



Georgetown University Law Center
Scholarship @ GEORGETOWN LAW

2006

Unintended Consequences: Refugee Victims of the War on Terror

Georgetown University Law Center, Human Rights Institute

This paper can be downloaded free of charge from:
http://scholarship.law.georgetown.edu/hri_papers/1

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: http://scholarship.law.georgetown.edu/hri_papers



Part of the [Human Rights Law Commons](#)

UNINTENDED CONSEQUENCES

Refugee Victims of the War on Terror

**Georgetown University Law Center
Human Rights Institute
Refugee Fact-Finding Investigation
May 2006**

EDITORS

Mark Fleming
Emi MacLean
Amanda Taub

AUTHORS AND RESEARCHERS

Shaina Aber
Devon Chaffee
Mia F. Cohen
Edward Dougherty
Mark Fleming
Emi MacLean
Elizabeth Matos
Jennie Pasquarella
Rebecca Shaeffer
Jeffrey Smith
Tom Smith
Amanda Taub
Sarah Yeomans

FACULTY ADVISOR

Andrew Schoenholtz
Deputy Director, Institute for the Study of International Migration
Georgetown University

SUPPORT PROVIDED BY

Georgetown University Law Center
Georgetown Human Rights Institute

ACKNOWLEDGEMENTS

The Georgetown University Law Center Fact-Finding Group acknowledges the support of innumerable people without whom this project would not have been possible.

The staff of the United Nations High Commissioner for Refugees in Ecuador (UNHCR), the Hebrew Immigrant Aid Society (HIAS) and the *Comité Pro Refugiados* (CPR) provided invaluable assistance in facilitating the field research in Ecuador and inspired us with their unwavering commitment to improving the lives of Colombian refugees. The group is particularly indebted to Walter Sanchez of UNHCR, Sabrina Lustgarten of HIAS, and Sister Jannet of CPR.

The support of the administration and faculty of Georgetown University Law Center has also been indispensable to this project. The group particularly thanks the Human Rights Institute, Dean Alex Aleinikoff, Professor Carlos Vázquez, Dean Mitchell Bailin, and Dean Carol O’Neil who have remained dedicated to the project’s mission to use law in the service of positive policy change. This project also depended on the financial support of generous Georgetown alumni.

Most importantly, the group is grateful to the refugees who entrusted us with their deeply personal stories in the hopes that they contribute to improving the lives of other refugees.

The thing was that I couldn't really do anything against them or tell them no.

I did what any human being would do.

- *José, Colombian taxi driver hijacked by armed guerrillas and forced to drive the guerrillas to undisclosed mountain encampments*

Table of Contents

EXECUTIVE SUMMARY I

I. INTRODUCTION 1

A. METHODOLOGY.....3

B. HISTORY OF THE COLOMBIAN CONFLICT5

C. HISTORY OF UNHCR REFUGEE PROTECTION PROGRAM IN ECUADOR.....6

D. UNITED STATES RESETTLEMENT PROGRAM6

**II. THE MATERIAL SUPPORT BAR TO REFUGEE RESETTLEMENT:
LEGAL ANALYSIS AND FINDINGS 9**

A. LEGAL ANALYSIS OF MATERIAL SUPPORT PROVISIONS.....9

 1. Definition of Material Support 10

 2. Definition of a Terrorist Organization 11

 3. Discretion to Waive the Material Support Bar 13

 4. Application to Asylum and Withholding of Removal 14

 5. Lack of Exceptions Violates International Law..... 14

B. INVESTIGATIVE FINDINGS: MATERIAL SUPPORT IN COLOMBIAN CONTEXT 15

 1. Categories of Material Support Given 16

 a. Vacuna16

 b. Goods18

 c. Services19

 d. Affiliation20

 2. Legal Problems Arising Out Of The Material Support Bar..... 21

 a. Lack of Duress Exception22

 1. *Material Support Provided Under Physical Force*..... 24

 2. *Material Support Provided Under Explicit Threat of Violence* 24

 3. *Material Support Provided Under Implicit Threat of Violence* 25

 4. *Material Support Provided without Coercion*..... 26

 b. Lack of De Minimis Exception for Insignificant Support26

 c. Overbroad Definition of Terrorist Organization.....28

d. No Time Bar or Exception for “Support” Provided Before Age of Consent	29
e. Exclusion of Refugees Who Inadvertently Provided Material Support.....	29
III. FIRM RESETTLEMENT: LEGAL ANALYSIS AND FINDINGS	30
A. LEGAL ANALYSIS OF FIRM RESETTLEMENT PROVISIONS	31
B. UNHCR’S CRITERIA FOR THE RESETTLEMENT OF COLOMBIAN REFUGEES.....	32
C. FINDINGS: FIRM RESETTLEMENT IN ECUADOR	34
1. Lack of Legal Protection for Refugees Recognized Under UN Mandate.....	35
2. Security Threats Within Ecuador’s Borders.....	36
a. Persecution by Colombian Armed Groups.....	36
b. Problems of Police Brutality and Inaction.....	37
3. Systematic Discrimination	38
a. Employment Discrimination.....	39
b. Housing Discrimination	40
c. Education Discrimination.....	40
d. Health Care Discrimination	41
4. Particularly Vulnerable Groups	41
a. Women: Trafficking and Sexual Exploitation.....	42
b. Afro-Colombians	43
c. Sexual Orientation.....	44
IV. CONCLUSION	45
APPENDICES	46
APPENDIX A: MATERIAL SUPPORT BAR – RELEVANT STATUTES.....	47
8 U.S.C. § 1182 - Inadmissible Aliens	47
8 U.S.C. § 1158(b) - Conditions for Granting Asylum.....	50
8 U.S.C. § 1231(a)(3) - Withholding of Removal	52
APPENDIX B: SUMMARIES OF CASES CITED	53

EXECUTIVE SUMMARY

“I was coming to the farm, and I was on the road when they captured me. They took my motorcycle and all my food. They took everything I had.”

Jorge resisted providing a *vacuna* (“war tax”) to the FARC guerrillas in Colombia, though the guerrillas asked him repeatedly for it. Once the armed conflict enveloped his village—with regular helicopter barrages and armed fighting encroaching on his farm—he could not endure the violence any longer. He fled with his family to Ecuador.

But, the Colombian conflict followed Jorge to Ecuador. After the United Nations High Commissioner for Refugees (UNHCR) granted Jorge refugee status, guerrillas kidnapped him and chained him up in the mountains for forty-five days. The guerrillas accused him of collaborating with the Ecuadorian government; they told him that his refugee papers proved his complicity. During the abduction, they stole his motorcycle and supplies.

With the help of one of his captors, Jorge barely escaped with his life. The guerrillas killed everyone else who had been chained in the mountains with him. Now, Jorge is terrified the guerrillas will come after him again. Since his release, one of the guerrilla commanders from his captivity has been apprehended and returned to Colombia. “I was afraid that when he was back in Colombia and they asked, ‘who reported him to the authorities?’ that they would think of me and come after me. They have all of the information about me and my life—everything.” Once, in an Ecuadorian town, Jorge saw the guerrilla who had brought him food while he was chained up. He ran, petrified.

It has been two years since Jorge’s abduction, and he is still living with his wife and children in Ecuador. Jorge’s family awaits resettlement to a third country where they can finally live in peace.

Because of his abduction, Jorge and his family would be barred U.S. resettlement under the “material support bar” as it has been amended by the USA PATRIOT Act and the REAL ID Act. The material support bar denies refugee or asylum protection to any individual who provides material support to a terrorist organization. Under the law, the terms “material support” and “terrorist organization” have few limiting principles. Virtually any interaction with an armed group—aside from successful resistance—constitutes material support. A terrorist organization is any group of two or more people, organized or not, who participate in certain enumerated activities. In Jorge’s case, his “provision” of his motorcycle and supplies under physical force and the threat of death would constitute prohibited material support to a designated terrorist organization.

The dramatic expansion of the material support bar has had deleterious unintended consequences. The bar intends to prohibit U.S. refugee resettlement and asylum to terrorists and those who aid terrorist groups. But, written and interpreted broadly, with no exceptions, and an impracticable waiver, the law has led to over-inclusive and irrational results antithetical to its purpose. In addition to denying protection to those who knowingly and deliberately provide meaningful support to

¹ Interview with “Jorge,” Colombian Refugee JSMFC-02 (Mar. 2006) (on file with author). See Appendix B for summaries of all cases cited in this report.

terrorist groups as Congress intended, the material support bar also precludes protection for countless refugee victims of terrorist groups.

The United States initiated the Colombian resettlement program in 2003 to protect recognized Colombian refugees who remain at great risk in Ecuador because of threats to their life or safety, severe discrimination, or special needs. UNHCR and the United States recognized that a select group of refugees could never be safe in Ecuador because they continued to face persecution from Colombian irregular armed groups operating in Ecuador. Likewise, they realized that some particularly vulnerable groups, such as women and Afro-Colombians, faced severe difficulty integrating in Ecuadorian society. For these refugees, local integration was often impossible because of severe sexual exploitation, acute discrimination, and a lack of access to basic services. For refugees most at risk of physical insecurity or an inability to locally integrate, resettlement to the United States and other third countries was recognized as the only durable solution.

However, just one year after the inception of UNHCR's resettlement program in Ecuador, the program was virtually shut down due to the broad application of the material support bar to Colombian refugees fleeing terrorist violence. UNHCR no longer refer cases to the United States for resettlement that could be construed as containing material support issues under this expansive law. In Colombia, where civil war has been far-reaching and persistent, interactions with irregular armed groups are common. As the law went into effect in late 2004, UNHCR officials in Ecuador were told by U.S. government representatives that "even a glass of water" could constitute prohibited support. According to UNHCR, an estimated seventy to eighty percent of Colombian refugees have provided some form of "material support." Because of the ongoing conflict, armed groups fight for control of much of the country—and the civilian population is caught in the middle.

The breadth of the law and its interpretation is having an effect far beyond Colombia. Some extreme interpretations have demonstrated that UNHCR's concerns about the impact of the material support bar on the global resettlement program are not unwarranted. The U.S. government indefinitely deferred U.S. resettlement of a Liberian woman who was gang-raped and held hostage by the Liberians United for Reconciliation and Democracy (LURD). Relying on the material support bar, DHS classified the laundry and chores that the rebels forced her to do while she was held hostage as prohibited material support to a terrorist organization. A Sri Lankan refugee was forced to pay a ransom for his release after he was abducted by the Liberation Tigers of Tamil Eelam (LTTE); the U.S. judge denied him asylum on account of this provision of material support to a designated terrorist organization. The expansive definition has denied U.S. protection to anti-communist *Alzados* who challenged Castro's dominance in Cuba; Vietnamese Montagnards who supported U.S. military action during the Vietnam War; and thousands of pro-democracy Burmese who supported resistance to a totalitarian regime that the United States also opposes.

A Georgetown Fact-Finding Group found that many Colombian refugees who would be barred U.S. resettlement because of material support generally provided "support" under coercion, inadvertently, or in amounts too small to be realistically considered support. In several cases, "material support" was provided many years prior to the persecution that compelled the refugee to flee Colombia or was provided when the refugee was a minor.

In the Colombian context, where armed groups are rampant and demand that civilians demonstrate their allegiance by acquiescing to their commands, the material support bar has denied protection to hundreds of deserving refugees every year. Under current U.S. law, their victimization at the hands of terrorists is read as collaboration, despite their often desperate efforts to resist terrorist demands.

RECOMMENDATIONS

In order to prevent meritorious refugees fleeing persecution from suffering the effects of the material support bar, the Georgetown University Law Center fact-finding group recommends that **Congress urgently amend the material support bar** to:

1. Establish an involuntary support exception for those who provided “support” under explicit or implicit duress. Where terrorist groups operate, people are often forced to provide goods or services through threats, intimidation, and violence. There is no statutory duress exception to the material support bar.
2. Provide a *de minimis* exception for those who provided insignificant “support.” Under the current interpretation, there are no exceptions for levels of support too small to be material support to terrorist activity. This interpretation reads the word “material” out of “material support.”
3. Require the U.S. government to certify an organization as a “terrorist organization” before an individual can be barred for providing “material support” to that group.
4. Provide a time bar exception for support provided before the age of consent or many years prior to the application for resettlement.

Further, the Georgetown group recommends that the **Department of Homeland Security create guidelines** that:

1. Interpret the material support bar to include exceptions for involuntary support and *de minimis* support, a requirement that terrorist organizations be certified, and a time bar.
2. Explicitly exempt individuals who inadvertently provided material support to a designated or non-designated terrorist organization, with neither knowledge nor intention to support an armed group.

Finally, the Georgetown group recommends that the **Secretary of the Department of Homeland Security, the Secretary of State, and the Attorney General appropriately delegate their authority to waive the material support bar** in cases where it should not apply. The waiver provision in the material support bar is currently impracticable.

The United States has set an example to the world as a nation that provides safe haven for refugees. Many refugees have been the victims of attacks by terrorist organizations and have relied on the US resettlement program to begin their lives anew.

I. INTRODUCTION

Miguel² was kidnapped by marauding paramilitaries on a killing spree and forced to dig graves for the victims of their slaughter. Other gravediggers were sometimes shot by the paramilitaries and buried in the graves they had freshly dug. Miguel never knew whether the grave he was digging would become his own.³ **Diana** was forced to provide ski-masks and scarves to the paramilitaries before they gang raped her and fed her to a ferocious dog,⁴ while **Juan**, a refrigerator repairman, was taken to a guerilla encampment and forced to repair their appliances.⁵ Miguel, Diana, and Juan, who fled Colombia to Ecuador to escape their persecutors, are designated refugees by the UNHCR. They are all awaiting resettlement to a safe third country because they face serious risk of continued persecution in Ecuador by Colombian armed groups.

Before 2004, Miguel, Diana, and Juan would have been eligible for refugee resettlement in the United States. Today, they are not. Since the enactment of anti-terrorism legislation and its application in 2004 by the Department of Homeland Security (DHS) to overseas refugee resettlement, *bona fide* refugees from war-torn regions like Colombia are barred from U.S. protection.

Anti-terrorism legislation adopted under the USA PATRIOT Act of 2001⁶ and the REAL ID Act of 2005⁷ amended section 212 of the Immigration and Nationality Act (INA) to widely expand the class of individuals considered inadmissible to the United States for having “engaged in terrorist activity,” including by providing “material support” to “terrorists” or “terrorist organizations.”⁸ The collection of amended terrorism provisions in the INA creates the grounds for inadmissibility that this report refers to as the “material support bar.” As a result of its overbroad language and lack of a duress exception, the material support bar has already prevented thousands of refugees from obtaining asylum relief or resettlement in the United States. Although this legislation may have imposed a formidable barrier on the ability of terrorists to pose as refugees, it has also had the perverse effect of shutting the door on thousands of meritorious refugees who are the victims of terrorism. In effect, the United States has foreclosed entry for those individuals who have suffered at the hands of the very terrorist groups it seeks to target.

During the last thirty years, the United States has pioneered international efforts to provide a safe haven for refugees by both administering programs to resettle overseas refugees in the United States and providing asylum relief to refugees who have already fled to the United States. The commitment and capacity of the United States to resettle refugees in dire need of protection is so imperative worldwide that in FY2004 the United States resettled sixty-seven percent of the total

² All refugee names have been changed to protect their identities.

³ Interview with “Miguel,” Colombian Refugee EMSA-05 (Mar. 2006) (on file with author).

⁴ Interview with “Diana,” Colombian Refugee SA-01 (Mar. 2006) (on file with author).

⁵ Interview with “Juan,” Colombian Refugee EMSA-01 (Mar. 2006) (on file with author).

⁶ The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, Pub. L. No. 107-56, 115 Stat. 272 (2001).

⁷ The REAL ID Act, Division B of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 1, 2005).

⁸ See INA § 212(a)(3)(B); 8 USC § 1182(a)(3)(B) (2005).

number of refugees referred for resettlement worldwide by United Nations High Commissioner for Refugees (UNHCR).⁹ Continuing in this tradition, in FY2006 alone, the United States aims to resettle 70,000 refugees in the United States.¹⁰ Without a legislative and administrative solution, however, the material support bar is and will continue to present significant challenges to the ability of the United States to live up to its commitments.¹¹

In the Colombian context, the application of the material support bar to meritorious refugees is inhumane and counterproductive to U.S. interests. The material support bar is written and applied as a catchall that effectively excludes any individual who ever provided goods, services, or funds to an armed group from U.S. refugee protection, even if they are victims of the groups they supposedly “support.” There are two principal problems with the material support bar as applied to the Colombian context. First, as in the case of Miguel, there is no explicit duress defense available in situations where “material support” was provided under the threat of harm. Second, “support” is broadly defined with no exception for minimal levels of support. As a result, DHS interprets “material” support to include even insignificant amounts of support.

In Colombia, for example, where the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC) control or contest seventy-five percent of Colombian territory,¹² minimal levels of support to these groups, often provided under duress, is routine. In many rural Colombian contexts, support in the form of “war taxes”¹³ or the provision of food or shelter is necessary for survival. Refusing to comply with the material demands of the guerillas or paramilitaries can result in death. UNHCR estimates that between seventy to eighty percent of Colombian refugees seeking asylum in Ecuador are ineligible for resettlement in the United States because they have provided some form of material support to these irregular armed groups.¹⁴

Our investigation revealed four additional problems with the material support provisions. First, the broad definition of a “terrorist organization” under the law obligates the United States to exclude *bona fide* refugees that provided support to a non-designated terrorist group whose activities meet the overbroad definition of “terrorist activities.”¹⁵ Second, the material support bar does not include a

⁹ U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2006, *in fulfillment of the requirements of INA § 207(e)(1)-(7)* at 2, available at <http://www.state.gov/documents/organization/52475.pdf>.

¹⁰ *Id.* at vi.

¹¹ *Id.*

¹² See Brief of Amicus Curiae Human Rights First in Support of Petitioner at 6, *Amaya Arias v. Ashcroft*, 143 Fed.Appx. 464 (3d Cir. 2005) (unpublished) (No. 04-1999) (citing UNHCR Working Paper, *Protecting Colombian Refugees in the Andean Region: The Fight Against Invisibility*, Mar. 2003, at 5).

¹³ In Colombia, a “war tax” is known as a *vacuna* or a “vaccine” because it provides inoculation from guerilla or paramilitary attacks.

¹⁴ See Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006); UNHCR-Ecuador, Resettlement Unit Report, “Unit for the Analysis of Cases with Special Protection Needs,” Jan. 2006, at 2 (on file with author).

¹⁵ This is less of a problem in the Colombian context where the majority of the myriad irregular armed groups have been designated as terrorist organizations by the U.S. government. However, the issue did nevertheless arise. See, e.g., Interview with “Elena,” Colombian Refugee AT-05 (Mar. 2006) (on file with author).

time bar and thus can be read to deny U.S. protection to individuals who provided support many years prior to becoming a refugee, or before the age of consent. Third, UNHCR has essentially ceased referring refugees who may have inadvertently provided material support to armed groups are scarcely referred to the United States for resettlement by UNHCR given DHS's sweeping application of the material support bar in the resettlement context. The material support bar does not require application to inadvertent support where the recipient is not a designated terrorist organization. However, without clear limiting principles established by DHS, even these individuals who inadvertently provided support are denied U.S. protection. Finally, the bar's waiver provision should be applied to protect refugees who would otherwise be wrongfully denied U.S. resettlement. However, because of its structure, the waiver provision is virtually impossible to use. By itself, the waiver provision is insufficient and unreliable as a tool to rectify the enormous breadth of the material support bar.

The material support bar has had a detrimental ripple effect throughout the U.S. and UNHCR resettlement programs. As a result of the application of the material support bar to U.S. resettlement, thousands of Colombian refugees who need to be resettled to a safe third country no longer have viable resettlement options. There are limitations on the number of refugee cases that the UNHCR can refer to other countries due to the lack of capacity and resources of these countries' resettlement programs. As a result, thousands of refugees who the United States originally anticipated resettling are forced to remain in Ecuador or Venezuela, the main receiving countries for Colombian refugees, where they lack physical protection and have limited opportunities for local integration.

In Ecuador, Colombian armed groups operate with impunity and have sophisticated capabilities to track their victims down. **Miguel** has relocated four times in order to stay one step ahead of the paramilitaries from whom he fled in Colombia. His uncle who fled Colombia before him was murdered in Ecuador, presumably by the paramilitaries who pursued them both. After one relocation, Miguel found himself standing across an Ecuadorian city street from one of the paramilitaries who had kidnapped him and forced him to dig graves during the killing spree. "I will never forget what he looked like," Miguel said, visibly traumatized. They caught each other's eyes and Miguel took off running. He has lived in a state of fear for his entire two years in Ecuador.¹⁶ As this report will describe, the implications of the material support bar are severe on refugees who are not safe in Ecuador or who cannot locally integrate on account of discrimination and lack of access to employment and social services.

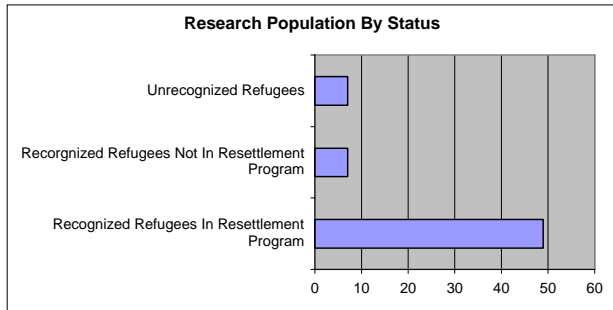
A. METHODOLOGY

A team of thirteen researchers from Georgetown University Law Center conducted a fact-finding mission in three different cities in Ecuador in March 2006. The primary goal of the fact-finding mission was to document the stories of Colombian refugees seeking resettlement to a third-country because they remain unsafe or unable to integrate in Ecuador, their country of first asylum. Many of these refugees are categorically excluded from resettlement in the U.S. under the material support bar and face insurmountable challenges to resettlement in Ecuador, such as continuing persecution or pervasive discrimination.

¹⁶ Interview with "Miguel," Colombian Refugee EMSA-05 (Mar. 2006) (on file with author).

Through coordination with UNHCR in Ecuador, the Georgetown Fact-Finding Group interviewed a total of sixty-three Colombian individuals or families. Fifty-five of these interviewees were recognized refugees under the mandate of the UNHCR, and most of them were also recognized as refugees by Ecuador. Forty-nine of these individuals or families were being processed by UNHCR for resettlement in a safe third-country. Seven of these interviewees were unrecognized refugees whose UNHCR “refugee status determination” interviews the group observed.

The group’s interviews were conducted in the private offices of UNHCR or nongovernmental organizations that collaborate with UNHCR to provide services to refugees, or, in a few instances, in refugee homes.¹⁷ The interviews were semi-structured and qualitative, with an interview guide providing a framework.



UNHCR arranged the interviews, but the interviews conducted by the Georgetown group had no impact on the refugee’s status or resettlement process.¹⁸

In addition to the interviews with refugees, the Georgetown group reviewed the case files of 125 designated refugees to gain a broad sampling of the prevalence and type of material support provided by Colombian refugees. The group reviewed a sequential sampling of all of the case files from 2005.

The group also visited seven local integration projects in order to better understand the problems faced by refugees living in Ecuador and the attempts by UNHCR, non-governmental implementing partners of UNHCR, and host communities to respond to the large influx of Colombian refugees. UNHCR-Ecuador has committed forty-two percent of its total budget to local integration projects, including education and income generation projects.¹⁹ The local integration programs attempt to address the legal, economic, and social integration of Colombian refugees into Ecuadorian society. Specifically, the integration projects are designed to improve the livelihoods of Ecuadorians and Colombians, and to ease the relationship between the refugees and their host communities.²⁰ The projects visited included a small co-operative fish farming operation started with seed money from the UNHCR’s micro-credit program; a small medical clinic funded by UNHCR near the Colombian-Ecuadorian border; a pre-school center for Colombian and Ecuadorian children; and a community-run general store in Quito that offered training, work experience, and small loans to Colombian refugees.

¹⁷ The interviews conducted at the offices of implementing partners were conducted at the Hebrew Immigrant Aid Society (HIAS) and *Comité Pro Refugiados* (CPR) in Quito and Lago Agrio. Interviews in Ibarra were conducted at the office of UNHCR.

¹⁸ The 8 refugee status determination interviews, however, were conducted by lawyers at UNHCR partner organizations and were influential in establishing the refugee’s status in Ecuador.

¹⁹ UNHCR committed \$360,000 for 29 projects in 2005 and plans to complete 125 projects with a budget of \$776,214 in 2006. Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁰ UNHCR reports that Colombians the beneficiaries of their local integration projects have been 34 percent Colombian and 66 percent Ecuadorian. Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

Finally, the group received extensive briefings by members of the UNHCR staff in Ecuador. In addition, the group conducted twenty-one non-refugee interviews with a variety of experts and stakeholders, including officials at the U.S. Embassy, the International Organization for Migration, the Ecuadorian Government's Refugee Office, UNHCR's implementing partner organizations, and academic institutions working in Ecuador on relevant issues.

B. HISTORY OF THE COLOMBIAN CONFLICT

The Colombian civil war has gone on for decades and claimed thousands of lives. Leftist guerilla groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) have fought bitter battles with both the state and with right-wing paramilitary groups. The paramilitaries, organized under the umbrella group of the United Self-Defense Forces of Colombia (AUC), have fought the guerillas and state forces. Both guerilla and paramilitary organizations have perpetrated numerous atrocities against civilians, including massacres and politically motivated assassinations.²¹ In July 2005, the AUC signed a peace deal with the government, agreeing to cease hostilities in exchange for blanket immunity for its members.²² The effectiveness of this peace deal remains to be seen.²³ The FARC and ELN remain active.

Much of rural Colombia has been under the de facto control of rebel groups for years.²⁴ In 1998, the government gave the FARC a 42,139 square kilometer “demilitarized zone” in the guerillas’ traditional stronghold in the center of the country—an area approximately the size of Switzerland.²⁵ The FARC continues to control much of Colombia, especially in the Southern rural departments. Although the paramilitaries are now technically demobilized, they too control a great deal of territory within Colombia.²⁶

In towns controlled by the FARC, the guerillas often are the governing authority. FARC commanders act as judges to adjudicate disputes; guerilla troops keep law and order; and the guerillas run the schools and other social services.²⁷ Though the FARC has quasi-government status in some areas, they are not a benevolent presence in areas under their control. Both guerilla and paramilitary groups demand “war taxes” from citizens—extorting money, goods, or services as both

²¹ Human Rights Watch, *Colombia: Smoke and Mirrors*, Vol. 17, No. 3(B), at 7 (Aug. 2005).

²² *Id.*

²³ *Id.*

²⁴ *Cf. Colombian Peace Talks Stretch to a Second Day*, CNN, Feb. 9 2001, <http://archives.cnn.com/2001/WORLD/americas/02/09/colombia.peace/index.html>; *see also* United Nations Development Program, Human Development Report: Colombia 2003, Ch.1, 2 (2003) *available at* <http://indh.pnud.org.co/pagina.plx?pg=ENdescargaInforme2003&mplat=11&lang=EN>.

²⁵ *Id.*

²⁶ *See* U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, ¶91 (Mar. 2005).

²⁷ *See, e.g.*, Interview with “Beatriz,” Colombian Refugee RS-10 (Mar. 2006) (on file with author) (describing his FARC-controlled town in Colombia as “like its own state, totally controlled by the FARC. They have their own laws. You pay the FARC for everything—for basic services, school, trash pickup, everything.”); Interview with “Rodriguez Family,” Colombian Refugee JP-02 (Mar. 2006) (on file with author).

a source of revenue and a form of persecution.²⁸ Inability to pay is punishable by kidnapping, murder, or forced recruitment of a family member.²⁹ Because of the militarization of everyday life, countless innocent Colombians have been drawn into the conflict, forced to provide support to at least one of these irregular armed groups. In the face of these persistent threats, thousands of Colombians have fled to Ecuador for protection.³⁰

C. HISTORY OF UNHCR REFUGEE PROTECTION PROGRAM IN ECUADOR

In order to address the needs of the growing number of Colombian refugees, UNHCR established operations in neighboring Ecuador in 2000 to protect and assist victims of the conflict.³¹ From 2000-2003, UNHCR provided protection, humanitarian, and local integration services to Colombian refugees in Ecuador.³² In 2003, UNHCR expanded its protection services for Colombian refugees by launching a resettlement program to resettle particularly vulnerable refugees to third countries in the Americas and Europe.³³ In 2003, UNHCR exceeded its goal of referring at least 350 people, successfully referring 383 people (187 cases).³⁴

Despite UNHCR's efforts, there are indications that the Colombian refugee crisis in Ecuador is significantly larger than the number of recognized refugees would indicate. According to UNHCR estimates, at the end of 2005, there were approximately 237,000 Colombians who had fled to Ecuador and may be eligible for refugee status but are not registered.³⁵ By December 2005, the Ecuadorian government had granted asylum to 11,492 Colombians.³⁶ As these numbers demonstrate, UNHCR and the Ecuadorian government are only reaching a fraction of the population of refugees in Ecuador.

D. UNITED STATES RESETTLEMENT PROGRAM

In 2002, UNHCR and the U.S. State Department's Bureau of Population, Refugees and Migration (PRM) sought to address the growing refugee crisis by starting a pilot program to resettle Colombian refugees who faced continuing security risks in Ecuador to the United States.³⁷ When the program

²⁸ U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, ¶96 (Mar. 2005).

²⁹ *Id.*

³⁰ *Id.*

³¹ See UNHCR-Ecuador, Protection Unit, *Algunos Datos Sobre La Operación del ACNUR en Ecuador*, Dec. 2005 (on file with author).

³² Interview with Marta Juárez, UNHCR Representative, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006); Interview with Simone Schwartz, Protection Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

³³ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See UNHCR-Ecuador, Protection Unit, *Algunos Datos Sobre La Operación del ACNUR en Ecuador*, Dec. 2005 (on file with author).

³⁷ Bureau of Population, Refugees, and Migration (PRM), U.S. Department of State, Refugee Admissions Program for Latin America and the Caribbean, Nov. 2002, available at www.state.gov/g/prm/rls/fs/15498.htm.

first began, there were high hopes for its future. In 2003, UNHCR referred sixty-four percent of its cases (87 of 137 cases) to the United States—a total of 287 Colombian refugees.³⁸ In the beginning of 2004, the U.S. resettlement program continued to grow in numbers. Through September 2004, UNHCR referred a total of 288 Colombian refugees to the United States.³⁹ PRM anticipated several hundred additional Colombian refugee referrals in FY2004.⁴⁰

In late 2004, however, the program began to face obstacles under U.S. law. Initially a number of Colombian refugees were denied resettlement because DHS had determined that they were firmly resettled in Ecuador.⁴¹ Under U.S. law, a person is not eligible for refugee status in the United States if that person has been firmly resettled in another country.⁴² A person is considered firmly resettled if she has been offered resident status, citizenship, or some other type of permanent residence in a country other than the United States.⁴³ The U.S. Citizenship and Immigration Services (USCIS) Guidelines on Firm Resettlement require that a refugee demonstrate a continuing fear of persecution in the country of asylum in order to be eligible for resettlement.⁴⁴ The U.S. government took the position that Colombian refugees granted asylum by the government of Ecuador were “firmly resettled” unless they could demonstrate such a fear.⁴⁵

For many Colombian refugees, local integration into Ecuadorian society is extraordinarily difficult, if not impossible. Colombians in Ecuador suffer from severe and pervasive social and economic discrimination and, as such, are often denied meaningful access to housing, employment, and education. Already impoverished Ecuadorian communities struggle to absorb the refugees and the attendant burdens breed resentment in the host community. In particular, vulnerable populations, such as unaccompanied women and children, face heightened physical dangers, social prejudices and economic barriers.

Ultimately, UNHCR and its implementing partners succeeded in persuading the United States government that, for a distinct group of particularly vulnerable refugees, local integration was not a long-term, durable solution. As the State Department recently acknowledged, “[i]n the recent past, local integration has been the most suitable solution to regional refugee problems in Latin America. In recent years, however, third country resettlement has become an important durable solution for

³⁸ UNHCR-Ecuador, Resettlement Unit Report, Unit for the Analysis of Cases with Special Protection Needs, Jan. 2006, at 2 (on file with author).

³⁹ *Id.*

⁴⁰ U.S. Department of State, Bureau of Population, Refugees and Migration, Fact Sheet: Refugee Admissions Program for Latin America and the Caribbean (January 16, 2004), *available at* <http://www.state.gov/g/prm/rls/fs/2004/28211.htm>.

⁴¹ 8 CFR § 208.15; U.S. Citizenship and Immigration Services (USCIS), Eligibility: Who May Apply to Be Resettled in the United States as a Refugee? (January 20, 2006), *available at* <http://uscis.gov/graphics/howdoi/RefElig.htm>; *See* Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

⁴² *Id.*

⁴³ *See Id.*

⁴⁴ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

⁴⁵ *See* Interview with Melanie Nezer, Migration Policy Counsel, Hebrew Immigrant Aid Society (HIAS) (Mar. 2006).

those who face physical risks and have urgent protection needs.”⁴⁶ Nevertheless, in order to meet the United States’ resettlement standards, these vulnerable groups effectively had to prove that they had suffered persecution twice—once in Colombia and again in Ecuador.⁴⁷

In September 2004, shortly after the complications regarding firm resettlement were resolved, the Colombian refugee resettlement program ran into new legal roadblocks in the form of the broadened material support bar. Under the INA, a refugee is barred entry to the United States if she provided material support to a terrorist organization.⁴⁸ The bar was expanded in response to the tragedy of September 11th and has been strictly interpreted by DHS to include no duress or *de minimis* exception.⁴⁹ This proved to have serious consequences for *bona fide* refugees.

Prior to September 2004, the material support bar was not as broadly written or as strictly interpreted to exclude even those forced to provide small amounts of support under duress. Moreover, there existed a practicable waiver provision that exempted many Colombians who had been caught up in the conflict and forced to assist an irregular armed group.⁵⁰ However, in September 2004, UNHCR-Ecuador learned that the United States would indefinitely defer any Colombian resettlement case referrals that raised material support concerns.⁵¹

Enforcement of the expanded material support bar against Colombian refugees effectively shut down the resettlement program from Ecuador. At the time, thirty-five case referrals were pending with the United States. After speaking with the refugees, UNHCR-Ecuador withdrew all but one case, which still remains deferred.⁵² Since September 2004, UNHCR-Ecuador has referred only fifteen Colombian refugees to the United States, a mere nine percent of the total number of refugees referred for resettlement to third countries.⁵³ None of these cases had material support issues.⁵⁴ Virtually all of these “*vacuna-free*” cases were of former members of the Colombian police or military forces, or refugees resettled for the purposes of family reunification.⁵⁵ Almost all other cases were viewed by UNHCR as raising potential material support issues.⁵⁶

⁴⁶ U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2006, *in fulfillment of the requirements of INA § 207(e)(1)-(7)*, available at <http://www.state.gov/documents/organization/52475.pdf>.

⁴⁷ See Interview with Melanie Nezer, Migration Policy Counsel, Hebrew Immigrant Aid Society (HIAS) (Mar. 2006). In practice, the application of the firm resettlement guidelines varied depending on the Immigration Officer applying them. See Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

⁴⁸ 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (2005).

⁴⁹ 8 USC § 1182(a)(3)(B) (2005).

⁵⁰ See Interview with Simone Schwartz, Protection Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

⁵¹ See *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

When the United States began applying the material support bar to Colombian refugees, the incipient resettlement program was just getting off the ground. As a result, it is difficult to gauge the true number of refugees affected by the bar. If the program had been able to continue to grow as anticipated, it would likely have reached or exceeded its initial target goal of 5,000 refugees per year.⁵⁷

UNHCR's Assistant High Commissioner for Protection, who visited Ecuador last year and observed the resettlement program first-hand, recently stated that, as a result of the material support bar, resettlement of Colombians outside the region has dropped by seventy-five percent while the number of referrals made by UNHCR had fallen to twenty-five percent of former levels.⁵⁸ The Assistant High Commissioner cautioned that the United States refusal to accept refugees with material support concerns could have a stigmatizing effect on these refugees, who would normally be eligible for resettlement in the United States and other countries.⁵⁹ The result could be to "complicate the resettlement dialogue" with other potential resettlement countries and jeopardize their willingness to accept these Colombians.⁶⁰ Unless a solution to the material support problem is found, according to the Assistant High Commissioner, UNHCR will not be able to meet its worldwide goal of a minimum of 25,000 referrals worldwide to the United States in FY2006.⁶¹

II. THE MATERIAL SUPPORT BAR TO REFUGEE RESETTLEMENT: LEGAL ANALYSIS AND FINDINGS

Many Colombian refugees have made payments or provided other forms of assistance to armed guerrilla or paramilitary groups, often under the threat of harm to themselves or their families. According to various estimates by UNHCR, between seventy and eighty percent of Colombian refugees were forced to pay a *vacuna* or provide some other assistance to an irregular armed group.⁶² This section first analyzes the material support bar, as it has been expanded by Congress and strictly enforced by DHS and U.S. immigration courts in recent years. Second, this section demonstrates the Georgetown group's findings about the impact of the material support bar on Colombian refugees in need of resettlement to a third country.

A. LEGAL ANALYSIS OF MATERIAL SUPPORT PROVISIONS

The material support immigration bar has been part of the Immigration and Nationality Act (INA) since 1990.⁶³ However, the USA PATRIOT Act of 2001 and the REAL ID Act of 2005 significantly

⁵⁷ See Interview with Melanie Nezer, Migration Policy Counsel, Hebrew Immigrant Aid Society (HIAS) (Mar. 2006).

⁵⁸ Speech to the Migration Policy Institute, Erika Feller, UNHCR Assistant High Commissioner, at the Migration Policy Institute (Apr. 12, 2006).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² One UNHCR official estimated that between 70% and 75% of Colombian refugees have provided some kind of material support. Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006). Another UNHCR official put the number of Colombians with material support concerns at 80% of individual refugee cases. Interview with Simone Schwartz, Protection Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

⁶³ Immigration Act of 1990, P.L. 101-649, 1990, Title VI, § 601; 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (2005).

broadened the scope of the material support bar by expanding the definition of “terrorist activity” and “terrorist organization,” relaxing the bar’s *mens rea* requirement, and limiting the availability of a discretionary waiver.⁶⁴ The current material support provision renders any alien ineligible for entry into the United States if she has committed “an act that the actor knows, or reasonably should know, affords material support (1) for the commission of a terrorist act; (2) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity,” or; (3) to a designated or non-designated terrorist organizations.⁶⁵ This section provides a legal analysis of the material support bar. It demonstrates the breadth of the law as written and applied.

1. Definition of Material Support

The current provision of the U.S. Code defining material support does not circumscribe the types of support prohibited.⁶⁶ The list of goods and services that are barred is non-exhaustive; there are no limiting principles; and the bar offers no exceptions for the involuntary provision of support.

The material support bar, 8 U.S.C. § 1182(a)(3)(B)(iv)(VI), states that material support includes the provision of a “safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training.”⁶⁷ U.S. courts have held that “material support” includes other types of support not enumerated in the provision.⁶⁸ In *Singh-Kaur v. Ashcroft*, the court found that providing food and setting up tents for a religious congregation, which may have included members of the religion’s militant sect, constituted material support to a terrorist organization.⁶⁹

Likewise, DHS has construed the term broadly such that even nominal support is *per se* material. DHS argued before the BIA and the Third Circuit Court of Appeals that Congress did not intend for the material support provision to include a *de minimis* exception, but rather that “material support” is a legal term of art that means *any* support, no matter how insignificant.⁷⁰ The *Singh-Kaur* court adopted a broad definition of “support,” agreeing with DHS that no *de minimis* exception applied.⁷¹ The court in *Arias v. Gonzales* found that material support included a farmer’s payment of his employer’s *vacuna* to the FARC, even though the money did not belong to the farmer.⁷²

⁶⁴ The Uniting and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, P.L. 107-56, 115 Stat. 272, § 411(a); REAL ID Act of 2005, P.L. 109-13, Div. B §§ 103(a)-(c).

⁶⁵ 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (2005).

⁶⁶ 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (2005).

⁶⁷ 8 USC § 1182(a)(3)(B)(iv)(VI) (2005).

⁶⁸ See *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298 (3rd Cir. 2004).

⁶⁹ *Id.*

⁷⁰ Transcript of Oral Argument at 20, *In re Ma San Kyne*, U.S. Department of Justice, Executive Office for Immigration Review, United States Immigration Court, Jan 26, 2006 (on file with author); Brief for Respondent, *Arias v. Gonzales*, 143 Fed. Appx. 464 (2005) (No. 04-1999).

⁷¹ *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298 (3d Cir. 2004).

⁷² *Arias v. Gonzales*, 143 Fed. Appx. 464 (3d Cir. 2005).

DHS and some immigration judges have refused to recognize any duress defense to the material support bar, even in the most extreme cases of threats of imminent bodily harm. In the asylum case *In the Matter of R.K.*, Immigration Judge Tadal declined to recognize a defense of involuntariness where a Sri Lankan refugee was kidnapped by the Liberation Tigers of Tamil Eelam (LTTE) and forced to pay 50,000 rupees for his release.⁷³ In the resettlement case of a Liberian woman attacked by rebels from the Liberians United for Reconciliation and Democracy (LURD) who killed her father, gang-raped her, abducted her, and held her against her will, DHS deferred her case on material support grounds.⁷⁴ DHS claimed that she provided material support while she was held hostage by LURD rebels for several weeks and forced to perform tasks such as washing the rebels' clothing.⁷⁵ DHS's failure to apply a duress exception has prevented the resettlement of thousands of victims of terrorism.

2. Definition of a Terrorist Organization

The term "terrorist organization" has an expansive meaning in the context of the material support provision. Under the definition of "terrorist organization," an individual who gave support to virtually any armed group can be excluded from entry to the United States, whether or not the group was previously designated a terrorist organization. If an organization is not already designated as a terrorist organization, the material support bar allows DHS adjudicators and immigration judges to evaluate whether an organization qualifies as a non-designated Tier III terrorist organization.

Designated terrorist organizations recognized by the material support bar include organizations designated by the Secretary of State through a process laid out in 8 U.S.C. § 1189⁷⁶; and organizations "otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in" certain enumerated terrorist activities.⁷⁷

Under the expanded material support bar, a non-designated group of people can be considered a terrorist organization if it is "two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" terrorist activities.⁷⁸

⁷³ *In the Matter of R.K.*, Oral Opinion, Judge Mirlande Tadal, United States Immigration Court, Elizabeth, New Jersey (May 9, 2005) (on file with author). Just months later, in the asylum case of a Nepali government employee and medical aide who was kidnapped and forced at gunpoint to treat wounded Maoist combatants, the Immigration Judge ruled that a defense of duress does apply to the material support to terrorism bars to asylum and withholding of removal. The case, however, is now on appeal to the BIA. See Email from Counsel for Respondent Brian D. O'Neill, Summarizing Oral Opinion of Judge Daniel L. Meisner, Immigration Court, Newark, New Jersey on October 21, 2005 (on file with author); see also Susan Benesch and Devon Chaffee, *The Ever-Expanding Material Support Bar*, INTERPRETER RELEASES, March 13, 2006, at 468.

⁷⁴ United States Department of State's Bureau of Population, Refugees and Migration ("PRM"), Case Summaries (on file with author).

⁷⁵ *Id.*

⁷⁶ 8 U.S.C. § 1182(a)(B)(iv)(VI)(I) (2005), referencing 8 U.S.C. § 1189.

⁷⁷ 8 U.S.C. § 1182(a)(B)(iv)(VI) (2005).

⁷⁸ 8 U.S.C. § 1182(a)(3)(B)(iv)(VI)(dd) (2005).

The definition of “terrorist organization” is based on whether illegal violence was used, not on the character of the organization, the nature of the conflict, or the type of government in question.⁷⁹ Therefore, the term can apply equally to organizations that the U.S. government opposes and supports. For example, according to DHS, an asylum seeker who provided support to Afghanistan’s Northern Alliance in the 1990s would be barred from entry even though the Northern Alliance was fighting the Taliban government, a regime the U.S. government considered illegitimate.⁸⁰ DHS has also recently put on hold the resettlement cases of 147 Cubans who provided support to the *Alzados*, an armed group that fought against Fidel Castro in Cuba in the 1960s.⁸¹ Similarly, it applies to nationals of Burma (Myanmar) who work with pro-democracy organizations that the United States supports.⁸² These refugees are predominately from the Karen ethnic minority who provided indirect support to the Karen National Union, a political and armed group resisting Myanmar’s repressive military regime.⁸³ The definition of terrorist organization is so broad that it would even apply to U.S. military activity abroad, with the U.S. military constituting a “Tier III terrorist organization.”⁸⁴

The statute defines terrorist activities so broadly that a group becomes a non-designated terrorist organization if it consists of more than one person who performs any one of the enumerated terrorist activities, and “material support” is an enumerated terrorist activity. This means that a restaurant in which two or more employees have served beer to members of the FARC could very well constitute a “terrorist organization,” and, consequently, all of the customers of the restaurant could be considered to have “engaged in the terrorist activities” because they provided support to the restaurant “terrorist organization.” Moreover, any other individual who then provides support to any one of the restaurant customers, and who is aware that the customer eats at the restaurant, could be considered to have provided material support to an individual who they know has committed a terrorist activity, potentially *ad infinitum*.

Note however that an individual is not barred from entry for providing material support to a non-designated organization if the individual “can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.”⁸⁵ It is the refugee’s burden to prove that she “should not reasonably have known” that she had provided material support to a terrorist organization as defined by the statute. This exception for lack of knowledge—the *mens rea* requirement—is potentially very arduous for refugees to demonstrate. This is a difficult burden given the lack of available evidence generally, and the

⁷⁹ See INA § 212(a)(3)(B); 8 USC § 1182(a)(3)(B)

⁸⁰ See Rachel L. Swarns, *Provision of Antiterror Law Delays Entry of Refugees*, N.Y. Times (Mar. 8, 2006).

⁸¹ *Id.*

⁸² Human Rights Program, Harvard Law School, *Preliminary Findings and Conclusions on the Material Support for Terrorism Bar as Applied to the Overseas Resettlement of Refugees from Burma* (Feb. 2006).

⁸³ *Id.*

⁸⁴ DHS recently admitted in oral argument before the Board of Immigration Appeals (BIA) that the Iraqi national who provided information to the U.S. Marines who rescued U.S. soldier Jessica Lynch would be barred from entry under this law. Under the current definition of “terrorist organization,” the U.S. Marines would qualify as a Tier III terrorist organization because their activity was unlawful during the U.S. occupation of Iraq under Iraqi law and they were fighting against an established government. Transcript of Oral Argument at 24-35, *In re Ma San Kywe*, U.S. Department of Justice, Executive Office for Immigration Review, United States Immigration Court, Jan 26, 2006 (on file with author)

⁸⁵ *Id.*

difficulty in substantiating a prior mindset. This defense, moreover, is not available to individuals who provide support to designated “terrorist organizations.”⁸⁶ Individuals who provide support to organizations designated as terrorist by the U.S. government are irrevocably presumed to have knowledge that the provision of support to the organization was prohibited under U.S. law.⁸⁷

3. Discretion to Waive the Material Support Bar

There is a waiver provision in the material support bar that would conceivably permit the U.S. government to grant resettlement to refugees who have provided material support where that is deemed necessary or desirable.⁸⁸ However, the construction of the waiver provision makes it unlikely that it can be exercised in a meaningful way.⁸⁹

Under Section 1182(a)(3)(B)(i) of the U.S. Code, the Secretary of the Department of Homeland Security and the Secretary of State have discretion to decide to not apply the material support bar.⁹⁰ The waiver grants discretionary authority to the Secretary of the Department of Homeland Security and the Secretary of State, after consultation with each other and the Attorney General to “not apply [the bar] with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity.”⁹¹ Likewise, the Secretary of the Department of Homeland Security and the Secretary of State, after consultation with each other and the Attorney General, may determine that a non-designated organization shall not be considered a “terrorist organization” “solely by virtue of having a subgroup” that fits the “terrorist organization” definition.⁹²

This structure of the provision seems to indicate that all three executive departments need to be in agreement before a material support waiver is applied. This is both a heavy burden and administratively difficult. Moreover, the statute does not indicate if and how the authority to exercise discretion might be delegated, and the relevant executive departments have issued no guidance on how the authority should be used.

⁸⁶ See 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(cc) (2005).

⁸⁷ *Id.*

⁸⁸ 8 USC § 1182(d)(3)(B)(i) (2005).

⁸⁹ An inter-agency agreement may have recently been worked out to allow for the waiver provision to apply—for the first time—to Burmese refugees who have been stranded at the Tham Hin camp in Thailand. Email from Richard Parkins, Chair, Refugee Council USA, to Material Support Working Group (Apr. 28, 2006). DHS barred their entry into the U.S. because their provision of support to pro-democracy groups in Burma constituted “material support” to a “terrorist organization.” The situation of the 9,500 Burmese has been especially urgent, yet no workable solution materialized for at least eighteen months after DHS blocked the resettlement. See The Immigration and Refugee Clinic & The Clinical Advocacy Project, Human Rights Program, Harvard Law School, *Preliminary Findings and Conclusions on the Material Support for Terrorism Bar as Applied to the Overseas Resettlement of Refugees From Burma*, at 8 (Feb. 2006).

⁹⁰ 8 USC § 1182(d)(3)(B)(i) (2005). Before the REAL ID Act was passed the Secretary of Homeland Security and the Attorney General, in consultation with each other, held the discretionary power. See REAL ID Act of 2005, P.L.109-13, Div. B §§ 104.

⁹¹ *Id.*

⁹² *Id.*

4. Application to Asylum and Withholding of Removal

The material support bar also applies to individuals who apply for asylum or withholding of removal—the two ways that refugees already in the United States can seek protection from deportation. Under the asylum provision, any alien who is ineligible for entry to the United States under the terrorism provision of section 1182(a)(3) is also ineligible for asylum.⁹³ Similarly, a refugee is not eligible for withholding of removal if “there are reasonable grounds to believe that the alien is a danger to the security of the United States.”⁹⁴ As the bar is currently applied, an individual who has provided material support, as broadly defined, “shall be considered an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.”⁹⁵

There are currently 512 asylum cases on indefinite hold at the Asylum Office because of material support concerns; in many of these cases, asylum seekers have been held in limbo for years, unable to present their cases to an immigration judge.⁹⁶

5. Lack of Exceptions Violates International Law

Interpretations of the material support bar that do not apply a duress exception or an exception for *de minimis* support violate U.S. obligations under Article 33 of the 1951 Refugee Convention to *non-refoulement*. Under Article 33 the United States cannot expel or return a refugee to a country where he or she will face persecution unless there are “reasonable grounds for regarding [the refugee] as a danger to the security of the [U.S.]” and the refugee “constitutes a danger to the community of [the United States]”⁹⁷ Applying the material support bar to refugees who provided support to terrorists under duress or insignificant amounts of support is inconsistent with the U.S.’s binding obligations under Article 33. Providing material support under the threat of imminent harm or immaterial support, such as a single glass of water to an armed group, does not make a refugee a danger to the security of the United States.⁹⁸

Similarly, interpretations of the material support bar that do not imply a *de minimis* exception plainly violate international law and U.S. obligations under the 1951 Refugee Convention as incorporated

⁹³ See 8 U.S.C. § 1158(b)(2) (2005). 8 U.S.C. § 1158(b)(2) states that the asylum provisions shall not apply to any alien described in 8 U.S.C. § 1227(a)(4)(B). The provision referenced, 8 U.S.C. § 1227(a)(4)(B), states “[a]ny alien who is described in subparagraph (B) ... of section 1182(a)(3) of this title [the terrorism bar to admissibility] is deportable.”

⁹⁴ 8 U.S.C. 1231(a)(3)(B)(iv) (2005).

⁹⁵ See 8 U.S.C. 1231(a)(3)(B)(iv). This provision states that an alien described in 8 USC § 1227(a)(4)(B) is deportable. The provision referenced, 8 USC § 1227(a)(4)(B), states “[a]ny alien who is described in subparagraph (B) ... of section 1182(a)(3) of this title [the terrorism bar to admissibility] is deportable.”

⁹⁶ See USCIS Headquarters Asylum Meeting with Community-Based Organizations (Nov. 8, 2005). USCIS “stated that 80% of the cases on hold are from Nepal, India, Sri Lanka, and Colombia.” See Melanie Nezer, *The ‘Material Support’ Problem: An Uncertain Future for Thousands of Refugees and Asylum Seekers*, 10-24 BENDER’S IMMIGRATION BULLETIN 2 (2005).

⁹⁷ 1951 U.N. Convention Relating to the Status of Refugees, July 28, 1951, art. 33(1-2), 19 U.S.T. 6259, 189 U.N.T.S. 137.

⁹⁸ Kolude Doherty, Regional Representative for the United States and the Caribbean, UNHCR Response to Mr. Edward Neufville, Re: Request for Advisory Opinion, June 15, 2005 (on file with author).

under the 1967 Protocol.⁹⁹ Even though providing funds to a “terrorist group” is a criminal offense under international law,¹⁰⁰ according to UNHCR, an individual should not be found to have engaged in terrorist activity or a “serious non-political crime” – a bar to refugee protection under the 1951 Convention – “if the amounts concerned are small and given on a sporadic basis.”¹⁰¹ By not applying a *de minimis* exception, DHS and U.S. courts are failing to limit the material support bar to actual terrorists and their supporters. Instead, they extend the material support bar to innocent civilians in war torn regions throughout the world who are forced to pay negligible “war taxes” in currency, goods, or services to rebel or terrorist groups.

B. INVESTIGATIVE FINDINGS: MATERIAL SUPPORT IN COLOMBIAN CONTEXT

This section outlines the types of material support refugees provided and the context in which support was given. Finally, it explores how the material support provisions, as written, create legal problems for *bona fide* Colombian refugees who would otherwise be eligible for resettlement in the United States. Of the sixty-three interviews conducted, forty-five refugees (71%) had provided some form of material support to an irregular armed group.¹⁰² Among these forty-five refugees or refugee families, there were a total of sixty-seven distinct instances of material support as some refugees provided support more than once.¹⁰³ When a refugee gave material support, it was virtually always under some form of duress or given inadvertently.¹⁰⁴ Currently, guided by the DHS interpretation, UNHCR does not recommend a refugee for U.S. resettlement any time a material support issue is implicated.

⁹⁹ Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 UST 6223, 606 UNTS 267.

¹⁰⁰ International Convention for the Suppression of the Financing of Terrorism, G.A. Res. 109, U.N. GAOR, 54th Sess., Supp. No. 49, Art. 2 at 408, U.N. Doc A/54/49 (Vol. I) (1999), adopted 9 Dec. 1999, entered into force 10 Apr. 2002.

¹⁰¹ UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees* (Sept. 4, 2003) at ¶82; see also Kolude Doherty, Regional Representative for the United States and the Caribbean, UNHCR Response to Mr. Edward Neufville, Re: Request for Advisory Opinion, June 15, 2005 (on file with author).

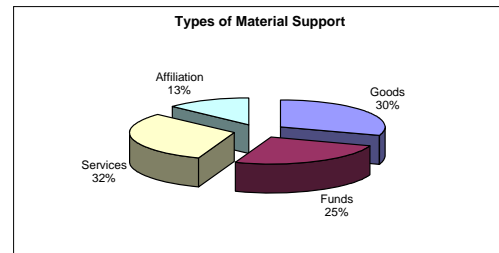
¹⁰² Georgetown Fact-Finding Mission, Interview statistics, Ecuador (Mar. 2006) (on file with author). In addition, we reviewed 125 Refugee Status Determination (RSD) interview summaries of refugees accepted by Ecuador in 2005 and discovered that 68 (54%) of those refugees had provided material support. See Georgetown Fact-Finding Mission, Statistics from Admitted Refugee Case Files, Ecuador (Mar. 2006) (on file with author). There are a number of possible explanations for the lower percentage. First, the small sample size (125 out of 2,453 designated refugees) may not reveal an accurate percentage of cases with an element of material support. Second, because the RSD interviewer was not as interested in uncovering every instance of material support, it is possible that in some cases the material support went unreported in the interview summaries. Finally, the resettlement program typically admits individuals in greater security risk and therefore they may have had more extensive contact with organizations that fall under the rubric of “terrorist organizations.”

¹⁰³ For the purposes of this report, an instance of material support was defined broadly, in order to maintain consistency with the broad material support definition provided by recent DHS interpretation. An instance of material support was defined as the provision of a certain type of support, whether knowingly or inadvertently, to an irregular armed group. The regular or repeated provision of funds, goods, or services (for instance, a monthly *vacuna*) was considered a single instance. Similarly, an ongoing relationship with a family member who was a member of an irregular armed group was considered a single instance of material support (affiliation). Eighteen refugees each provided two instances of material support. Two refugees each provided three instances of material support. Georgetown Fact-Finding Mission, Ecuador (Mar. 2006) (on file with author).

¹⁰⁴ See Section II(B)(3)(a), Lack of Duress Exception, *infra*.

1. Categories of Material Support Given

The types of material support given varied considerably. Of the forty-five refugees that provided material support in sixty-seven instances, refugees provided goods in twenty instances (30%), funds in seventeen instances (25%), services in twenty-one instances (31%), and an affiliation with an armed group in nine instances (13%).¹⁰⁵ Thirteen refugees provided a *vacuna*, or a regular “war tax” in goods or funds, to an irregular armed group; thus, twenty-one percent of all refugees interviewed made an ongoing provision of goods or funds to an armed group upon the group’s explicit or implicit demand.¹⁰⁶



a. *Vacuna*

“I refused to believe they were serious and I told my manager just that—that we wouldn’t allow ourselves to be intimidated. It was a foolish thing to not pay them anything. I left [for another town] that afternoon and within the week, my factory was burned down.”¹⁰⁷

In Colombia, it is common for armed groups to demand “war taxes” from civilians in areas under their control. These taxes typically consist of money, farm animals, or goods from a shop or restaurant. Colombians understand the demand for a *vacuna* to be involuntary—an implicit threat that will be acted upon if an individual refuses to capitulate to the demands of the armed group.¹⁰⁸ Indeed, the word *vacuna* literally means vaccination—to pay this regular fee in money or goods provides protection from violent reprisal from the armed group demanding it.¹⁰⁹

Those who fail to pay face serious consequences, ranging from harassment to kidnapping and murder.¹¹⁰ The Georgetown group encountered a number of cases in which failure to comply with demands led to serious reprisals. When **Victor** refused to pay the *vacuna* demanded by the FARC,

¹⁰⁵ *Id.* In addition, in reviewing the files of 125 RSD interviews, of the 68 cases of material support, 28 refugees provided goods (41% of cases), 20 refugees provided a service (29%), there were 5 cases of forced affiliation (7%), and 36 cases where the guerrillas, paramilitaries, or other armed group extorted a *vacuna*, “war tax.” See Georgetown Fact-Finding Mission, Statistics from Admitted Refugee Case Files, Ecuador (Mar. 2006) (on file with author).

¹⁰⁶ A one-time provision of a sum of money or goods was not considered a *vacuna* for the purposes of this report. This report distinguished between a more regular *vacuna* and a one-time extortion, though the term is sometimes used more broadly in the Colombian community to refer to any obligatory payment made to an armed group.

¹⁰⁷ Interview with “Victor,” Colombian Refugee SA-05 (Mar. 2006) (on file with author).

¹⁰⁸ See U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, ¶96 (Mar. 2005) (describing threats by irregular armed groups to “mark victims as a military target” if they refuse to comply with demands to pay a *vacuna*).

¹⁰⁹ In a recent report, Human Rights Watch defined the term “*vacuna*” as “an illegal levy that guerrilla or paramilitary groups often require individuals to pay for their protection or in support of the war effort.” Human Rights Watch, *Colombia: Displaced and Discarded* 17:4(B) (Oct. 2005), available at <http://hrw.org/reports/2005/colombia1005/index.htm>.

¹¹⁰ See, e.g., Interview with “Victor,” Colombian Refugee SA-05 (Mar. 2006) (on file with author); Interview with “Geronimo,” Colombian Refugee EMSA-05 (Mar. 2006) (on file with author); Interview with “Maria,” Colombian Refugee MF-03 (Mar. 2006) (on file with author); Interview with “Felipe,” Colombian Refugee MF-05 (Mar. 2006) (on file with author); Interview with “Amelia,” Colombian Refugee AT-08 (Mar. 2006) (on file with author).

they burned down a factory he owned. Later, the paramilitaries also approached him for “protection” money. When he refused, they kidnapped and raped his wife.¹¹¹ Other Colombian refugees expressed an understanding of the dire consequences of resisting the *vacuna* demands of armed groups. **Geronimo’s** partner in a woodworking business was killed for refusing to pay a *vacuna*;¹¹² and **Lucy** knew that guerrillas had killed girls in her village who had refused to pay.¹¹³

Moreover, the payment of *vacuna* may temporarily protect the civilian from immediate persecution at the hands of the armed group receiving the payment, but simultaneously “marks” that individual as a supporter, making her a target for persecution at the hands of other guerrilla or paramilitary groups.¹¹⁴ **Carlos**, for example, lived in a village that was contested by the FARC guerrillas and AUC paramilitary. Carlos was forced to provide a *vacuna* to both the FARC and the AUC when armed members of the groups came to his farm. Upon hearing that Carlos may have provided a *vacuna* to the AUC, the FARC commander arrived at his farm with thirty guerrillas and ordered Carlos’ family to evacuate the farm or face certain death.¹¹⁵

Thirteen of the refugees interviewed (21%) paid a *vacuna*.¹¹⁶ The size of *vacuna* payment varied considerably with ability to pay. For example, **Elena’s** family was forced to pay a *vacuna* of approximately US\$0.75 per week. Members of the *Sicarios*, a gang of urban assassins with ties to the paramilitaries, came to her home every week and demanded the money at gunpoint.¹¹⁷ **Susana’s** family was forced to give a small percentage of their farm’s harvest to the guerrillas. At every harvest, the guerrillas would come to their house, calculate how much the family had grown, and then take away their “tax” in the form of corn, yucca, rice, and plantains. She and her husband were told they would be shot if they did not comply.¹¹⁸ In some cases, the demands were more significant. **Maria** was the wife of a wealthy indigenous businessman. The FARC demanded a fifteen million peso *vacuna*, approximately US\$6,500, from her husband.¹¹⁹

¹¹¹ Interview with “Victor,” Colombian Refugee SA-05 (Mar. 2006) (on file with author).

¹¹² Interview with “Geronimo,” Colombian Refugee EMSA-04 (Mar. 2006) (on file with author).

¹¹³ Interview with “Lucy,” Colombian Refugee AT-03 (Mar. 2006) (on file with author).

¹¹⁴ U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees* (Mar. 2005).

¹¹⁵ Interview with “Carlos,” Colombian Refugee MF-06 (Mar. 2006) (on file with author); *see also* Interview with “Luz,” Colombian Refugee RS-12 (Mar. 2006) (on file with author) (recalling that the paramilitary killed her husband and forcibly evicted her and her children from their land after she provided a glass of water to a guerrilla who approached her farm).

¹¹⁶ Georgetown Fact-Finding Mission, Ecuador (Mar. 2006) (on file with author). Based on a review of 125 randomly selected refugee case files, the Georgetown group suspects that the practice of paying a *vacuna* is significantly higher than the interviews may indicate. Of the refugee case files reviewed that contained an element of material support, 53% were extorted for a *vacuna*. Georgetown Fact-Finding Mission, Statistics from Admitted Refugee Case Files, Ecuador (Mar. 2006) (on file with author).

¹¹⁷ Interview with “Elena,” Colombian Refugee AT-05 (Mar. 2006) (on file with author).

¹¹⁸ Interview with “Susana,” Colombian Refugee AT-04 (Mar. 2006) (on file with author).

¹¹⁹ Interview with “Maria,” Colombian Refugee MF-03 (Mar. 2006) (on file with author).

Under current U.S. law, *vacuna* payments constitute “material support,” regardless of whether or not they were given under duress¹²⁰ or were extremely small payments.¹²¹ DHS’s interpretation stands in stark contrast with UNHCR’s position on the *vacuna*. UNHCR argues that individuals who have paid the *vacuna* should not be considered excludable from refugee status, because “a defence of duress is likely to arise from the fact that they did so under threat of death or serious bodily harm.”¹²² Ironically, U.S. Embassy staff expressed an understanding of the great risks a civilian faces if she refuses to pay a *vacuna*. In an interview with officials of the U.S. Embassy in Quito, the embassy staff referred to the *vacuna* as “protection money.”¹²³ That statement clearly indicates an understanding of the duress involved. DHS, however, has refused to take duress or the size of the contribution into account when adjudicating the cases of individuals who have paid war taxes.

b. Goods

*"I was reluctant to provision them. But what was I to do. I tried to make an excuse. I said, 'I don't know if I will have enough supplies.' But the leader looked at me and said 'You will.' I knew to refuse would make me a target."*¹²⁴

A significant percentage of the Colombian refugees interviewed by the Georgetown Fact-Finding Group were forced to provide basic goods, such as food and clothing, to irregular armed groups. Out of sixty-seven instances of support recognized among the sixty-three refugee interviews, refugees were extorted for goods in twenty instances.¹²⁵

Luz, a poor farmer from southern Colombia, provided a glass of water to an armed member of the FARC. The next day, members of the paramilitaries confronted Luz and her husband, accusing them of supporting the FARC with food and water. When Luz’s husband tried to explain it was just a glass of water, the paramilitaries shot and killed him.¹²⁶ **Diana**, a small shop owner, was forced to provide members of the paramilitaries with sixty scarves, gloves, and ski masks. The paramilitaries

¹²⁰ 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (2005); see *Arias v. Gonzales*, 143 Fed. Appx. 464, 468 (3d Cir. 2005); *In the Matter of R.K.*, Oral Opinion, Judge Mirlande Tadal, United States Immigration Court, Elizabeth, New Jersey (May 9, 2005) (on file with author).

¹²¹ When UNHCR’s Quito office was briefed on the application of the bar, they were told that “even a glass of water” constituted material support; see Transcript of Oral Argument at 20, *In re Ma San Kywe*, U.S. Department of Justice, Executive Office for Immigration Review, United States Immigration Court (Jan. 26, 2006) (on file with author). In one instance, DHS successfully argued to an immigration judge that a refugee should be denied asylum because he carried his employer’s *vacuna* payment to the FARC. *Arias v. Gonzales*, 143 Fed. Appx. 464 (3d Cir. 2005).

¹²² U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, ¶165 (Mar. 2005); see 1951 U.N. Convention Relating to the Status of Refugees, July 28, 1951, art. 1(F), 19 U.S.T. 6259, 189 U.N.T.S. 137.

¹²³ Interview with Rosemary Macray, Political Section, U.S. Embassy, in Quito, Ecuador (Mar. 6, 2006); see also U.S. State Department, Country Report on Human Rights Practices (Colombia) – 2001 (describing the practice of Colombian irregular armed groups of extracting “war taxes” from the civilian population).

¹²⁴ Interview with “Diana,” Colombian Refugee SA-01 (Mar. 2006) (on file with author).

¹²⁵ Of the 68 RSD interviews we reviewed that had material support, we discovered 41% or 28 cases had been forced to provide material support in the form of goods. Georgetown Fact-Finding Mission, Statistics from Admitted Refugee Case Files, Ecuador (Mar. 2006) (on file with author).

¹²⁶ Interview with “Luz,” Colombian Refugee RS-12 (Mar. 2006) (on file with author).

later gang-raped her, strapped meat to her, and fed her to a ferocious dog.¹²⁷ In 2003, a group of armed men ambushed **Jorge** on a mountain road and stole his motorcycle and food. They held him prisoner in a remote mountain location chained at the feet during the day and at night tied up by his hands and a leash around his neck. After forty-five days, he escaped but all other prisoners at the camp were murdered.¹²⁸ All three of these refugees would be denied resettlement to the United States, because under the expansive U.S. material support bar, they are considered to have provided goods to a terrorist organization. The material support provision has been interpreted broadly to exclude from U.S. resettlement or asylum any individual who has provided any goods to an armed group—whether or not the goods are typically associated with terrorist activity.¹²⁹

c. Services

“About fourteen of them arrived at the farm; they were members of the FARC—heavily armed, wearing army boots and with FARC armbands on. They didn’t touch us, but they told us to make them food, and wanted some chickens from the farm. We heard of cases where the FARC just killed people for refusing their orders, so we did not refuse.”¹³⁰

The material support provision explicitly defines several prohibited services, including the provision of “a safe house, transportation, communications . . . or training.”¹³¹ As with the material support’s definition of prohibited goods, this list of prohibited services is non-exhaustive and has been interpreted broadly. Of the sixty-seven instances of material support that the Georgetown group recognized in interviews with sixty-three refugees, in twenty-one (31%) of the instances, the refugee performed an act which would constitute the provision of services to a terrorist group.¹³² It was not uncommon for guerrillas or paramilitary groups to force Colombian civilians to provide cooking, lodging, or transportation.

Louisa was held captive with her three children in their home while armed FARC members occupied it for three days and kidnapped her husband at gunpoint.¹³³ **José** was forced on numerous occasions to drive men armed with machetes and rifles to their mountain encampments. José knew of other taxi drivers that were murdered when they did not cooperate.¹³⁴ Louisa and José would be barred from U.S. resettlement for providing services—housing and transportation, respectively—to a terrorist organization. In a situation of extreme duress, **Miguel** dug graves for marauding paramilitaries. Under the expansive definition of the material support bar, with no exception for

¹²⁷ Interview with “Diana,” Colombian Refugee SA-01 (Mar. 2006) (on file with author).

¹²⁸ Interview with “Jorge,” Colombian Refugee JSMFC-02 (Mar. 2006) (on file with author).

¹²⁹ *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298, 300 (3d Cir. 2004) (holding that providing food and tents for a religious congregation, which may have included members of the religion’s militant sect, constituted material support).

¹³⁰ Interview with “Daniela,” Colombian Refugee EDMTS-08 (Mar. 2006) (on file with author).

¹³¹ 8 U.S.C. § 1182(a)(3)(B)(VI) (2005).

¹³² Georgetown Fact-Finding Mission, Interview statistics, Ecuador (Mar. 2006)(on file with author). Of the 68 RSD interviews we reviewed that had material support, we discovered 29% or 20 cases had been forced to provide material support in the form of services. Georgetown Fact-Finding Mission, Statistics from Admitted Refugee Case Files, Ecuador (Mar. 2006) (on file with author).

¹³³ Interview with “Louisa,” Colombian Refugee AT-14 (Mar. 2006) (on file with author).

¹³⁴ Interview with “José,” Colombian Refugee JSMFC-01 (Mar. 2006) (on file with author).

duress and a non-exhaustive list of services, Miguel's gravedigging would bar him from U.S. resettlement.¹³⁵

Many refugees lived in areas controlled by armed groups. **Adriana**, for example, worked as a waitress in a FARC-controlled area of southern Colombia. She often served to non-uniformed members of the FARC. She stated that she often did not know who she was serving, and that it would have been difficult to refuse to serve selected restaurant clients because she was only an employee.¹³⁶ In these occupied villages, providing services to an armed group was often an inevitable part of everyday life.¹³⁷

d. Affiliation

*"[My husband] never told me what he did; he just told me to do my job and take care of our kids and he would go and do his job. He told me not to ask questions, so I didn't. We have five children and I was busy with them."*¹³⁸

The current material support bar penalizes anyone who gave "material support" to "any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity."¹³⁹ DHS has been extremely strict in applying this provision. A recent Harvard Law School report documented cases of Burmese refugees who were barred for allowing family members to eat with them or stay at their home, because those family members were affiliated with armed groups resisting the Burmese military junta.¹⁴⁰ In a recent asylum case, a Burmese woman, who gave a small amount of money, backpacks, and rain gear to her fiancé and his friends, was denied asylum for providing "material support" because the recipients were affiliated with an armed group.¹⁴¹

Because of the pervasiveness of armed groups in Colombia, and the breadth of the terms "material support" and "terrorist activity," many unavoidable daily activities constitute material support. First, large regions of the Colombian countryside have been under the de facto control of an armed group for years, if not decades. Known as the *zonas rojas* ("red zones"), these areas were entirely lacking in legitimate government services and structures. The guerillas ran the schools, adjudicated legal disputes, and preserved law and order, albeit often violently.¹⁴² The government often essentially sanctioned these arrangements.¹⁴³

¹³⁵ Interview with "Juan," Colombian Refugee EMSA-01 (Mar. 2006) (on file with author).

¹³⁶ Interview with "Adriana," Colombian Refugee RS-01 (Mar. 2006) (on file with author).

¹³⁷ See Section II(B)(1)(d), Affiliation, *infra*; Section I(B), History of the Colombian Conflict, *supra*.

¹³⁸ Interview with "Sara," Colombian Refugee RS-02 (Mar. 2006) (on file with author).

¹³⁹ 8 U.S.C. § 1182 (a)(3)(B)(iv) (2005).

¹⁴⁰ The Immigration and Refugee Clinic & The Clinical Advocacy Project, Human Rights Program, Harvard Law School, *Preliminary Findings and Conclusions on the Material Support for Terrorism Bar as Applied to the Overseas Resettlement of Refugees From Burma*, at 8 (Feb. 2006).

¹⁴¹ Transcript of Oral Argument at 20, *In re Ma San Kywe*, U.S. Department of Justice, Executive Office for Immigration Review, United States Immigration Court (Jan. 26, 2006)(on file with author).

¹⁴² U.N. Development Program, *Human Development Report: Colombia 2003* (2003), available at <http://indh.pnud.org.co/pagina.plx?pg=ENdescargaInforme2003&mplat=11&lang=EN>.

¹⁴³ *Id.*

Beatriz lived in a town in the “red zone.” She had to pay the FARC for schooling, trash pick-up, and other public services.¹⁴⁴ Under current US law, all of those interactions constitute material support. **Mercedes** also lived under FARC control. FARC members frequently came to eat in the restaurant she owned. She did not intend to support their cause but served them as she served everyone else. Later, when paramilitaries took over the area, they perceived this as “support.” In retaliation for her “cooperation” with the guerillas, the paramilitaries brutally murdered her brother and burned down her restaurant.¹⁴⁵ Mercedes would be barred from U.S. resettlement because she served members of the FARC in her restaurant. As Mercedes’ story demonstrates, the material support bar, as currently written and interpreted, has the perverse effect of validating the tactics of terrorist organizations, like the paramilitaries, when those organizations label innocent civilians as collaborators in the terrorist activities of organization such as the guerrillas.

Second, for many refugees, “support” is the result of normal interactions with family members who are affiliated with armed groups. Under current U.S. law, even normal family interactions can constitute material support. **Lola** was the mother of three sons who joined the guerillas without her knowledge. She eventually found out and went to the camp to demand that they be released to her. The next day, the FARC came to her house and informed her that if her sons did not return within twenty-four hours, she would be killed.¹⁴⁶ Under the current material support bar, giving food and shelter to her own children after they joined the guerillas constitutes the provision of material support to “individual[s] who [have] committed terrorist activity.”¹⁴⁷

Sara’s husband joined the FARC without informing her. Eventually she became suspicious, and later discovered that he was involved with the FARC. He became abusive, and eventually forcibly conscripted two of her young children. She went to the camp to get them back but was unsuccessful. Eventually, she managed to rescue them and fled with them to Ecuador.¹⁴⁸ Under the current law, every time she shared a meal with her husband, allowed him to stay in their home, or performed a household chore, she was committing an act of “material support.” In addition, in the absence of any exception for being an underage member of an armed group, her care for her young children, whom she rescued from the guerillas, constitutes material support to “individuals who have committed terrorist activity.”¹⁴⁹

2. Legal Problems Arising Out Of The Material Support Bar

Below we analyze the specific legal problems in the material support provisions that have prevented Colombian refugees from resettlement to the United States. There are two legal areas of the material support bar that have had the greatest impact on Colombian refugees: the absence of an exception for material support provided under duress; and the absence of an exception for the provision of *de minimis* support.

¹⁴⁴ Interview with “Beatriz,” Colombian Refugee RS-10 (Mar. 2006) (on file with author).

¹⁴⁵ Interview with “Mercedes,” Colombian Refugee AT 11 (Mar. 2006) (on file with author).

¹⁴⁶ Interview with “Lola,” Colombian Refugee JSMFC-03 (Mar. 2006) (on file with author).

¹⁴⁷ 8 U.S.C. § 1182(a)(3)(B)(iv) (2005).

¹⁴⁸ Interview with “Sara,” Colombian Refugee RS-02 (Mar. 2006) (on file with author).

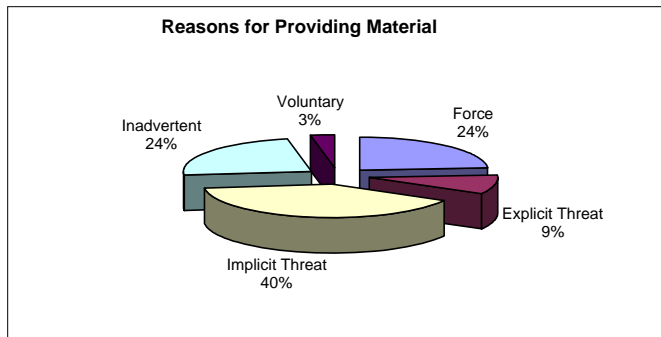
¹⁴⁹ 8 U.S.C. § 1182(a)(3)(B)(iv) (2005).

The Georgetown group noted four additional problems with the material support bar as written and applied. First, the bar’s breadth requires the exclusion of refugees who have provided support to individuals or groups that the United States would not even consider “terrorist.” Second, the provision lacks a time bar and an exception for support provided before the age of consent. Third, the expansive interpretation of the material support bar has led to the exclusion of refugees who provided support without knowledge that they were supporting a terrorist organization. Finally, the bar’s waiver provision does not provide a sufficient mechanism to rectify the bar’s expansiveness.

a. Lack of Duress Exception

“I never knew when I would be digging my own grave.”¹⁵⁰

For Colombians, coerced provision of funds, goods, or services to armed groups is often an



inevitable fact of life.¹⁵¹ The Colombian armed groups use kidnappings, extortion, and violence as a means to maintain social control, persecute those suspected of sympathizing with the enemy, and fund the activities of the armed group.¹⁵² Whether the threat is explicit or implicit, Colombians know that to refuse the demand of an armed group carries great risk.¹⁵³ While some factors place certain

Colombians at greater risk of extortion from armed groups, no one is immune.¹⁵⁴

The Georgetown group found that virtually all of those who knowingly provided material support to an armed group provided it under some form of duress—either force or the threat of force. In seventy-three percent of the instances in which individuals provided material support, they provided it under duress.¹⁵⁵ In the remaining instances, individuals provided support inadvertently (24%) or voluntarily (3%).¹⁵⁶

¹⁵⁰ Interview with “Miguel,” Colombian Refugee EMSA-05 (Mar. 2006) (on file with author).

¹⁵¹ U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, ¶89 (Mar. 2005) (“for the civilian population generally, it is becoming increasingly difficult to remain uninvolved in the conflict”).

¹⁵² *Id.* at ¶56.

¹⁵³ *Id.* at ¶58 (“An act of extortion carries with it a threat to life, security, and personal freedom. The irregular armed groups have the capacity to track down victims through Colombia and, indeed, they have done so frequently in the past.”).

¹⁵⁴ *Id.* at ¶¶ 55, 57 (“kidnapping and extortion affect virtually all groups in society”).

¹⁵⁵ In 49 of 67 instances in which material support was provided, refugees provided it under duress. Georgetown Fact-Finding Mission, Interview statistics, Ecuador (Mar. 2006) (on file with author).

¹⁵⁶ Two interviewees voluntarily provided support to family members who were members of irregular armed groups. *See* Section II(B)(3)(a)(4), Non-coercive material support, *infra*.

The material support bar provides no explicit defense for duress.¹⁵⁷ In the asylum context, DHS argues, and some courts have agreed, that a duress exception should not be read into the statute. In *In the Matter of R.K.*, Immigration Judge Tadal declined to recognize a defense of involuntariness where a Sri Lankan refugee was kidnapped by the Liberation Tigers of Tamil Eelam (LTTE) and forced to pay 50,000 rupees for his release.¹⁵⁸

In the overseas refugee resettlement context, DHS does not apply an exception for duress or involuntary support, causing an outright bar to resettlement for thousands of victims of terrorism. DHS has denied resettlement to UNHCR-recognized refugees who have been brutalized by armed groups and forced to provide funds, goods, or services. A woman gang-raped, abducted, and held hostage by rebels of the Liberians United for Reconciliation and Democracy (LURD) was forced to perform a variety of household tasks, including cooking and laundry. DHS has placed her resettlement case on indefinite hold because the Department considers the laundry and cooking services that she provided “material support to a terrorist organization.”¹⁵⁹ In another case, rebels attacked the house of a Sierra Leonean woman, brutally killed one family member and burned another, and raped the woman and her daughter. The rebels held the family captive for four days in their own home. DHS has placed her case on indefinite hold, alleging that the shelter that she “provided” to the Sierra Leonean rebels constitutes “material support” to a terrorist organization.¹⁶⁰ Despite their victimization by terrorist groups, U.S. law considers these women to have “engaged in terrorist activity.”¹⁶¹

¹⁵⁷ The lack of a duress defense in this context can be contrasted with the well-established duress defense in U.S. criminal law. In the criminal context, an individual forced to give money or goods to an armed group would be considered a victim of criminal extortion, not a participant in the crime under U.S. criminal law. *See* Model Penal Code § 2.09(1) (defining duress as “an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, that a person of reasonable firmness in his situation would have been unable to resist.”); Joshua Dressler, *Exegesis of the Law of Duress: Justifying the Excuse and Searching for its Proper Limits*, 62 S. CAL. L. REV. 1331, 1343 (1989) (stating that “[t]hirteen states have adopted in whole or in substantial part the definition of duress framed by the American Law Institute (ALI) in the MPC”); *see, e.g., United States v. Bailey*, 444 U.S. 394, 409, 411 n.8 (1980) (finding that under the common law, duress “excuse[s] criminal conduct where the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of the criminal law” and “duress excuses criminal conduct... ‘because given the circumstances other reasonable men must concede that they too would not have been able to act otherwise’”).

¹⁵⁸ *In the Matter of R.K.*, Oral Opinion, Judge Mirlande Tadal, United States Immigration Court, Elizabeth, New Jersey (May 9, 2005) (on file with author). Just months later, in the asylum case of a Nepali government employee and medical aide who was kidnapped and forced at gunpoint to treat wounded Maoist combatants, the Immigration Judge ruled that a defense of duress does apply to the material support to terrorism bars to asylum and withholding of removal. The case, however, is now on appeal to the BIA. *See* Email from Counsel for Respondent Brian D. O’Neill, Summarizing Oral Opinion of Judge Daniel L. Meisner, Immigration Court, Newark, New Jersey (Oct. 21, 2005) (on file with author); *see also* Susan Benesch and Devon Chaffee, *The Ever-Expanding Material Support Bar*, INTERPRETER RELEASES, Mar. 13, 2006, at 468.

¹⁵⁹ United States Department of State’s Bureau of Population, Refugees and Migration (“PRM”), Case Summaries (on file with author); *see also* Editorial, Terrorists or Victims?, N.Y. TIMES, April 3, 2006, at A16.

¹⁶⁰ United States Department of State’s Bureau of Population, Refugees and Migration (“PRM”), Case Summaries (on file with author).

¹⁶¹ 8 U.S.C. §1182(a)(3)(B)(iv)(VI) (2005).

For many Colombian refugees, compliance with the demands of armed groups was viewed as undesirable but resistance was often wrought with severe consequences. Without a duress exception, the material support bar implies that civilians should allow themselves to be killed or jeopardize the lives of their family members rather than comply with the demands of a controlling terrorist organization. This is a particularly shocking proposition in the Colombian context. More often than not, when a Colombian refugee gave material support, it was given under duress and was part and parcel of their persecution by terrorist groups.

1. *Material Support Provided Under Physical Force*

Of the forty-nine instances in which material support was provided under duress, the refugee provided material support because of actual physical force in sixteen cases (24%). For example, armed paramilitaries came to **Miguel's** home and forced him to dig graves at gunpoint on a death march. The paramilitaries often shot the gravediggers so that they toppled into the trenches they had dug.¹⁶² **Louisa** was imprisoned with her children in her own home by the FARC for three days after her husband was kidnapped and forcibly conscripted into the FARC armed forces.¹⁶³ **Jorge's** motorcycle and food were stolen by a group of armed men that ambushed him on a mountain road. They held him prisoner in chains in a remote location.¹⁶⁴

All these refugees are currently barred from resettlement, because the law does not provide an exception for the provision of support under force. Current law would seem to require that Miguel refuse to dig in the face of a firing squad; that Louisa expel armed FARC forces from her house after they abducted her husband; and that Jorge repossess his motorcycle before fleeing the slaughter.

2. *Material Support Provided Under Explicit Threat of Violence*

In six instances (9%), refugees provided material support because of an explicit threat. They were told that their own lives or the lives of their family members depended on their cooperation with the demands of an armed group. For example, **Maria** and her husband consistently refused to pay a large cash *vacuna* to the FARC. The FARC continued to escalate their pressure, ultimately demanding fifteen million Colombian pesos, approximately US\$6,500, paid before four p.m. on a specific date or they would kill Maria's husband. Maria's husband withdrew the money but was late in arriving at the delivery point. The FARC took the money but killed him anyway because he missed the deadline.¹⁶⁵ Paramilitary forces kidnapped **Victor's** six-year-old son from his school in retaliation for Victor's wife's courageous effort to press charges against paramilitary officers who raped her. Victor was forced to pay a ransom of forty-three million pesos, approximately US\$18,400, for his release. A ransom note demanded the cash or they would kill his son.¹⁶⁶ Maria

¹⁶² 8 U.S.C. §1182(a)(3)(B)(iv)(VI)(aa) (2005); Interview with "Miguel," Colombian Refugee EMSA-05 (Mar. 2006) (on file with author).

¹⁶³ 8 U.S.C. §1182(a)(3)(B)(iv)(VI)(aa) (2005); Interview with "Louisa," Colombian Refugee AT-14 (Mar. 2006) (on file with author).

¹⁶⁴ Interview with "Jorge," Colombian Refugee JSMFC-02 (Mar. 2006) (on file with author).

¹⁶⁵ Interview with "Maria," Colombian Refugee MF-03 (Mar. 2006) (on file with author).

¹⁶⁶ Interview with "Victor," Colombian Refugee SA-05 (Mar. 2006) (on file with author).

and Victor would both be barred from U.S. resettlement for having provided material support to the FARC.

3. *Material Support Provided Under Implicit Threat of Violence*

Refugees provided material support because of an implicit threat in twenty-seven instances (40%). Because of pervasive and targeted violence in Colombia, a request from an armed group for funds, goods, or services is generally understood to carry a threat of retribution if the individual does not comply. “When people refuse to give their animals or collaborate, they are killed,” said **Marco**, when asked why he submitted to the FARC’s demand to provide them with animals from his farm.¹⁶⁷

Refugees we interviewed typically knew people who had refused the demands of armed groups’ demands and suffered greatly for it.¹⁶⁸ **Lucy** commented that everyone in her village knew the consequences for not complying with a *vacuna* demand because the guerrillas had killed local girls who had refused to pay the tax.¹⁶⁹ **Yarisa’s** husband was killed by the paramilitaries after she and her husband did not immediately abandon their employer’s farm when demanded.¹⁷⁰ **Paula’s** mother was killed when she did not take part in a strike organized by the FARC.¹⁷¹

In non-*vacuna* cases in which material support was provided because of an implicit threat, Colombians described the general fear and intimidation they felt when known members of armed groups made overt demands. The demands were backed up with force and past experience confirmed this. Fourteen heavily armed FARC guerrillas approached **Daniela’s** farm at night and demanded a meal. She was home alone with four children. None of the guerrillas explicitly threatened or physically harmed her, but Daniela knew better than to challenge their request. “We heard of cases where the FARC just killed people for refusing their orders so we did not refuse.”¹⁷²

Twelve of the refugees we interviewed provided a *vacuna* (war tax) to an armed group under an implicit threat.¹⁷³ The FARC would regularly enter **Carlos’s** family farm and demand milk and food. Though they did not explicitly threaten Carlos or his family, “everyone knows that if you don’t give the guerrillas what they want, they will kill you.”¹⁷⁴ Paramilitaries collected a monthly *vacuna* of 100,000 Colombian pesos, approximately US\$43, from **Eva**. They entered her house, broke her property, and took what they wanted in addition to the cash they demanded. They did not directly

¹⁶⁷ Interview with “Marco,” Colombian Refugee MFC-01 (Mar. 2006) (on file with author).

¹⁶⁸ See U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, ¶96 (Mar. 2005) (“refusal or inability to pay is viewed as an act or indication of political opposition, resulting in persecution and violence”).

¹⁶⁹ Interview with “Lucy,” Colombian Refugee AT-03 (Mar. 2006) (on file with author).

¹⁷⁰ Interview with “Yarisa,” Colombian Refugee EDMTS-02 (Mar. 2006) (on file with author).

¹⁷¹ Interview with “Paula,” Colombian Refugee ED-02 (Mar. 2006) (on file with author).

¹⁷² Interview with “Daniela,” Colombian Refugee EDMTS-08 (Mar. 2006) (on file with author).

¹⁷³ See Section II(B)(1)(a), *Vacuna*, *supra*. Thirteen interviewees provided a *vacuna* to an irregular armed group. In one case, the *vacuna* was provided after an explicit threat.

¹⁷⁴ Interview with “Carlos,” Colombian Refugee MF-06 (Mar. 2006) (on file with author).

threaten her, but she knew that “they kill innocent people.” Eventually, they killed her husband and demanded that she vacate her land or face the same fate.¹⁷⁵

4. *Material Support Provided without Coercion*

Refugees provided material support in eighteen instances (27%) without coercion. In all but two of these cases, the refugee provided material support inadvertently. **Oswaldo**, for instance, inadvertently provided transportation to members of the FARC. Oswaldo drove farm workers between their homes and the farms at which they worked—usually carrying between twenty and fifty people per trip. He discovered that he had transported a FARC guerrilla at least once when armed paramilitaries stopped him during one of his trips and shot and killed two men in his vehicle. Both were FARC in civilian clothes.¹⁷⁶

There were only two instances in which a refugee provided material support voluntarily—mothers supporting their children who were, or had been, members of an armed group.¹⁷⁷ **Sara** separated from her husband when she found out that he was involved with the guerrillas, but her ex-husband returned to the house armed and abducted her ten-year-old son and three-year-old daughter, spiriting them away to the FARC encampment. After six months, she found the camp, went there in person, and tried to retrieve her children. The guerrillas treated her with derision and chased her away. Several days later, she was able to seize her children and escape with them to Ecuador. In Ecuador, after her children had been “trained” at the FARC camp, Sara provided them with what would be considered under U.S. law “voluntary material support.”¹⁷⁸

b. *Lack of De Minimis Exception for Insignificant Support*

“When my husband tried to explain that it was only a glass of water, they killed him.”¹⁷⁹

Under current law, there are no exceptions for levels of support so small that they could have no material effect on furthering terrorist activity. In a 2004 briefing to UNHCR on the application of the material support bar, staff from the U.S. Embassy stated that if a person gave “even a glass of water” to a member of an armed group, that act would qualify as material support and result in the individual being barred from the U.S. resettlement program.¹⁸⁰

Many refugees provided only *de minimis* support. In most cases, the support given was merely part of daily life in areas in which the armed groups have a heavy presence. **Luz**, for instance, provided a single glass of water to an armed guerilla.¹⁸¹ **Mario** sold household items to guerilla members from

¹⁷⁵ Interview with “Eva,” Colombian Refugee SY-02 (Mar. 2006) (on file with author).

¹⁷⁶ Interview with “Oswaldo,” Colombian Refugee EDMTS-04 (Mar. 2006) (on file with author).

¹⁷⁷ Interview with “Esmeralda,” Colombian Refugee ED-01 (Mar. 2006) (on file with author); Interview with “Sara,” Colombian Refugee RS-02 (Mar. 2006) (on file with author).

¹⁷⁸ Interview with “Sara,” Colombian Refugee RS-02 (Mar. 2006) (on file with author).

¹⁷⁹ Interview with “Luz,” Colombian Refugee RS-12 (Mar. 2006) (on file with author).

¹⁸⁰ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

¹⁸¹ Interview with “Luz,” Colombian Refugee RS-12 (Mar. 2006) (on file with author).

his family's small *bodega*.¹⁸² **Guillermo** sold bread from his bakery to un-uniformed guerillas.¹⁸³ **Juan**, a refrigerator repairman, was taken to a FARC encampment and forced to repair their appliances.¹⁸⁴

In some cases, refugees the Georgetown group interviewed had actively fought against the armed groups' terrorist control, but had nevertheless been forced to provide some *de minimis* support.

Elena was the sister of a security guard who was hired to protect their neighborhood from a non-designated terrorist group charging residents a *vacuna*. Every week, armed men would come to each home in the area, including theirs, and force the residents to pay the "tax." Elena's brother, Jorge, actively opposed the collection of the *vacuna* and the gang's other activities. In retaliation, the gang beat him and shot him five times. He managed to survive, but the family began receiving formal death threats.¹⁸⁵ Under current law, despite Jorge's active opposition of the armed group to whom they gave their "support," the family is barred from U.S. resettlement because their family paid a *vacuna* of approximately US\$3 per month.

Without an exception or waiver for *de minimis* situations, refugees like these will be unable to find safety in the United States. That interpretation of the law is problematic because it reads the word "material" out of the term "material support." Had Congress intended to bar *de minimis* contributions, they could have written the law simply to prohibit "support." The choice to include the word "material" indicates it that was not Congress's intention to punish contributions so tiny that they could have no material effect on terrorist capabilities.

The Department of Homeland Security, however, has argued the opposite. It argued before the Bureau of Immigration Appeals (BIA) and the United States Third Circuit Court of Appeals that Congress did not intend for the material support provision to include a *de minimis* exception, but rather that "material support" is a legal term of art that means *any* support, no matter how insignificant.¹⁸⁶ The DHS interpretation effectively reads the word "material" out of the provision and concludes that even a contribution of a glass of water is "material" to the support of terrorists.¹⁸⁷

¹⁸² Interview with "Mario," Colombian Refugee JP-03 (Mar. 2006) (on file with author).

¹⁸³ Interview with "Guillermo," Colombian Refugee AT-15 (Mar. 2006) (on file with author).

¹⁸⁴ Interview with "Juan," Colombian Refugee EMSA-01 (Mar. 2006) (on file with author).

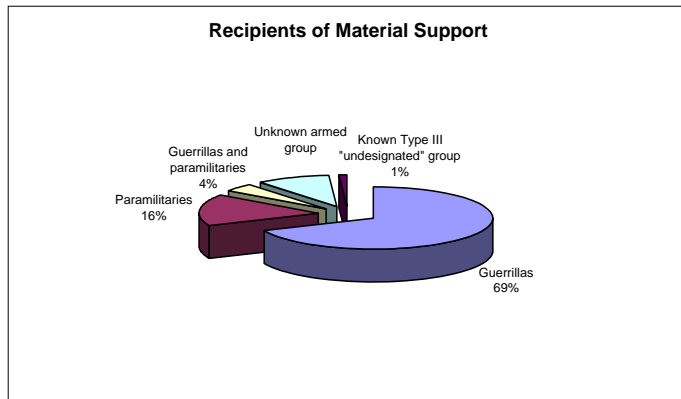
¹⁸⁵ Interview with "Elena," Colombian Refugee AT-05 (Mar. 2006) (on file with author).

¹⁸⁶ Transcript of Oral Argument at 20, *In re Ma San Kywe*, U.S. Department of Justice, Executive Office for Immigration Review, United States Immigration Court (Jan. 26, 2006)(on file with author); Brief for Respondent, *Arias v. Ashcroft*, No. 04-1999, U.S. Department of Justice, Office of Immigration Litigation. Mr. Amaya Arias' only "support" had been the act of handing money from his boss to an armed group each month.

¹⁸⁷ Transcript of Oral Argument at 20, *In re Ma San Kywe*, U.S. Department of Justice, Executive Office for Immigration Review, United States Immigration Court (Jan. 26, 2006) (on file with author).

c. *Overbroad Definition of Terrorist Organization*

Under the REAL ID Act of 2005, the definition of a “terrorist organization” was dramatically expanded to encompass any group of two or more individuals that commit any of a number of enumerated “terrorist activities,” including providing material support to a terrorist organization.¹⁸⁸ In Colombia, the primary irregular armed groups—the FARC, ELN, and AUC—are designated terrorist organizations.¹⁸⁹ However, because of the pervasiveness of the violence, there are examples of armed groups within Colombia that the United States has



not designated as terrorist organizations, and which coerce civilians to provide them support.

Of the sixty-seven instances in which refugees interviewed provided support to an armed group, in at least one instance a refugee provided material support to a known non-designated “terrorist organization.”¹⁹⁰ **Elena’s** family provided a small, but regular cash *vacuna* to the *Sicarios*, a gang directly connected to the police.¹⁹¹ In another seven instances (10%), refugees provided support to an unknown armed group that may or may not have been designated a terrorist organization by the United States.

In the remaining instances, refugees provided support to a guerrilla group in forty-five instances (67%); to a paramilitary group in eleven instances (16%); and to both the guerrillas and the paramilitaries in three instances (4%).¹⁹²

¹⁸⁸ 8 U.S.C. § 1182(a)(3)(B)(iv) (2005).

¹⁸⁹ U.S. Dep’t of State, Fact Sheet: Foreign Terrorist Organizations (Oct. 11, 2005), *available at* <http://www.state.gov/s/ct/rls/fs/37191.htm>.

¹⁹⁰ Amongst the 125 RSD interview summaries we reviewed, we found that of the 68 cases with material support, 37 of those cases the material support was given to a guerrilla organization, while in 24 cases the material support was offered to a paramilitary organization. In four cases the material support was given to a non-designated armed group. *See* Georgetown Fact-Finding Mission, Statistics from Admitted Refugee Case Files, Ecuador (Mar. 2006) (on file with author).

¹⁹¹ Interview with “Elena,” Colombian Refugee AT-05 (Mar. 2006) (on file with author). Elena’s brother nearly died during his employment as a security guard defending the community from the *Sicarios*.

¹⁹² Georgetown Fact-Finding Mission, Interview statistics, Ecuador (Mar. 2006) (on file with author). A guerrilla group was classified as the FARC, ELN, or an unspecified guerrilla group. A paramilitary group was either the AUC or unspecified paramilitaries (*paracos*).

d. No Time Bar or Exception for “Support” Provided Before Age of Consent

“My children wouldn’t even look at me. They were so different—they were in uniforms, with a gun in their boots and a grenade on their belts. My little son wouldn’t look at me.”¹⁹³

Among the refugees interviewed, there were five instances in which the material support bar could be read to exclude refugees who provided support under the age of twenty-one. **Laura**, a middle-aged woman, was forced as a teenager to cook for groups of FARC members that would take over parts of the family house as sleeping quarters.¹⁹⁴ **Ronaldo**, 31, was taken at the age of ten to a mountaintop by unknown armed men. He was given a gun, taught to hold it, and forced to aim at a wounded man who was destined to die. Confused and in tears, he refused and watched the man who “trained” him shoot the wounded man five times in the head.¹⁹⁵ There is no exception in the material support bar for support provided before the age of consent.¹⁹⁶

e. Exclusion of Refugees Who Inadvertently Provided Material Support

“I was so stupid. I sold bread to everyone. I never asked who they were.”¹⁹⁷

Of the sixty-seven instances in which refugees provided material support to an armed group, the support was provided inadvertently in sixteen instances (24%). In each case, the refugee provided “support” to an individual without knowledge of their identity and only later discovered or presumed the recipient of their “support” to be a member of an armed group. In communities in which armed groups exert significant control and have a constant presence, almost anyone who operates or is employed in a business will, in the course of their work and without their knowledge, provide some goods or services to individuals who are members of armed groups. In areas consumed by the civil conflict, it is impossible to know the identity of all people in civilian dress.

While visiting a nearby community to fulfill his Holy Week responsibilities, **Cesar**, a seminarian, was asked to take a package of medicine to a remote farm. He did not inquire further, but later learned that he had delivered the medicine to a FARC member.¹⁹⁸ **Oswaldo** transported workers between their homes and the farms. Unknowingly, he also occasionally transported members of armed groups dressed in civilian clothes in the same vehicle.¹⁹⁹ The material support bar does not adequately exempt individuals who provided funds, goods, or services that inadvertently benefited an armed group.

¹⁹³ Interview with “Sara,” Colombian Refugee RS-02 (Mar. 2006) (on file with author). Sara’s children were aged three and ten when her FARC ex-husband abducted them and took them to a FARC encampment. She eventually managed to escape with them to Ecuador.

¹⁹⁴ Interview with “Laura,” Colombian Refugee MF-02 (Mar. 2006) (on file with author).

¹⁹⁵ Interview with “Ronaldo,” Colombian Refugee SA-03 (Mar. 2006) (on file with author).

¹⁹⁶ 8 USC §1182(a)(3)(B)(iv)(VI) (2005).

¹⁹⁷ Interview with “Guillermo,” Colombian Refugee AT-15 (Mar. 2006) (on file with author).

¹⁹⁸ Interview with “Cesar,” Colombian Refugee MF-04 (Mar. 2006) (on file with author).

¹⁹⁹ Interview with “Oswaldo,” Colombian Refugee EDMTS-04 (Mar. 2006) (on file with author).

Individuals are *not* barred admission to the United States if they can prove that they “did not know, and should not reasonably have known” that the non-designated organization to which they provided support was a terrorist organization.²⁰⁰ Thus, an explicit knowledge defense exists in the law for support provided to a non-designated terrorist organization. This defense, however, does not apply to support provided to a designated terrorist organization.

Because DHS and immigration judges have previously erred on the side of over-inclusiveness in defining the material support bar, the U.N. High Commissioner of Refugees has all but stopped referring refugees for U.S. resettlement where individuals inadvertently provided material support to armed groups. Furthermore, there is no explicit exception for the inadvertent provision of “material support” to a designated or non-designated terrorist group. DHS’ generally expansive interpretation has thus led UNHCR to exclude refugees who could otherwise be admitted.

III. FIRM RESETTLEMENT: LEGAL ANALYSIS AND FINDINGS

UNHCR prioritizes voluntary repatriation or local integration as the preferred solutions for refugees. However, for many refugees worldwide, neither local integration in the first country of asylum nor voluntary repatriation is possible, and resettlement is the only suitable solution.²⁰¹ Because of the Colombian civil war, UNHCR considers voluntary repatriation an untenable option for Colombian refugees. Still, third-country resettlement is considered only in exceptional cases.

Nevertheless, there are some Colombian refugees who need to be resettled due to a lack of legal protection in Ecuador.²⁰² There remain many more who need to be resettled because of the high presence of armed groups who regularly migrate across the porous Colombia-Ecuador border or because their conditions in Ecuador are severely constrained due to discrimination. The resettlement program was established by UNHCR, with the assistance of the U.S. government, to respond to these pressing resettlement needs.

The current circumstances of discrete groups of Colombian refugees within Ecuador highlights the need for an amendment to the material support bar so that the United States can respond to the security risks and arduous socio-political conditions that face them in their first country of refuge. The following segment serves three purposes: to outline the U.S. guidelines traditionally used to analyze firm resettlement; to highlight ways in which the traditional firm resettlement analysis may fail to recognize the vulnerable condition of groups of endangered Colombian refugees in Ecuador; and to demonstrate why this vulnerability requires a revitalization of the U.S. resettlement program which has been all but shut down as a consequence of the material support bar. This section begins with an explanation of U.S. law regarding firm resettlement. The section then elaborates on the

²⁰⁰ 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(dd) (2005).

²⁰¹ UNHCR, Resettlement Handbook, Department of International Protection, Resettlement Section (HQRS00), sec. 1.1, Geneva, ¶4.2.2 (2004).

²⁰² UNHCR recognizes Colombian refugees at approximately the same rate as the Ecuadorian government. There is a discrepancy of approximately 3-10 percent every year—cases in which UNHCR recommends that the Ecuadorian government grant asylum, but the government refuses. These refugees are permitted to stay temporarily in Ecuador, but are recognized under UN Mandate. *See* Section III(D)(1), Lack of Legal Protection for Refugees Recognized Under UN Mandate, *infra*.

problems experienced by Colombian refugees after their flight from Colombia into Ecuador, and their reasons for needing resettlement in a third country.

A. LEGAL ANALYSIS OF FIRM RESETTLEMENT PROVISIONS

Under the principle of first country asylum, refugees who have been given asylum by one state generally may not seek recognition in a third country.²⁰³ However, if the refugee is unable to find “local integration” in the initial country of refuge she may apply to be resettled to a third country.²⁰⁴ UNHCR recognizes a refugee to be without local integration prospects if a refugee faces the possibility of *refoulement* because of a lack of legal status within the first country of refuge, in cases where the refugee faces continued security threats, or in circumstances in which the refugee or her dependents do not have access to the “civil, political, economic, social and cultural rights similar to those enjoyed by nationals.”²⁰⁵

DHS’s interpretation of U.S. law has provided only narrow grounds for a waiver of the firm resettlement bar. More restrictive than the UNHCR guidelines, DHS’s administrative regulations define an individual as firmly resettled if another country offered her permanent status prior to her U.S. entry.²⁰⁶ The regulations allow a waiver of the firm resettlement bar in narrow circumstances if the individual’s conditions in her first country of asylum are “so substantially and consciously restricted by the authority of the country that he or she was not in fact resettled.”²⁰⁷ In determining whether conditions are sufficiently restricted to allow a refugee to be resettled in the U.S. despite legal recognition in her initial country of asylum, the U.S. considers the individual’s housing situation; prospects and extent of employment; and enjoyment of basic rights.²⁰⁸ DHS, however, has

²⁰³ 8 C.F.R. § 208.15.

²⁰⁴ UNHCR, Resettlement Handbook, Department of International Protection, Resettlement Section (HQRS00) at sec. 1.1, Geneva (2004).

²⁰⁵ *Id.*

²⁰⁶ 8 C.F.R. § 208.15 reads:

“An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.”

²⁰⁷ 8 C.F.R. § 208.15.

²⁰⁸ *Id.*

permitted the waiver of firm resettlement to apply to significantly fewer refugees than UNHCR has recognized as being without genuine prospects for local integration.²⁰⁹

A small number of Colombians recognized as refugees by UNHCR are denied refugee status by the Ecuadorian government; these individuals are generally slated for resettlement by UNHCR to a third country.²¹⁰ Based on interviews conducted by the Georgetown group, the overwhelming majority of the Colombian refugees in Ecuador with resettlement needs demonstrate hardships stemming from physical insecurity and socio-political exclusion from society.²¹¹ Prior to the imposition of the revised material support bar, DHS's restrictive interpretation of the firm resettlement waiver created unnecessary barriers to U.S. resettlement.²¹² Due to the combined effect of the restrictive firm resettlement waiver and the material support bar, most Colombian refugees in serious need of third-country resettlement are prohibited from resettling in the United States and often delayed in their resettlement to a third country.

B. UNHCR'S CRITERIA FOR THE RESETTLEMENT OF COLOMBIAN REFUGEES

UNHCR aims to find an appropriate “durable solution” for all refugees—either voluntary repatriation, local integration, or third-country resettlement.²¹³ Because of the character of the Colombian conflict, refugee repatriation is strongly discouraged and is not considered a viable durable solution for Colombian refugees.²¹⁴ Given the tenacity of the Colombian war, UNHCR-Ecuador operates under the belief that the preferred durable solution for recognized Colombian refugees in Ecuador is full integration with the local population. UNHCR has found, however, that lack of legal protection, discrimination, lack of economic prospects, and security problems have presented legitimate challenges to the integration of certain sectors of the refugee community. The Resettlement Program serves those refugees who are unable to integrate into Ecuadorian society or who remain at risk of persecution by Colombian armed groups.²¹⁵

Since the program's inception in 2003, the UNHCR Resettlement Program in Ecuador has resettled approximately twelve percent of Ecuador's recognized refugee population.²¹⁶ UNHCR evaluates

²⁰⁹ See Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²¹⁰ Three percent of the refugees recognized by UNHCR are denied refugee status by the Ecuadorian government. This small number of refugees are recognized under the mandate of UNHCR and slated for resettlement. Interview with Simone Schwartz, Protection Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²¹¹ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²¹² *Id.*

²¹³ UNHCR, Resettlement Handbook, Department of International Protection, Resettlement Section (HQRS00), sec. 1, Geneva, 3 (2004).

²¹⁴ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²¹⁵ Given the large influx of Colombian refugees who fled the civil war, UNHCR-Ecuador supports local integration prospects with various programs, run with the assistance of local and international NGOs, offering humanitarian, legal, and social assistance. Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²¹⁶ See Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

whether a refugee merits third-country resettlement based on criteria consistent with the factors used to determine firm resettlement under U.S. law.²¹⁷

Resettlement cases fall into two broad categories. First, a small group of refugees are placed in the resettlement process because they were recognized under UN mandate but not given status by the Ecuadorian government.²¹⁸ Second, a larger group of refugees have been recognized as refugees by both UNHCR and the Ecuadorian government, but nevertheless experience persistent physical insecurity or local integration problems in Ecuador. After these individuals approach UNHCR or a partner organization with their problems, the UNHCR Resettlement Officer determines whether their circumstances fit into one of the UN's criteria for third-country resettlement.²¹⁹

To be eligible for resettlement, the refugee must compellingly demonstrate that she falls into one of six categories: (1) persons with legal and physical protection needs; (2) persons in need of special care as survivors of violence and torture; (3) persons with medical needs not met in Ecuador; (4) women at risk; (5) persons with a general lack of local integration prospects; or (6) unaccompanied minors or elderly individuals in need of family reunification.²²⁰ Of those, the Resettlement Officer gives the highest priority to cases with “acute legal and physical protection needs . . . in particular to the most vulnerable such as women-at-risk and unaccompanied children for whom resettlement has been found to be in their best interests.”²²¹

UNHCR evaluates potential cases arising from “lack of local integration” alone only after the refugee has lived for at least two years as a recognized refugee in the first country of asylum.²²² Beyond the length of stay in the country of refuge, the UNHCR Resettlement Officer examines other indicators of local integration, looking at the same factors a U.S. Immigration Judge would consider when making a determination of “firm resettlement.”²²³ These factors include: the conditions in which a refugee lives in the country of asylum compared to the living standards of the local population; socio-economic indicators such as access to fundamental services, education for children, access to work, and access to property ownership; psycho-social indicators such as the refugee's past history of persecution and circumstances of flight; efforts made on the part of the refugees to improve their situation; and the existence of pervasive discrimination in the host country based on the refugee's social, cultural or socio-economic profile.²²⁴

²¹⁷ U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2006, *in fulfillment of the requirements of INA § 207(e)(1)-(7)* at 2, available at <http://www.state.gov/documents/organization/52475.pdf>.

²¹⁸ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²¹⁹ *Id.*

²²⁰ UNHCR, *Resettlement Handbook*, Department of International Protection, Resettlement Section (HQRS00), ¶¶4.1-4.6.9, Geneva (2004).

²²¹ *Id.* at ¶4.1.

²²² Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²²³ Compare UNHCR, *Resettlement Handbook*, Department of International Protection, Resettlement Section (HQRS00), sec. 1.1, Geneva, ¶4.1 (2004), with *Sall v. Gonzales*, 437 F.3d 229, 232 (2d Cir. 2006) and *Mussie v. INS*, 172 F.3d 329 (4th Cir. 1999).

²²⁴ UNHCR, *Resettlement Handbook*, Department of International Protection, Resettlement Section (HQRS00) sec. 1.1, Geneva, ¶¶4.9.2-4.9.5 (2004).

The Georgetown Fact-Finding Group focused its research on refugees who had already been selected for resettlement. Forty-nine of the sixty-three refugees interviewed (78%) were in the resettlement process. The following section examines the resettlement needs as expressed in the stories of Colombian refugees interviewed by the Georgetown group. Their accounts made clear the inability of certain vulnerable groups to find safety and basic support within Ecuador. They testify to the continued need for U.S. participation in the international burden-sharing system created by the resettlement program, and limited by the expansive material support bar.

C. FINDINGS: FIRM RESETTLEMENT IN ECUADOR

*“[Ecuadorians] hear your accent and suddenly you are converted in their eyes from people to dirt...Everywhere you go here, the answer is no. It makes me so angry that there are so many Colombians in the street—refugees who can’t speak for themselves, denied at every turn...”*²²⁵

UNHCR-Ecuador estimates that approximately 850 vulnerable refugees every year are in need of third-country resettlement because they lack legal protection or face severe conditions that render asylum in Ecuador untenable.²²⁶ The rate at which UNHCR-Ecuador is able to relocate refugees with resettlement needs to a third country hovers at fifty percent annually.²²⁷ There are barriers both within UNHCR and within the resettlement countries that prevent UNHCR from successfully resettling a greater proportion of refugees in need of resettlement. UNHCR cannot immediately process all of the refugees in need of resettlement because of human and financial resource constraints.²²⁸ But, in addition, resettlement countries often have slow processes, cannot resettle certain populations, and do not have the resources to accept all of the refugees that UNHCR refers to them—especially those with special needs.²²⁹

While many rights and privileges attach to an individual’s asylum status, many Colombian refugees continue to be shut out of basic services such as education, housing, and medical care. In addition to institutional discrimination, societal prejudice against Colombians remains pervasive. In virtually all of the interviews, Colombian refugees complained about both institutional discrimination and societal prejudice.²³⁰ Colombian women in particular discussed problems of sexual exploitation and abuse while in Ecuador. For many, these experiences that opened anew wounds sustained during

²²⁵ Interview with “Victor,” Colombian Refugee SA-01 (Mar. 2006) (on file with author).

²²⁶ *Id.* UNHCR estimates that there are approximately 250,000 Colombians living in Ecuador. Of these, UNHCR has recognized 11,492 as refugees. Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006) (citing unofficial statistics from UNHCR). It is important to note that there is a serious potential for the humanitarian crisis to grow exponentially. If UNHCR can reach the population of unregistered refugees, or if the conflict spills over the border and these individuals start to register, the identifiable security and local integration problems will increase considerably.

²²⁷ *Id.*

²²⁸ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²²⁹ *Id.*

²³⁰ More than eighty percent of the refugees interviewed had experienced institutional and interpersonal discrimination in Ecuador. Georgetown Fact-Finding Mission, Ecuador (Mar. 2006) (on file with author).

their persecution in Colombia. Refugees consistently expressed feelings of insecurity and isolation within their host communities in Ecuador.

All of the refugees that the Georgetown Fact-Finding Group interviewed who were in the resettlement process were either not recognized as refugees by the Ecuadorian government, suffering from secondary persecution in Ecuador, or facing serious local integration problems or medical needs. Of the forty-nine refugees in the resettlement process, five (10%) were most likely referred for resettlement because they lacked legal protection in Ecuador; twenty-one (43%) because of security risks²³¹; and twenty-three (47%) because of local integration problems, because they were considered to be women at risk, or because of serious medical needs.²³²

1. Lack of Legal Protection for Refugees Recognized Under UN Mandate

“The difficulty is the documents. If we had some help, we could begin a new life.”²³³

A refugee is recognized under UN mandate when the UNHCR has recognized the refugee but the host country’s government has not.²³⁴ The U.S. government does not require a refugee recognized under UN mandate to offer extraordinary proof of the lack of firm resettlement because the lack of legal status creates a presumption that the applicant has not firmly resettled in the third country.²³⁵ In 2004, UNHCR-Ecuador recognized 101 refugees under UN mandate, placing them automatically into resettlement processes.²³⁶

Although refugees recognized under UN mandate are among the UNHCR’s highest priority refugees to resettle, the yearly resettlement backlog sometimes means that these legally vulnerable individuals languish within Ecuador’s borders, entirely dependent on UNHCR and refugee advocacy groups for the provision of their fundamental needs because of the Ecuadorian government’s unwillingness to recognize them.²³⁷ These refugees face particularly severe conditions because they are not legally able to work or obtain essential government services until UNHCR finds countries willing to offer them asylum.²³⁸ Refugees in this situation expressed sentiments of isolation, alienation and abandonment.²³⁹

²³¹ According to UNHCR-Ecuador, approximately 50-75 percent of those resettled every year are resettled because of serious physical security risks. In 2003, 2004, and 2005, 50.5, 67, and 71 percent of resettled refugees, respectively, were resettled for security risks. Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²³² Georgetown Fact-Finding Mission, Interview statistics, Ecuador (Mar. 2006) (on file with author).

²³³ Interview with “Martinez Family,” Colombian Refugee EMSA-06 (Mar. 2006) (on file with author).

²³⁴ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²³⁵ 8 C.F.R. § 208.15.

²³⁶ Interview with Simone Schwartz, Protection Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²³⁷ See e.g., Interview with “Fernando,” Colombian Refugee EMSA-02 (Mar. 2006) (on file with author).

²³⁸ *Refugiados Colombianos en Quito* DVD, Kameo Films, Jesuit Refugee Services (SJR), 2005.

²³⁹ See e.g., Interview with “Esmeralda,” Colombian Refugee ED-01 (Mar. 2006) (on file with author); Interview with “Fernando,” Colombian Refugee EMSA-02 (Mar. 2006) (on file with author); Interview with “Martinez Family,” Colombian Refugee EMSA-06 (Mar. 2006) (on file with author).

Carla Martinez resides in Ecuador under UN mandate with her husband, three children and their spouses, and her six grandchildren. She feels that she has her family, support from UNHCR, and little else. Ecuadorians have called her “trash” as she has walked down the street, she has felt the watchful eye of store proprietors, and she has felt a constant isolation that she never felt in Colombia. But, added to the discrimination that many Colombians have described, Carla and her large family are also devoid of most of the legal benefits that come from their refugee status because the Ecuadorian government has not granted them asylum. Carla’s five school-age grandchildren cannot attend school, and her children cannot legally work. All the family members that spoke with a Georgetown group spoke of feeling as “alone and marginalized” as Carla described.²⁴⁰ The Martinez family awaits resettlement, but the system often appears to move sluggishly for such vulnerable “mandate” refugees.

2. Security Threats Within Ecuador’s Borders

“Here there is no one you can count on, no one you can trust...”²⁴¹

“Here we are in the mouth of the wolf.”²⁴²

Many Colombian refugees reported that their persecution did not stop when they fled Colombia. Colombia’s irregular armed groups operated regularly throughout the region. These refugees stated that they did not know whom they could trust because they knew that the guerrillas and paramilitaries were present throughout Ecuador.²⁴³ Coupled with the lack of confidence in the Ecuadorian security forces, and sometimes the outright brutality by Ecuadorian police towards Colombians, many Colombian refugees expressed grave security concerns.

a. Persecution by Colombian Armed Groups

The Colombian conflict has spilled over the porous border into Ecuador. Both paramilitary and guerrilla groups operate within the country, trafficking in drugs and arms and crossing back and forth over the border with ease.²⁴⁴ Many of the refugees interviewed had suffered physical protection problems while living in Ecuador. The UNHCR Resettlement Officer said that 71% of Colombian refugees in the resettlement program have experienced secondary persecution in Ecuador and await resettlement because of serious physical protection concerns.²⁴⁵

For many refugees who face secondary persecution in Ecuador, the persecution is linked to the persecution they suffered in Colombia. Irregular armed groups have targeted certain refugees as “military objectives,” offering bounties for the assassination or kidnapping of Colombian civilians

²⁴⁰ Interview with “Martinez Family,” Colombian Refugee EMSA-06 (Mar. 2006) (on file with author).

²⁴¹ Interview with “Marta,” Colombian Refugee EMSA-03 (Mar. 2006) (on file with author).

²⁴² Interview with “José,” Colombian Refugee JSMFC-01 (Mar. 2006) (on file with author).

²⁴³ See, e.g., Interview with “Daniela,” Colombian Refugee EDMTS-08 (Mar. 2006) (on file with author) (“I feel that I can’t trust many people here—even the Colombians—because you never know who they could be, and if they are connected to the FARC or *paramilitaries* [paramilitaries] or not.”); Interview with “Andrea,” Colombian Refugee SY-01 (Mar. 2006) (on file with author).

²⁴⁴ See generally, International Crisis Group, *Colombia’s Borders: The Weak Link in Uribe’s Security Policy* (Sept. 2004).

²⁴⁵ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

who have crossed into Ecuador.²⁴⁶ For instance, **Miguel** fled Colombia after severe persecution by the paramilitaries. His uncle had fled before him after they were both attacked in the night. Miguel never found his uncle Otilio in Ecuador because two paramilitaries tracked Otilio to Ecuador. Though Otilio moved to another town, authorities later found him shot in the back of the head. The same two men also tracked Miguel, forcing him to relocate four times within Ecuador. He has been living in a state of constant insecurity for the two years since he arrived.²⁴⁷

Geronimo, an elderly Colombian man, has also relocated several times within Ecuador due to security problems. First, three men arrived at his home asking for him by description. After being relocated, Geronimo was brutally attacked on the street by two men with knives. He believes that his attackers were members of the guerilla unit who had extorted him at gunpoint in Colombia.²⁴⁸

The FARC tracked the **Rodriguez family** to the Ecuadorian town where they had sought refuge, near the Colombian border. Guerrillas sprayed their home with bullets, wounding the family's infant daughter who sustained a bullet in her abdomen. One week prior, a man approached Mrs. Rodriguez at the UNHCR office at the border town and asked her questions that demonstrated that he knew who she was.²⁴⁹ Other refugees also noted that members of irregular armed groups come to the offices of UNHCR or their implementing partners to intimidate or target refugees fleeing persecution in Colombia.²⁵⁰

For some refugees, however, the secondary persecution in Ecuador does not appear linked to the persecution that forced them to flee Colombia, though the persecution often involves similar actors. **Juan** was persecuted and targeted by the FARC in Colombia. He encountered members of a Colombian irregular armed group at a refugee agency in Ecuador. They extorted money from him, threatened to kill him, intimidated his family, and warned him that if he did not fulfill their demands, they would tell his Colombian persecutors that they had located him.²⁵¹

For many Colombian refugees trying to rebuild their lives in Ecuador, the threat of persecution at the hands of Colombian armed groups was constant, preventing them from firmly resettling in Ecuador.

b. Problems of Police Brutality and Inaction

The lack of police protection for persecuted Colombians exacerbates their secondary persecution. Many refugees described discrimination or abuse at the hands of the Ecuadorian police which made

²⁴⁶ *Id.*; U.N. High Commissioner for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, ¶96 (Mar. 2005).

²⁴⁷ Interview with "Miguel," Colombian Refugee EMSA-05 (Mar. 2006) (on file with author). Miguel has been tracked to Ecuador and has relocated four times after learning that the paramilitaries have learned where he was.

²⁴⁸ Interview with "Geronimo," Colombian Refugee EMSA-04 (Mar. 2006) (on file with author). Geronimo, 73 years old, identifies himself as "an abandoned refugee." He has suffered indigence and insecurity while in Ecuador and sustained neurological damage from the knife attack.

²⁴⁹ Interview with "Rodriguez Family," Colombian Refugees JP-02 (Mar. 2006) (on file with author).

²⁵⁰ *See, e.g.*, Interview with "Juan," Colombian Refugees EMSA-01 (Mar. 2006) (on file with author).

²⁵¹ Interview with "Juan," Colombian Refugee EMSA-01 (Mar. 2006) (on file with author).

them unable or unwilling to report incidents of abuse. A police officer propositioned **Pietra**, a recently widowed Colombian mother of three, while she was working in a restaurant. He asked her to “help” him by doing him a sexual favor, and threatened to deport her if she didn't comply. Pietra has been the victim of sexual assault several times while living in Ecuador but has not reported it, fearing further victimization at the hands of the police.²⁵²

Police would stop **Juan** and insist that he pay bribes in order to avoid detention and deportation. Police have entered his house and harassed him as well. He vividly recounted the story of a Colombian friend who was brutally beaten by the police and arbitrarily detained. When the friend asked, “what about my human rights?” in the middle of the abuse, the police wrote “*derechos humanos*” (human rights) on a board and beat him with it over the head.²⁵³ **Claudia** reported to the police a brutal rape and physical abuse at the hands of her former husband, but regretted that the authorities “did not take [her] seriously.”²⁵⁴

3. Systematic Discrimination

*“Why do we have to live like this?”*²⁵⁵

Many recognized refugees expressed that their situations had not improved, or improved only slightly after a grant of refugee status.²⁵⁶ They complained of pervasive and systematic discrimination, lack of job opportunities, inability to find landlords willing to rent to Colombians, lack of educational opportunities for their children, inability to open bank accounts, police harassment and abuse, general deficiency of services and protection for recognized refugees, and a constant prejudice against Colombians.

Ronaldo related various incidences of discrimination, lack of physical security and general difficulty with local integration. Ronaldo said there is an omnipresent prejudice: “to them, we are thieves and murderers.” He asserted that his family had been ostracized—“even at church.”²⁵⁷ Ronaldo’s complaints of closed communities, hostility, and outright prejudice were echoed by many other refugees. **Carolina** and **Julio** have been denied apartments because of their nationality. They were particularly disturbed that Ecuadorians seem to associate them with the armed groups when they are in actuality the victims of these groups.²⁵⁸ UNHCR Resettlement and Programs Officers confirmed

²⁵² Interview with “Pietra,” Colombian Refugee EDMTS-07 (Mar. 2006) (on file with author).

²⁵³ Interview with “Juan,” Colombian Refugee EMSA-01 (Mar. 2006) (on file with author).

²⁵⁴ Interview with “Claudia,” Colombian Refugee SA-07 (Mar. 2006) (on file with author).

²⁵⁵ Interview with “Andrea,” Colombian Refugee SY-01 (Mar. 2006) (on file with author).

²⁵⁶ E.g., Interview with “Claudia,” Colombian Refugee SA-07 (Mar. 2006) (on file with author); Interview with “Talia,” Colombian Refugee SA-04 (Mar. 2006) (on file with author); Interview with “Anita,” Colombian Refugee SA-02 (Mar. 2006) (on file with author); Interview with “Graciela,” Colombian Refugee RS-08 (Mar. 2006) (on file with author).

²⁵⁷ Interview with “Ronaldo,” Colombian Refugee SA-03 (Mar. 2006) (on file with author). While working for the government in Colombia, forced to give the census results he collected to a group of armed guerillas. He fled the area that day and was followed to another Colombian city.

²⁵⁸ Interview with “Carolina” and “Julio,” Colombian Refugees EDMTS-03 (Mar. 2006) (on file with author). Carolina and Julio feared their eldest son would be murdered because he was a witness to a murder committed by a gang affiliated with the guerillas.

reports by various refugees that recognized Colombian refugees are often unable to open bank accounts, enroll their children in school, or receive adequate emergency medical services.²⁵⁹

The UNHCR-Ecuador Programs Officer explained that the main problems preventing the local integration of Colombian refugees are exclusion from national programs, growing xenophobic sentiments among the Ecuadorian populace, refugee unemployment and lack of job opportunities, and weak and insufficient public services.²⁶⁰ In cases in which severe systemic discrimination has limited the local integration prospects for a refugee, UNHCR will consider resettlement as a more durable solution.²⁶¹ In Ecuador, UNHCR will consider resettlement due to a lack of local integration after a Colombian refugee has made efforts to integrate for at least two years.²⁶²

a. *Employment Discrimination*

“I am an educated woman... Why is it so impossible for me to find work?”²⁶³

Discrimination and the weakness of the Ecuadorian economy force many refugees to operate in the informal economy. Interviewees reported engaging in informal work such as selling candy or homemade bread on the street and manual labor. **Victor** could only find sporadic work, asserting that Ecuadorians do not want to hire Colombians. His wife was unable to work because of trauma she suffers from a rape in Colombia, and Victor is not able to earn enough to feed the family every month.²⁶⁴

Many reported that they were unable to find work, or were overqualified for the work that they were doing. **Talia** and her husband have doctoral degrees, but have been unable to obtain employment commensurate with their experience—and have been turned away from jobs for which they are overqualified. Her husband, an agronomist, has been denied farmhand positions. Talia, an economist, works as a waitress after having been denied low-level banking positions due to “security concerns.”²⁶⁵ **Anita**, a former teacher, assisted at a daycare center until she realized that her “employer” did not intend to pay her. She also worked in the position of *animadora*, attracting customers to a business by handing out leaflets on the street. She was eventually laid off for “not smiling with enough enthusiasm” and has not had steady work for the last six months.²⁶⁶ Women, especially outside of Quito, described pressures that forced them and other Colombians into prostitution.²⁶⁷

²⁵⁹ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006); Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁶⁰ Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁶¹ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁶² UNHCR, Resettlement Handbook, Department of International Protection, Resettlement Section (HQRS00), sec. 1.1, Geneva, ¶4.9 (2004).

²⁶³ Interview with “Anita,” Colombian Refugee SA-02 (Mar. 2006) (on file with author).

²⁶⁴ Interview with “Victor,” Colombian Refugee SA-05 (Mar. 2006) (on file with author).

²⁶⁵ Interview with “Talia” Colombian Refugee SA-04 (Mar. 2006) (on file with author).

²⁶⁶ Interview with “Anita,” Colombian Refugee SA-02 (Mar. 2006) (on file with author).

²⁶⁷ See Section III(D)(4)(a), Particularly Vulnerable Groups: Women: Trafficking and Exploitation, *infra*.

Twelve refugees described instances in which their employer refused to pay them or delayed payment. In these circumstances they had no legal recourse. Said **Talia**, the human rights worker who works as a waitress in Colombia: “they know you are Colombian so they pay you sporadically because they know you can never do anything about it.”²⁶⁸ Colombian refugees described their limited legal recourse and cultural disorientation as barriers Ecuadorian employers exploited. **Mr. Rodriguez** reported that he experienced discrimination and exploitation in various jobs—once working for two months before getting paid, and even then being underpaid by his employer.²⁶⁹ One refugee, **Ronaldo**, recalled making an official denouncement against an employer at the Ministry of the Exterior and the Prosecutor’s office, but not receiving a satisfactory response.²⁷⁰

b. *Housing Discrimination*

“We lived like animals for almost six months.”²⁷¹

Housing discrimination and predatory landlords also proved a persistent problem, relegating many Colombian refugees to several dilapidated neighborhoods in the cities of Quito and Ibarra and camp life in Lago Agrio. **Lola** described multiple landlords telling her that the apartment she was seeking had already been rented, though she knew otherwise.²⁷² The living conditions in the neighborhoods where many Colombian refugees can find shelter are inadequate. While pregnant with her first child, **Claudia** lived in one room in a small house with four other adults. The room had neither a kitchen nor a bathroom.²⁷³

c. *Education Discrimination*

“My children aren’t in school right now. My daughter didn’t have her identity documents, so she couldn’t register. My girls are both working and when they are home they take care of my son and help with the cooking and cleaning.”²⁷⁴

A recurring complaint among the interviewees stemmed from the lack of educational and medical services available to refugees in Ecuador. Refugees related disturbing stories about their dealings with government sponsored medical facilities and schools. UNHCR estimates that only twenty-five percent of the school-aged children of recognized refugees have access to education and are able to attend local schools.²⁷⁵ Despite an official commitment by the Ecuadorian government to allow recognized refugees to attend local schools, no government action has been taken to prevent local school districts from barring Colombian children from matriculation.²⁷⁶ None of **Andrea’s** children

²⁶⁸ Interview with “Talia,” Colombian Refugee SA-04 (Mar. 2006) (on file with author).

²⁶⁹ Interview with “Rodriguez Family,” Colombian Refugees JP-02 (Mar. 2006) (on file with author).

²⁷⁰ Interview with “Ronaldo,” Colombian Refugee SA-03 (Mar. 2006) (on file with author).

²⁷¹ Interview with “Claudia,” Colombian Refugee SA-07 (Mar. 2006) (on file with author).

²⁷² Interview with “Lola,” Colombian Refugee JSMFC-03 (Mar. 2006) (on file with author).

²⁷³ Interview with “Claudia,” Colombian Refugee SA-07 (Mar. 2006) (on file with author).

²⁷⁴ Interview with “Pietra,” Colombian Refugee EDMTS-07 (Mar. 2006) (on file with author).

²⁷⁵ Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁷⁶ *Id.*

are able to attend school in Ecuador because secondary school is not free and there is no money to send them. She has spoken with the directors of schools to see if her children could simply sit in on classes but the schools have refused.²⁷⁷

d. Health Care Discrimination

“The pills he needs to take cost \$1 each. He takes three a day. I don’t make enough money to pay my rent and his medical bills.”²⁷⁸

Serious medical ailments, some sustained as a result of the refugee’s former persecution, often went untreated in Ecuador because refugees were denied access to health care services. **Daniela’s** son suffered from epilepsy and received a low level of care in Ecuador because Daniela could not afford the treatment.²⁷⁹ **José’s** son was born with a serious bone condition. He needs an operation and treatment that is not available in Ecuador.²⁸⁰

Although the Ecuadorian government gave some refugees medical cards to allow hospital access, refugees have been repeatedly turned away at the door. The UNHCR protection officer in Lago Agrio explained that, although Ecuadorian hospitals are supposed to provide free pre-natal care to refugees and citizens, they often refuse to treat refugees.²⁸¹ In emergencies, refugees are thus forced to go to private clinics. This results in large bills that the refugees are unable to pay, causing further economic problems.

With regards to basic public health, UNHCR estimates that seventy percent of recognized refugee minors under the age of twelve do not receive adequate calories on a daily basis.²⁸² In order to feed their children, many refugee parents go hungry.²⁸³

4. Particularly Vulnerable Groups

UNHCR in Ecuador has recognized certain groups as inherently more vulnerable to secondary persecution because of societal discrimination. These groups include women, Afro-Colombians, and sexual minorities. These populations generally have severely limited options in Ecuador and are often in need of resettlement to a third country. Historically, the United States has been one of the countries most willing and able to offer protection to vulnerable populations, particularly refugee women at risk of sexual exploitation in their first countries of asylum.²⁸⁴ Due to the material support bar, UNHCR more often looks to other countries for the resettlement of these populations.²⁸⁵

²⁷⁷ Interview with “Andrea” Colombian Refugee SY-01 (Mar. 2006) (on file with author).

²⁷⁸ Interview with “Daniela,” Colombian Refugee EDMTS-08 (Mar. 2006) (on file with author).

²⁷⁹ *Id.*

²⁸⁰ Interview with “José,” Colombian Refugee JSMFC-01 (Mar. 2006)(on file with author).

²⁸¹ Interview with Ara Yoo, Protection Officer, UNHCR-Lago Agrio, in Lago Agrio, Ecuador (Mar. 2006).

²⁸² Interview with Duval Martinez, Programming Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁸³ *Id.*

²⁸⁴ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁸⁵ *Id.*

a. Women: Trafficking and Sexual Exploitation

“My wife receives the worst of the prejudice. She has had other women, Ecuadorian women, spit on her in the street.”²⁸⁶

Colombian women are a particularly vulnerable population. A significant number are forced into prostitution and there are reports that the same people involved in trafficking drugs across the border are also involved in trafficking women and children.²⁸⁷ According to UNHCR’s Protection Officer, many refugee women report being asked to provide sexual favors to officials in the course of seeking protection or essential services.²⁸⁸ Because of the particular problems that women refugees face in Ecuador, UNHCR identifies gender as one of the personal characteristics that may play a role in determining appropriate solutions to integration and protection concerns.²⁸⁹

Sexual exploitation by Colombians and Ecuadorians was a recurring and insidious problem for the women interviewed. With one exception, the single or widowed refugee women interviewed described instances of sexual exploitation, inappropriate sexual behavior by authorities, rape and sexual assault, or forced prostitution in Ecuador. Some married women and their husbands also complained of the climate of sexual exploitation and discrimination facing Colombian women and girls in Ecuador.²⁹⁰ **Pietra** has been sexually assaulted on many occasions, and people have made sexual proposals to her daughters. She reported that Ecuadorians slander Colombian women for not having husbands, seemingly not realizing that many lost their husbands to guerrilla or paramilitary violence.²⁹¹

Many reported that Ecuadorians presume Colombian women to be prostitutes. **Anita** said angrily, “They criticize us and call us whores because that is what they want us to be. It is not as hard to treat us like we are not people if they pretend we have not experienced these tragedies in our lives.”²⁹² **Claudia**’s landlord suggested that she pay her rent through sexual favors. Claudia was fortunately able to scrape together enough money for rent after her husband abandoned her and was never forced to seriously consider her landlord’s proposal.²⁹³

²⁸⁶ Interview with “Ronaldo,” Colombian Refugee SA-03 (Mar. 2006) (on file with author).

²⁸⁷ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report, Section V, Country Narratives*, (June 3, 2005), available at <http://www.state.gov/g/tip/rls/tiprpt/2005/46613.htm>; Interview with Robert Natiello, Officer, IOM, in Quito, Ecuador (Mar. 7, 2006); Interview with Carlos Arrobo, Director of Trafficking in Persons Project in Ecuador, American Bar Association, in Quito, Ecuador (Mar. 9, 2006). The U.S. Department of State classifies Ecuador as a source, transit and destination country for those trafficked for sexual exploitation or forced labor. Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report, Section V, Country Narratives*, (June 3, 2005).

²⁸⁸ Interview with Simone Schwartz, Protection Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

²⁸⁹ UNHCR, *Resettlement Handbook*, Department of International Protection, Resettlement Section (HQRS00), sec. 1.1, Geneva, ¶4.2 (2004).

²⁹⁰ See, e.g., Interview with “Juan,” Colombian Refugee EMSA-01 (Mar. 2006) (on file with author) (recalling that his wife expressed the desire to return to Colombia despite the danger to her life because of the prejudice she experienced in Ecuador); Interview with “Ronaldo,” Colombian Refugee SA-03 (Mar. 2006) (on file with author).

²⁹¹ Interview with “Pietra,” Colombian Refugee EDMTS-07 (Mar. 2006) (on file with author).

²⁹² Interview with “Anita,” Colombian Refugee SA-02 (Mar. 2006) (on file with author).

²⁹³ Interview with “Claudia,” Colombian Refugee SA-07 (Mar. 2006) (on file with author).

A number of the women interviewed expressed fears of being forced into prostitution. **Yarisa** was fired from her factory job for missing work to attend appointments with UNHCR. Community members have repeatedly approached her to suggest that she should do as the other Colombian women do and sell her body.²⁹⁴ **Jayamara**, a 23-year-old widowed mother of four, reported being approached by a pimp who attempted to recruit her to work in a brothel. “He kept trying to insist and I kept refusing,” she said.²⁹⁵

A painful irony for many Colombian refugee women is that prostitution is one of the only options that allows women both to make enough money to support their families and to stay home with their small children during the day. Some reported resisting prostitution, but also being tempted by the ability to spend more time raising their children. **Angelica** worked at a liquor store, earning US\$100 a month to work seventeen hours per day, every day. As a single mother who cannot afford childcare, she left her four children home unsupervised. She admitted that she considered working as a prostitute because it would allow her to care for her children during the day.²⁹⁶ Prostitution in nightclubs is legal in Ecuador and this is where many young girls are found to be prostituting themselves.²⁹⁷

b. Afro-Colombians

“What kind of monster calls an eleven-year-old a ‘little black rapist’? What crime has he committed in this world outside of being born black and Colombian?”²⁹⁸

Afro-Colombians are more easily identified as Colombians than their indigenous and white counterparts in the mostly Mestizo racial landscape of the Ecuadorian interior. The Georgetown Fact-Finding Group interviewed at least eight Afro-Colombian refugees.²⁹⁹ The Afro-Colombians interviewed recounted race-specific discrimination and prejudice in addition to discrimination based on their nationality.³⁰⁰ Said **Diana**, “they know I am Colombian because of my color and my accent; this closes all doors.”³⁰¹

Edith was attacked on the street, brutally beaten by a man with no provocation. No one on the busy street came to her aide. She felt that the attack, and the lack of responsiveness, may have been

²⁹⁴ Interview with “Yarisa,” Colombian Refugee EDMTS-02 (Mar. 2006) (on file with author).

²⁹⁵ Interview with “Jayamara,” Colombian Refugee EDMTS-05 (Mar. 2006) (on file with author).

²⁹⁶ Interview with “Angelica,” Colombian Refugee AT-09 (Mar. 2006) (on file with author).

²⁹⁷ Interview with Carlos Arrobo, Director of Trafficking in Persons Project in Ecuador, American Bar Association, in Quito, Ecuador (Mar. 9, 2006).

²⁹⁸ Interview with “Anita,” Colombian Refugee SA-02 (Mar. 2006) (on file with author).

²⁹⁹ Eight refugees self-identified as Afro-Colombian. Ethnicity was not recorded for all interviews.

³⁰⁰ See, e.g., Interview with “Diana,” Colombian Refugee SA-01 (Mar. 2006) (on file with author); Interview with “Anita,” Colombian Refugee SA-02 (Mar. 2006) (on file with author); Interview with “Fernando,” Colombian Refugee EMSA-02 (Mar. 2006) (on file with author); Interview with “Eva,” Colombian Refugee SY-02 (Mar. 2006) (on file with author); Interview with “Mercedes,” Colombian Refugee AT-11 (Mar. 2006) (on file with author); Interview with “Yarisa,” Colombian Refugee EDMTS-02 (Mar. 2006) (on file with author); Interview with “Paula,” Colombian Refugee ED-02 (Mar. 2006) (on file with author).

³⁰¹ Interview with “Diana,” Colombian Refugee SA-01 (Mar. 2006) (on file with author).

related to her race. When she went to hospital following the beating, the medical clinic refused to treat her even though she was a recognized refugee.³⁰² **Yarisa** reported that her race may contributed to heightened pressure to engage in sex work—people immediately see her and believe she will be willing to sell her body for money or protection.³⁰³

Afro-Colombians expressed particular concern for the prejudicial treatment that their children were forced to endure. **Yarisa** complained that her seven-year-old son has been called racist epithets at school and has experienced harassment, badgering, taunting and name-calling on the street.³⁰⁴ **Anita**'s eleven-year-old son was slandered by the child's teacher in front of the whole class. The teacher separated the four Colombian boys from the rest of the class, and then separated Anita's son and the other Afro-Colombian boy from the other two boys. She then called the Colombian boys "thieves" and the two Afro-Colombians "little black rapists." Anita has attempted to enroll her fifteen-year-old son in three different schools, but each time something discouraged him. Twice the directors told him he was unwanted; and once his classmates threw stones at him. He was a good student in Colombia, but after the third attempt, he told his mother, "don't waste our money *mami*. I can't go to school here. Here they do not want me." He now studies at home.³⁰⁵

A refugee aid worker commented on the racism and discrimination directed specifically at Afro-Colombians: "They have practically no chance to have a life here in Ecuador."³⁰⁶ The UNHCR Resettlement Officer likewise expressed skepticism about the prospects for Afro-Colombians to firmly resettle in Ecuador, asserting that they have very few prospects for local integration.³⁰⁷

c. Sexual Orientation

*"It's much worse here for a lesbian—worse even than Colombia."*³⁰⁸

The Ecuadorian community has historically proven unwelcoming, and sometimes violent, to gay, lesbian, intersex, and transgender people. Ecuador has been internationally censured for persecution of homosexuals and for failing to act to protect homosexuals from persecution at the hands of private individuals.³⁰⁹ The cultural climate of Ecuador make it an inhospitable and dangerous for homosexuals. Ecuador often does not offer them protection, but rather an increased risk of violence.

³⁰² Interview with "Edith," Colombian Refugee MF-01 (Mar. 2006) (on file with author).

³⁰³ Interview with "Yarisa," Colombian Refugee EDMTS-02 (Mar. 2006) (on file with author).

³⁰⁴ *Id.*

³⁰⁵ Interview with "Anita," Colombian Refugee SA-02 (Mar. 2006) (on file with author).

³⁰⁶ Interview with Sabrina Lustgarten, Legal Coordinator, Hebrew Immigrant Aid Society Ecuador, in Quito, Ecuador (Mar. 2, 2006).

³⁰⁷ Interview with Walter Sanchez, Resettlement Officer, UNHCR-Ecuador, in Quito, Ecuador (Mar. 2006).

³⁰⁸ Interview with "Diana," Colombian Refugee SA-01 (Mar. 2006) (on file with author).

³⁰⁹ See Amnesty International, *Ecuador: Continued Torture and Ill-Treatment of Lesbian, Gay, Bisexual and Transgender People*, AMNESTY INTERNATIONAL HUMAN RIGHTS REPORTS (June 2001).

The Georgetown Fact-Finding Group interviewed only one openly gay refugee. She experienced very severe persecution in part based on her sexual orientation both in Colombia and in Ecuador. **Diana** suffered a brutal and vicious rape at the hands of paramilitaries who extorted clothing from her while in Colombia. Fleeing Colombia, Diana had few options when she arrived at an Ecuadorian border town. She was forced into prostitution in order to escape from the border region where she was in the greatest danger. In Ecuador, she has been assaulted three times explicitly because of her sexual orientation. In addition, she has been sexually propositioned, groped, and evicted by landlords. During her interview, she asserted, “there is no place for me here in Ecuador.”³¹⁰

IV. CONCLUSION

The material support provisions are having a deleterious effect on Colombian refugees in need of resettlement to a third country. In particular, the lack of duress and *de minimis* exceptions, the broad definitions of “terrorist activities” and “material support,” and the lack of exceptions and a workable waiver provision have had the effect of punishing particularly vulnerable refugees and validating the tactics of terrorist organizations. The law, as currently written, is not flexible enough to effectively address the harsh, everyday realities for Colombians and others who find themselves in a conflict zone. The material support provisions are currently punishing the victims of terrorism as if they themselves are terrorists.

Even in Ecuador, Colombian refugees often cannot escape the conflict or rebuild their lives. Colombian refugees in Ecuador frequently face serious security and local integration problems. Refugees are often denied access to basic services and face pervasive societal prejudice. Moreover, particularly at-risk groups, such as women and Afro-Colombians, are vulnerable to trafficking, sexual exploitation, and acute discrimination. Because of the material support bar, UNHCR has lost a valuable means to address the pressing needs of particularly vulnerable refugees. U.S. resettlement has virtually ceased for Colombian refugees and resettlement worldwide has been slowed.

Congress and DHS must rectify the problems related to the material support bar in order to alleviate the suffering for the most vulnerable victims of armed conflict. Thousands of refugees worldwide depend on the U.S. resettlement program. Without a congressional amendment and clear DHS regulations limiting the application of the material support bar to actual terrorists and not their victims, the material support bar will continue to lead the United States to abandon the victims of terror that it has long sought to protect.

³¹⁰ Interview with “Diana,” Colombian Refugee SA-01 (Mar. 2006) (on file with author).

APPENDICES

APPENDIX A: MATERIAL SUPPORT BAR – RELEVANT STATUTES

8 U.S.C. § 1182 - Inadmissible Aliens

- a. Classes of aliens ineligible for visas or admission
 - (3) Security and related grounds
 - (B) Terrorist activities.**
 - (i) In general. Any alien who--
 - (I) has engaged in a terrorist activity;
 - (II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));
 - (III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;
 - (IV) is a representative (as defined in clause (v)) of--
 - (aa) a terrorist organization (as defined in clause (vi)); or
 - (bb) a political, social, or other group that endorses or espouses terrorist activity;
 - (V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);
 - (VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;
 - (VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;
 - (VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code [18 USCS § 2339D(c)(1)]) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or
 - (IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.
 - (ii) Exception. Subclause (VII) of clause (i) does not apply to a spouse or child--
 - (I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or
 - (II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.
 - (iii) Terrorist activity defined. As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:
 - (I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or

vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any--

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) Engage in terrorist activity defined. As used in this Act, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization--

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for--

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual--

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or

(vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training--

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) Representative defined. As used in this paragraph, the term "representative" includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) Terrorist organization defined. As used in this section, the term "terrorist organization" means an organization--

(I) designated under section 219 [8 USCS § 1189];

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary's sole unreviewable discretion that subsection (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) of this section shall not apply to an alien, that subsection (a)(3)(B)(iv)(VI) of this section shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity, or that subsection (a)(3)(B)(vi)(III) of this section shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 1229a of this title.

8 U.S.C. § 1158(b) - Conditions for Granting Asylum

(1) In general.

(A) Eligibility. The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A) [8 USCS § 1101(A)(42)(A)].

(B) Burden of proof.

(i) In general. The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A) [8 USCS § 1101(a)(42)(A)]. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden. The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination. Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions.

(A) In general. Paragraph (1) shall not apply to an alien if the Attorney General determines that--

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of

the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) [8 USCS § 1182(a)(3)(B)(i)] or section 237(a)(4)(B) [8 USCS § 1227(a)(4)(B)] (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 212(a)(3)(B)(i) [8 USCS § 1182(a)(3)(B)(i)], the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules.

(i) Conviction of aggravated felony. For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses. The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations. The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review. There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children.

(A) In general. A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) [8 USCS § 1101(b)(1)(A), (B), (C), (D), or (E)]) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children. An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3) [8 USCS § 1159(b)(3)], if the alien attained 21 years of age after such application was filed but while it was pending.

8 U.S.C. § 1231(a)(3) - Withholding of Removal

(3) Restriction on removal to a country where alien's life or freedom would be threatened.

(A) In general. Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(B) Exception. Subparagraph (A) does not apply to an alien deportable under section 237(a)(4)(D) [8 USCS § 1227(a)(4)(D)] or if the Attorney General decides that--

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States;

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 237(a)(4)(B) [8 USCS § 1227(a)(4)(B)] shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

(C) Sustaining burden of proof; credibility determinations. In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B) [8 USCS § 1158(b)(1)(B)].

APPENDIX B: SUMMARIES OF CASES CITED

AT-01 Gloria

Gloria lived in Colombia with her family on the farm they owned. In 2000, her father received a call from Gloria's godfather asking to borrow money urgently—"in order to survive with his children." Members of an armed group accompanied her godfather to the house and demanded to be paid in cattle. Her father agreed, in order to protect the godfather. The men left with the cattle; they were followed by two cars and three motorcycles of armed men. Gloria does not know what group the men were from—"that sort of person does not bring identification when he comes to your house."

The next day, her entire family left their town. They had to leave or sell everything they owned. In the nearby village where they first sought refuge, they received threatening phone calls. They next went to Bogotá, but the threatening phone calls continued. Out of desperation and fear, they fled Colombia for Ecuador.

Previously, her godfather had been forced to pay the FARC a *vacuna* of 3 million pesos by the FARC after he received a detailed letter from them directed towards him. Her father was also forced to provide a *vacuna* of 3.5 million pesos. Gloria knew of a widow in her village who refused to pay the *vacuna* because she could not afford it; the guerrillas stole or destroyed everything she owned.

In Ecuador, Gloria has encountered serious discrimination. In front of her children, Ecuadorians have told her that "all Colombians are robbers." She has had to buy food at inflated prices, and been sexually harassed and encouraged to provide sexual favors in order to pay for basic goods. Employers have discriminated against her, refusing to hire her, or refusing to pay her the wages she has earned. She had a small business selling clothes, but people refused to pay, knowing that the police would not help her because she was Colombian.

AT-02 Victoria

In Colombia, Victoria supported her family by running a small restaurant that was quite successful until the guerillas arrived in 2004. She is not sure what guerilla group they were from, but thinks it may have been the FARC. The guerillas began eating in the restaurant every night, and they refused to pay. Victoria could not afford to pay for all the food and drink they took, and other customers were avoiding her restaurant in order to avoid contact with drunken guerillas. Eventually, her two sons approached the guerillas and told them that they had to pay. That night, the guerillas came to Victoria's house and beat her severely. They demanded to know where her sons were because they wanted to take them away. That night, when her sons returned, she told them they had to leave. They fled immediately and Victoria does not know where her sons are. Victoria fled to Ecuador a few days later. After she left, the guerillas destroyed her restaurant.

After arriving in Ecuador, Victoria found a job as a housekeeper. She worked there for one year, but her boss refused to pay her, so she quit. In December, she was working on a farm and was mauled by a dog so severely that she required skin grafts on her leg and had to stay in the hospital for three months. Victoria has been unable to get the medical care that she needs to heal properly. When she goes to the Ecuadorian hospital for outpatient care, they refuse to treat her. She has not had the bandages on her leg changed in weeks, and is in danger of serious medical complications from her injuries and the accompanying infections. Victoria is unable to work or walk more than a few steps at a time.

AT-03 Lucy

Lucy is a single mother of three daughters. After her husband left her and their children for another woman, she worked on a farm as a cook. In December, the FARC put a blockade around the area where she lived. She believes it was because they wanted to steal oil and sell it. Lucy never paid the *vacuna*. “Because she never had anything to give, so they never demanded anything.” However, she believes that the farm where she worked was probably forced to pay either in cash or in a portion of the food they grew. Everyone in her village knew about the *vacuna* because the guerillas had killed girls in the village who did not pay the tax on demand. After she and her daughter were threatened by the guerillas, Lucy managed to escape the blockaded area with her children and come to Ecuador.

Lucy is living in the UNHCR *albergue* (hostel). She has health problems that cannot be treated well in Ecuador. Her children are not in school because the school is far from the isolated *albergue* and because she does not have money to buy the uniforms and notebooks they would require. She has not been able to find work or a place to live.

AT-04 Susana

Susana lived with her husband and eleven children on their farm in Colombia. Several years ago the violence in the area where they lived increased significantly when the Colombian army came to drive out the guerillas. Susana’s family was often afraid to leave their house for fear of encountering the guerillas or the military. The children did not attend school because Susana feared her children could be forcibly recruited or hurt.

The guerillas passed through Susana’s farm to get from one area to another. The family did not try and stop the guerillas for fear of reprisals against them and their children. The guerillas also took *vacuna* payments from them in the form of food. The payments were not regular or scheduled, but the guerillas would show up and look at their harvest or fields, and then calculate the percentage that the family owed. Susana’s family was told that if they failed to hand it over, they would be shot. In late 2004, members of the Colombian army came to their house. The army accused them of collaborating with the FARC and said that they knew the family left the guerillas pass through their land. Susana’s family was afraid of violent reprisals from the army and of being drawn into the fighting. Their entire family left immediately for Ecuador.

AT-05 Elena

Elena’s brother Jorge is a professional security guard working for their urban neighborhood’s *directivo* (neighborhood council). The neighborhood had been having trouble with a protection racket run by the *Sicarios*, a gang of professional assassins who were demanding *vacuna* payments from all the neighborhood residents. Elena’s family was forced to pay 2000 pesos every week to representatives of the gang that came to their house. The gangs were directly connected with the police.

The *directivo* hired Jorge and other guards to serve as a private security force to protect residents from abuse by the police and the *Sicarios*. Jorge received verbal warnings from the *Sicarios* to “stop interfering.” One night, when he was guarding a parking lot, three armed gang members approached him and said he must allow them to rob the cars in the lot. He refused. They beat him severely, and when he had collapsed on the ground, one of them pulled out a gun and shot him five times. Miraculously, Jorge survived. Elena and her mother then moved to a different part of town.

After a few weeks in the new neighborhood, Elena received a phone call asking for Jorge and threatening to kill him. She and her mother took Jorge from the hospital and fled directly to Ecuador.

AT-06 Hector

In Colombia, Hector worked as a bodyguard for wealthy businessmen in his town. Last year, he and three other men were guarding the *padron* he worked for when armed men attacked the car. The bodyguards were able to ward off the attackers. Hector does not know whether they were from a particular armed group, or whether they were common criminals. Three months later, a bomb was thrown into his family's apartment, injuring Hector's son and leaving him in a wheelchair. The family does not know why their home was bombed. They believe that it might have something to do with the foiled attack on the vehicle Hector was guarding, but they are not certain. After their son was out of the hospital and able to travel, they left Colombia.

Hector has had difficulty finding work in Ecuador. Hector remains very traumatized by his experiences in Colombia. He hates to leave his house alone and always tries to make sure that his wife or one of his children is with him. He is constantly worried for the safety of his family, especially because "you don't know who is who." His son also needs medical care that the local hospital is unable to provide.

AT-08 Amelia

Amelia was born in a small village in rural Colombia. Her mother abandoned her when Amelia was eight years old; and the woman who took her in severely mistreated her. Eventually, Amelia escaped and was alone on the streets. At fourteen, a man picked her up off the streets, took her back to his house, and raped her at gunpoint. From then on, he forced her to work as a prostitute and to give him the money she earned.

Eleven years ago, her son was born. Her child was "a gift from god" who changed her life completely. She stopped working for the pimp and tried to live "a clean life." Soon after, she met her adopted daughter, Alicia, who had been abandoned by her parents and was living alone. Shortly before they came to Ecuador, Alicia was raped by a paramilitary. She became pregnant from the rape, and now has a two-year-old child. Around the same time, a friend of theirs was murdered by paramilitaries and found floating in a river. They decided to flee to Ecuador because they were afraid that they would be next.

Amelia feels like she has left one hell for another. She has been subjected to serious abuse and discrimination in Ecuador. The week before the interview, she and a friend were beaten severely in the street. Her nose was broken, and she was covered with bruises and abrasions. The police came, but they just watched as it happened, and left her lying in the street. Afterwards, the people who had beaten her stayed around, laughing and joking, because they weren't afraid of the police at all. "If I had been a dog, it would have been different. They would help an animal, but not us." Amelia is terrified to stay in Ecuador, because she knows that she could be attacked at any time, and no one would come to her aid.

AT-09 Angelica

Angelica was an agricultural worker on a farm in Colombia. Approximately two and a half years ago, three members of the paramilitaries came to the house where she lived alone with her four children. They forced her to come with them and leave her children home alone. The paramilitaries kept Angelica with them for two days, and made her pay two million pesos to ransom herself before they would let her return to her children. Soon after she returned home, she began to receive anonymous threats saying that she had to leave to survive. Angelica left Colombia for Ecuador.

Angelica also feels very insecure living only 15 minutes from the Colombian border. She knows that she crossed the border without any papers and was not given any problems by the authorities, so is sure that members of the armed groups are able to do the same. Angelica has also had serious problems integrating in Ecuador. She has had difficulty finding work, because of prejudice against Colombians. Men assume that because she is Colombian, she is a “loose woman” or a prostitute, and they constantly sexually harass her. She hates to leave her young children alone during the day, but she has no family nearby and is unable to obtain childcare. Although she is adamant that she does not want to become a prostitute, she is afraid that someday she will have no other choice.

AT-10 Leonora

Leonora is a nurse from a “red zone” town, an area completely controlled by the guerillas. Last May, a woman from her town came to her and borrowed 2000 pesos, promising to pay Leonora back after two weeks. Two weeks later, when Leonora went to collect the money, the woman refused to pay her, became angry, and shouted “don’t you know who I am?” Leonora then realized that she was the wife of a well-known guerilla commander in their town. A few days later, the guerrilla and a friend beat Leonora severely in retaliation for the disrespect she had shown his wife by asking her to repay the money. Leonora went to the police and filed a complaint about the attack. After that, she began to receive threatening phone calls. The caller would say, “we aren’t playing around,” and threaten to harm her and her son. Then, one day, when she was riding her motorcycle home, a guerilla shot her in the leg. She and her son immediately fled to Ecuador.

In Ecuador, Leonora has struggled to get by. The Ecuadorian authorities have not given her any services or assistance. Although she is a trained nurse, she is unable to find a formal sector job, and is working as a street vendor. She does not have enough money for books or a school uniform for her son, who is unable to finish his education. Leonora also feels extremely unsafe in Ecuador. Friends who still live in Colombia have told her that guerillas have told them that they saw her in Ecuador and know exactly where she lives.

AT-11 Mercedes

Mercedes is originally from a small village in rural Colombia. When she was young, the guerillas came to her town. From then on, the guerilla functioned as the government of her town, though Mercedes did not have much contact with them. One day, the Colombian army came and bombed Mercedes’ village—supposedly to “liberate the people.” Many civilians were killed, and the villagers had to flee. The army treated the villagers very badly, accusing them of being collaborators, and publicly tortured men from the village, leaving them along the road to die. Mercedes and her family fled the area.

In their new village, Mercedes started a small restaurant. She worked in the restaurant kitchen, and did not necessarily know who she was serving. However, the town was in the “red zone,” an area completely controlled by the guerillas, so it is likely that guerilla members ate in her restaurant along with civilians. One day, her brother was kidnapped. The men who took him did not identify themselves, but Mercedes believes that they were paramilitaries who targeted her brother because they believed that she was serving guerillas in her restaurant. Mercedes could not be sure, and that made the experience even more terrifying. “Imagine living in a red zone with someone threatening you, and you don’t know who it is!” Her brother’s body was found the next day. He had been shot in the abdomen seven times and dumped in a ditch. The following day, the men returned to her restaurant to look for her. When they did not find her, they burned the restaurant to the ground. Mercedes fled to Ecuador.

AT-14 Louisa

Louisa and her husband Miguel worked on a farm for six years, where they lived with their children. One evening, three members of the FARC came to the house, kidnapped Miguel at gunpoint, took him away, and imprisoned Louisa and her children in their home. The armed guerillas stayed in their house, and refused to let them leave. After three days, the guerillas released Louisa and her children. They fled across the border to Ecuador that same day. Louisa has not heard anything about her husband since the day he was taken, and she does not think she will ever see him alive again.

Louisa has not been able to create a stable life for herself in Ecuador. She works washing clothes in private homes, but is unable to find enough work to buy basic necessities for herself and her children. When she is sick, she is unable to afford medical care. She has no one to take care of her children while she is at work. Louisa also does not feel secure in Ecuador near the Colombian border. She is terrified that she and her children could be in danger if someone with ties to an armed group recognizes them.

AT-15 Guillermo

Guillermo was a baker in Colombia. He owned a small shop that sold bread and baked goods. His town was contested territory between the guerillas and the paramilitaries. He did not know anyone in the armed groups, and did not recognize the members of the groups when they were in plain clothes. He thinks that he must have sold bread to the guerrillas because one day a group of uniformed paramilitaries came to his shop and harassed him for selling bread to the other side, accusing him of being a *sapo*, or collaborator. They left without harming him, but a member of the guerillas saw him speaking with uniformed paramilitaries, and decided that he must be collaborating with them. His name was placed on an official FARC blacklist of people who were to be killed for collaborating. He knew the significance of those lists: a friend in another province had been placed on one and then murdered shortly afterwards. He and his family fled to Ecuador, but he still lives in fear of being discovered by the FARC and killed.

ED-01 Esmerelda

Esmerelda initially left Colombia in order to protect her son who had been recruited by an armed group. When her son left the group, her family received threats and she left with him for Ecuador. In Ecuador, Esmerelda and her son encountered difficulty obtaining refugee status from UNHCR.

One day, a gunman on a bus called her son by name and shot him. The son somehow survived that incident only to be killed later at a party. Esmerelda suspects that the armed group from Colombia was responsible for the attack and killing of her son.

Esmerelda has obviously found life in Ecuador quite difficult. In Quito, she lives in continuous fear of being discovered by someone from Colombia. She and her husband receive telephone threats periodically. At one point, men asked about them at the husband's place of business. The two live in such fear that they rarely leave their home.

ED-02 Paula

Paula lived with her husband and two children in Colombia near the Ecuadorian border. One morning, the FARC came and took her husband away, telling Paula to leave her home. She quickly took her children and fled to Ecuador. She never saw her husband again and later heard he had been murdered.

Paula has found it difficult in Ecuador. She is Afro-Colombian and has experienced a lot of racism. Finding work has been difficult and she is quite poor. While living in Ecuador, Paula's good friend was brutally murdered. Paula suspects that the FARC was responsible for this attack and she feels very unsafe.

EDMTS-01 Rosaria

Rosaria is a single mother with a three-year-old daughter. In Colombia, Rosaria lived on a farm that paid a *vacuna* to the paramilitaries. One day, the paramilitaries came to the farm, beat the owner, stole livestock, and trapped Rosaria in a bathroom. She eventually managed to escape with her baby daughter. After that experience, she went to live at another farm, but fled to Ecuador after a paramilitary forced her into the woods and raped her. She fled to Ecuador with her daughter.

In Ecuador, she has had trouble finding work and has been forced to leave two jobs because of anti-Colombian discrimination. She feels that Ecuadorians do not trust her. Her daughter's teacher has physically abused her daughter at school. Rosaria also suffers from medical problems that cause her to sometimes go stiff and fall on her knees. She is scared that she will end up crippled. But, more than anything, she is scared for her daughter's future. Rosaria cannot make enough to pay for their needs.

EDMTS-02 Yarisa

Yarisa is an Afro-Colombian single mother of three young children, aged 7, 4, and 1. She is from a town in the *zona roja* (red zone) where the guerillas and paramilitaries often engage in territorial battles. Yarisa left Colombia with her children after her husband was murdered by paramilitaries. Her husband had recently started working at a farm outside of town. The paramilitaries threatened him and told him that he had to leave the area. In order to protect themselves, they prepared to leave the town. However, on the day that they planned to leave, the paramilitaries came to the farm and shot her husband to death. She fled to Ecuador with her children immediately following her husband's death.

As a young, single, Afro-Colombian, Yarisa is vulnerable in Ecuador. She has been solicited to be a prostitute. She has experienced racism at her work and in her children's school. She has heard that in Colombia, there has been violence between her husband's brothers and his killers since his death.

EDMTS-03 Carolina and Julio

Julio and Carolina left Colombia with their three sons, aged 11, 14 and 18, and Carolina's father, age 79, after their eldest son witnessed a double murder on the streets of their hometown. After the murder, people called the family's house and threatened to kill the eldest son. They fled to a nearby town, but they continued to receive threatening calls even after the move. They attempted to avail themselves of police protection, but they felt that the protection was inadequate. Julio and Carolina did not trust the police or feel protected though. One day, a man in a concealing helmet showed up at their house when they were not home and asked a neighbor where they were. Julio and Carolina suspected that the man was connected to the armed group that had threatened their son. They immediately sought help from the police and the police told the family that the state could not help them and they should seek refuge in Ecuador.

In Ecuador, Julio and Carolina live isolated from other Colombians because they are worried the "wrong person" will recognize their son and come to kill him. They find life in Ecuador difficult because Ecuadorians do not want to hire Colombians. Julio and Carolina cannot find consistent work that pays them a sufficient amount for them to raise their children. The schools are inferior to those they left behind in Colombia and they regret that the schools obliged their children to repeat a year when they first arrived.

EDMTS-04 Osvaldo

Osvaldo worked as a bus driver for a cooperative. He transported workers between their town and a nearby farm. In 2005, he was driving the bus to the farm with about 20-24 passengers when two paramilitaries emerged from the dense coffee plants, stood in the road, and ordered him to stop. The men were armed but dressed in civilian clothes. They boarded the bus and proceeded to shoot two passengers to death. Osvaldo later discovered that these two passengers were FARC guerrillas disguised in civilian clothing. During the attack, one of the paramilitaries held a gun to Osvaldo's head. After the assassinations, the paramilitaries ran off into the coffee bushes. The police came to remove the bodies and record Osvaldo's account of the incident.

Despite the traumatic experience, Osvaldo needed the money and thus continued his work as a driver. However, this was not the end of Osvaldo's troubles. Three days before the interview with the Georgetown group, while Osvaldo was still in Colombia, he was attacked by the FARC as he was driving the bus. Two FARC guerrillas, with FARC armbands, came out of the dense coffee plants and stood in the road. They threatened him for having helped the paramilitaries transport people to and from the farm. He told them that he was merely doing his job. These men accused everyone on the bus of having collaborated with the paramilitaries, ordered everyone to get off the bus, and then blew up the bus with a grenade. Osvaldo fled the next day to Ecuador feeling certain that either the FARC or the paramilitaries would come after him again.

EDMTS-05 Jayamara

Jayamara worked on a farm with her husband in Colombia. One day, thirty to forty fully armed government soldiers arrived at the farm. The soldiers did not say anything to them. A few days later, seven or eight guerillas came to the house. They had previously visited the farm and demanded *vacunas* from the farm's owner. Afraid of the consequences if he refused, the owner had always paid the *vacunas*. This time, however, the guerillas accused Jayamara's husband of being a *sapo* (collaborator) because they knew the government soldiers had been to the house. The guerrillas told Jayamara's husband that they would kill him and his family if he collaborated with the government. Out of fear, Jayamara and her husband left that night and went to another farm where Jayamara's in-laws lived. As with the previous farm, the FARC regularly visited this farm and demanded *vacunas* which Jayamara's in-laws always paid. Sometimes they also demanded food and drink which they also provided. Two weeks after Jayamara and her husband arrived at this farm, FARC guerrillas appeared and threatened them, saying that they knew about the incidents at the previous farm. Jayamara and her family took the second visit as a serious warning and left for Ecuador.

While she was in Ecuador and pregnant, Jayamara was working at a *hacienda* with her husband from 3 am until 7 pm. During this time, her husband abandoned her. Jayamara, now 23 years old, is single mother of four children, all under the age of six. In Ecuador, Jayamara has experienced many instances of discrimination and sexual harassment. In one instance, she was solicited by a man in the restaurant where she worked; he suggested that she work in his bar "serving" men where she could make US\$30 a night. She refused. In another instance, a police officer threatened to deport her if she did not "help" him, and implied that he wanted her to provide him sexual favors. Despite the officer's persistence, Jayamara repeatedly refused, though she knows of other Colombian women who were forced into relationships with Ecuadorian police officers in order to avoid deportation.

Rebeca, Jayamara's 51-year-old mother fled Colombia for Ecuador after Jayamara left, and Rebeca lives with Jayamara. One evening while Rebeca was still in Colombia, eight guerrillas pounded on the door to her house and demanded 500,000 pesos. She told them that, as a single mother supporting herself and her two daughters, she did not have that large a sum of money. They threatened that they would return in three days to take her daughters and kill her if she did not pay them as demanded. That same night, after the guerrillas left, Rebeca packed her things and left with her children, to find her third daughter, Jayamara, in Ecuador.

EDMTS-07 Pietra

Pietra is a single woman with three children aged 16, 15, and 6. Pietra sold undergarments and credit in a *zona roja*, a contested area. To her knowledge, she never sold any goods to the guerrillas or paramilitaries, but she says that it would be impossible for her to know.

One day, Pietra was at her neighbor's house with her children when a man ran through the house attempting to escape from some men on a motorcycle. The man grabbed one of Pietra's children before being chased by into the house by the men who had been on motorcycles. In the presence of several children—Pietra's children and their guests—one of the men in pursuit shot and killed the man who was being chased, and who had been carrying her child. During and after the drama, the children were terrified. The men who had been in pursuit of the man who now lay dead immediately left by motorcycle without a word to Pietra. On another motorcycle, a man purporting to be a government police officer arrived and took down information about the incident. Given the

recent event, and the ever-present violence in their town, Pietra was suspicious of their identity and reluctant to provide them a comprehensive accounting of what transpired.

Two weeks later, Pietra's neighbor was murdered by machete. Pietra suspected that the cause of his murder was related to the incident that occurred at Pietra's house. The family of the man who had been murdered left the area immediately, and Pietra was terrified that her family might be the next family attacked. She sold her possessions and left with her children to Ecuador.

In Ecuador, Pietra has had trouble renting apartments and she presumes that to be because people discriminate against her because she is Colombian. Pietra also experiences gender-specific discrimination: Ecuadorian men also assume that she is available for sexual services, and Ecuadorian women suspect that she is pursuing their husbands. On one occasion, Pietra was threatened and sexually assaulted by a taxi driver.

EDMTS-08 Daniela

Daniela has two children—a son born from a rape at the age of thirteen, and a daughter born years later. In Colombia, she worked as a cook, first at a restaurant and later at a nearby farm. One day, fourteen heavily armed guerrillas came to the farm and demanded that Daniela cook and provide them some of the farm's chickens. Out of fear, Daniela and her friend, who also worked at the farm, complied with their demands. While Daniela and her friend were cooking, their children came to the kitchen to see the commotion. The FARC demanded the names of the boys. Daniela begged them not to take her son, a severe epileptic. The FARC said that they did not believe that her son was epileptic and, after eating, they promised to return for the boys.

Daniela and her friend were scared. They packed their things and left the same night, each going their separate ways. Daniela felt unsafe wherever she went in Colombia and was advised to leave for Ecuador.

In Ecuador, Daniela has experienced constant sexual harassment, employment discrimination, and housing discrimination. She has been unable to purchase the expensive medication that she needs for her son's severe epilepsy. Her daughter, 16, has withdrawn from school and must often care for her son. Daniela's daughter was raped about one year ago and went through the painful experience of deciding to get an abortion.

EMSA-01 Juan

Juan lived in a town in Colombia where he worked as an appliance repairman serving the surrounding rural areas. One day when Juan had traveled to nearby rural areas to fix appliances on several farms, the guerrillas came to the farm, demanded money from those managing the farm, and took Juan by force to a guerrilla encampment. They forced him to stay with them for several days to fix appliances. He eventually convinced the guerrillas to let him leave. As soon as Juan returned home, he and his family moved to Bogotá for their protection. Two days later, the guerrillas came in the night and broke into their prior house. One month later, Juan ran into a cousin of someone who had been with him in the guerrilla encampment who informed him that the person who had been with him at the encampment had been executed—shot in the back of the head by a riverside.

After several months, the guerrillas again found Juan and tried to kill him while he was at a marketplace, attempting to drag him into a car of where at least one of the men was armed; Juan barely escaped with his life and brought his family to Ecuador for their safety.

In Ecuador, guerrillas have continued to harass Juan, follow him, and threaten his family. At one instance, they demanded US\$1000 to US\$1500 and said that they would kill him if he did not provide it. He gave them US\$150 out of fear and hoped that that would be enough to prevent them from coming after him or his family. He and his family have changed houses several times, but guerrillas have consistently harassed them—arriving at his house to threaten them, regularly passing their house slowly in cars, watching them from nearby to intimidate them, and spreading false accusations about him. In 2004, people at UNHCR suggested that he might go to the United States. However, he was eventually told that the U.S. was not interested in his case.

EMSA-02 Fernando

In Colombia, Fernando was threatened by the paramilitary (*autodefensa*). He worked in a farm in and managed the owner's shop. While both the guerrillas and the paramilitary have a presence in the rural area where Fernando worked, he never before had had interactions with either. One day, while the owner of the farm was not there, four paramilitaries came to the farm with knives and arms. He does not know why he was singled out, but they threatened him with death if he did not become their informant and agree to spy on his neighbors. Out of fear, he said that he would but he had no intention of serving as an informant. He left soon after, without ever having provided information to the paramilitaries.

He lives in Ecuador with his wife and four children who followed him. The family is recognized under UN mandate, having been refused refugee status by the Ecuadorian government. Because he does not have legal status, his children cannot attend school and it is officially illegal for him and his wife to work. The UNHCR is currently seeking to resettle the family.

EMSA-03 Carolina

Carolina lives with her mother and seven-year-old daughter in one of Ecuador's larger cities. Their family lived comfortably. Her mother owned a large farm on the outskirts of Bogotá that was subdivided into plots that she rented out to various families and Carolina worked at an international bank at the managerial level. One day, the FARC began making threatening calls to Carolina at the bank where she worked, demanding that she provide them large sums of money and demonstrating that they knew many details about Carolina's family life. The FARC began calling her both at the bank and at home. On one occasion, someone who she suspects was from the FARC came to her house while her mother was there, but her mother did not open the door. Carolina requested assistance from the Anti-Kidnapping Unit and they informed her she had two options: provide the FARC with a sufficient quantity of money to get them off of her back or move to another country. Carolina left with her mother and daughter for Ecuador shortly thereafter.

Carolina finds her life in Ecuador as a refugee very difficult. People discriminate against her family because she is Colombian. Her mother is depressed and no one in the family feels safe.

EMSA-04 Geronimo

Geronimo is a 73-year-old Colombian man who had a small woodworking business in the Colombian countryside. In early 2004, Geronimo was hiking through the mountains in Colombia to purchase wood when he was stopped by eight guerrillas carrying large machine guns. They put a machine gun to Geronimo's forehead, threatened to kill him, and demanded money. He only had

96,000 Colombian pesos (approximately US\$42) that he had brought with him to purchase wood. “[T]hey demanded more, pretending to pull the trigger. I told them ‘please I have no more, this is the money from my business.’” When the guerrillas learned that Geronimo owned a business in town, they told him that he would have to pay them a monthly *vacuna* if he wanted to live. Geronimo went home despondent over the prospect of losing either his business or his life, knowing he could not go to the police. He contacted his business partner and warned him that the guerrillas were expecting a *vacuna*. Geronimo’s business partner was angry at the idea of being extorted. About a week after his encounter with the guerrillas, Geronimo learned of his partner’s violent death. Geronimo fled to Ecuador.

Not long after receiving refugee status, three men arrived at the place where Geronimo was staying asking for him by description. UNHCR helped him relocate. Only a few months after his move, however, Geronimo was brutally and viciously attacked on the street. Two men assaulted Geronimo with knives, inflicting wounds on his skull and his shoulders. Geronimo believes the men were guerrillas. Because of his age, security problems, and deteriorating health, Geronimo has found local integration impossible.

EMSA-05 Miguel

Miguel’s mother in Colombia had owned a small expanse of family property she had inherited from her grandfather and that the paramilitary wanted to develop into a road. Miguel’s mother refused to sell the family property and submit to the paramilitary plan. One day, when Miguel returned home from school, he found that his mother and three younger siblings had all disappeared. He searched for them everywhere, but believes they were probably killed for their resistance to the paramilitary plan. Miguel, at the age of 16, continued to defend the land as his mother had done to honor her memory and her commitment to the land and the community.

After several years, they ceased pursuing the development plan. However, paramilitary forces nevertheless remained a very public presence in the town. One night, four members of the paramilitary arrived at Miguel’s mother’s house where he was living with his uncle. They attacked his uncle, who fled, and they forced Miguel on a march that lasted several days. During the march, the paramilitaries shot and killed many of those who marched with him. Miguel was forced to watch this, and at times, to dig the graves of the dead. The paramilitary forces would sometimes shoot someone in the back when he had finished digging the grave, only to have the gravedigger fall into the hole that he had recently dug. He remains horribly traumatized from the experience.

At the paramilitary encampment that they reached after several days, Miguel saw a cousin who convinced her paramilitary boyfriend to let Miguel escape. He ran straight to the nearby town and left the next day for Ecuador. Since his arrival in Ecuador, he has been followed to several different locations by two men who have been searching for him, and whom he presumes to be paramilitary. He also found out that his uncle, with whom he had been living after his mother’s disappearance, was found dead in a lake after his flight from Colombia.

EMSA-06 Martinez Family

The Martinez family had a good life in Colombia. Isabela and her husband, Ricardo, were married for six years and planned their daughter’s birth for when they were financially stable. In Colombia, Isabela lived with her husband’s large family. Ricardo worked as a mechanic and Isabela worked in a national park. Ricardo had previously worked for a newspaper, but left because the guerrillas

threatened him after the newspaper published articles about them. Other than that experience, the family had no significant problems with the guerrillas until 2003 when Enrique, a friend and client of Ricardo's, asked for help relocating to Ecuador because he was having problems with the FARC. Ricardo did not ask details about Enrique's problems; he did not want to know because he did not want the problems to touch his family. He did, however, help Enrique relocate, and then helped to bring Enrique's family to him in Ecuador.

That was when the Martinez family began to have problems with the FARC. Unknown people began to call or come to the house asking first for Enrique, and then for Ricardo. They wore boots that made the family think that they were guerrillas. Ricardo left for Quito for six months hoping that things would calm down. When he returned, in order to avoid any problems with the guerrillas, the large family moved to a relative's farm nearby. In order to ensure they could pass relatively unnoticed, they lived on the small farmhouse behind the main house. One night, there was an explosion in the big house, and the family heard people scream "*sapos!*" (collaborators). The family was in the farmhouse at the time and ran to escape. They left the next morning for Ecuador.

They have had a difficult time adjusting to their life in Ecuador. The large family of fourteen lives together in a large city. The family consists of Isabela, Ricardo, their one-year-old daughter Juanita, Ricardo's mother, Carla, and father, Rafael, and Ricardo's brother and sister and their respective spouses and children. They have not been granted asylum by the Ecuadorian government, and are awaiting resettlement because of their lack of legal protection. They only have "provisional permission" that must be renewed every two months. Ricardo's mother spoke of the discrimination that she consistently felt from Ecuadorians. She has heard Ecuadorians call her "trash" and she feels that Colombians treat her as if she plans to rob or kill them because she is Colombian. They feel very "alone and marginalized," exchanging only greetings with people outside of their family. Isabela and many other family members are in the house most of the time and prefer to keep to themselves. Ricardo has had trouble finding consistent work; he now works intermittently as a mechanic. The five school-age children could not study last year because they have no legal status. They spoke of a desperate desire to return to Colombia, but their inability in order to protect the children.

JP-01 Rogelio

Rogelio, his wife Ronda, and their children, José, 17, and Maria, 2, escaped Colombia in 2000. One day the FARC entered the farm where Rogelio worked and massacred the other eight workers on the farm. Rogelio believes that the workers were murdered because the owner of the farm had refused to pay a *vacuna*. He reported that it is standard practice for the FARC to go after everyone associated with the one person who refuses to pay a *vacuna*. Rogelio managed to hide from the FARC in some coffee bushes during the massacre, but some members of the FARC discovered him and chased him. Rogelio ran to his house without being caught and immediately fetched his family and fled Colombia. He knew that the FARC killed witnesses or survivors of attacks in order to wipe out any record of the event.

The family has been in Ecuador for six years, but has suffered enormously. They have had to uproot themselves twice because an unidentified armed group throughout Ecuador is pursuing them. They have lived in three cities in Ecuador and each time they try to start up a business so they can be self-sufficient, while remaining as anonymous as possible. The persecution began in the first city in Ecuador where they lived. They had successfully integrated and ran a business selling seafood. But in 2004, they hired a young Colombian woman to provide domestic help in their

home. She was somewhat suspicious: she never gave them her last name, asked lots of questions, refused to reveal details of her past, and observed the family's actions closely. Finally, one day she disappeared. They had no idea where she went, but armed men came to their house looking for her. They threatened Rogelio claiming that he must know where she was and that if she didn't reappear, they would kill him. They presume that the young woman must have been working for this armed group. They immediately fled to another city in Ecuador, leaving behind their home and successful business. But shortly thereafter they were located by men from the armed group and threatened a second time, prompting them to flee to a third city in Ecuador. They live in constant fear of these men. The father is unable to work because of his nerves.

JP-02 Rodriguez Family (Jorge, Sandy, and Angelie)

Jorge and Sandy, and their two-year-old daughter Angelie, lived in a town in Colombia that was controlled by the FARC. They explained that the "town was founded by the Colombian mafia" and has historically been a base for guerilla activity. In response to the *mano duro* policy of the Uribe government, the FARC issued an order that when the Colombian army invaded, the entire population was required to abandon the town because the FARC wanted to make sure no one would be left to pass information to the army. When the army invaded in November 2004, everyone in town fled. The one person who refused to leave was burned alive by the FARC. The town is now a ghost town. They couldn't return to their farm in the countryside because the FARC had blocked travel to that region, so they fled to Ecuador because they "wanted a different life, and nothing more to do with the war."

In Ecuador, they lived in a border town. One day a member of the FARC identified Sandy outside of the UNHCR office. He knew her face and knew what town in Colombia she was from and what her family name was. She thought nothing of it until, in January 2006, their home was attacked by four men from the FARC. Sandy identified one of the men as being the main leader of the FARC living in this Ecuadorian town. The FARC sprayed bullets into their house, nearly killing their infant daughter. A bullet grazed through her stomach and it is a miracle that she survived. Nevertheless, the daughter suffers from severe trauma as a result of this incident. The family quickly fled this border town and relocated in Ecuador. They currently live in a safe-house.

JP-03 Mario

Mario's family owned a small *bodega* that sold basic goods. The guerilla, paramilitary, and irregular armed groups operate with regularity in his region of Colombia. Many people in town shopped at his family's *bodega*, including occasionally members of the guerillas or paramilitaries. One afternoon, a group of FARC and ELN guerrillas came to the store. These guerrillas boasted to Mario's brother that they were going to massacre a group of people the next day from a nearby town because they had collaborated with other armed groups. Mario's brother protested, pleading with the guerillas not to kill those people, telling them that those people were honest, innocent civilians and that they were no one's enemy. After his brother's comments, Mario overheard the guerillas discussing amongst themselves the brother's resistance to their actions.

The next day, Mario's father never returned from work. The brother, who had protested the guerrilla actions, was assassinated; his mutilated body was found hanging in a tree near a waterfall. FARC soldiers warned Mario and his remaining brother that they could either join the FARC as combatants or flee. Mario fled to a nearby city and his brother fled towards Venezuela. When

Mario learned that his brother never made it to Venezuela because FARC massacred him before he reached the border, Mario fled immediately to Ecuador.

The same day that Mario's brother was assassinated and his father disappeared, the guerillas carried out the massacre that they had informed the brother of, killing 15 people and leaving their bodies to decay in the streets.

JP-04 Alejandra and Manuel

Alejandra and Manuel met and married in Ecuador. He is the father of four children whom he left behind in Colombia. He served in the Special Forces of Colombia for three or four years. Some of his friends from the military later joined the AUC paramilitaries. His friends tried to recruit him to join the paramilitaries. He knew that he only had two choices: to join or to flee. He fled to Ecuador.

In Ecuador, he met Alejandra. Alejandra came from a FARC controlled town in Colombia. She worked for a shop in that town and one day the FARC demanded that the owner pay a *vacuna*. The owner refused and the store was subsequently destroyed. The owner was forced to flee, as were all of his employees, including Alejandra. She feared that she would be associated with the owner and that her young boys might be kidnapped or forcibly conscripted by the FARC. She arrived in Ecuador one year before Manuel.

Alejandra and her children have lived in Ecuador as refugees under UN mandate because Ecuador refuses to recognize them. Their children are tormented at school because they are Colombian. The family feels that they are unwanted in Ecuador and at great risk—that living in Ecuador creates a situation of being a “double refugee.” They remain isolated and fearful of speaking to other Colombians since many Colombians in Ecuador have been killed by guerillas.

JP-05 Eduardo

Eduardo is a highly educated man who fled to Ecuador with his wife and three children two years ago. Eduardo had the misfortune of being an employee of a Colombian Senator who, unbeknownst to Eduardo, was also a drug trafficker allied with the paramilitaries. Eduardo worked on the Senator's yacht, which was used for recreation until the Senator began engaging in drug trafficking, at which point the yacht was used for secret meetings with paramilitaries, drug traffickers or other Senators or politicians working within his corrupt circle. The Senator was eventually arrested by the Colombian authorities and extradited to the United States on drug charges.

Subsequent to the Senator's arrest, Eduardo and other previous employees of the Senator were targeted by the paramilitaries who wanted to eliminate any trace of information about their activities. The Colombian and U.S. governments recruited Eduardo to work as an undercover agent for the U.S. Drug Enforcement Agency (DEA). The DEA promised that they would arrange to help him and his family leave Colombia. Eduardo worked undercover for the DEA, engaging in special tasks to get information from the paramilitaries. Someone from the Colombian government leaked to the paramilitaries that he was working as an undercover agent for the DEA. As an onslaught of persecution began, the DEA refused to help Eduardo leave the country or provide him protection. He hid on a remote farm with his family for three months before he managed to obtain assistance from the International and Colombian Red Cross who paid and arranged for his transportation out of Colombia to Ecuador.

Eduardo and his family have suffered greatly in Ecuador. They had no money upon arrival and slept in a church for seven months. They received minimal assistance from service providers in Ecuador. Eduardo stressed that they were treated “like an old shoe.” The psychological trauma and stress of what they had endured in Colombia and Ecuador caused his wife to become mentally ill and Eduardo to suffer a heart attack. They suffer extreme discrimination because they are Colombian. Eduardo finds that he is followed frequently and he remains constantly vigilant.

JSMFC-01 José

About 25 years ago, José was living and working in a town near his wife’s family’s farm. The guerillas frequently came to the farm and demanded livestock or sums of money. Finally, worried about their survival, the family began to refuse to provide the *vacuna*. After the family had refused the guerillas’ demands for about 20 days, an armed group of 20 to 30 men arrived at the farm and shot and killed all the men in front of José’s wife. José was working in town and knew he could not return to the farm. He and his wife fled the area. In a nearby town where they fled, a guerilla in civilian clothing who recognized José, pulled out his revolver and shot him twice.

José and his wife moved again. In the new town, he worked as a taxi driver. Uniformed soldiers carrying machetes and rifles came to his town, took him by force and made him drive them around in the mountains in his taxi. They wrote down the car’s license plate number and returned four more times, each time forcing him to drive them along a route in the mountains. He feared that if he refused, the guerillas would take his car and either tie him up and leave him in a remote place in the mountains or kill him, as he knew that they had done of other taxi drivers. At one point, the guerillas threatened to kill him if he did not continue to drive them around.

Alarmed by the threats to his life from the guerillas, his friends contributed enough money to purchase plane tickets to Bogotá for José and his son. He felt very insecure in Bogotá, and moved constantly. After hearing that three bearded men had come to his lodging looking for him, he and his son fled to Ecuador by bus. His wife and daughters joined him several weeks later. Armed bearded soldiers have visited his mother’s house in Colombia asking questions about him.

José and his family do not feel safe in Ecuador. Guerillas have been spotted in the town where they live. José has also had trouble finding work. Moreover, José’s son was born with a serious but treatable bone condition. However, the necessary medical treatment is not available in Ecuador.

JSMFC-02 Jorge

Jorge was a farmer in Colombia. Three times he was forced to flee his farm and start anew to escape the guerillas. The guerillas came to his farm and asked for a *vacuna* in the form of cattle or a financial contribution. Each time he refused, and the guerillas forced him to leave. Finally, in 1990, after his last encounter with the guerillas, Jorge decided to flee to Ecuador. The guerillas came to his farm and demanded that he deliver to them a large load of supplies and food. He refused, saying that he did not want to get involved or have anything to do with them. Three days later, the guerillas returned and told him he had a few hours to leave the farm. Jorge fled to Ecuador.

Ecuador granted him asylum and provided him with a refugee card. He also obtained an *empadronamiento* card, generally granted to displaced farmers listed on the civil registry.

In 2003, while traveling on his motorcycle to his farm, he was kidnapped by a group of armed men.

The men confiscated his motorcycle and the three weeks of supplies he had brought with him. When they saw his civil registry papers, they accused him of working for the Ecuadorian government. They held him captive for 45 days in the mountains. During this time, they kept his feet chained and at night they tied his hands and put a strap around his neck with a lock on the back. Each morning when Jorge woke up, his hands would be swollen from the restraints. Finally, they unchained him for three days, then took him down from the mountain to a small house at their base camp where he was confined for 15 days. He learned from one of the soldiers guarding him that their commanders had ordered them to kill all of the hostages since they knew the locations of their camps and bases. He managed to convince this soldier that he was not working for the government and the soldier allowed him to escape.

He later saw news reports that the commander of the camp where he had been held hostage had been captured in Quito. Instead of prosecuting him, the government simply returned him to Colombia. Jorge feared that this commander might become suspicious that he had denounced him to the Ecuadorian authorities and come after him.

JSMFC-03 Lola

Lola lived in a village with her three teenage sons. When she noticed that her sons were coming home with money and cell phones, she realized that they might be involved with the guerillas. She went to the guerilla encampment to look for them and found them sitting around the campfire. She demanded that they come home. A few days later, the soldiers came to her door and gave her an ultimatum. They told her that if her sons were not back at the camp within twenty-four hours, they would kill her. She and her sons fled immediately. They traveled through several towns. In one town, a friend of hers told her that a soldier had come around with her picture looking for her and were looking for her at various checkpoints throughout the area.

After sending her sons to live with family in the northern part of the country. In Ecuador, Lola has experienced a lot of discrimination, including landlords who refuse to rent to her because she is Colombian.

MF-01 Edith

Edith is an Afro-Colombian widow and mother of three children. For many years she was unaware that her husband was involved in narco-trafficking. One afternoon in August 2004, soon after her husband's most recent "business trip" to Costa Rica and Panama, Edith witnessed her husband gunned down by three masked men after she had briefly left him to use the bathroom. She fled out the back door of their home and flagged down a boat at the river behind their home. She arrived in Ecuador with four dollars to her name.

Her security problems have not ceased in Ecuador. Edith has had to move two times because suspicious men had been tracking her. Most recently, in July 2005, a tall man with a reddish face approached her as she got off the bus to go to the local market. He tried to force her into a car, but she resisted. She fell to the ground where he continued to kick her. Nobody immediately came to her aid. When she sought out medical attention at a local clinic, no one would attend to her. Edith said she faced discrimination in Ecuador on a daily basis, particularly in finding decent housing and employment. She spent the month of February 2006 homeless with her three children because she could not find any work.

MF-02 Laura

Laura comes from a family that initially resisted FARC incursions into the Colombian countryside. In the 1950s, her grandparents supported the political opposition to the FARC. Because of their opposition, the FARC scheduled them and other opponents in their village for extermination. Anticipating this potential fate, her grandfather constructed an extensive tunnel dug underneath the foundation of the home and provisioned a three month supply of food so he could hide 35 members of his family including the infant, Laura. Laura's grandmother ultimately sacrificed herself because someone had to nail in the floorboards covering the entrance to the tunnel.

As a teenager, Laura remembers often having to cook for members of the FARC as they would take over sections of the house as living quarters. By 1986, FARC control of the area became so pervasive that she left for another area of the country. She had no contact with irregular armed groups again until 2002. In 2002, in the middle of one night, five masked men stormed into Laura and her husband's home, kidnapping her husband. Terrified, Laura quickly packed a few things the next morning for her two young children and fled to Ecuador hidden in the back of a potato truck. She still does not understand why her husband was kidnapped.

MF-03 Maria

Maria comes from a proud indigenous family that has been active in protecting indigenous rights in southern Colombia. Maria and her husband were very successful leaders in the business community, running the biggest department store in town. Starting in spring 2003, the FARC targeted Maria's husband as a man of wealth and demanded a *vacuna* of between 1 and 3 million pesos, approximately US\$435-US\$1300. Maria's husband repeatedly refused to pay but would give the guerrillas blankets, jackets, and boots. The pressure from the FARC continued to escalate, however, until finally they issued an ultimatum that Maria's husband pay 15 million pesos by 4 pm on a particular day or they were going to kill him. Feeling the pressure, Maria's husband traveled to a nearby town to withdraw the 15 million pesos from their joint bank account. Her husband, however, did not return in time. After handing over the 15 million pesos, the FARC murdered him. Maria fled to a nearby city, fearing the FARC would kill her as well. She returned to her hometown but began hearing rumors that the FARC intended to kill her because of her husband's late payment. Frightened, she fled to Ecuador in October 2003.

In 2004, the FARC's persecution of Maria's extended family in Colombia intensified due to their political activism. Three of her cousins were murdered, including one who was killed by the FARC at his dinner table in front of his family. His crime was his refusal to allow the FARC to use his truck.

Maria and her children have continued to be threatened by armed guerrillas. Even in Ecuador guerrillas have tracked her down. During one particularly harrowing incident, she was cornered by an armed FARC hitman but fortuitously escaped when he was distracted when a child's soccer ball knocked over his motorcycle. Most recently, her oldest son, who had stayed behind in Colombia, was kidnapped for 12 days by the FARC. His kidnappers tortured him by sticking needles underneath his fingernails to extract information as to the whereabouts of different family members. Maria's son is now reunited with her in Ecuador and the family anxiously awaits resettlement to a safe third country.

MF-04 Cesar

Cesar was studying to be a Catholic priest. In 2002, as part of his studies he was assigned to organize Holy Week activities for a remote rural community. During his stay in the village, he was asked by a local man, whom he did not know, to take a package of medicine out to a distant farm. Without further questioning, Cesar took the package out to the farm. When Cesar went home to visit his parents in December 2002, his father informed him that the paramilitary were searching for him because he was a supporter of the FARC. Unbeknownst to Cesar, he had delivered medicine to a FARC member during the Holy Week.

MF-06 Carlos

Carlos diligently worked with his father on their family's farm, helping to support his mother, two brothers, and sister. In 1998, the FARC moved into the region around Carlos' farm, and started to collect war taxes. While the FARC never specifically threatened Carlos or his family, they required Carlos to provide food and milk twice a week. Carlos understood that if they did not comply with the FARC's *vacuna* demands, there would be consequences. For four years, they lived peacefully with this arrangement.

In 2002, rumors started to swirl that the AUC paramilitaries had arrived near the village. For nearly three years, Carlos and his family provided milk and food to both the FARC and the AUC without either group knowing that he simultaneously providing milk and food for the other on demand. In October 2005, the FARC's squadron commander paid a visit to Carlos' farm. The FARC commander warned Carlos' father that if the family gave even one drop of milk to the AUC, they would kill the family. Carlos and his family felt trapped; they could not resist the AUC without retribution. The FARC commander returned in January 2006 with a squadron of thirty guerrilla soldiers. He said he had received word that the family had continued to cooperate with the paramilitaries. Because of their alleged transgression, the commander ordered Carlos' family to immediately evacuate the farm; if they refused, the commander assured them that they would be killed. Carlos fled to Ecuador.

RS-01 Adriana

Adriana worked for a family that owned a restaurant in a FARC-controlled area with a lot of violence. She had lived in the area her whole life. The restaurant mainly served peasants who worked on farms in the area. But some who came to the restaurant were guerrillas who occupied the town.

Since she wasn't the owner of the restaurant she didn't have the power to choose who to serve and not to serve. One day in 2002, some paramilitaries came to the restaurant and told Adriana that she had been serving guerillas. When she told them she didn't know anything about that, they threatened her, accused her of supporting the FARC, and told her that they would hurt her and her family. She fled Colombia for Ecuador.

In Ecuador, Adriana is struggling to raise two small children born in Ecuador, aged 2 years and 3 months. Neither child's father supports Adriana or their children. Adriana works during the nights at a hotel known to serve as a brothel. She can only work at night so that she can care for her children during the day.

RS-02 Sara

Sara was married to a FARC commander for fourteen years, but did not know that he was involved with the FARC for the first twelve years of their marriage. When she became suspicious, she investigated and discovered his work. After she found out, she knew she didn't want her children being brought up in an atmosphere of violence and danger, and so she separated from him.

About a year and a half after the separation, when her son was 10 years old, her ex-husband came to the house, armed, and forcibly recruited their son. Two months later, he returned for their three-year-old daughter. After considerable effort, and harassment from FARC guerrillas, Sara was able to rescue her children from the camp. Afraid for herself and her children, she moved with them from town to town, living in churches and safe houses, but they were unable to find safety anywhere in Ecuador.

They were able to escape over the border while her husband was in jail. A few weeks after she arrived in Ecuador, Sara heard word that he was out of jail. Sara has been living at the UNHCR-sponsored camp for asylum seekers since she arrived in Ecuador. She feels unsafe living there because residents have not been fully vetted and conditions are insecure.

RS-03 Mariana

Mariana, an Afro-Colombian widow with five children, fled Colombia the first time in April 2004 after three men broke into their house and abducted her husband. She is not sure why they targeted him or who they were, but she thinks that they were paramilitaries who believed he had carried some guerrillas in his taxi. Five days after his kidnapping, the same men and one other man attacked her in her home, raped and beat her, and threatened to kill her children.

She left Colombia immediately and stayed in Ecuador for about nine months, hoping things would calm down. She then returned to Colombia, but on the first day of her return, she received a threatening phone call on her brand new telephone she had just registered that day. The caller said, "Have you arrived already Mariana? Good, very good." After that frightening call, she fled a second time, bringing two of her children with her. Now back in Ecuador, Mariana is plagued with panic attacks and feels she will never be safe.

RS-05 Julio

Julio doesn't like to talk about his past much, but says that he worked on different farms until DEA planes flew over the farms fumigating their crops and preventing the community from farming. He said that after the fumigations came "the violence." Paramilitaries killing many people—"even children"—alleging that they were *sapos* (collaborators). Julio doesn't talk about what happened to him, but he is missing one arm from above the elbow.

He, his pregnant wife, and their four children have had a difficult time in Ecuador. They have faced discrimination. Julio has been unable to find a job, and the family lives in a rural area far from services.

RS-06 Ofelia

Ofelia is a single mother of five sons, three of whom live with her in Ecuador. Her eldest son was killed by paramilitaries while working on a farm. After her son's murder, she moved her family to another town and got a job cooking for the police. The police came under attack from paramilitaries and one day she was threatened by an armed man who told her she would die like her son. After a brief stay in another area, where there was open battle in the streets, the family, accompanied by their pet goat, fled to Ecuador.

Ofelia sometimes works in a kitchen but complains that she is underpaid. She faces wage discrimination because she is Colombian, but she is "afraid" of other Colombians because she does not know if they are affiliated with armed groups.

RS-07 Pacho

Pacho owned his own pizza shop and worked informally as a natural healer in a region of heavy armed presence. One night, some members of the FARC kidnapped him, beat him, and forced him at gunpoint to dress the broken arm of one of their soldiers. They returned him to his home last night in bad condition. Later, a friend told him the paramilitaries were looking for him, that they said he had been acting as a FARC medical assistant. He fled to Ecuador. During his exile, paramilitaries came to his house, raped and beat his wife, and killed his brother. In a separate incident, the FARC killed his brother when he couldn't pay the *vacuna* on his business.

Now, his wife and three children have joined him in Ecuador, where he works in a pizza shop. One of his other brothers still in Colombia has been receiving threats from the FARC. Pacho lamented that "exile does not make the killing stop."

RS-08 Graciela

Graciela's family was displaced when she was a child because her father was a politician who was murdered in 1999. In 2002, when she was 16, she started to be stalked, harassed and routinely raped by a paramilitary, who approached her at school and knew her name. He threatened to kill her family if she told anyone, and wore his gun and grenade as he raped her. She had been a virgin prior to the rapes. Her mother finally found out when Graciela fell pregnant. With her mother's support, she decided to have an abortion.

After the abortion, she left Colombia. She lives with an elder sister and her husband in Ecuador. She is terrified she will be forced to engage in sex work, one of the primary income generators for women in the region. She says that due to her previous trauma, she would rather die than have sex with drunken men at bars. She would like to be able to engage in legal work, go to university in safety, and send money home to her mother, but fears that it may be impossible—"I have left one hell for another," she said.

RS-09 Mateo

Mateo drove a truck for a food company, distributing goods all over the countryside. After five years, he was stopped at a guerilla blockade and asked for a *vacuna*. After, that he was expected to pay millions of pesos every time he drove through certain regions. He paid what he could with the company money, at times hiding parts of it to pay them less, but they had access to the receipts and

threatened him when he did not provide what they demanded. If he didn't have all the money they wanted, they forced him at gunpoint to transport them around instead. Eventually they started calling him at his home and workplace, displaying intimate knowledge of his identity and routines. Not wanting to cooperate with the FARC, he fled to Ecuador.

He lives with relatives who own a restaurant, where he has been approached by the FARC. He whispered throughout the interview and displayed extreme fear, even two years into exile, and expressed a desire to live farther away from the Colombian border.

RS-10 Beatriz

Beatriz grew up in an area in Colombia that was under FARC rule. Her family lived relatively peacefully until the AUC entered FARC territory in 2002, when the killing began. As the leader of a group of gas station attendants, the FARC tried to recruit her. To resist the FARC, Beatriz left town. In the city that she fled to, she was raped by a soldier, and moved again. Her husband received threats from paramilitaries and disappeared. In her third city of displacement, a FARC member tried to take her as "his woman," and threatened her when she refused. In her fourth place of displacement, Beatriz received threatening phone calls and was forced to move yet again. Finally, she settled in a fifth town, where she cooked hamburgers and served as a natural healer. One day, guerillas tried to recruit her to help them with her healing skills. Though she had been living under an alias, they called her by her real name, telling her that she was a friend of the paramilitaries. That morning at dawn she was kidnapped, beaten until unconscious, and brought to the FARC camp. When she woke, she was paralyzed. Afraid that Beatriz might die, a friend helped her flee to Ecuador.

When she first arrived in Ecuador, she could not walk, but was too afraid to come to the UNHCR offices near the border for fear that someone would identify her, so she went to Quito for her interviews. Slowly, she has regained mobility. After she fled, her brother began to receive threats and has since joined her in Ecuador. Beatriz dreams to attend medical school some day.

RS-11 Donaldo

Donaldo grew up in a displaced family since the AUC threatened and killed his father in 1984. In 2004, he started organizing a small union, a cooperative of engineers and construction workers, and gave free classes to villagers. He was persecuted by government officials and paramilitaries who claimed his union ties demonstrated his affiliation with the FARC. In August 2005, while he was working in the country, one of his coworkers told him some guerillas were looking for him saying that he was a paramilitary. Both sides thought he belonged to the opposite armed group, despite his avowed pacifism.

He fled with his children and mother, fearing for their safety. His wife has disappeared. He is severely anxious, grinding his teeth so strongly that they are worn down visibly.

RS-12 Luz

One afternoon in June 2002, while Luz was sitting with her husband outside her house in the evening near the farm where they worked, a uniformed, armed guerilla approached her and asked her for a glass of water. He said that he had been walking a long time and was thirsty. She went

inside the house and got the man a glass of water. He drank it, thanked her, and returned the glass.

The next day, a paramilitary approached her where she was working near her husband in the field. There were five or six armed men a short distance away from him. He accused the couple of supporting the FARC, saying they had been seen providing a FARC member with food and water the day before. Luz's husband tried to protest that it was only a glass of water. The paramilitary shot her husband as he protested, and threatened to kill Luz and the children. Luz's husband died that night from complications from the gunshot wound.

Luz got her children together and fled their town, arriving on a border town in the Ecuadorian jungle two days later, where she received refugee status from the UNHCR. Luz and her children are living in a small shack in the jungle. In 2004, Luz received funding from UNHCR to travel to Quito for a surgery. While in the city, she was run over by a car and severely injured. She is now paralyzed from the waist down, and unable to speak. Her cognition is severely impaired. Her eldest daughter had to quit her job working at a bakery to take care of her mother full-time. Chances for increased mobility and speech could improve with therapy, but none is available, and the family has no income now that neither Luz nor her daughter can work. Her daughter told Luz' story.

SA-01 Diana

Diana sold clothes out of her small *bodega* in a Colombian city along the Ecuador-Colombian border. She never had any contact with any armed group until four men who she recognized as paramilitaries approached her shop and told her that she needed to supply them with 60 scarves, gloves, and ski masks. "I tried to make an excuse. I said, 'I don't know if I will have enough supplies.' But the leader looked at me and said, 'you will.'" Six months after complying with the paramilitary demands, she approached three of the men and asked that they pay her as they had promised. The men laughed at her and told her she was a fool to think she would get money from them. That night, her partner never returned home. Diana searched everywhere for her but did not find her.

Two weeks later, two young men arrived at Diana's home and asked whether she was still looking for her partner. They told her they would show her where her roommate was. She followed the men and they took her to a remote location far outside of town to two stone houses. The men beckoned her into one of them. Inside were a group of paramilitaries smoking marijuana and drinking *aguardiente*. Diana asked where her roommate was and the men pointed to the neighboring house. She walked over to the neighboring house, but was followed by the men, who pushed her into an empty room. The men cut the clothes from her body with a knife and gang raped her, yelling at her at the same time.

After the multiple rapes, the men pulled her to her feet by her hair. They strapped raw meat to her body and brought a ferocious dog into the room. She began begging them at that point to kill her—"better that you kill me now than this!" The paramilitaries laughed at her pleas, stuffing several pairs of the gloves they had stolen from her into her mouth. "No," they said, "this dog is going to enjoy you as he enjoyed your friend." Diana miraculously survived the attacks by the dog. In the morning, still alive but severely wounded, she managed to free herself from the room and eventually escape to Ecuador.

SA-02 Anita

Anita is an Afro-Colombian mother of two adolescent boys. Anita left her life in Colombia, where she was employed as a teacher, fleeing threats of death from a gang affiliated with the AUC paramilitary group. The gang had murdered her sister and niece after they and Anita witnessed the gang murder a neighborhood boy.

Anita's husband Mateo left for Ecuador a few days before the rest of the family. After arriving in Ecuador, Anita received a phone call from a man who had rented her husband a room after Mateo had crossed over the border. He informed her that Mateo's corpse had been found stabbed to death in Ecuador. During her time living in Ecuador, Anita has suffered constant discrimination on account of her nationality and race, and feels that racism is worse in Ecuador than in Colombia. Anita's sons have faced racism as well at the hands of teachers and principals. Her older son is shut out of school entirely.

SA-03 Ronaldo

An armed group tried to recruit Ronaldo when he was young. One day, when Ronaldo was playing in a field on the farm, a few armed men intercepted him, took him in a truck up a mountain and tried to force him to shoot a wounded and bound man. One of the armed men gave him a gun, showed him how to use it, and shoved him toward the cot where the wounded man lay. "Shoot him! What are you waiting for? Shoot him!" When Ronaldo could not, one of the armed men took out his own gun and pointed it at Ronaldo's head. Ronaldo cried; and the armed man shot and killed the man who lay wounded. Later that day, one of the men returned Ronaldo down the mountain. Soon after, Ronaldo's family relocated to another part of Colombia.

When Ronaldo was an adult, the paramilitary and the army began to engage the guerillas near the town where Ronaldo lived with his wife Veronica and their three children. Ronaldo was working as a government census taker. One day while he was working, Ronaldo was intercepted by about ten armed men who identified themselves as ELN guerillas. They began questioning Ronaldo about why he had been walking from house to house. The men said they wanted Ronaldo to be an informant and to give them copies of the citizen registry he was collecting for the government. Ronaldo was forced to give them the results from that day. When he returned home, he fled with his wife and children to avoid working for them. His family was followed by the guerrillas, who attacked him at his house one night. Out of fear, they fled over the border to Ecuador.

Since entering Ecuador, Ronaldo has faced physical threats from Colombian armed groups operating in Ecuador because he has offered support to newly arrived Colombian refugees. He has also faced job discrimination and had problems with local integration. He dreams of a peaceful life for his children and of opening a Christian bookstore with his wife.

SA-04 Talia

Talia, with a doctorate in Economics, and her husband Lazaro, an educator and social agronomist, worked as human rights volunteers in a rural Colombian town teaching a variety of subjects to help the community revitalize the land. They later discovered that some of their students were paramilitaries or family members of AUC paramilitaries. After teaching in the town for only a few weeks, the couple was approached by a commander of the paramilitary unit who expressed his

displeasure that the two were encouraging people to grow crops other than coca. The paramilitaries told them to leave the town and to never come back.

The two left the rural area and abandoned the larger city where they lived during the week. They moved to the city, where they received a letter from the FARC designating them as “military objectives” for having associated with a paramilitary group. They sought help from the police, but, finding no help available, they fled Colombia for Ecuador. Their Colombian apartment was bombed a week after their departure.

Since arriving in Ecuador two years ago, the two have had serious local integration problems. They have been unable to find jobs, open bank accounts, or receive basic medical care. Their inadequate medical care resulted in Talia’s recent miscarriage. They once encountered and were recognized by a headhunter for the paramilitary group while visiting a refugee aid society.

SA-05 Victor

Victor is the father of five boys under the age of 18. While in Colombia, Victor owned two successful chicken factories. He was approached twice for *vacuna* payments: once by guerillas and once by the AUC paramilitaries. Both times Victor refused and both times the irregular armed group exacted retribution. The guerrillas burned one of the factories to the ground when he refused to contribute a war tax. The paramilitaries abducted his wife and gang-raped her when he refused to hire them for protection.

After the rape, Victor and his wife reported the paramilitaries to the police and attempted to prosecute them. Due to this effort, Victor became an even greater target for the paramilitaries. The paramilitaries then kidnapped one of Victor’s sons and held him for a substantial ransom. On the advice of authorities, Victor paid the ransom for the return of his son and fled Colombia with his family.

Since arriving in Ecuador, Victor has faced extreme poverty, lack of job opportunities and security threats. Victor is a vocal advocate for the refugee population and visits churches on the weekends to give sermons about tolerance and about his experiences.

SA-07 Claudia

Claudia’s town in Colombia was in a “red zone,” controlled by the FARC and all but abandoned by the government. The FARC collected a *vacuna* from every family every three months. When Claudia’s family got word that the FARC were planning to forcibly recruit Claudia’s oldest brother, they fled the region. Claudia stayed behind to marry the boy she had been dating, Paco. She moved into Paco’s father’s house. Soon after, Claudia discovered that Paco’s father sold boys to the FARC. Eventually, Paco’s father sold Paco’s cousin, Geraldo, to the FARC during a family financial crisis. Claudia began to beg Paco to flee with her to Ecuador. The subject always ended in bitter arguments with Paco becoming physically abusive. But eventually, Paco agreed to leave.

In Ecuador, after the birth of their daughter, Paco abandoned her. He returned at one point, physically abused her, and raped her at knifepoint, leaving her pregnant. She relocated, but he found her again, broke into her house, and abused her while she was pregnant. The abuse induced Claudia to go into labor, causing her to be hospitalized for almost a month and leaving her son with persistent health problems. Claudia believed Paco had joined the FARC. Claudia sought help from the Ecaudorian government, but they refused to assist her. She has faced pervasive discrimination

because of her gender and nationality. The Ecuadorian government has refused to allow her to leave Ecuador with the children without the permission of the children's father despite documentation of the last brutal beating.

SY-01 Andrea

Andrea, a mother of three children aged 16, 15, and 13, lived in a region in which the FARC and ELN operated. Uniformed guerrillas regularly came to her *hacienda* and asked for food and lodging, and would take whatever they wanted from civilians. In order to protect her family's safety, Eva obliged when they demanded food. Because she did not have significant financial resources, the paramilitary did not demand a cash *vacuna*. Her family also had interactions with the guerrillas which scared Eva. Her younger brother, who had been a soldier, was killed by the guerrillas. A FARC guerrilla had fallen in love with her oldest daughter and wanted to take her away. She left in 2002 with her oldest child, and the other two followed soon thereafter.

After arriving in Ecuador, Andrea and her family remained undocumented for two years because they did not know what a refugee was. In Ecuador, Andrea has encountered discrimination in all sectors of society. She says many Ecuadorians think Colombians are thieves, criminals, prostitutes, or generally bad people. She has also encountered discrimination in the housing market where landlords increase the rent for Colombians. Andrea works each day as a street vendor from 7am-9pm and earns very little. The police persecute the Colombian street vendors by setting fire to their stands, fining them, and continually demanding to see documentation. Andrea also experiences racism because of her indigenous ethnicity. None of Andrea's children have been able to attend school in Ecuador because secondary school is not free and she does not have money to send them. She attempted to obtain permission for her children to sit in on classes, but the school's directors refused.

SY-02 Eva

Eva lived with her husband and two children, aged 6 and 17, in a region in which the paramilitaries maintained a presence. The paramilitaries regularly visited her family's *hacienda* to collect a monthly cash *vacuna* of 100,000 Colombian pesos. Once when they came, the paramilitaries required her to give them a cow. She paid them to maintain tranquility. But, one day the paramilitaries abducted her husband and ordered Eva and her children to leave their *hacienda* within twenty-four hours or be killed. She and one child fled that night for Ecuador; the other child followed within the year.

Eva has not heard from her husband since she left Colombia. Eva faces discrimination in Ecuador and feels that Ecuadorians presume that all Colombians are drug traffickers or prostitutes. She has been unable to find steady work, and has been selling goods informally. Eva also complained about the lack of resources available for refugees in Ecuador. Her family has been unable to access adequate health services and, because she moved in the middle of the academic term, her children have been unable to re-start their studies.