivos/SUR\\_2005\\_III\\_rec.pdf](http://www.colombiassh.org/archivos/archivos/SUR_2005_III_rec.pdf) [accessed June 2006]



### 3.2.1 Expulsions

Four departments, Bolívar, Antioquia, Caquetá and Tolima, between them were responsible for 42% of expulsions taking place during the period 1996 to mid-2005.<sup>74</sup> An examination of the government's cumulative register of IDPs over the last ten years, which details their stated place of origin, gives a rough idea of some of the "hot spots" of forced displacement, and shows that these expelling municipalities and towns are generally situated in the zones of most acute armed conflict.<sup>75</sup>

In these long-term figures, regions like the Montes de Maria, one of the oldest areas of paramilitary activity in Colombia, and the Sierra Nevada de Santa Marta stand out. Other clearly identifiable geographical areas are the Atrato River in the Chocó, Eastern Antioquia, Urabá, Magdalena Medio, César and the Catatumbo. Most of them are in dispute between the irregular armed groups and some are situated along the routes of strategic corridors.<sup>76</sup> It is also significant that many municipalities with high accumulated displacement rates are located in north-western Colombia, where the

<sup>74</sup> See, *Boletín RUT Informa sobre el desplazamiento interno*, No. 24 & 25, June 2005, <http://www.disaster-info.net/desplazados/informes/rut/24y25/06trayectorias.htm> - 570 [accessed February 2006]

<sup>75</sup> See Colombia, Office of the President, Sistema Único de Registro, *Informe*, 2 December 2005

<sup>76</sup> See González, Bolívar and Vázquez, *Violencia política*

paramilitary forces have traditionally set up their centres of operations.<sup>77</sup> Putumayo, Guaviare and the Pacific Basin in the South on the other hand, are areas that have been dominated by the FARC guerrilla, affected by paramilitary incursions and fighting in the former demilitarized zone. Displacement in Putumayo and Caquetá departments is closely related to the increasing production of coca in these regions, which generated conflicts over control of the trade, led to the full-scale militarization of the departments and the aerial spraying of thousands of hectares of illicit crops with eradication chemicals like glyphosates.<sup>78</sup> The official policy of coca eradication is itself directly responsible for much forced displacement, and numerous arbitrary actions against the civilian population by the security forces.<sup>79</sup>

Some highly conflict-ridden areas, such as Arauca, North-Central Valle, Nariño or the Northern Cauca, appear to show no constant long-term expulsion patterns, however. There are several possible explanations for this. Firstly, there are some groups – like the indigenous inhabitants in the Cauca – that display particular displacement patterns, i.e. they move collectively, but in a circular pattern, never departing very far from their traditional home areas. Secondly, more and more communities are virtually encircled and besieged by the armed actors, who close all access routes to the municipality and refuse passage of people or transports. In some of the worst cases there is even denial of humanitarian aid to the civilian population.<sup>80</sup> These inhabitants would obviously be abandoning their homes if they could, but are forced to stay where they are. Lastly there is the problem of under-registering, which affects all IDP registers to a certain extent. The interplay of these different regional factors and dynamics gives the frequency and appearance of forced displacement a strongly variable geographical face.<sup>81</sup>

Most recently, expulsions have been registered in Antioquia (Yondó), Bolívar (San Juan Nepomuceno), Chocó (Istmina, Medio San Juan), Guaviare (San José del Guaviare), Nariño (Policarpa, Los Andes-Sotomayor), Norte de Santander (Hacari, Ocaña) and Putumayo (Puerto Asís), while further communities at risk were identified in Chocó, Guajira, Sucre, César, Santander, Tolima, Valle del Cauca, and the Cauca.<sup>82</sup> Unfortunately, such early warnings pinpointing communities at risk of displacement, which are regularly provided by the national Early Warning System (SAT) of the Defensoría, the UN and other organizations, are rarely followed up by the responsible officials. The prevention of displacement still needs to be substantially improved.

### **3.2.2 Receiving Communities**

As we have already seen there has been a general upward trend in the occurrence of internal displacement during the last year, but at the receiving end, i.e. in respect of the

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<sup>77</sup> Rangel, A. (ed.), *El poder paramilitar*, Bogotá: Editorial Planeta, 2005

<sup>78</sup> Ramírez, M.C., *Entre el Estado y la guerrilla: Identidad y ciudadanía en el movimiento de los campesinos cocales del Putumayo*, Bogotá: Instituto Colombiano de Antropología e Historia, 2001

<sup>79</sup> CODHES, *La otra cara del plan Colombia*, Bogotá, 6 December 2005 (press statement)

<sup>80</sup> International Crisis Group, *Colombia's Humanitarian Crisis*, Bogotá; Brussels, 9 July 2003

<sup>81</sup> See e.g. the information provided on internal displacement events in the periodic reports of the OCHA Humanitarian Situation Room Colombia, found at <http://www.colombiassh.org/> [accessed June 2006]

<sup>82</sup> United Nations Office for the Coordination of Humanitarian Assistance, Sala de Situación Humanitaria Colombia, *Informe Mensual Marzo/Abril 2006*, [http://www.colombiassh.org/imagenes\\_nuevas/documentos/03-04SSH06.pdf](http://www.colombiassh.org/imagenes_nuevas/documentos/03-04SSH06.pdf) [accessed June 2006]

communities where the displaced people in Colombia arrive, a differentiated picture presents itself.

While most communities have received more IDPs than they had over a similar period of the preceding year, some (Barranquilla, Risaralda) have actually received fewer or only slightly more (Medellín, Florencia, Bucaramanga, Puerto Asís). A large majority of municipalities has had an increase of between 10% and 100%, whereas five (Sincelejo, Valledupar, Ibagué, Popayán and San José del Guaviare) have received between double and triple the number of displaced of the previous year.<sup>83</sup>

The more extreme cases fall into two categories: on the one hand are the large cities or their suburbs which have experienced a rise of IDP influx of between 200% and 1,000%. This applies to Bogotá, Cali, Cartagena and Soledad on the outskirts of Barranquilla, and relates to the fact already discussed that IDPs generally and disproportionately seek the relative safety of anonymous large urban areas.

On the other hand, there are small towns with their surrounding hamlets, which experienced little or no displacement in 2004 but received very large numbers of IDPs in the course of three months during 2005. One example is Silvia (Cauca) which has a total of around 40,000 inhabitants, 82% of whom live in the rural parts of the district, and where more than 7,500 mostly indigenous victims of displacement presented themselves.<sup>84</sup> The very strong growth of IDP numbers in two municipalities in the Pacific lowlands of the southern department of Nariño, El Charco and Barbacoas, is similar, and is due to the escalating armed conflict in this strategically located department.<sup>85</sup> Finally, the case of Manizales, the capital of Caldas, must also be seen in the context of growing violence targeting the indigenous communities of this department, which are concentrated in the north-western corner of Caldas (Riosucio municipality) and which have recently staged several demonstrations against the incursions of armed groups into their traditional lands.<sup>86</sup>

From these data we can establish two seemingly contradictory trends. On the one hand internal displacement is regionally concentrated. Official RSS statistics show that 13 of Colombia's 32 departments have received 75% of the forcibly displaced population. These departments are Antioquia, Bolívar, Sucre, Magdalena, Valle, Bogotá, Cesar, Córdoba, Santander, Atlántico, Chocó, Norte de Santander and Nariño. Between them, the first six have received more than 48% of all IDPs. On the other hand internal displacement is fast spreading geographically. While in the year 2000 only 420 of Colombia's 1,119 municipalities were affected by internal displacement (i.e. 37.5%), in 2004 the phenomenon had spread to 904 (i.e. 80.9%), a doubling of affected municipalities in only four years, leaving a mere fifth of all Colombia unaffected.

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<sup>83</sup> See data published in CODHES, Los 'límites' de la seguridad

<sup>84</sup> Colombia, Alcaldía Municipal Silvia Cauca, *Municipio de Silvia Cauca*, n.d., <http://www.silviacauca.gov.co/bsn/turismo/formato.php?&id=1> [accessed February 2006]

<sup>85</sup> Colombia, Agencia Presidencial para la Acción Social y Cooperación Internacional, *Boletín de Noticias*, 3 December 2005

<sup>86</sup> Consejo Regional Indígena de Caldas, Comité Ejecutivo, Marcha por la vida, la libertad y el respeto de los indígenas de Caldas, Riosucio, 2 March 2003 (press statement)



### 3.3 Groups at Risk

#### 3.3.1 Indigenous Populations

From our previous discussion it should already be clear that Colombia's one million indigenous people have become primary targets for the armed groups because of the strategic importance of their reservations, but also because they have as a rule refused to submit to the demands of either side, insisting on their neutrality in the armed conflict.<sup>87</sup> As a consequence, entire communities are at acute risk of disappearing after being forced to flee their traditional territories.

Recently, the guerrillas and, especially, the paramilitary groups appear to have been engaged in a campaign of extermination against the indigenous peoples, which has been repeatedly condemned by national and international observers and which has been subject to several interventions and provisional protection orders by the Inter-American Commission and Court of Human Rights.<sup>88</sup> In the course of 2005, six different indigenous communities have applied to the Court in San José, but the Colombian government has been very slow to react. Massacres of indigenous leaders and activists like the ones perpetuated in Riosucio (Caldas) on 24 November 2001, and again on 8 June 2003 and in Ubarba (Caldas) on 17 August 2005 have become increasingly commonplace.<sup>89</sup>

A recent report by the Organización Nacional Indígena de Colombia (ONIC – National Indigenous Organization of Colombia) found that 21,711 indigenous men, women and children were forced to flee their homes and territories between 1 January and 9 December 2005, a rate of more than 12 families per day. This means that more than 2.1% of the whole indigenous population in Colombia was forcibly displaced in just one year, almost four times as high a percentage as for the rest of Colombian society. The largest groups of victims in 2005 were from the Nasa tribe in western Colombia (14,000) and from the Awa people who live in Nariño and Putumayo (4,600).<sup>90</sup>

However, most of Colombia's more than 80 indigenous groups are equally at risk. The people are fleeing the escalating fighting in the department of Putumayo, some of them going across the border into Ecuador. The Embera-Katio people in the Chocó, the Paéz in the north of the Cauca department and the Kankuamos in César are all under constant armed pressure and risk losing their ancestral homeland. Even the hitherto relatively isolated and untouched small indigenous communities in Colombia's sparsely populated Amazon basin have fairly recently become targets of armed violence.<sup>91</sup> Published

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<sup>87</sup> Derechos y Democracia, *Informe: Misión a Colombia para Investigar la Situación de los Pueblos Indígenas Mayo 27– Junio 3 del 2001*, Ottawa: Derechos y Democracia en colaboración con la Asamblea de Primeras Naciones de Canadá, 2001

<sup>88</sup> See, e.g., Interamerican Court of Human Rights, *Resolución [...] Caso Pueblo Indígena Kankuamo*, (Corte I.D.H., Ser. E, 2004), 5 July 2004, [http://www.corteidh.or.cr/seriee/Kankuamo\\_se\\_01.doc](http://www.corteidh.or.cr/seriee/Kankuamo_se_01.doc) [accessed February 2006]

<sup>89</sup> Organización Nacional Indígena de Colombia, *Masacre indígena en el departamento de Caldas*, Bogotá, 18 August 2005 (press statement)

<sup>90</sup> Organización Nacional Indígena de Colombia, *Desplazamiento y muerte rondan la vida y los territorios indígenas*, Bogotá, 10 December 2005 (press statement), <http://www.onic.org.co/nuevo/comunicados.shtml?x=72> [accessed February 2006]

<sup>91</sup> Asociación Latinoamericana de Derechos Humanos, *La Agonía del jaguar: Derechos humanos de los pueblos indígenas de la Amazonia colombiana*, Bogotá, November 2003

statistics show over 600 incidents of violence in 2005 alone, ranging from threats to torture and assassinations.<sup>92</sup> These figures show only part of the story, however, because many of the threats and acts of violence are not reported for fear of retribution.

The exodus provoked by the many violations committed against the indigenous communities threatens both lives and whole cultures. Indigenous culture is closely linked to the ancestral land and displacement often leads to the total collapse of traditional authority and cultural patterns. Like many others, displaced indigenous families often end up in big cities where they find it particularly difficult to create a new life in an alien environment. In addition crimes and human rights abuses against indigenous people often go unreported and stay unpunished. According to ONIC, more than 1,600 indigenous people were murdered in the past twenty years – 60% of them during the last five years. A single small group like the Wiwa people in the Sierra Nevada de Santa Marta in the North is reported to have lost 12 members in the first eight months of 2005 alone out of an estimated population of 1,850.<sup>93</sup>

Armed violence against indigenous groups is intensifying. For example, in early December 2005 the Colombian NGO Hemera Foundation issued an early warning notice according to which the life and physical integrity of the Emberá-Dobidá members of the Mamey Dipurdú reservation, located in the municipality of Carmen del Darién (Chocó) were in serious danger because the paramilitary Block “Elmer Cárdenas”, which has refused to participate in the demobilization process, invaded their territory and took possession of their food and common land, and accused the leaders of the indigenous community of being guerrilla collaborators.<sup>94</sup> UN Emergency Relief Coordinator Jan Egeland warned in March that 12 small indigenous groups in Colombia, such as the Nukak Maku, are facing extinction.<sup>95</sup> A major difference between indigenous communities and other groups of victims is that – due to their greater degree of social cohesion and sense of belonging – they often decide to resist, peacefully but massively opposing the armed actors or staging large demonstrations against their abandonment by the government.<sup>96</sup>

### **3.3.2 Afro-Colombians**

Another disproportionately victimized group is that of the Afro-Colombians who live along the coast, especially on the Pacific coast (where they constitute 75% of the population) and in the Urabá and Cartagena regions (55% of the population). They have historically been marginalized and discriminated against and they live in the poorest and most underdeveloped regions of the country. It has been calculated that the

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<sup>92</sup> See Organización Nacional Indígena de Colombia, *Desplazamiento y muerte*

<sup>93</sup> United Nations High Commissioner for Refugees, *Colombia: Indigenous Groups Badly Affected by Conflict*, Geneva, 9 December 2005 (press statement), <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=439961674&page=news> [accessed June 2006]

<sup>94</sup> Bloque de las Autodefensas invade resguardo Emberá en el Chocó, *Actualidad Étnica* [Bogotá], 9 December 2005, [http://www.etniasdecolombia.org/periodico\\_detalle.asp?cid=3049](http://www.etniasdecolombia.org/periodico_detalle.asp?cid=3049) [accessed February 2006]

<sup>95</sup> United Nations Office for the Coordination of Humanitarian Affairs, UN Emergency Relief Coordinator Concerned by Situation of Colombian Indigenous People, New York, 5 May 2006 (press statement), <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EGUA-6PHLDP?OpenDocument> [accessed June 2006]

<sup>96</sup> Andrade Casama, L. E., *Colombia: Resistencia e iniciativas de paz de los pueblos indígenas*, 18 May 2005, <http://www.voltairenet.org/article125259.html> [accessed June 2006]

displacement rate of Afro-Colombian communities is 20% higher than the national rate. In fact, Colombia's highest rate of displacement in 2003 was recorded in the Chocó department, where 75% of the population are Afro-Colombians. According to information provided by the national government, 10.78% of the displaced population is Afro-Colombian, while 7.85% is indigenous.<sup>97</sup> Significantly, Afro-Colombian and indigenous people together only constitute 11% of the population.<sup>98</sup> The NGO CODHES estimates that Afro-Colombians constitute a much higher percentage, amounting to 33% of the total displaced population, and that 40,512 Afro-Colombians were displaced nationwide in 2003 alone.<sup>99</sup>

The plight of the Afro-Colombians is clearly made worse by the continuing escalation of violence on the Pacific coast, especially in the departments of Chocó, Valle, Cauca, and Nariño, which have acquired strategic value for the armed actors. In their conflict over control of the coastal drug trade, the guerrilla, the paramilitaries and the drug mafia have turned areas like the corridor running between Pasto and Tumaco in Nariño or the Pacific port city Buenaventura into war zones, with fatal consequences for the civilian population. Buenaventura had the highest homicide rate in the whole of Colombia in 2005, at 365 per 100,000 inhabitants, 14 times the national average.<sup>100</sup>

The government's heavy spraying with the weedkiller glyphosate in the Putumayo department has also contributed to move large areas of coca cultivation to neighbouring Nariño, thus further fuelling the conflict. As recently as December 2005, various Afro-Colombian community organizations warned that their traditional communal lands along the Yurimangui and Raposo rivers in the municipality of Buenaventura were being invaded by armed forces and expressed fears for the safety of community members.<sup>101</sup> An international verification mission composed of representatives of the Defensoría del Pueblo (National Ombudsman's Office), UN OCHA, and several NGOs visited the region and reported that the humanitarian situation of the population was extremely worrying.<sup>102</sup>

A similar situation presents itself in the Chocó department, where thousands of Afro-Colombians have had to abandon their homes, under threat of falling victim to the ongoing armed clashes.<sup>103</sup> The Chocó is already Colombia's poorest and most underdeveloped region, with almost 80% of the population living in extreme poverty

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<sup>97</sup> Colombia, Defensoría del Pueblo, *Informe Defensorial sobre el Desplazamiento Forzado*

<sup>98</sup> Indigenous Peoples and Afro-Colombian Communities in Giugale, Lafourcade and Luff (eds.), *Colombia*

<sup>99</sup> United States Office on Colombia, *The Impact of War on Afro-Colombians: A Community Under Siege*, Washington, July 2004

<sup>100</sup> CODHES, *Navidad en medio del terror: Informe extraordinario sobre desplazamiento forzado, conflicto armado y derechos humanos*, Bogotá, 21 December 2005, [http://www.codhes.org/index2.php?option=com\\_content&do\\_pdf=1&id=180](http://www.codhes.org/index2.php?option=com_content&do_pdf=1&id=180) [accessed February 2006]

<sup>101</sup> Proceso de Comunidades Negras en Colombia et al., *Aumenta la amenaza en las comunidades negras de la Costa Pacifica*, December 2005 (press statement)

<sup>102</sup> Red Hermandad y Solidaridad Colombia, *Informe sobre visita de acompañamiento a las comunidades negras del territorio ancestral de los ríos Naya, Yurumangui, Cajambre, Mayorquin y Raposo, 12-17 diciembre 2005*, Bogotá, 2006, <http://www.nasaacin.net/noticias.htm?x=1782> [accessed February 2006]

<sup>103</sup> United Nations High Commissioner for Refugees, *Cientos de personas continúan huyendo en el departamento del Chocó*, Bogotá, 23 February 2005 (press statement)



and an illiteracy rate three times higher than in the rest of the country. Basic indicators of the human development index are all far below the national average.<sup>104</sup> Over the last years, the Chocó has seen numerous atrocities, including the massacre of Bojaya in 2002 in which 120 people were killed. Other communities have expressed similar fears about the safety of their inhabitants, and have not hesitated to apply to the Inter-American complaints procedure to make their voice heard. In a case involving the Afro-Colombian communities Jiguamiandó and Curbaradó in the lower Atrato river valley, a region of high levels of conflict, the Inter-American Court of Human Rights in march 2003 granted temporary measures of protection, arguing that the Colombian state had an obligation to protect these threatened civilians. A year and a half later, the Court found that the recommended measures were being almost universally ignored, and the protected communities had been subjected to numerous and ongoing armed incursions, assassinations, and forced disappearances.<sup>105</sup>

### 3.3.3 Women and Children

Women and children are among the civilians worst affected by violence and internal displacement in Colombia. Although they are not targeted as a specific group, the violence nevertheless impacts on them very strongly. For example, in 2005 66% of all those displaced by the violence were under 18 years, rising from 55% in 1996.<sup>106</sup> All illegal armed groups in the conflict recruit child soldiers; their number is estimated at around 10,000.<sup>107</sup> Other children are engaged in urban militia groups. Recently, a major effort by international agencies and the Colombian state have contributed to about 800 children under 18 leaving guerrilla and paramilitary groups, but the remaining minors continue facing appalling conditions.<sup>108</sup>

Likewise, women are highly vulnerable in the armed conflict. They are frequently the ones who hold displaced families together, and they bear the brunt of double discrimination as women and as IDPs. An average IDP family has about six members, three or four of whom are minors. If – as frequently occurs – women have to assume the role of head of household, they have to feed these children on an average income of 68% of the legal Colombian minimum wage. Especially after the end of government-supplied emergency aid (three months), studies have found that the state of nutrition of the IDP population deteriorates considerably. As displaced families have been robbed of the means of subsistence production, they are forced to buy their food at market prices, spending practically their whole income on it.<sup>109</sup>

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<sup>104</sup> Gibbs, T. and Leech, G., Displacing Development in the Chocó, *Colombia Online Journal*, 12 October 2003, <http://www.colombiajournal.org/colombia169.htm> [accessed February 2006]

<sup>105</sup> See Interamerican Court of Human Rights, *Resolución [...] Caso de las comunidades de Jiguamiandó y del Curbaradó*, 17 November 2004, <http://www.corteidh.or.cr/seriee/index.html> [accessed February 2006]

<sup>106</sup> See CODHES, Niños desplazados por la violencia: Rostros inocentes de una tragedia acumulada, in its *Un país que huye*, p. 97; International Committee of the Red Cross, *IDPs in Colombia: A Joint needs assessment by the ICRC and the World Food Programme*, Bogotá, March 2005

<sup>107</sup> González Uribe

<sup>108</sup> Human Rights Watch, *'You'll learn not to Cry': Child Combatants in Colombia*, New York, September 2003

<sup>109</sup> World Food Programme and International Committee of the Red Cross, *Identificación de las Necesidades Alimentarias y No Alimentarias de los Desplazados Internos: Una Encuesta Conjunta de las Poblaciones Desplazadas Internamente en Colombia*, Bogotá, March 2005

Women and girls make up almost half of all the internally displaced population, but there is no integral policy to address their specific needs in terms of health care and reproduction. Almost a third of all IDP women have had an involuntary abortion, or their babies have died during or soon after birth, and only 63% have received medical treatment. Internally displaced women are often turned away from hospitals and clinics because of their inability to pay. Even though 52% of internally displaced women report having suffered physical violence and 36% sexual abuse, according to the Social Protection Ministry, gender-based violence remains without serious attention.<sup>110</sup>

### 3.4 Causes of Displacement

Some analyses distinguish between two essential reasons for displacement, violence and fear for safety on the one hand and structural poverty and lack of opportunities on the other.<sup>111</sup> Nevertheless, displacement, which is a radical step usually taken as an emergency response to an immediate threat, will not normally be undertaken simply because of a lack of opportunity, although it may sometimes be difficult to clearly make this distinction in individual cases. Following this logic also immediately leads to controversy as to the causes and nature of the phenomenon and gives rise to the belief that forced displacement by violence is not as widespread as it may seem.

The overwhelming majority, 97%, of IDPs in Bogotá interviewed by NGO and Church representatives, cited actual or feared violence as the reason for their displacement.<sup>112</sup> What is doubtlessly clear from this survey is that the terror targeting the rural population, which finds its most visible expression in massacres and selective assassinations and other shocking human rights violations experienced or witnessed by the IDPs, creates a pervasive culture of fear that explains most observable cases of displacement. Violence is clearly the driving factor for displacement, and the principal forces responsible, particularly for assassinations and mass killings, have been identified as the paramilitary groups, though the guerrilla groups are believed to be almost as highly involved in actions directly aimed at generating forced displacement.<sup>113</sup>

It is also important to see that the tactics of terrorizing the population may change, but the end result stays more or less the same. One such switch occurred during the years 1998-2002, at the peak of paramilitary violence. The number of massacres increased until in 2000 they happened at a rate of almost two per week; thereafter the preferred method has been selective assassination, which has been equally as effective in terms of displacement, but does not draw as much condemnation.<sup>114</sup> It remains to be seen whether the recently concluded formal disbanding of most paramilitaries will permanently alter the balance of violence and terror.

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<sup>110</sup> Amnesty International, *Colombia: Scarred Bodies, Hidden Crimes: Sexual Violence in the Armed Conflict*, London, 2004

<sup>111</sup> Manrique Reyes, A., La prevención de las violaciones masivas de los derechos humanos: El caso de las masacres y el desplazamiento forzado in C. Tassara *et al.* (eds.), *El desplazamiento por la violencia en Colombia: Experiencias, análisis y posibles estrategias de atención en el departamento de Antioquia*, Bogotá: CISP, 2000

<sup>112</sup> Source: CODHES, *Un país que huye*, p. 364

<sup>113</sup> Women's Commission for Refugee Women and Children, *Millones no vistos*

<sup>114</sup> See Colombia, Ministerio de Defensa, *Informe Anual Derechos Humanos y Derecho Internacional Humanitario 2002-2003*, Bogotá, 2004

The demobilization process with the paramilitary groups, which started in 2003, has had a positive impact on the registered number of grave human rights violations. However, the war goes on as long as the guerrilla remains fighting, and this has assumed an increasingly important share of atrocities and other activities that generate internal displacement. It is also possible that the insurgents will try to occupy territories and resources abandoned by the paramilitary groups, forcing the latter to rearm. As the paramilitary movement is breaking apart, the FARC are stepping up their activities, creating new local dynamics of violent confrontation. In this reconfiguration of local and regional conflicts, entire zones are subjected to blockades by irregular armed forces, and are cut off from communication with the rest of the country. The departments of Chocó, Putumayo, Nariño and the Catatumbo region (Norte de Santander) are especially prone to such actions and the resulting humanitarian emergencies.<sup>115</sup> The violent confrontation has also seen a return of massacres as a tool of war. A recent example is the case of the municipality of Curumaní (Cesar), where around 200 heavily armed men invaded several hamlets, killing 22 *campesinos* and intimidating scores more between 4 and 7 December 2005.<sup>116</sup> Responsibility for this massacre has not been clearly established so far.

## 4 Property Rights of IDPs

### 4.1 Land Ownership in Rural Areas

The large majority of forcibly displaced people come from rural areas – 91% of all IDPs in Bogotá according to CODHES.<sup>117</sup> For them land is a vital, often their only resource, and losing it can be literally a threat to their existence. Moreover, most analysts agree that conflict over land is itself one of the driving factors of political violence and especially forced displacement.<sup>118</sup>

Land tenure in Colombia has always been a complicated and potentially conflict generating area. Already in the nineteenth century, when the country was much more sparsely populated, and large parts consisted of undeveloped public land (*tierras baldías*), the process of colonization and frontier settlement was fraught with difficulties. There was no reliable system of land title registry and no national land survey, and the government saw the public lands essentially as a source of income, selling debt certificates to private investors that were redeemable in land titles. From the outset, this created a situation where peasant settlers, who actually colonized and cultivated the land, but frequently had no or only a precarious legal title to it, confronted “land entrepreneurs”, who acquired huge government grants of public lands, mostly for

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<sup>115</sup> Global IDP Project, *Colombia: Respuesta gubernamental al problema de desplazamiento interno criticada al agudizarse el conflicto*, Geneva, 27 May 2005

<sup>116</sup> CODHES, Paramilitares acusados de masacre en nororiente colombiano, Bogotá, 12 December 2005 (press statement)

<sup>117</sup> CODHES, *Un país que huye*

<sup>118</sup> For general background to the land issue see e.g. Reyes Posada, A. and Bejarano, A.M., *Conflictos agrarios y luchas armadas en la Colombia contemporánea: una visión geográfica*, *Análisis Político*, No. 5, 1988, pp. 6-27; Machado, A., *La cuestión agraria en Colombia a fines del milenio*, Bogotá: El Ancora, 1998; Salgado, C. and Prada, E., *Campesinado y protesta social en Colombia, 1980-1995*, Bogotá: CINEP, 2000; Farjado, D., *Situación y perspectivas del desarrollo rural en el contexto del conflicto colombiano*. Paper presented at FAO Seminar Situación y perspectivas para el desarrollo agrícola y rural en Colombia, Santiago, 2002; Ibáñez and Querubín, *Acceso a tierras y desplazamiento forzado*

speculative reasons.<sup>119</sup> The ensuing conflicts were often settled violently and the usually defeated squatters and small colonists moved on to some still unclaimed strip of land farther out in the periphery where they began anew.<sup>120</sup>

Not surprisingly, in colonization zones, especially if they were economically booming like Urabá during the years of large scale banana production, there was constant conflict, protest and evictions. Competition for land was also an important factor in the outbreak of the *Violencia* of the 1940s-1950s in rural areas. Two agrarian reforms were implemented in 1936 and in the early 1960s, which effectively confirmed a limited number of squatter claims, but did not structurally change the socio-economic imbalances. These historical patterns of colonization-conflict-violence are still evident in more recent colonization zones like the Guaviare, Putumayo or Arauca.<sup>121</sup> Nevertheless, influential members of the Colombian establishment, like ex-president Alfonso López Michelsen, believe that agrarian reform is no longer a national necessity, but an “anachronism” given modern technology and production methods.<sup>122</sup> This view, however, does not hold, when set against details of the actual situation.

Colombia is characterized by an extremely unequal distribution of land, which has actually grown worse over the years. Between 1986 and 1994 the proportion of land held by the very largest landholdings (above 1,000 hectares) increased from 25% to 38%, while landholdings of less than 100 hectares decreased from 40% to 35%.<sup>123</sup> Poverty rates in the rural sector remain around 80%, extreme poverty at 37%, more than twice the urban the figure.<sup>124</sup> Although the rural population has dropped in relative terms, it has continued to increase in absolute terms from 6 million people in 1938 to 11.6 million in 1993, while the economically active population in the farming sector grew from 1.9 million in 1938 to 2.7 million in 1993. The number of so called “self-employed workers” in the agricultural sector went from 600,000 in 1938 to 700,000 in 1964 and to 800,000 in 1993.<sup>125</sup>

The crisis of the Colombian countryside has been aggravated by a combination of factors, chief among which are the impact of worsening prices for agricultural products on the world market, the phasing out of most governmental agrarian subsidies under the policy of economic “opening up” (*apertura*) or liberalization, the degrading of natural resources, and the growing impact of armed conflict and illegal narcotics cultivation.<sup>126</sup>

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<sup>119</sup> For a detailed discussion see LeGrand, C., *Frontier Expansion and Peasant Protest in Colombia, 1830-1936*, Albuquerque: University of New Mexico Press, 1986

<sup>120</sup> Parsons, J., *La colonización antioqueña en el Occidente de Colombia*, Bogotá: El Ancora, 1997; Rausch, J., *The Llanos Frontier in Colombian History, 1830-1930*, Albuquerque: University of New Mexico Press, 1993

<sup>121</sup> Molano, A., *Siguiendo El Corte: Relatos de guerra y de tierras*. Bogotá: El Ancora, 1987

<sup>122</sup> López Michelsen, A., *Palabras pendientes. Conversaciones con Enrique Santos Calderón*, Bogotá: El Ancora, 2001, pp. 23-5

<sup>123</sup> Machado, *La cuestión agraria*, pp. 72-3

<sup>124</sup> Brizzi, A., Gomez, N., MacMahon, M., Agriculture and Rural Development in Giugale, Lafourcade and Luff (eds.), *Colombia*, p. 489

<sup>125</sup> Mondragón, H., Colombia: Agrarian Reform, Fake and Genuine, *Land Research Action Network*, 5 September 2005, <http://www.landaction.org/display.php?article=329> [accessed February 2006]

<sup>126</sup> Jaramillo, C. F., La agricultura colombiana en la década del noventa, *Revista de Economía de la Universidad del Rosario*, November 1998

During the 1990s, the retreat or dismantling of the state apparatus did not only give rise to new powerful regional and local actors, but created a situation where development as an aim has been replaced by mere survival.<sup>127</sup> The attempt to halt this by introducing new agrarian reform legislation in 1994 failed completely.

The progressive degradation of rural Colombia has several notable consequences:

- Macro-economic decline in agrarian production. The total cultivated area has dropped from 3.7 million hectares in 1990 to 3.1 million in 1997 (excluding coffee and flowers). Only 30% of land suitable for agriculture is really utilized for crops (with significant regional variations). One consequence of this is that the country has become a net importer of food and agricultural products.<sup>128</sup>
- Growth of land area dedicated to pasture. Data from about 800 municipalities show that a high degree of land ownership inequality is associated with greater expansion of livestock farming into ecologically fragile areas unsuitable for farming, and underutilization of agricultural land. More than double the area suitable for pasture is used for livestock grazing.<sup>129</sup>
- Continuing concentration of land ownership, driven largely by violence and displacement. Already by the middle of the 1990s, 1.24% of farmers owned 55.28% of the cultivable land, whereas 78%, classified as peasant farmers, shared just 7.8% of the land. The ongoing displacements which have driven many more small tenants and sharecroppers off their properties have certainly worsened this already highly skewed distribution.
- Growing importance of mega-projects of agro-industrial development, e.g. the plan to cultivate hundreds of thousands of hectares of African palm tree in Vichada and other Amazon departments.<sup>130</sup>

#### 4.2 IDP Property Rights and Property Loss

There are no reliable statistics on the amount of land abandoned by forcibly displaced people in Colombia. The Attorney General's Office states that about 2.6 million hectares are affected; the Presidency's RSS says it is more like 6.8 million hectares.<sup>131</sup> International organizations estimate about 4 million hectares, amounting to three times the quantity of territory redistributed by the government in all agrarian reform efforts

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<sup>127</sup> Brizzi, Gomez and MacMahon, *Agriculture and Rural Development*, p. 504

<sup>128</sup> Farjado, D., *Tierra, poder político y reformas agraria y rural*, Cuadernos Tierra y Justicia, No. 1, Uppsala: University of Uppsala, 2002

<sup>129</sup> Machado, A., *Tenencia de tierras, problema agrario y conflicto*, Bogotá: Universidad Nacional, 2003 (unpublished manuscript); see also Instituto Geográfico Agustín Codazzi and Corporación Colombiana de Investigación Agropecuaria, *Zonificación de los conflictos de uso de las tierras en Colombia*, Bogotá, 2002

<sup>130</sup> Colombia, Office of the President, Vichada contará con 64 mil hectáreas para sembrar palma africana, Bogotá, 10 July 2003 (press statement), <http://www.presidencia.gov.co/sne/2004/julio/10/04102004.htm> [accessed February 2006]

<sup>131</sup> CODHES, Procuraduría raja proceso de reinserción y reparación, 20 June 2006 (press statement)

since 1961.<sup>132</sup> Due to the magnitude of internal displacement in Colombia, government lack of interest, and the reluctance of many IDPs to collaborate with the authorities, little reliable information exists about their property situation. It is especially notable that there was no centralized register for abandoned IDP properties until the creation in 2005 of the Registro Único de Predios (RUP – Unified Property Register), even though Decree 2007 of 2001 established the state's duty to protect such lands.<sup>133</sup> Attorney General Edgardo Maya has recently warned that RUP needs to be totally overhauled, as it only includes 70,000 hectares as of June 2006.<sup>134</sup> All available information is thus based on voluntarily declarations by the victims of forcible displacement. Some observers have also made the point that the land losses reported by the IDP families themselves have to be treated cautiously, as they might overstate the real extension of their property holdings with a view to receiving more generous treatment in a later restitution programme.<sup>135</sup>

According to data collected during a survey of 1,322 IDP households in Bogotá carried out by the Conference of Colombian Bishops, a large majority of displaced persons (83%) were owners of their own plots of land, with the overwhelming majority (66%) owning 10 hectares or less of land. For many of them this land was their principal (or only) source of income. This type of background obviously leaves IDP families ill prepared for life in a large urban environment.<sup>136</sup> Similar findings are reported by a study carried out by the University of Los Andes, which found that around 50% of interviewed households had held landed property before their displacement and almost 80% of these stated that their income depended on this land. The large majority further stated that they had to abandon their land under threat of force. The average size of the abandoned landholding was around 20 hectares per displaced family, with some regional variations.<sup>137</sup> With regard to the family home, there are similar data also created through empirical research among the affected populations. A survey of IDP households in Cartagena and Bogotá showed that 72% had lived in a house they owned before displacement, but that this was true of only 25% afterwards, while the proportion of those living in rented or shared apartments, perhaps the most precarious form of residence, rose from 2% to 34%.<sup>138</sup>

A crucial question for our further discussion is what happens with the land after the original tenants leave, after being threatened by or falling victim to violence. There is again very little information available. According to data collected in the 1990s, the

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<sup>132</sup> Deininger, K. and Lavadenz, I., Colombia: Política Agraria en Transición, *Banco Mundial en Breve*, No. 55, October 2004

<sup>133</sup> Colombia, Ministry of the Agriculture and Rural Development, Decree 2007 [Regarding the Rural Population Displaced by the Violence], 24 September 2001; Colombia, Ministerio del Interior y de Justicia, Decreto 250 [Plan for Attention to the Displaced Population], 7 February 2005

<sup>134</sup> CODHES, Procuraduría raja proceso de reinserción

<sup>135</sup> Ibáñez and Querubín, *Acceso a tierras y desplazamiento forzado*, p. 12

<sup>136</sup> CODHES, *Un país que huye*, p. 371

<sup>137</sup> Erazo, J.A. *et al.* Diversas Causas y Costos del Desplazamiento: Quién los compensa?, *Planeación y Desarrollo*, Vol. 30, No. 3, July-September 1999

<sup>138</sup> Kirchhoff, S., and Ibáñez, A.M., *Displacement due to Violence in Colombia: Determinants at the Household Level*, Discussion Paper on Development Policy, No 41, Bonn: Zentrum für Entwicklungsforschung, , October 2001

overwhelming majority of surveyed households did not have time to arrange for any transfer of the property and simply abandoned the premises. The proportion of those abandoning their property ranged from 71.6% in 1995 to 94.4% in 1997.<sup>139</sup>

Such abandoned properties usually either end up incorporated into a larger, neighbouring property or are redistributed by the agents of displacement to people making up their political constituency. Because of this, the campaigns of forcible displacement have also been described as “agrarian counter-reform”, because they are undertaken by extra-official armed forces with the aim of taking control of the landed property of the displaced population. This illegitimately acquired land is usually “legalized” through corrupt agents acting with the connivance or active support of the local authorities. In this way, local and regional agro-businesses and ranchers systematically benefit from the exodus of smallholders, and paramilitary commanders fulfil their desire to create socially “homogenous” zones of control. An early example of the former was the huge territorial expansion by large drug traffickers in the Magdalena Medio and other regions.<sup>140</sup> A pioneer of the latter was paramilitary leader Fidel Castaño, who settled hundreds of former guerrillas and his own temporarily demobilized fighters through a specially set up family foundation.<sup>141</sup>

Both phenomena often go hand in hand, as the expanding landowners, be they drug lords or not, usually need a private security outfit to hold on to their gains and maintain minimum levels of security on their territories. This brings them to form alliances with locally existing paramilitary structures or to set up new ones. From the victims’ point of view, the fact that their land is being usurped by a powerful illegal economic force, which employs a powerful illegal army as its private enforcer, is clearly a major disincentive to seeking compensation, to registering the loss and to any other form of resistance.

To resume, available information about forced displacement and the dispossession of IDP property suggests that some major tendencies can be identified. Before displacement, most rural IDP families belonged to the social class of small tenants with a landed property of maximum 20 hectares and ownership of a small farm or house. The expulsion from these properties was generally traumatic and violent, as well as frequently undertaken on behalf of concrete political and economic interests. Internally displaced people are being treated as “surplus population” in the countryside, where their presence is seen as an obstacle to ambitious development projects. Equally, no space is cleared for them in the urban labour market, which means that they are relegated to the informal urban sector, new colonization zones, the extractive economies or the primary production of illegal narcotics.<sup>142</sup>

### **4.3 Legal Uncertainty, Physical Insecurity**

The situation of the displaced owners is thus characterized by a double predicament. On the one hand, they are confronted with adversaries who respect few if any moral

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<sup>139</sup> CODHES, *Un país que huye*, p. 419

<sup>140</sup> Reyes Posada, A., *Compra de tierra por narcotraficantes*, in Thoumi, F. (ed.), *Drogas ilícitas en Colombia*, Bogotá: Editorial Ariel, 1997

<sup>141</sup> Human Rights Watch, *War without Quarter*

<sup>142</sup> Farjado, *Tierra*



limitations in their drive to get what they want. This implies that it is more advisable to keep quiet and accept even the massive loss in fortune and status coming with displacement, than to risk retribution or revenge by an offender or his visible and invisible backers. The campaigns of disappearance and murder carried out against NGO spokespeople, organizers of civil society and other groups that try to generate solidarity between the victims of internal displacement is no accident, but the result of a careful strategy which aims at fragmenting the IDP population and minimizing the danger of a more coherent opposition.<sup>143</sup>

Those IDPs who try to regain or claim compensation for their lost properties are likely to discover that the state institutions charged with protecting their rights are overstrained, inefficient or uninterested. This is not because of a lack of legislation to regulate the matter, quite the opposite. In its attempts to deal with the massive socio-economic problems suffered by IDPs the government has passed numerous legal measures, starting with Law 387 of 1997, which was designed to lay down a detailed regime of public IDP policy. Since that time, every government has acknowledged the need to improve the situation of the internally displaced population, and numerous action plans, analyses, executive decrees and other measures have been adopted.<sup>144</sup> A not exhaustive list of the most important of these regulations and recommendations includes the following:

- Council for Economic and Social Policy (CONPES) Document 2804 of 1995 about the socio-economic, political and psycho-social consequences of the phenomenon of forced displacement in Colombia;
- Law 387 of 1997 which adopts measures to prevent forced displacement;
- CONPES Document 3057 of 1999 “Action Plan to prevent and alleviate forced displacement”;
- RSS Document “Strategic Plan to manage the internal displacement caused by the internal armed conflict”, 1999;<sup>145</sup>
- Decree 2569 of 2000 which defines the condition of the displaced, and establishes the registration system SUR;
- Law 812 of 2003 by means of which is approved the National Development Plan 2002-2006 “Towards a Communitarian State”;
- Decree 250 of 7 February 2005 “National Plan for Comprehensive Assistance to the Population Displaced by the Violence”.<sup>146</sup>

It has been observed that, in terms of IDP legislation, Colombia is probably one of the most advanced countries in the world, but in practice many of these rules are routinely ignored.<sup>147</sup>

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<sup>143</sup> United Nations, Commission on Human Rights, Report, p. 5

<sup>144</sup> Montoya Ortiz, D., *La política nacional de atención integral a la población desplazada por la violencia*, Bogotá: Fundación Foro Nacional Para Colombia, August 2004

<sup>145</sup> United Nations High Commissioner for Refugees, *Balance de la política de atención al desplazamiento interno forzado en Colombia 1999- 2002*, Bogotá, October 2002

<sup>146</sup> United Nations High Commissioner for Refugees, *Balance de la política pública de prevención*

<sup>147</sup> Global IDP Project, *Colombia: Respuesta gubernamental*



In respect of the specific issue of IDP landed property, the most pertinent start is Article 27 of Law 387 of 1997, which states that if the owner of a property is forced by violence to abandon it this will not be treated as an interruption in terms of the legal provision for establishment of title through occupancy.<sup>148</sup> This was obviously designed with those IDPs in mind who had no legal title to the land they abandoned, but were merely occupants of public lands or held other forms of semi-legal tenancies.

Decree 2007 of 2001 was a very important step to implement some of the rules of Law 387 of 1997. The decree introduces public protection for the patrimonies of displaced people, and a land assignment procedure in cases of resettlement. The mechanism relies on a declaration of a state of imminent risk of forcible displacement in a particular area or region, which enables the competent authority, INCORA (Instituto Colombiano de la Reforma Agraria – Colombian Institute for Agrarian Reform), to take over the property of those persons who abandon the area. According to the decree, the sale of properties in such zones is only permissible with explicit permission of the local Board of Comprehensive Assistance to IDPs and INCORA. Displaced households can apply for an exchange of their abandoned land and house for a similar property in another region of the country, and have priority over other applicants to INCORA.<sup>149</sup>

To test the implementation of Decree 2007, the official IDP agency RSS conducted pilot studies during 2002 in the municipalities of Carmen de Bolívar (Bolívar) and Landázuri (Santander) with the assistance of UNHCR. In 2003, the RSS began another pilot project entitled “Protection of patrimony of the rural displaced population and strengthening the social fabric”, with the assistance of the World Bank, the Swedish International Development Agency and the International Organization for Migration. Official reports suggest that the results have been very positive, including the establishment of a monitoring system and the conclusion of agreements with regional and local governments.<sup>150</sup> In Eastern Antioquia, in the pilot municipalities of San Carlos and Granada, 617 properties with an area of 2,132.89 hectares were protected in the course of 2004.<sup>151</sup>

However, independent evaluation of the results achieved through the policy highlight a number of problems:

- when the property information registered in the project inventory was compared with existing data in the local land registry a high level of under-registration was detected, with nearly 50% of properties not listed by the project;
- several households under protection asked for retrospective permission to voluntarily sell their properties, but in most of these cases there was evidence that the application for release of the property was due to outside pressure on the owners to enable others to acquire their land;

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<sup>148</sup> Colombia, Congress, Ley 387

<sup>149</sup> Colombia, Ministry of Agriculture and Rural Development, Decree 2007

<sup>150</sup> Colombia, Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, *Informe Anual de Derechos Humanos y DIH 2004*, Bogotá, 2005

<sup>151</sup> Colombia, Red de Solidaridad Social, *Proyecto Antioquia: Protección de bienes patrimoniales de la población rural desplazada y fortalecimiento del tejido social comunitario*, Medellín: Gobernación de Antioquia, 2005

- only a limited proportion of the affected population is participating, which hampers the effective implementation of the decree;
- conversely the high number of potential applicants makes it doubtful whether universal application of the Decree would ever be possible, and RSS has calculated that no more than 15% of IDPs registered in 2001 were able to benefit from this regulation;
- the programme suffers from low efficiency caused by poor organization, inadequate institutional capacity and a lack of coordination with other institutions;
- the continuing loss of capital has also had the effect of limiting commercial credit which in turn inhibits the purchase of more land;
- the Decree does not differentiate between owners and non-owners of land, which presents an obstacle, given the predominance of precarious forms of tenancy in many regions;
- the option of a land swap, which is provided for in the Decree, has not been carried out in practice so far;
- a further element, which has not been taken into account by the Decree, is the question of land mortgages, which affects many displaced families who have taken out debts which are backed up by their landed property; after displacement, these financial obligations are no longer serviced, which puts at risk the mortgaged properties;
- finally, many owners lack the necessary documentation to prove their title to a property, and more flexible forms of registration of land titles might be required.<sup>152</sup>

UNHCR's Colombia office, in its latest biannual report, is critical of the government's efforts so far:

The results with regard to the distribution of land have been minimal in coverage and impact and are concentrated on pilot experiences of small size. Between 1996 and 2004 25,838 hectares have been acquired for the benefit of 1,740 displaced families at a cost of 37,286 million pesos (US\$ 16.4 million). Nevertheless the government estimated in May 2004 that 42,124 displaced households had not received attention.<sup>153</sup>

The situation has been further complicated by the decision in 2003 by the government of Alvaro Uribe to dissolve the state institution tasked with agrarian reform and the implementation of Decree 2007. INCORA, which was founded in 1962 and had managed to build a good reputation among farmers, was replaced by an agency called INCODER (Instituto Colombiano de Desarrollo Rural – Colombian Institute for Rural Development), with a significantly lower budget and 50% less staff.<sup>154</sup> Although the decision was presented as an example of reforming public administration, the impression it gives is that agrarian reform is not high on the government's list of priorities.

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<sup>152</sup> For a detailed discussion of these problems see Ibáñez and Querubín, *Acceso a tierras y desplazamiento forzado*

<sup>153</sup> United Nations High Commissioner for Refugees, *Balance de la política pública de prevención* [translation by present author]

<sup>154</sup> Comienza recorte en el agro, *El Tiempo* [Bogotá], 15 June 2003

As a consequence of multiple applications by 1,150 IDP families, the highest guardian of the legal order, the Constitutional Court, which had already ruled frequently in past cases that public IDP policies constituted an unconstitutional infringement of the displaced population's civil rights, undertook a thorough revision of the whole range of government actions in the field of internal displacement. The result was Court decision T-025-2004 which came to the summary conclusion that the treatment of the IDP population was such a deviation from constitutionally established requirements that the whole policy must be deemed an "unconstitutional state of affairs".<sup>155</sup> The Court found state policy and provision deficient on numerous accounts, especially with regard to its inability to protect the highly vulnerable IDP population and concerning the insufficient funds made available for the implementation of IDP support policies. Accordingly, basing itself on its constitutional mandate, the Court ordered the government and its agencies and institutions to overcome the unconstitutional state of affairs by implementing a number of concrete measures:

- adopt a budget in accordance with the identified needs of the registered IDP population;
- develop an action plan which addresses the deficits of state action;
- inform the victims of forced displacement about their basic rights and entitlements;
- undertake within six months all necessary steps to guarantee a Court-defined minimum level of protection for all IDPs;
- guarantee full participation of the displaced population in the decision-making;
- sanction any civil servants or agencies that had forced IDPs to have recourse to legal remedies to obtain their entitlements.<sup>156</sup>

This landmark ruling has had a very considerable impact on the debate of IDP issues in Colombia and has been the reference point for national and international organizations working in the field.<sup>157</sup> The Court effectively took the definition and scope of IDP care out of the administration's hands and forced it to dedicate resources and time to the question, especially through a tight control on the implementation of its orders. After granting the government several extensions, the Court itself stated in its "final implementation order", of 13 September 2005, that progress in improving the situation was "slow and irregular" and set an ultimate deadline. Due to favourable political circumstances and support from civil society and the international community, the Court was able to generate substantial momentum and the government followed up with a notable budget raise for IDP policy.<sup>158</sup> However, by issuing orders with strict deadlines, the Court has arrived at the limit of its own power, because the implementation depends in any case on the whole gamut of executive institutions making up the SNAIPD, who are legally competent to do so. A very close follow-up monitoring will certainly be necessary to avoid compliance problems. Only the future will show whether the change of direction in public attention to IDPs undertaken after T-025 will become permanent or may yet be reversed.

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<sup>155</sup> Colombia, Constitutional Court, *Sentencia T-025 de 2004*, 22 January 2004

<sup>156</sup> *Ibid.*

<sup>157</sup> See e.g. CODHES, ¡Cómo el cangrejo! El gobierno frente al desplazamiento in *Reelección: El embrujo continúa*, Bogotá: Plataforma Colombiana Derechos Humanos, Democracia y Desarrollo, 2004

<sup>158</sup> Presupuesto: Por fin, buenas noticias, *Semana* [Bogotá], 5 December 2005, pp.82-3

#### 4.4 Return Impossible

The Colombian government's current National Development Plan focuses IDP support on a pilot programme for the return of 30,000 displaced peasant families, which incorporates housing subsidies, land registry processes, and support and training for improved productivity and income generation.<sup>159</sup> However, return is not the only available option, and under the current situation often the least viable. For as long as local security conditions depend on the volatile interactions of hostile armed actors, and the humanitarian crisis is ongoing, the promotion of massive return programmes gives the impression of a further contribution to victimization and uprooting of the civilian population.<sup>160</sup> Nevertheless, the government continues to promote return as the only solution to the displacement crisis. Displaced persons, NGOs and officials of many international agencies have roundly criticized the government's return policy, and in particular pointed out that lack of security is an obstacle to safe return. In the words of a UNICEF official in August 2004: "There's not a sign of any one of the three necessary conditions for return. There's no security, no dignity, and very often no voluntariness"<sup>161</sup>

From the government's perspective, there are a number of reasons for giving preference to the policy of return. First, it is cheaper to return the IDPs to their rural homes than to resettle them. Second, the mayors of the recipient towns and municipalities are often reluctant to accept IDPs, since they are associated with armed actors and public insecurity. And finally, there is a strategic reason in that the returned people are used as a token of state presence. Unfortunately none of this takes into account the real preferences and needs of IDPs themselves. Given the difficult security situation in their original communities, and the lack of guarantees for their safe return, their access to land or to a job, most do not wish to return, as is shown, for instance, by responses recorded on the Catholic RUT database that indicate that nearly 65% of IDPs want to remain where they are and only a little over 12% want to return to their old communities.<sup>162</sup> The most likely explanation for this attitude is a pervasive fear of having to face reprisals or other form of violence, given the well-known violent nature of the land usurpers.<sup>163</sup>

In spite of the preferences expressed by many victims of displacement, the government assisted in the return of more than 70,000 IDPs to their home communities in more than 130 return actions between 1 August 2002 and 31 December 2004. Moreover, according to UNHCR, the majority of these cases occurred between one and four months after initial displacement, without significant change in the overall security situation and with no real alternatives that would enable victims of forced displacement to voluntarily

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<sup>159</sup> See, Colombia, Office of the President, *Bases del Plan Nacional de Desarrollo 2002-2006*, Bogotá, 2003, <http://www.presidencia.gov.co/planacio/> [accessed February 2006]

<sup>160</sup> Suárez Morales, H.D., ¿Hay condiciones para retornos?, *Revista En Nombre de ...*, No. 2, May 2005

<sup>161</sup> Human Rights Watch, *Colombia: Displaced and Discarded*

<sup>162</sup> *Boletín RUT Informa*

<sup>163</sup> Ferrero, E., El desplazamiento interno forzado en Colombia. Paper presented at Woodrow Wilson Center for International Scholars, Washington, September 2003

decide on their preferences.<sup>164</sup> Renewed displacement is a real risk under such circumstances.

In any case, the official policy of return is not achieving the desired results. In spite of the considerable budget assigned to these return and reallocation programmes, their outcome can only be described as modest: less than ten percent of all households entered in the official SUR registry of displacement have participated in reallocation programmes and only about one percent have actually returned.<sup>165</sup>

#### 4.5 Mechanisms for Protecting Property Rights

The main government agency in charge of all rural property issues is the newly established INCODER. It is not only responsible for the implementation of Decree 2007 as already discussed, it has also set up a special registry for abandoned properties, RUP (Registro Unico de Predios – Unified Property Register), where IDPs can list the properties they have had to abandon. As we have seen, the agency has an impossibly small staff and budget for such a very large scale enterprise. In its budget for 2005, INCODER did not even include a reference to funds specially earmarked for the displaced population, and its whole budget for rural investment covered only one percent of estimated IDP needs, according to UNHCR calculations.<sup>166</sup> Even by its own modest goals, which are not limited to or even concentrated on IDPs, the Institute has achieved less than half the targeted number of adjudications.<sup>167</sup>

Of the 16,025 hectares taken over and distributed by INCODER during the whole of 2004, 6,469 originated in public interventions into incidents of internal displacement. The rest came from indigenous communities and from properties seized by law enforcement from criminals, especially drug dealers. Only under the impact of the Constitutional Court's ultimatum does there seem to have been a change of emphasis, and INCODER has recently announced that it will spend its 2006 budget on buying land for distribution among displaced families. It still has to be seen, however, how funds for 2007 to 2010 will be distributed. These funds have only been allocated to financial years, but no preference for IDP needs has yet been established.<sup>168</sup>

To sum up, public policy on internal displacement suffers from a number of fundamental weaknesses:<sup>169</sup>

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<sup>164</sup> United Nations High Commissioner for Refugees, *Solicitud de información sobre el cumplimiento de la orden contenida en el ordinal quinto de la parte resolutive de la Sentencia T-025 de 2004, relativo a los mínimos de atención a la población desplazada* [Letter to the Constitutional Court], Bogotá, 18 March 2005, <http://www.acnur.org/biblioteca/pdf/3909.pdf> [accessed February 2006]

<sup>165</sup> Ibáñez and Querubín, *Acceso a tierras y desplazamiento forzado*

<sup>166</sup> United Nations High Commissioner for Refugees, *Solicitud de información*

<sup>167</sup> Colombia, Instituto Colombiano de Desarrollo Rural, *Informe Anual 2004*, Bogotá, 2005

<sup>168</sup> Colombia, Instituto Colombiano de Desarrollo Rural, *En marcha plan para atención a población desplazada*, Bogotá, 28 November 2005 (press statement), <http://www.incoder.gov.co/Noticia.asp?Id=424> [accessed February 2006]

<sup>169</sup> González Bustelo, M., *Desterrados: Desplazamiento forzado en Colombia*, Barcelona: Médicos sin Fronteras, December 2001

- existing rules are often unclear and deficient in clarifying the responsibilities of each institution;
- supplementary or executing decrees or institutions called for in national regulations are not adopted, not created or left undeveloped;
- there is a lack of political will to implement existing legal norms – affected communities are not taken into account during the elaboration of a law, while those who participate have their own interests;
- there is a lack of funds, delays in disbursements and confusing elements of decentralization;
- registration processes are excessively bureaucratic as a result of which many IDPs remain outside the system;
- regional and local governments are fearful of attracting massive displacement flows and try to evade this by minimizing their IDP support services;
- there is a degree of general mistrust and discrimination against displaced people;
- national authorities prefer to discharge their responsibilities through NGOs and international organizations.

The situation therefore is that although Colombia does possess a range – albeit incomplete – of mechanisms and institutions, which could serve to protect the property rights of IDPs, their actual success is extremely limited. In some cases they are just not operative, like many of the municipal Boards for the Comprehensive Assistance to IDPs, or are rendered ineffectual, like INCODER. Other organs, like the police, neglect their IDP functions because they have more pressing business to attend to.

The principal remaining avenue for the victims of threatened or actual forcible displacement is an appeal to the courts, which has at least two serious drawbacks. Firstly, such an approach would only be viable if the applicant has some form of legally recognizable entitlement to their land, and secondly, since court proceedings are public, they would subject the applicants and the judge to serious personal risk at the hands of the new owners or some of their friends. Additionally it is by no means guaranteed that even a favourable court decision will be respected by the defendant.

In practice, the most likely approach is not to seek out any representative of the state, but instead to try to come to an arrangement with the source of the threat, which is how the agricultural sector has become the principal source of revenue for armed actors, in the form of protection fees, extortion, ransom payments and other types of not easily quantified “contributions”. As observers have pointed out this actually means that Colombian society has chosen to accommodate rather than resist the activities of criminal groups, with the consequence that societal institutions and safeguards become eroded.<sup>170</sup> It should also be clear that while this sort of illegal arrangement is quite likely to be available for wealthier members of the rural classes, small tenants and farmers who own a few hectares are not in a position to accede to such demands, and are therefore even more vulnerable to violence and displacement.

#### **4.6 The Problem of Collective Property**

For some ethnic communities in Colombia, the cultural and social connection to the land is much stronger than for average Colombians. Article 329 of the Colombian

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<sup>170</sup> Bejarano, J.A., Violence, Security and Economic Growth in Colombia, 1985-1995, *Colombian Economic Journal*, Vol. 1, No. 1, 2003, pp. 36-57

Constitution of 1991 recognized this fact for the indigenous peoples, establishing the collective and inalienable nature of land in the reservations. For the Afro-Colombian communities living on the Pacific Ocean coast, the recognition was a little more complicated, since their special status was only recognized implicitly in Transitory Article 55 of the Constitution, subject to a report by a commission of experts. The enabling legislation which established their rights to collective property was adopted with Law 70 of 1993. Article 7 of this law likewise defines that the collectively owned lands of black communities are inalienable, and can not be mortgaged or confiscated.<sup>171</sup>

In theory, this is clear and unambiguous. In practice, there is little in these legal guarantees that can prevent land-hungry enterprises allied with paramilitary squads from taking control of such “protected” collective properties. An example is that of the Afro-Colombian communities of the Curvaradó and Jiguamiandó rivers in the Chocó department, who began to feel the pressure of paramilitary incursions in 2001, when their collective lands were invaded by the paramilitary Block “Elmer Cárdenas” for the first time. Since then, the armed aggressions have become so frequent that twelve Afro-Colombian communities in the region have been forced off their lands.<sup>172</sup> As reported by the Defensor del Pueblo, several large agro-businesses almost immediately began taking control of the abandoned lands, using them for the cultivation of African palm trees and cattle ranching. By November 2004, 21,142 hectares of collective property had been converted in this manner. The investigation also found that the enterprises had acquired fraudulent contracts and titles, enabling them to transfer 14,881 hectares of “inalienable land” into their ownership.<sup>173</sup>

Under international pressure from the Inter-American Court of Human Rights, which ordered the Colombian government to take action and protect the civilians displaced and expropriated, the new INCODER entered the scene and came to the legally unavoidable conclusion that the lands were illegally occupied, and that the collective land title belonged “inalienably” to the displaced Afro-Colombian communities. However, after being apparently subjected to considerable outside pressure, INCODER modified its initial decision of granting more than 100,000 hectares to 1,125 displaced families from these communities and withdrew the specific recognition of a claim for 10,162 hectares that had already been granted.<sup>174</sup> This incident is a worrying example of the general problem that the new institution, which is charged with clarifying the legal limbo that surrounds millions of hectares of abandoned IDP property, lacks independence and power to take hard decisions. Like the recently surfaced evidence that the top two directors of Colombia’s secret state police have been collaborating with paramilitary

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<sup>171</sup> Colombia, Congress, Ley 70 de 1993, 27 August 1993, *Diario Oficial*, No. 41,013, 31 August 1993

<sup>172</sup> Comisión Intereclesial de Justicia y Paz, *Palma de Muerte, silencio y complicidad institucional*, *Agencia de Prensa Rural*, 20 April 2005, <http://www.prensarural.org/jyp20050420.htm> [accessed February 2006]

<sup>173</sup> Colombia, Defensoría del Pueblo, *Violación de derechos humanos por siembra de palma africana en los territorios colectivos de Jiguamiandó y Curvaradó*, Bogotá, 8 April 2005 (press statement)

<sup>174</sup> *Informe Mensual de la Sala de Situación Humanitaria*, Vol. 4, No. 10, October/November 2005, [http://www.colombiassh.org/imagenes\\_nuevas/documentos/10-11SSH-05ext.pdf](http://www.colombiassh.org/imagenes_nuevas/documentos/10-11SSH-05ext.pdf) [accessed February 2006]

commanders, the case is another example of the gradual erosion of state institutions by private interests.<sup>175</sup>

For both the indigenous and the Afro-Colombian peoples forced displacement is doubly traumatic. Not only is the community bond to their ancestral lands violently broken, but in addition the use made of the land by the new occupiers, which frequently involves environmental degradation or the destruction of the forest, is in itself a further violation. In the subsequent long and often frustrating struggle to regain their property, it is often unclear who should assume the leadership and representation of the community. INCODER has had occasional successes, as in the case of 661 Afro-Colombian families on the Dagua river (Valle) who in January 2006 collectively received 14,698 hectares at a public ceremony organized by INCODER.<sup>176</sup> However, the onslaught against these reservations and communities continues relentlessly and the government urgently needs to address this challenge.

## 5 Possible Future Scenarios

### 5.1 Likely Development of Displacement Patterns

The future of the Colombian conflict is currently open. In early 2006, all signs pointed to another spate of pre-electoral violence, as customary in election years.<sup>177</sup> The FARC accelerated their armed activities, attacks and incursions in several parts of the country, striking with increasingly deadly effect against the state security forces. For example, the rebels dynamited eight oil wells in Orito (Putumayo), as well as an electricity tower near the Ecuadorean border which left 300,000 people without power.<sup>178</sup> The Armed Forces likewise stepped up the pressure and renewed their efforts to track and hunt down the top leadership of the guerrilla, the *Secretariado* (Secretariat). The paramilitaries and their allies, while supposedly exiting the military stage, nevertheless engaged in occasional “armed campaigning”, while dissident groups who have not joined the negotiation process, remained active. The widely feared escalation did not come to pass, however, and the elections were comparatively peaceful, though not without incidents. One of the most serious was the abduction of some 35 members of an electoral jury in Chocó near the border with Panama by the FARC.<sup>179</sup>

At the outset of President Uribe’s second mandate, there are two questions that will affect the future course of the conflict and the country. One concerns the process in relation to the paramilitary forces, which was positive as far as it went, but has entered into crisis. The government has so far tried to get the AUC to disarm and disband, without being very clear about what is being offered in return. This policy

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<sup>175</sup> Forero, J., 2 Top Directors Leave Colombia’s Secret Police as Scandal Mounts, *New York Times*, 28 October 2005

<sup>176</sup> Colombia, Instituto Colombiano de Desarrollo Rural, Gobierno nacional entrega títulos colectivos a comunidades afrodescendientes en el Valle, Bogotá, 19 January 2006 (press statement), <http://www.incoder.gov.co/noticias/verNoticia.asp?Id=498> [accessed February 2006]

<sup>177</sup> *Crisis Watch*, No. 29, 2 January 2006, p. 10

<sup>178</sup> Reuters, Colombian Rebels Bomb Oil Wells, Energy Tower, 2 January 2006

<sup>179</sup> Elecciones colombianas culminan con hechos aislados de violencia, *El Comercio* [Lima], 28 May 2006, <http://www.elcomerciooperu.com.pe/EdicionOnline/Html/2006-05-28/onlMundo0513434.html> [accessed June 2006]



unintentionally promotes the growing danger that the demobilizing paramilitary groups, already now disunited and distrustful, will fragment and their component parts drift into organized crime, death squads, or racketeering. Should this come to pass, violence will augment, but it will be sporadic, localized and concentrated in conflict ridden areas, more difficult to control and employed by multiple actors pursuing their own agendas. In the foreseeable future, there will probably be no large-scale offensive operations or incursions by illegal armed actors, as the AUC had carried out. The impact of such a development on displacement would be the reduction of mass displacement, but the increase of individual or household movement, also more interurban and secondary displacement.

The second pending issue is the eventual peace process with the FARC and ELN guerrillas. The electoral result has certainly strengthened Uribe's position, if he wants to enter into serious negotiations (which will certainly require making concessions if they are to lead anywhere). Recent government announcements have been encouraging in this sense. Just two days after his re-election, the President in effect recognised that an armed conflict existed by stating his government's intention to explore ways of reaching a negotiated settlement.<sup>180</sup> The FARC, without whom there can be no negotiated end to the armed conflict, have initially asserted that Uribe's re-election meant "more of the same: war and intervention, disintegration of our America, commercial treaties which give away national sovereignty (...) and more repression",<sup>181</sup> making clear that there would be no talks with this government. In a surprising recent turn of events, FARC spokesman Raúl Reyes announced on Venezuelan television that the insurgency would be willing to talk with the government, if certain conditions (a demilitarized zone, end of US military aid) were met.<sup>182</sup> Although these conditions are effectively unacceptable for the government, there is at least some movement on both sides, which may yet break the stalemate on talks.

The effect of eventual peace talks on displacement patterns is more difficult to assess, because as long as there is no cease-fire, fighting will go on nevertheless. As a matter of fact, negotiations may even have a short-term catalyst effect on violence, because all sides will try to strengthen their positions at the table. Another risk is that a confrontation between those armed groups participating in the negotiations and spoilers who chose to remain outside may develop, as is actually the case in the Arauca department, where the local FARC front has declared war on the ELN, which has been negotiating since last December.<sup>183</sup> In case the FARC should show itself reluctant to agree to talks, the government could also step up the military pressure on the organization, trying to force it into negotiations. Under all such scenarios, renewed violence accompanied by an escalation of the humanitarian emergency and in particular new instances of internal displacement is likely. In the last such spate of intensive fighting around Christmas 2005, at least 11 of Colombia's 32 departments were affected by the humanitarian crisis, which saw new massacres perpetuated by illegal groups, the

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<sup>180</sup> Logan, S., A President's Chance to Improve Colombia, *ISN Security Watch*, 22 June 2006, <http://www.isn.ethz.ch/news/sw/details.cfm?id=16250> [accessed June 2006]

<sup>181</sup> Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo, Marquetalia es Colombia entera avanzando hacia la victoria, con el inicio de 48 combatientes: 42 Aniversario de las FARC-EP, 1964-2006, 26 May 2006 (press statement), <http://www.farcep.org/?node=2,2093,1> [accessed June 2006]

<sup>182</sup> BBC News

<sup>183</sup> Taille, M., Colombie: les guérillas en guerre ouverte, *Libération* [Paris], 16 June 2006

imposition of “armed strikes” and increasing use of anti-personnel mines by the guerrilla and heavy-handed tactics of the security forces, including mass detentions, aerial bombardments and indiscriminate spraying with weedkiller.<sup>184</sup>

## 5.2 Possible Impact of the “Justice and Peace” Law

The Justice and Peace law enacted in 2005 has been one of the most acrimoniously debated initiatives of the government of Alvaro Uribe. It developed out of the disarmament and demobilization talks with the AUC and other paramilitary groups, whose commanders asked for guarantees of immunity from judicial prosecution for atrocities and crimes against humanity committed in the course of their 20-year struggle. The first version of the law introduced by the government was withdrawn from Congress after the Colombian human rights community as well as leading representatives of international agencies and some governments criticized the draft law as too lenient. A revised bill was later presented by the government, which incorporated some improvements in substance, but would still allow major perpetrators of human rights violations escape retribution. According to the government, this was a necessary requirement for the pacification of the country and the successful demobilization of around 20,000 irregular paramilitary combatants.

A third, revised version of the Justice and Peace law was eventually adopted by the Colombian parliament on 21 June 2005 as Law 975. The title is rather grander in scope than the law itself, which is mainly concerned with the demobilization of illegal combatants and not even with the deactivation of the ample paramilitary support structures.<sup>185</sup> International observers have particularly commented on the following features of the law:<sup>186</sup>

- although its main object is the demobilization of combatants, the law never mentions either the existence of an armed conflict or the applicability of international humanitarian law;
- members of the irregular combatant groups (in principle this is also applicable to guerrillas), who wish to demobilize, must apply and can be admitted to the process provided that the group they belong to has agreed to cease its activities;
- perpetrators of crimes committed in the course of the conflict “may” provide information on their crimes but are not compelled to do so; neither are they forced to apologize to the victims or disclose (let alone return) their illegitimately acquired properties;
- a maximum penalty of five to eight years is foreseen for non-pardonable offences; this can be reduced for good conduct and time served in pre-trial detention;
- the interests of the victims are ignored and there is no recognition by the state of a duty to compensate them independently of the perpetrators; victims and their families will only be eligible for reparation for offences for which the perpetrator has been sentenced;

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<sup>184</sup> CODHES, *Navidad en medio del terror*

<sup>185</sup> Amnesty International, *Colombia: The Paramilitaries in Medellín: Demobilization or Legalization*, London, September 2005

<sup>186</sup> Valencia Villa, H., *La Ley de Justicia y Paz de Colombia a la luz del Derecho Internacional de los derechos humanos*, Madrid: Centro de Investigación para la Paz, 2005

- the government is not required to investigate those financing or otherwise supporting the paramilitaries; all criminal investigations are subject to the Prosecutor General's decision whether it is "opportune" to prosecute (*principio de oportunidad*), a decision that must be taken and proceedings commenced within 60 days of an individual fighter demobilizing.

With regard to the topic of land and its treatment in the process of paramilitary demobilization, the Justice and Peace law explicitly sets out to seek a guarantee of the victims' interests, and several times reiterates the importance of the rights to memory, reparation and justice. However, the law does not contain any specific and practicable steps to ensure this outcome. Instead the practical work of reparation for Colombia's innumerable victims of terror and violence is delegated to a 13-member ad hoc national commission (Comisión Nacional de Reparación y Reconciliación, CNR), which, however, has not been provided with the resources needed to undertake its ambitious mandate. Supplementary legislation, Decree 4760, adopted at the end of 2005 established additional bodies, so called regional restitution boards, but their function remains unclear.<sup>187</sup> Decree 4670 also made clear that the state penal system will not prosecute the perpetrators of illegal property transactions, especially if there is no other crime connected to them involved.

International reactions to the Justice and Peace legislation have been strongly critical. The Office in Colombia of the UN High Commissioner for Human Rights, for example, has expressed doubts about the implications of Decree 4760 of 2005, stating that "[it] has not succeeded in establishing the advisable comprehensive legal framework with regard to persons who do not belong to organized illegal armed groups, but have participated in the acquisition, possession, tenancy, and transfer of illegally acquired properties that are handed over for the reparation of victims". The Office further points out that in the application of the principle of opportunity, the Attorney-General's Office should take into account the international obligations of the Colombian state with regard to the administration of justice and the fight against impunity.<sup>188</sup>

While the law's exact legal status remained in limbo due to the pending examination of its constitutionality in the Constitutional Court, the demobilization process of its intended beneficiaries, the combatants of the AUC and the Elmer Cardenas Block, has proceeded until its announced successful completion in April 2006. A total of 30,944 fighters were reported as demobilized, 17,564 weapons as decommissioned and, most interestingly, rural properties "presumably related to AUC activity" amounting to 25,601 hectares as confiscated,<sup>189</sup> This last figure amounts to 0.6% of the approximately four million hectares abandoned by forcibly displaced people.

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<sup>187</sup> Colombia, Ministerio del Interior y de Justicia, Decreto No. 4760 de 30 December 2005 por el cual se regula parcialmente la ley 975 de 2005, <http://www.altocomisionadoparalapaz.gov.co/noticias/2006/enero/documentos/decreto4760.pdf> [accessed February 2006]

<sup>188</sup> United Nations High Commissioner for Human Rights, The Regulations Regarding the 'Justice and Peace Law' [...], Bogotá, 4 January 2006 (press statement)

<sup>189</sup> Colombia, Oficina del Alto Comisionado para la Paz, *Proceso de paz con las Autodefensas: Informe ejecutivo*, Bogotá: Presidencia de la República, June 2006

On 18 May 2006, the Constitutional Court, after intensive deliberations, finally announced its verdict on the constitutionality of the “Justice and Peace” law. Numerous applicants had argued that the law was passed in violation of Colombia’s international obligations to truth, justice and reparation for the victims of massive human rights violations. The Court decided by 7:2 votes that the law was not in and of itself unconstitutional, but that several of its provisions were irreconcilable with the Constitution and had to be eliminated. It also interpreted several crucial paragraphs of the law in a manner so as to permit only one reading – usually the most generous one possible for the victims. In this way, the victims’ participation was made obligatory throughout the proceedings, the requirements for perpetrators to receive beneficial penal treatment (reduced sentences) were amplified and the original legal requirement that the prosecutor must formally accuse a perpetrator within six months was modified, to permit longer periods of investigation.<sup>190</sup>

In relation to the question that is most central to this report, the status of IDP housing and property, the Court has improved on the originally very weak claim that the victims had against the perpetrators. Law 975 had provided for reparation and restitution only “to the extent possible” and “if available”. The Court eliminated these loopholes. It also introduced a subsidiary liability of all members of a demobilized illegal armed group to compensate the victims of the atrocities committed by an individual member. In sum, the Court has done what was legally possible to improve on the law, and has taken up most of the issues raised by the critics.

Now that the Court has spoken, the the matter returns to the executive agencies in charge of applying the law on the ground. Numerous questions remain, which will hopefully find solutions that further the aims of justice and reconciliation. On the issue of prosecution, the government has presented a list of 2,180 perpetrators to the Public Prosecutor for further criminal investigation, roughly 7% of all the demobilized paramilitaries, who are accused of the most serious crimes.<sup>191</sup> If most of these people actually submit to the law and receive sentences, this would set a powerful precedent in a country where average impunity rates hover around 97%. Such convictions would also have an important impact on the restitution of stolen property, because a compensation claim against a perpetrator can only be legally recognised and enforced if the former has been formally sentenced. Once any member of an illegal armed group has been found guilty, its victims can also present claims against the other members, due to the liability of all for one.

In spite of these perfectly legal possibilities, the effective administration of restitution and compensation claims for hundreds of thousands of victims of internal displacement appears impossible through the judicial system. This is even truer as the lion’s share of IDP land was taken over by third parties, with no ostensible connections to the perpetrators. Only a minimal part could therefore be confiscated without extensive criminal investigations and be made readily available for restitution by court order. The Colombian judiciary lacks the resources to deal with a task of this magnitude, and

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<sup>190</sup> Colombia, Constitutional Court, Comunicado de prensa sobre demanda contra la Ley de Justicia y Paz, Ley 975 de 2005, 18 May, 2006, Expediente D-6032, Sentencia C-370/06. Note that the complete decision still has not been made public at the time of writing.

<sup>191</sup> Colectivo de Abogados José Alvear Restrepo, Balance del Proceso de Impunidad y Desafíos, 15 June 2006, <http://colombia.indymedia.org/news/2006/06/45020.php> [accessed June 2006]

should concentrate on securing the criminal convictions of perpetrators, especially those who refuse to submit to the Justice and Peace law. Neither will most victims have the time or money to spend years in court trying to prove that they were dispossessed of their original estates.

Many IDPs will therefore apply for compensation to the CNR and the National Funds for the Reparation of the Victims that it will administer. Attorney General Edgardo Maya has already warned that the Commission will face an enormous task in the question of land and territory, because if it attempts to implement integral reparation, it would actually have to give back all the material goods that were lost, something that appears hardly possible. The Colombian public had exaggerated expectations concerning the work of the CNR, whereas international experience showed that individual and collective reparation of victims was always incomplete, cautioned Maya, who also stressed that all properties the Commission could use for reparation would have to be voluntarily handed over by the perpetrators and the CNR had no coercive power to force their compliance.<sup>192</sup> Given such difficult circumstances, state institutions active in the preparation of reparation and compensation for victims such as IDPs are doing an excellent job, and try hard to set up working structures and secure additional funding to make up for the expected shortfalls and assist as many victims as possible.

The Justice and Peace law, as amended by the Constitutional Court, is not an ideal solution to the difficult dilemmas faced by hundreds of thousands of victims of forced displacement in Colombia, but it is a good start.<sup>193</sup> Many may never get their original properties back, but at least they can look forward to receiving financial compensation for their loss, and may restart their lives in another part of Colombia. The law is now clearly laid out, the challenge of the re-elected President and his staff is to put into place effective mechanisms which can deliver prompt and adequate compensation for the IDP population and to contribute sufficient funds to them so that they can carry out their tasks properly.

### **5.3 Review of Opportunities for IDP Return**

The Pinheiro principles, named for the UN's Special Rapporteur on Housing and Property Restitution for Refugees and IDPs, are a fairly new international standard which establishes the right of internally displaced people to return to their original homes or be fully and adequately compensated for their value. The principles include the right of voluntary return in conditions of safety and dignity, the right to be protected from further displacement and other comparable rights.<sup>194</sup> These rights are not really new or expressed for the first time, and similar arguments have in fact been utilized by UN and other international agencies in their contacts with the Colombian government to try to put a hold on premature and overhasty return initiatives. But the codification of the principles is certainly to be commended, because it provides the UN system as well

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<sup>192</sup> Colombia, Procuraduría General, Palabras del señor Procurador General de la Nación, doctor Edgardo José Maya Villazón, en el acto de instalación del seminario "Territorio, patrimonio y desplazamiento", Bogotá, 23 November 2005

<sup>193</sup> Comisión Colombiana de Juristas, La Corte Constitucional protege los derechos de las víctimas y de la sociedad colombiana a la verdad, la justicia y la reparación, Bogotá, 19 May 2006 (press statement)

<sup>194</sup> Centre on Housing Rights and Evictions, *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Geneva, [2006], <http://www.cohre.org/downloads/principles.pdf> [accessed February 2006]

as interested representatives of the state and civil society with an important additional tool and source of information on the current status of international human rights law. It is clear that the principles as such do not have binding value, but they are an important document of “soft law” whose normative significance is bound to increase over time.<sup>195</sup> Until now, the awareness of these principles, and the work leading up to their formulation, in Colombia has been very limited, which is unfortunate, given their direct relevance for the situation of hundreds of thousands of Colombians forcibly displaced from their homes.

In practical terms, the Pinheiro principles contain a number of recommendations and steps, which could be implemented by national and international actors in order to improve public assistance to IDPs. At the same time, the principles also constitute a set of standards which can be used to assess the performance of a particular service or activity. A number of possible examples applied to the Colombian case could be cited, but it will be sufficient to mention a few by way of illustration:

- Principle 19 contains a clear and unambiguous prohibition of arbitrary and discriminatory laws which prejudice the restitution process. In the light of this principle, it would be useful to carry out a fresh examination of the Justice and Peace law, as this appears to have precisely such a prejudicial effect on IDP properties, as discussed above.
- Principle 12 stipulates that states should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims, and make adequate financial, human and other resources available to facilitate restitution. These recommendations are particularly valid for Colombia, where, as we have seen, an understaffed and underfunded agency which lacks independence tries to cope with a huge backlog of cases, on most of which work never even begins.
- Principle 10 recognizes the right of refugees and IDPs to a safe and dignified, voluntary return to their former places of habitual residence, with the decision to return based on free and informed individual choice, including information on legal and safety issues. This rule, if much more widely known and accepted among Colombian state officials, could stop the implementation of the present reckless and counter-productive returns policy, which proceeds without consulting the affected population.

Regarding the more general question of opportunities for return for Colombia’s IDPs, it is clear to most analysts that at the time being conditions for a safe return are usually simply not in place, because of the ongoing conflict and the inability of the state security forces to provide a permanently safe environment for returning IDPs.<sup>196</sup> As a consequence, return is currently not a realistic possibility in large parts of the country, but the state could still do a great deal in terms of preparing the ground for an eventual return of the IDP population. Such a strategy would necessitate making it harder for the

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<sup>195</sup> Hillgenberg, H., A Fresh Look at Soft Law, *European Journal of International Law*, Vol. 10, No. 3, 1999, pp. 499-515

<sup>196</sup> See opinions by displacement experts cited in Human Rights Watch, *Colombia: Displaced and Discarded*, pp. 23 ff



political and economic interests driving internal displacement to take advantage of the situation they have created. The legal instruments for doing this are almost all in place; what is sorely needed is the political will to implement them.

#### **5.4 Changing Roles for International Actors**

The situation in the rural areas is complex and there are no easy solutions, given the interplay of regional and local interests, conflict dynamics, agro-industrial development schemes and a weakening state presence. In many ways it appears clear that the Colombian government would like to hand over responsibility for managing IDP affairs to the international community, but at the same time it resents the growing importance and outspokenness of international oversight and control mechanisms. The land issue, for a number of reasons discussed in the report, is especially crucial and politically as well as economically delicate. In this double bind, the government will certainly watch the actions of international organizations and their clients in the country very carefully and may clearly state its opposition or discontent with one particular policy or other. This also creates a difficult situation for the international agencies present in the country. They have to emphasize the strictly humanitarian nature of their work and might have to make special efforts to avoid becoming involved in the occasional public controversies the government likes to stage for domestic consumption.

Concrete steps are necessary to improve the miserable situation of Colombia's millions of expropriated rural IDPs. While the lion's share of responsibility certainly belongs to the national government, the international players can work in a number of ways to meet this important challenge. Their focus should be on three priority fields:

- Information and awareness raising about the Pinheiro principles is important. With this set of rules, the international community disposes of a written catalogue which can be used in order to evaluate performance and educate on the most important aspects of attending to the needs of the IDP population. The whole system of the United Nations, and specialist organizations like COHRE (Centre on Housing Rights and Evictions), need to make it a priority to inform IDPs and government officials alike about the minimum requirements for treatment of abandoned IDP property contained in the Pinheiro principles.
- Encouraging the participation of affected IDP populations by capacity building. This would necessitate strengthening the work, outreach and human capital of local organizations of displaced persons.
- Planning and implementing integrated revision and reform in concrete issue areas that have been identified as in need of improvement. This would apply e.g. to the whole area of prevention of internal displacement, which has seen a serious deterioration in its capacities (early warning, crisis intervention, etc.)

## **6 Conclusion**

The presidential and congressional elections provided opportunities for the people to assess the performance of the Uribe government and a large majority of voters have not only renewed the mandate of the President but also of the political forces supporting him in Congress. This double victory has given Uribe a broader space for manoeuvre to address the manifold problems which persist in Colombia, in spite of some measurable

improvements achieved during his first term. Paramount among these challenges is achieving a sustainable pacification by redefining the negotiations with the paramilitaries, reforming the current process of demobilization and reintegration of former combatants and starting a peace process with the guerrilla. In apparent recognition of this opportunity, the government has substantially modified its stance in recent months, showing itself more open to effective negotiations, including over a humanitarian exchange, with the insurgents. This will not be easy, as the narcotics industry and trade as well as other illicit businesses continue to provide major incentives to armed actors motivating them to struggle for control over territory and strategic routes.

While the FARC guerrilla's tactics appear to have changed insofar as they refrained from actively sabotaging the elections this year, they have remained adamant up to now that they will not negotiate with a government they consider illegitimate. The FARC are also intensifying their campaign against the smaller ELN, which has already entered into talks with the Uribe administration. The Armed Forces for their part are continuing their counter-insurgency operations which cost billions of dollars every year and have produced only limited results so far. The large-scale demobilization of paramilitary groups has had a positive impact on the development of political violence, including a reduction in internal displacement numbers. However, the danger that this effect might not be permanent is real, due to a lack of coherent government policies, as well as the growing anarchization of the violence in several parts of the country. Demobilized paramilitaries can easily be reactivated to form criminal gangs or death squads, or become hit men or guerrillas, especially if they have no viable alternatives. In such a scenario, the conflict could rapidly return to its former brutality, including particularly violent means such as massacres targeting the long-suffering civilian population. More displacement and large humanitarian emergencies would be the inevitable consequence.

The situation with regard to the properties of IDPs remains very worrying. It is estimated that about four million hectares of land have been abandoned by forcibly displaced people, amounting to three times the quantity of territory redistributed in all public agrarian reforms since 1961. More than 90% of IDP households have simply abandoned their homes, while the rest sold under pressure or coercion from armed actors who invaded their properties and threatened them openly. The state has gradually made some mechanisms available for the temporary protection of abandoned IDP properties, but they are ineffective and overwhelmed by the magnitude of the crisis. A Unified Property Registry, indispensable for protecting displaced owners, was only set up in 2005. The government agency charged with addressing rural property issues, INCODER, is understaffed and clearly lacks funds; its whole budget for rural investment in 2004 covered only one percent of estimated IDP needs. The results with regard to the distribution of land have been minimal in coverage and impact and remain concentrated on small pilot projects. Too often, victims of forced displacement are left to themselves to see how they can salvage anything from their lost properties, which quite frequently become part of large agro-industrial development schemes backed by paramilitary firepower and official silence. The government of President Alvaro Uribe appears unable so far to assemble an effective and credible state policy to address this issue, as it has dedicated most of its resources to humanitarian emergency response, which has in fact improved considerably. Nevertheless, this limited focus has gone at the expense of finding long-term solutions for IDPs (resettlement or return).



Some measures ostensibly designed as solutions instead compound the problem. A case in point is the Justice and Peace law adopted in 2005, which has provided for strictly limited compensation for victims, while leaving untouched those who make a handsome profit by taking over abandoned IDP properties. In a positive development, the Constitutional Court, in a recent ruling, has remedied some of the most glaring defects of this law, by declaring some parts of it unconstitutional. Especially important for the issue of reclaiming lost property are the following: a broader definition of victims/claimants, an extension of civil liability to all members of an illegal group that is found guilty of committing violations, and the striking down of limitations to the duties of restitution and reparation to the victims.

This decision has to be seen in the context of the increasingly active role the Constitutional Court has assumed in the control of government IDP policy. A landmark ruling (T-025-2004) has been the source of many improvements observed over the last two and a half years. Under pressure from the Court, the government also promised in November 2005 that it would substantially increase the budget for IDP support, which should rise to 818,000 million pesos (US\$ 362.16 million) in 2006, with an undertaking that a total of 5,100 billion pesos (US\$ 2.26 billion) will be spent over the next five years. Many of the Court's orders addressing what it has termed an "unconstitutional state of affairs" still need to be implemented, however. Other government agencies, such as the Attorney General's Office (Procuraduría General) which often takes the lead in controlling (and criticising) government action, also work to improve the critical situation of internal displacement in Colombia.

International actors are of crucial importance in alleviating the effects of the Colombian displacement tragedy, not only by being responsible for the provision of a large part of the humanitarian assistance available to IDPs, but also by setting standards (in particular the Pinheiro principles) by which the government's performance can be evaluated.

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