



trol the border with Haiti and donated 20,000 M-16 assault rifles to the Dominican government.

**Haitians** Dominican authorities estimate that one million Haitians live in the Dominican Republic. With the U. S. crackdown on Haitian migrants arriving in the United States, the Dominican Republic fears that even more Haitians will try to escape Haiti by crossing into the Dominican Republic. Haitians and Dominicans of Haitian descent are routinely deported from the Dominican Republic. Persons who appear to be Haitian are rarely given a chance to challenge their expulsion.

Haitians generally lack legal status in the Dominican Republic. Although children born in the Dominican Republic are entitled to its citizenship, the Dominican Republic considers most Haitians to be in transit, and denies citizenship to their children born in the country. In December, however, a district court in the Dominican Republic ordered the government to grant citizenship to two children born to undocumented Haitian immigrants in the Dominican Republic. The government stated it would appeal to the Supreme Court.

## Ecuador

Ecuador hosted 9,100 refugees, including 3,500 recognized refugees and 5,600 persons awaiting determination of their asylum claims. All but 126 were Colombians. In 2002, the number of asylum applications by Colombians in Ecuador increased significantly, with some 500 Colombians applying every month. An estimated 75,000 other Colombians are living in Ecuador in refugee-like circumstances.

**Colombian Refugees** Colombians flee to Ecuador to escape increased conflict between Colombian guerrillas and paramilitaries and their human rights violations. Some also flee the U.S.-funded coca fumigation program.

The Ecuadorian government and people have welcomed Colombian refugees more than their counterparts in Venezuela and Panama, in part because of strong social, familial, and economic links. Refugees in Ecuador enjoy all rights accorded foreigners generally, plus the rights to work and own property, identity documents, and public education. Refugees who remain in Ecuador for more than three years are eligible to apply for permanent residence and, eventually, citizenship. The Ecuadorian authorities occasionally arrest and detain Colombians who enter without documentation, but generally release them after they are identified as asylum seekers.

Estimates of the number of Colombians who have sought refuge in Ecuador vary significantly. Besides the 9,100 registered refugees, tens of thousands of other Colombians are living in Ecuador because of the conflict in Colombia.

Since 2001, the number of Colombians living in

refugee-like circumstances in Ecuador has risen sharply, although no precise figures exist. According to the October 17, 2002 *New York Times*, the Ecuadorian Migratory Police estimate that more than 200,000 Colombians have entered Ecuador in recent years and remained there. A June 22, 2002 report by the Washington Office on Latin America said that some 37,000 Colombians fled to Ecuador during the first half of 2002 alone. The number of Colombians living in refugee-like circumstances in Ecuador could be as many as 75,000—perhaps more.

Most of the recognized Colombian refugees and Colombian asylum seekers in Ecuador live in the country's two largest cities, Quito and Guayaquil, while most undocumented Colombians live in the provinces bordering Colombia, particularly in the towns of Ibarra, Santo Domingo de los Colorados, and Lago Agrio. The Colombian consulate in Santo Domingo reports that 10,000 Colombians are registered as living there, but many other Colombians live there without documentation.

Colombian guerrillas and paramilitaries both use Lago Agrio, a town of less than 50,000 inhabitants just 12 miles from the Colombian border, as a center for espionage and a transit center for weapons and other supplies. The groups attack each other, Colombian refugees living there, and local people. During May alone, there were 68 murders in Lago Agrio. In February, Colombian guerrillas forced the residents of six Ecuadorian villages to abandon their homes. In response to the growing insecurity, the Ecuadorian authorities assigned an additional 1,000 soldiers to the border provinces.

Ecuador has 14 percent unemployment, and as much as 70 percent of the population lives in poverty—20 percent in absolute poverty, according to the UN. An estimated one in five Ecuadorians has reportedly migrated abroad for economic reasons. Competition between refugees and locals for scarce jobs and resources, and the increase in violence in border areas that many Ecuadorians attribute to the refugees' presence, causes friction between the two groups.

## Guatemala

In 2002, Guatemala hosted 730 refugees, including 500 Nicaraguans and 180 Salvadorans.

Until 2001, the Mexico office of the UN High Commissioner for Refugees (UNHCR) adjudicated asylum claims in Guatemala, which reportedly resulted in long delays for asylum seekers. In October 2001, Guatemala established a national process for determining refugee claims. A refugee office in the Migration Directorate was tasked with interviewing asylum applicants and making status recommendations to an eligibility committee comprised of representatives of various government ministries. The process had not begun to operate by the end of 2002, however.

An unknown number of persons hoping to reach the United States through Mexico transit through Guatemala every year. Guatemala generally detains the migrants, some of whom apply for asylum. The United States finances the deportation of nearly all extra regional migrants from Guatemala in an attempt to prevent them from reaching the U.S. border.

Guatemalan immigration agents trained by the U.S. Immigration and Naturalization Service also implement a domestic immigration law enforcement initiative. Although the program, known as Plan Coyote, is aimed at stopping smugglers, it generally only leads to the arrest and deportation of undocumented migrants.

According to UNHCR, the Guatemalan authorities release undocumented migrants who identify themselves as asylum seekers and permit them to live in a center run by nongovernmental organizations while their asylum claims are reviewed. However, immigration officials reportedly often fail to report detained migrants' requests for asylum to UNHCR.

**Internal Displacement** The conflict that caused much internal displacement in Guatemala ended in 1996, and many Guatemalan refugees have returned. Some formerly internally displaced Guatemalans seek land and assistance from the government to facilitate return to their former homes.

Human Rights Watch reported an escalation of political violence and continued impunity for human rights violators in Guatemala. Clandestine groups that may have links with the government security forces killed several human rights workers in 2002. According to the Inter-American Commission on Human Rights, human rights advocates were the victims of more than 100 physical assaults during the year.

## Haiti

Some 33,200 Haitians were refugees or asylum seekers at the end of 2002, most of whom (29,200) were awaiting the outcome of pending asylum claims in the United States. During the year, 10,600 Haitians sought asylum, including about 8,400 in the United States (approximately 1,400 fewer than in 2001, based on revised calculations), 1,900 in France, 260 in Canada, and 120 in the Dominican Republic. Nearly 1,600 Haitians were granted asylum in the United States during the year. The approval rate of Haitian cases before U.S. Immigration and Naturalization Service asylum officers was 36 percent, the same as last year; however, the approval rate for those cases before immigration judges went up from about 12 percent to about 17 percent.

The U.S. Coast Guard interdicted 1,500 Haitians at sea in fiscal year 2002, up slightly from the year before, and summarily repatriated virtually all of them. In addition, thousands of Haitians fled to the Dominican Republic and

the Bahamas. Dominican and Bahamian authorities subjected thousands of Haitians to collective, mass expulsions with little opportunity to apply for protection. Hundreds more were lost at sea. Haitian authorities detained returned asylum seekers along with repatriated criminal deportees from the United States and extorted money from them for their release.

According to the National Coalition for Haitian Rights, nearly 6,200 Haitians were internally displaced by threats and repression during the year.

**Political Violence** Much of the displacement was due to human rights violations and political instability which wracked Haiti in 2002, including more than 150 political murders, suspicious disappearances, and quasi-political gangland slayings. In August, control of the fourth largest city, Gonaïves, passed into the hands of politicized mobs led by two rival prison escapees, one formerly associated with the ruling Lavalas party, the other, with Haiti's former military. The last two months of the year were particularly tumultuous as tens of thousands demonstrated against the Lavalas government, which responded with a violent crackdown on dissent.

## Mexico

At the end of 2002, there were 4,000 refugees or asylum seekers in need of protection in Mexico. During the year, 243 asylum seekers filed claims in Mexico. Mexico granted asylum to 57 applicants, rejected 110, and had 12 cases pending at year's end; 64 applicants withdrew their asylum claims. The largest groups of recognized refugees were Salvadorans (about 1,900) and Guatemalans (about 1,000), most of whom lived in urban centers. During the year, Mexico granted citizenship to 72 urban refugees.

In 2002, some 22,100 Mexicans sought asylum in other countries, 20,000 of them in the United States (which approved 88) and the other 2,100 in Canada (which approved 290). Many Mexicans who applied in the United States before the Immigration and Naturalization Service did so after the one-year filing deadline for asylum cases. This triggered removal proceedings where many pursued forms of relief unrelated to asylum but only available in such proceedings.

Approximately 12,000 Mexicans remained internally displaced in Chiapas.

**Refugees** Mexico ratified the UN Refugee Convention and Protocol in 2000. In 2001, the Mexican Commission for Refugee Assistance (COMAR), a government agency, began making refugee status determinations, a function previously handled by the UN High Commissioner for Refugees (UNHCR). In 2002, UNHCR provided COMAR with training and technical support for its refugee status determination process. Asylum applications dropped by 41 percent



after the government took over refugee determination. According to Sinfronteras, a Mexican nongovernmental organization (NGO), many would-be asylum seekers appeared to be less comfortable divulging their protection concerns to a Mexican government agency than to UNHCR.

Refugees in Mexico generally enjoy economic, social, and cultural rights equal to those of nationals, and refugee children enroll in Mexican schools. Individuals granted refugee status can remain in Mexico indefinitely and most can apply for citizenship after five years. UNHCR provides temporary assistance to newly recognized refugees and extended assistance to especially vulnerable refugees.

According to Sinfronteras, many of the recognized refugees in Mexico initially intended to reach the United States or Canada, but applied for asylum in Mexico after being apprehended by the Mexican authorities. Many non-Latin American refugees find it difficult to integrate in Mexico and do not remain in Mexico long-term. An estimated 70 to 80 percent of recognized refugees migrate by their own means to the United States or Canada.

Mexico detains asylum seekers who enter the country without valid entry visas at the Migration Holding Center in Mexico City. In 2001, UNHCR and local NGOs alleged that detention conditions were unsatisfactory and did not meet international minimum standards. Following an October 2002 government investigation, the authorities dismissed some officials and improved conditions, at least for asylum seekers. Detainees at the center have access to COMAR and UNHCR officials. The authorities release those who are determined to be refugees.

In 2001, Mexico initiated the Southern Plan (Plan Sur), a program aimed at stemming the number of unauthorized border crossers from Central America and countries outside the region. Under Plan Sur, Mexico deployed thousands of troops to the southern states of Chiapas and Oaxaca to conduct border patrols and checks. According to local NGOs, the authorities immediately return some of the intercepted migrants to Guatemala, and detain and subsequently return others to their home countries without any assessment of their protection needs. The United States helped to fund the deportations of such migrants. In 2002, UNHCR opened an office in Tapachula, near the border with Guatemala, to "ensure access to protection of refugees and asylum seekers in the midst of migration flows."

In May 2002, a boat carrying seven Cuban asylum seekers landed in Mexico. Mexican authorities rescued another five Cuban rafters in Mexican waters in June. After briefly detaining them, the Mexican authorities permitted the Cubans to apply for asylum in Mexico. Some of the Cubans subsequently abandoned their claims and observers believe that they may have gone to the United States. The Cuban government, which urged Mexico to return the asylum seekers to Cuba, reportedly initiated discussions with Mexico regarding an agreement to return asylum seekers in the future.

Also in May, the Mexican government completed

the process of providing land titles to 12,000 fully integrated former refugees from Guatemala who remained in Mexico's Campeche State. In June, Mexico's National Institute of Anthropology and History opened a new museum near Campeche that commemorates the experience of Guatemalan refugees in Mexico and celebrates their contribution to the local culture and society.

**Internally Displaced Persons** In 1994, conflict broke out in the southern state of Chiapas between insurgents associated with the leftist Zapatista Army of National Liberation (EZLN), the Mexican army, and paramilitary groups causing thousands to become internally displaced.

Active fighting between the government and EZLN ended in 1996, when the two parties signed accords that promised reforms. Mexico's Congress later amended the accords, thereby stalling progress toward peace and creating a situation where the displaced are unable to return to their homes. Violence against civilians continues in the region, particularly at the hands of paramilitary groups, which killed four prominent EZLN supporters during the year.

The U.S. Committee for Refugees estimates that approximately 12,000 persons remain displaced in Chiapas. Some 1,300 to 2,000 displaced persons returned home beginning in August 2001, despite concerns for their safety and ability to survive. The UN's Special Representative for Internally Displaced Persons visited Mexico in August and found that the displaced continue to lack adequate assistance. The special representative stressed the need to reactivate the peace process so that the displaced can return home. He also urged the government to formulate concrete policies regarding internal displacement and to seek UN agencies' cooperation in responding to the needs of the displaced.

In November, the International Committee of the Red Cross reduced its aid to displaced persons in Chiapas by half, citing improved conditions in Chiapas and the return home of some of the displaced.

## Panama

Panama hosted 1,700 refugees at the end of 2002. These included 700 recognized refugees (of whom 49 Colombians and 4 others were newly recognized during 2002), 100 asylum seekers whose claims were pending, and 900 Colombians who had Temporary Humanitarian Status (THS). The recognized refugees included 300 persons from El Salvador, 200 from Nicaragua, 100 from Colombia, and 100 from Cuba; the remainder were from various other countries. More than 60,000 Colombians were living in Panama in refugee-like circumstances.

Most of the Salvadoran and Nicaraguan refugees have lived in Panama for many years, while a majority of the Colombian refugees and people in refugee-like circumstances have entered Panama since the late 1990s.

**Asylum** Panama is a party to the UN Refugee Convention and Protocol and has incorporated the Convention's provisions into national law. In 1998, Panama adopted Executive Decree 23, which established a system for determining refugee status, along with protection and assistance measures for recognized refugees.

Decree 23 established the National Commission for the Protection of Refugees to adjudicate asylum claims. The Commission, which meets a few times per year, includes representatives of the Ministries of Foreign Affairs, Labor, and Justice, as well as the national Police and Red Cross. The National Office for the Attention of Refugees (ONPAR) is charged with providing refugees with humanitarian assistance.

Decree 23 also introduced a new category of limited protection, THS, for people who flee situations of generalized violence, but who might not qualify individually as refugees under the Refugee Convention. THS is granted for two months, but is renewable.

According to the UN High Commissioner for Refugees (UNHCR), THS "falls short of international standards" because its eligibility criteria are not clearly defined, nor are the rights accorded its grantees. Further, the decree does not guarantee UNHCR access to applicants and calls for bilateral repatriation agreements with governments of countries of origin.

ONPAR prescreens Colombians who enter overland into Darien and San Blas provinces and, rather than substantively assess the merit of their asylum claim, routinely accords them THS (in some cases, ONPAR denies THS). ONPAR rarely refers any Colombians who enter overland to the National Commission for the Protection of Refugees for refugee status determination, thus denying them access to the full protections of refugee status. Decree 23 does not make any provision for persons to appeal ONPAR's decisions.

Decree 23 has a more restrictive definition than the UN Refugee Convention of who qualifies as a refugee. It does not recognize fear of persecution by nonstate agents as grounds for asylum, making Panama the only country in Latin America with such a restrictive position.

Even those Colombians who do manage to petition for asylum and whose cases are heard by the Commission risk being rejected, since a large majority of them fled Colombia due to persecution, threats, or violence perpetrated by paramilitary and guerrilla groups.

The government restricts freedom of movement of THS beneficiaries, and sometimes does not provide them documentation as to their status. They have a difficult time finding work, and many of their children do not attend school. The authorities also harass, abuse, and detain them, often accusing them of having links to Colombian paramilitary or guerrilla groups.

UNHCR has repeatedly urged Panama to amend the provisions of Decree 23 that deny full protection to refugees. In April, the National Commission for the Protection

of Refugees decided that Decree 23 should be revised. At the Commission's request, UNHCR sponsored a workshop attended by representatives of the Panamanian government and former directors of ONPAR to discuss ways that Decree 23 could be brought in line with international standards. At year's end, however, the revision process was stalled because of Panama's National Security Council's concerns about security along the border with Colombia.

**Colombians with THS** Most of the estimated 900 Colombians with THS entered Panama in 1999 and early 2000, although about 100 have been in Panama since 1997. UNHCR assists many of them through local churches, non-governmental organizations, and through ONPAR. A majority are Afro-Colombians and indigenous peoples. The assistance and international attention that the refugees receive has contributed to tension between the Colombians and local people in the Darien region.

In 2002, following the breakdown of peace talks between the Colombian government and Revolutionary Armed Forces of Colombia guerrillas, the Panamanian authorities strengthened their presence in the Darien region in anticipation of new outbreaks of violence in Colombia and an increase in the number of Colombians seeking refuge. UNHCR also intensified its monitoring in the region and communications with partner organizations in order to ensure a coordinated humanitarian response in the event of a new, large-scale refugee influx.

Only small groups of Colombian asylum seekers entered Panama during the year, and were detected, however. In May, 60 Colombian civilians entered the Punusa region of the Darien. The group—more than half children—fled violence in the Uraba region of Colombia between guerrillas and paramilitaries that resulted in hundreds of casualties.

**Colombians in Refugee-Like Circumstances** Besides the Colombians who are recognized as refugees and those with THS, tens of thousands of other Colombians who may have fled Colombia for reasons similar to those of refugees were living in Panama.

Many were without refugee status or THS, and therefore subject to detention to deportation. According to UNHCR, although ONPAR "has an obligation to periodically register the arrival of persons who could qualify for THS, in practice such registration rarely takes place." It says that ONPAR officials, who are based in Panama City, rarely travel to some border areas and never travel to others. Consequently, "few individual cases in the rural area have been duly registered with the temporal protection regime."

For some Colombian asylum seekers, ONPAR's lack of presence at the border results in their being detained by the police for entering "illegally." According to UNHCR, they "face appalling treatment both prior to and during detention." The police and immigration authorities in border ar-



eas often make decisions to deport these individuals that are "arbitrary and contrary to Panamanian law."

The number of Colombians in refugee-like circumstances in need of protection in Panama is significantly higher than the number who are recognized as refugees or have THS.

The Colombian consul in Panama City estimates that some 66,000 Colombians live in Panama, many without documentation. The consul further estimates, based upon material data, that three of every ten Colombians who Panama deports to Colombia because they lack documentation are persons who were in need of international protection (and who were therefore *refouled*). Assuming that the three-in-ten rate applies similarly to the estimated 66,000 undocumented Colombians in Panama, about 20,000 of them should be considered to be persons in refugee-like circumstances subject to detention and deportation. According to UNHCR, the conditions of detention are so poor that it raises "serious concerns about the human rights of those detained."

## Peru

At the end of 2002, Peru hosted about 900 refugees, mostly Cubans, former Yugoslavs, and Iranians. Peru is a party to the UN Refugee Convention and has legislation that provides for granting refugee status.

During the 1980s and early 1990s, a violent insurgency by the Communist Party of Peru, or Shining Path, and a harsh government counterinsurgency campaign ravaged Peru. The conflict left some 25,000 people dead and displaced about 430,000 people. By 1994, the Shining Path insurgents had lost much of their strength, and violence was minimal in most areas. During the late 1990s, thousands of displaced people returned home, but most of the displaced settled permanently in their new locations.

In February 2002, an intrusion by Colombian guerrillas into Peruvian territory in a remote, sparsely populated region led to the temporary displacement of the more than 100 indigenous residents of the Peruvian village of Secoya, in Loreto Department.

## United States

At the end of fiscal year 2002, the United States hosted an estimated 638,000 refugees and asylum seekers in need of protection. This figure includes about 407,000 persons with pending asylum cases with the Immigration and Naturalization Service (INS), about 120,000 persons with asylum cases pending before immigration judges (IJs), about 37,400 persons granted asylum during the year both by IJs and by the INS, some 27,100 resettled refugees, and 21,300 persons granted Temporary Protected Status (excluding cases related to natural disasters). In addition, an estimated 150,000

Colombians were living in refugee-like circumstances in the United States.

During FY 2002, the INS received some 64,700 asylum cases; roughly the same as the previous year. Since an applicant may include his or her spouse and children, the U.S. Committee for Refugees (USCR) multiplies the number of cases by 1.34 to estimate the number of persons included therein. The United States has a two-tiered system of affirmative and defensive asylum application (see below).

INS asylum officers approved about 19,200 cases and denied or referred about 20,000 cases, for a 49 percent approval rate, down from 57 percent in 2001. The largest number of new asylum claims in the year, 22,700, came from Chinese. The next largest groups were Mexicans (20,000, but see below), Colombians (17,400), Haitians (8,400), Guatemalans (4,000), and Indians (3,800). The nationalities with the highest asylum approval rates by INS asylum officers were Ethiopians (75 percent), Afghans and Iraqis (72 percent), Cubans (69 percent), and Iranians (67 percent).

(Mexican nationals filed more than 7,500 asylum applications after the one-year filing deadline rendering them ineligible and resulting in INS placing them in removal proceedings in 2002. There they were able to seek other forms of relief, unrelated to asylum, that were otherwise unavailable.)

The INS continued to reduce the backlog of asylum cases. By year's end, about 304,000 cases were pending with the INS, down from 324,000 the year before. According to the INS, however, most of the applicants in those cases are Salvadorans, Guatemalans, and Haitians, who may be eligible for permanent residence under provisions of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) or the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA).

The backlog of cases pending before IJs housed in the Executive Office for Immigration Review (EOIR) increased in 2002. At the end of FY 2002, some 89,300 cases were pending, up from 71,400 in 2001. IJs approved about 8,600 asylum cases and denied about 18,300, an approval rate of 32 percent. Nationals of Burma (76 percent), Bosnia (70 percent), Iraq (68 percent), Egypt (63 percent), and Russia (61 percent) had notably high acceptance rates before the EOIR.

**Refugee Resettlement** The United States resettled approximately 27,100 refugees in FY 2002, the lowest number since the program began in 1980, despite authorized admissions of 70,000. Enhanced background checks, verification of claimed relationships, FBI review of selected applications, and fingerprinting of all refugees arriving at U.S. ports of entry all caused delays contributing to the lower numbers.

The largest number of resettled refugees came from the former Soviet Union (9,800), followed by Bosnia (4,900), Vietnam (2,900), Cuba (1,900), and Afghanistan (1,600). In FY 2002, six countries were eligible for family-



Somali Bantu refugee woman and child awaited resettlement in the United States in 2002, but none were admitted. Photo: UNHCR/B. Press

based priorities in refugee processing: Angola, Burundi, Congo-Brazzaville, Congo-Kinshasa, Sierra Leone, and Sudan.

President Bush again authorized 70,000 refugee admissions for FY 2003, but 20,000 of those slots were designated in an unallocated and unfunded reserve which refugee advocates fear will go unfilled.

**Asylum Procedure** When an applicant not already in immigration proceedings comes forward to seek asylum (known as an affirmative application), an INS asylum officer will either grant asylum based on a non-adversarial interview or refer the applicant, if removable, to an immigration judge (IJ). The application is now defensive in relation to a charge of removability. The IJ hears the application in an adversarial proceeding with INS supplying opposing counsel. Asylum seekers are entitled to representation by counsel, but not at the government's expense. Approximately 90 percent of detained asylum seekers do not have legal representation during their proceedings. Applicants are not eligible for work authorization unless the application is pending for 180 days or more, which is rare.

Asylum cases are subject to administrative review by the Board of Immigration Appeals (BIA) within the Department of Justice (DOJ), and to judicial review in the Federal Courts. In September, regulations were passed to reduce the BIA to 11 members from 23. In most cases, one board member instead of three will conduct the review, and shorter deadlines were imposed for the submissions of briefs. The discretion of board members to review facts before them was also limited and an option for members to summarily affirm the decisions of IJs was added. BIA will also be required to eliminate the backlog of 55,000 cases within 180 days. Advocates estimate that this would allow a board member 15 minutes to consider each case.

Persons who do not file asylum applications within one year of entry into the United States are generally precluded from applying for asylum unless they can show changed circumstances in their home country within the past year that materially affect their eligibility.

Persons granted asylum are eligible for cash and medical assistance for eight months from the date they are granted asylum.



**Gender-Based Persecution** In January 2001, then-Attorney General Janet Reno vacated the BIA's decision in *Matter of R-A*, in which BIA had declined to grant asylum to a Guatemalan victim of spousal abuse on the grounds that it had "not...been shown that the government of Guatemala encourages its male citizens to abuse its female citizens." Attorney General Reno remanded the case for reconsideration after the INS promulgated a rule that gender can constitute a particular social group and that domestic violence may constitute persecution. The INS, however, had not finalized the rule by year's end.

**Temporary Protected Status** The attorney general is authorized to designate Temporary Protected Status (TPS) for nonresidents who would be endangered if returned home. TPS is based on any of three circumstances: ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions that prevent safe return. Unlike asylum that requires an individualized adjudication, TPS is given to all eligible persons from the designated country who register and who were present in the United States as of a specified date. USCR includes persons granted TPS for reasons related to persecution (i.e., excluding natural disasters) as persons in need of international protection along with refugees and asylum. At the end of FY 2002, such forms of TPS were in effect, having been redesignated from prior years, for 21,300 nationals of Angola, Burundi, Liberia, Sierra Leone, Somalia, and Sudan.

**T-Visas** On March 4, 2002, the Department of Justice implemented the Trafficking Victims Protection Act. This act established a T-visa (with a cap of 5,000 per year) for victims of "severe trafficking" who cooperate with law enforcement efforts to prosecute traffickers. The visa includes many of the benefits of refugee status and enables holders to apply to adjust to permanent resident status after three years. To obtain the visa, victims must demonstrate that they would suffer extreme hardship if removed from the United States.

**Cuban Adjustment Act** Cubans who are paroled into the country, typically after reaching U.S. shores or the Mexican border, can apply for permanent residence after one year under the Cuban Adjustment Act of 1966. Often called *balseros* for the makeshift rafts some still come on, many beneficiaries of this blanket form of relief have well-founded fears of persecution and would likely be asylum applicants were the Cuban Adjustment Act not available. (Of the Cuban asylum cases INS heard on their merits, it granted over 69 percent in FY 2002.) USCR includes them, just as beneficiaries of certain forms of TPS (above), along with refugees and asylum seekers as persons in need of international protection, but only in their first year of arrival. There were 25,300 such Cuban parolees in 2002, a 24 percent increase over the year before. (See *Cuba*.)

**Adjustment of Status** At the end of the year, the INS published a regulation that allowed nationals from Vietnam, Cambodia, or Laos who were paroled into the United States prior to October 1, 1997 and who entered the United States from one of three programs, the right to apply for adjustment of status to permanent residence.

**Children** Roughly 8,500 children seek asylum in the United States annually; almost three-quarters of them are unaccompanied by adults. The INS detains approximately 5,000 children during their proceedings, sometimes in local jails with juvenile offenders. Critics charged that this arrangement, besides being inhumane, creates a conflict of interest as the INS is both responsible for children in their care and is seeking to deport them.

No attorneys or legal guardians are appointed to represent children in immigration proceedings, and children with asylum claims often bear the burden of proving their claims in court without assistance.

Under new legislation, the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services will be responsible for the custody of unaccompanied minors in asylum proceedings. The new law makes no provision, however, for legal representation or guardians for unaccompanied children.

**Reorganization** New legislation was passed in 2002 to create the Department of Homeland Security (DHS), which will take over the functions of the INS. These functions will be split between three entities within the DHS:

1. The Bureau of Citizenship and Immigration Services (BCIS), responsible for the adjudication of immigrant visa petitions, naturalization petitions, affirmative asylum and refugee applications, and other benefits.
2. The Bureau of Immigration and Customs Enforcement (BICE), responsible for enforcement of customs and immigration laws, including detention, removal, intelligence, and investigations; and
3. The Bureau of Customs and Border Protection (BCBP), responsible for inspections and border enforcement.

The director of the BCIS will report to the deputy secretary of the DHS. The BICE and BCBP will be under an Office of Transportation and Border Security within the DHS. The BCIS will have an ombudsman to identify and report on problems and propose changes. The office of the ombudsman will also assist in resolving immigration problems encountered by individuals and employers.

The new legislation, however, does not eliminate the role of the Attorney General. The Executive Office of Immigration Review (EOIR), which conducts administrative proceedings to enforce immigration laws, will remain in the Department of Justice.

**Expedited Removal** An immigration inspector may order an individual removed from the United States without further hearing or review if the inspector determines that the individual arrived without proper documents. If the person seeks asylum or indicates fear of return, however, the inspector must refer him or her to an asylum officer. If the person does not, the officer may order him or her removed without further hearing or review. Inspectors are not authorized or trained to adjudicate asylum claims. A study by the General Accounting Office, however, showed that they often dismissed claims and failed to refer them to asylum officers where fear of return was expressed, based on their own evaluations of their merits.

When the inspector refers an applicant to an asylum officer, the asylum officer will hold an interview to determine whether he or she has a “credible fear” of persecution. If so, the person may apply for asylum before an IJ. The credible fear standard requires showing a “significant possibility...that the alien could establish eligibility for asylum.” Asylum officers must take into account the credibility of the asylum seeker and other facts known to the officer in making the credible fear determination. An IJ may review a negative credible fear assessment within seven days, if requested by the asylum seeker.

The INS is required to detain all asylum seekers in expedited removal proceedings while the determination of credible fear is pending. If the officer makes a finding of credible fear, the INS district directors have discretion to continue to detain the individual while the asylum application is considered or to grant parole.

No judicial review of expedited removal orders is permitted, except for persons who claim under oath that they have already been lawfully admitted for permanent residence, admitted as a refugee, or granted asylum.

In November of 2002, the INS announced that it would expand expedited removal to include the detention of migrants who arrived by sea as many as two years ago. Observers noted that this policy shift appeared to be prompted by arrivals of Haitians. Cubans are exempted.

**Antiterrorism Measures** The USA PATRIOT Act of 2001 broadened the definitions of “terrorism,” “terrorist activity,” and “terrorist organization” for purposes of deportability and inadmissibility; created additional mechanisms for the attorney general to detain and deport noncitizens as terrorists; and established new grounds of inadmissibility for spouses and children of those inadmissible on terrorist grounds.

The USA PATRIOT Act also mandated the detention of any noncitizen the attorney general certifies as a terrorist suspect, even if he or she is eligible for relief from removal, including asylum. The attorney general has seven days to charge a detained terrorist suspect with a deportable offense, but it need not be terrorism-related. Detainees

whose removal “is unlikely in the reasonably foreseeable future” may be detained indefinitely if their release is deemed to threaten national security or the safety of the community or any person. The DOJ may also monitor communications between lawyers and clients in federal custody, including those held as witnesses, detainees, or otherwise by INS agents.

**Detention and Removal** The INS is required to detain almost all noncitizens with criminal records in removal proceedings and all noncitizens who appear inadmissible.

In 2000, the INS issued uniform standards for conditions of immigration detention. The guidelines—which are not legally enforceable—include access to telephones, legal counsel, legal orientation, legal materials and copiers, medical treatment, recreation, and religious observance for detainees. The INS indicated that it would have all facilities holding immigration detainees—including all state and local jails—in compliance with the standards by the end of 2002. Reports from nongovernmental organizations investigating the detention of Haitian asylum seekers, as well as reports about nonimmigrants detained under the special registration program in 2002, indicated that many facilities did not meet the standards.

The INS continued to detain persons with final removal orders in 2002 because the detainees’ countries refused to accept them or because they were stateless. Many of these “indefinite” or “post-order” detainees initially entered the United States as refugees. In 2001, the Supreme Court ruled that the government could not detain immigrants and refugees who committed crimes in the United States indefinitely merely because there was no place to send them. The Court ruled that the INS may reasonably take six months to effect removal, but did not necessarily prohibit detention for longer than that in all cases. The attorney general directed the INS to detain immigrants affected by the ruling unless they could show “no significant likelihood that they will be removed.”

In December, a U.S. district judge granted a nationwide temporary restraining order barring the INS from deporting Somalis to Somalia. The lawsuit alleged that the deportations were illegal because the INS had no consent from the government, since Somalia does not have a recognized government. The INS argued that since Somalia does not require an entry document, formal acceptance is not required, which the judge deemed an “incredible interpretation.” The judge also released three Somali men from INS detention. The case was later certified as a class action suit in early 2003 and this suspended the removal of Somalis for the time being.

Overall, the INS removed some 146,000 persons in FY 2002; about 69,600 on criminal grounds and 76,400 others. Non-expedited removals constituted 77 percent of all removals, up from 60 percent in 2001.



**Interdictions and Apprehensions** In FY 2002, the Coast Guard interdicted 4,100 migrants and asylum seekers with Ecuadorians (1,600) representing the largest nationality. Others included Haitians (1,500), Cubans (670), Dominicans (180), and Chinese (80).

Interdicted migrants were not entitled to asylum screening, whether they were interdicted in international or U.S. territorial waters. The INS does, however, provide a minimal level of asylum screening to interdicted persons on an ad hoc basis, particularly to Chinese and Cubans, but not to Haitians or others. Cubans who are found to merit asylum are brought to the United States or resettled in other countries; all others are returned to Cuba. With the exception of Cubans (see "Cuban Adjustment Act" above), those who make landfall are detained.

In FY 2002, the U.S. border patrol made 930,000 apprehensions along the southwestern border, a 25 percent decrease from 2001. Most of those apprehended were Mexicans, and 21,800 were Central Americans from Honduras, El Salvador, Guatemala, and Nicaragua.

**Haitians** The United States detained Haitians indefinitely in 2002, often in harsh conditions without adequate opportunity to present their requests for asylum. Even Haitians ordered released on bond by IJs remained in detention as INS attorneys appealed those determinations. In at least two cases, the INS took the unusual step of appealing grants of asylum.

Lawyers filed a suit alleging discrimination against the Haitians, as members of other nationalities were routinely released after credible fear determinations. The INS admitted that the detention policy against the Haitians was designed as a deterrent. UNHCR issued a letter indicating that deterring asylum seekers was not an appropriate rationale for detention. At year's end, many Haitians were still in detention, including some of the 228 Haitians who arrived by boat in October. Detention policies hindered their access to counsel. Family members were often separated and denied visitors. In some cases, Haitians' asylum hearings lasted only 30 minutes, including translation.

In November, the president issued an executive order authorizing the detention of any undocumented person interdicted or intercepted in the Caribbean region at the U.S. naval base at Guantánamo Bay, Cuba. The order gave the attorney general discretion to conduct any screening he deemed appropriate (or none at all) to determine whether to return the individuals to their countries or origin or transit. The order explicitly does not "require any procedure to determine whether a person is a refugee or otherwise in need of protection." This order will primarily affect Haitians who continue to be interdicted at sea.

**Colombians** Some 17,400 Colombians applied for asylum in the United States in 2002, whether affirmatively be-

for the INS or as a defense in removal proceedings before the EOIR. The INS granted around 45 percent of those cases it heard, down from 63 percent in 2001. The EOIR, granted only 37 percent, roughly the same as in 2001.

Since the late 1990s, many Colombians have left their country to escape generalized political violence, entering the United States on tourist visas and remaining after they expire. Most do not apply for asylum, fearing they will not prevail, as their claims may not meet the individualized standard of persecution for asylum.

USCR argued that the U.S. government should grant Temporary Protected Status to these Colombians. In October, UNHCR indicated that many Colombians were in need of international protection and urged governments to extend such protection through whatever mechanisms available. Nevertheless, the United States has yet to designate Colombians for TPS.

USCR considers these Colombians to be in a refugee-like situation in the United States. There are no precise statistics available, but USCR estimates their number to be no less than 150,000.

**Safe Third Country Agreement** The United States signed a safe third country agreement with Canada on December 5, 2002. Although yet to be implemented, the agreement would deny persons who pass through the United States and arrive at a Canadian port of entry the right to claim asylum in Canada. The United States would also have the right to refuse asylum seekers who arrive at their ports of entry from Canada, although their numbers are significantly less: approximately 200 persons a year, as opposed to roughly 15,000 heading to Canada. Prior U.S. case law held that mere physical presence in another country did not preclude the right to seek asylum in the United States and the Immigration and Naturalization Act states that only persons "firmly resettled in another country prior to arriving in the United States" should be denied the opportunity. Implementation of the Safe Third Country Agreement could change that.

## Uruguay

At year's end, Uruguay hosted 60 refugees—mostly Europeans who have lived in the country for more than five years. Eight persons, all Colombians, applied for asylum in Uruguay during 2002.

According to the Uruguayan government, refugees enjoy the same rights as other foreigners resident in Uruguay. Refugees receive yearly, renewable permits to remain in Uruguay, and can apply for citizenship after five years. The government provides refugees with free medical assistance and education, and the UN High Commissioner for Refugees, which carries out refugee determinations on behalf of the government, provides recently

arrived refugees with cash assistance. The Uruguayan government does not deport rejected asylum seekers, but permits them to apply for other migration categories.

## Venezuela

Venezuela hosted 1,100 refugees and asylum seekers in 2002; almost all of them Colombians whose asylum claims were pending at year's end. Asylum applications from Colombians increased more than five-fold. Of the 58 individuals with refugee status in Venezuela, 21 were Colombians; the remainder were Haitians, Cubans, Chinese, persons from the former Yugoslavia, and nationals of various other countries. At least 50,000 to 75,000 Colombians—perhaps many more—lived in Venezuela in refugee-like circumstances.

Venezuela is a party to the 1967 UN Refugee Protocol. Since 1999, the Venezuelan government began receiving asylum applications, which were previously handled by the UN High Commissioner for Refugees (UNHCR). In 2001, Venezuela enacted the Organic Law on Asylum and Refugees, but had not implemented it as of the end of 2002. Consequently, the more than 1,000 individuals who have applied for asylum in Venezuela since 1999 remain in limbo, with none of their claims adjudicated. While their asylum claims remain pending, the U.S. Committee for Refugees considers these persons to be refugees.

In late 2001, UNHCR said that it was “unclear whether the [Venezuelan] government has the political will to make the...new organic refugee law operational.” On several occasions during 2002, the Venezuelan authorities told UNHCR that they planned to implement the law and that they would soon set up the Eligibility Commission to determine asylum claims, but by year's end had not done so.

Besides establishing asylum determination procedures, the Organic Refugee Law would commit Venezuela not to impose sanctions on asylum seekers for irregular entry and not to forcibly return any individual to a territory where his or her life would be endangered. Because Venezuela has not implemented the law, its military and border officials continue to treat asylum seekers as they do any other migrants. According to UNHCR, “asylum seekers with irregular migration status are thus likely to be indiscriminately deported in contradiction with international and national refugee law.”

Since 2000, large groups of Colombians have fled to Venezuela seeking refuge, and Venezuelan authorities have promptly returned them. The largest known group of Colombians to have sought refuge in 2002—an estimated 3,000 people—entered Venezuela through the town of La Grita, in Tachira state, on February 27. Ven-

ezuelan authorities returned the group to Colombia the following day. The Venezuelan authorities did not provide UNHCR access to the group.

**Colombians in Refugee-Like Circumstances** No reliable data exist regarding the number of Colombians who may have sought refuge in Venezuela, but not applied for asylum. Some of these Colombians in refugee-like circumstances enter with special border permits that enable them to remain legally in Venezuela for one year. They generally settle inconspicuously among the 1.5 million economic migrants from Colombia who have lived in Venezuela since the 1970's oil boom. Most lack documentation, which makes them vulnerable to detention and deportation by the Venezuelan authorities.

In 2002, UNHCR began a study to assess the number of Colombians in Venezuela who might be refugees. Preliminary findings that the number of Colombian children in Venezuelan schools in border areas of Zulia state increased by 69 percent between 1999 and 2002 suggest a substantial increase in the overall Colombian population in the state during that time period.

**Political Upheaval in Venezuela** Turbulent political developments in Venezuela in 2002 led a small number of senior Venezuelan government and military officials to flee the country and prompted many other Venezuelans to migrate to the United States and elsewhere, but did not lead to significant refugee flows or internal displacement.

The problems began in December 2001, when President Hugo Chavez, a leftist former military officer who was elected in late 1998, enacted a decree that introduced land reforms and tightened the government's control over the oil industry. On April 11, Venezuelan soldiers opened fire on a demonstration of some 500,000 protestors, killing 18 and wounding 150 others. This led senior military officers to force President Chavez to resign. Chavez supporters rioted, resulting in additional deaths. The interim government collapsed and Chavez returned to power on April 14.

A number of high-ranking Venezuelan government and military officials who participated in or supported the failed coup, including the country's minister of foreign affairs, sought asylum in the United States and Colombia or in the Bolivian and Salvadoran embassies in Caracas. Thousands of other Venezuelans who were concerned about Chavez' policies migrated to other countries, particularly the United States.

*(In February 2003, Chavez forced an end to a general strike launched in December and arrested Venezuela's top opposition leader—a move condemned by human rights groups in Venezuela and abroad and by some governments.)*