



**IDEABORN - COTECNO SRL**

**INTERMEDIATE EVALUATION OF THE  
USAID HUMAN RIGHTS PROGRAM  
IN COLOMBIA, PHASE II**

**FINAL DRAFT**

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**December 9, 2008**

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## **I. INTRODUCTION**

### **a. The evolution of human rights violations from Phase I to Phase II of the program and the situation of human rights in Colombia, 2006-2008**

Over the past eight years, USAID has developed the largest and most significant U.S. human rights program in the world as part of the U.S. assistance program known as Plan Colombia. The program was developed and implemented with the input and participation of human rights activists, academics, Colombian authorities and a broad and diverse cross-section of civil society. It was designed to prevent human rights violations, protect vulnerable groups and communities, and increase state and civil society capacity to confront human rights challenges. In 2006, USAID launched a second phase of the program, expanding the program's reach to reflect the changing circumstances of the conflict on the ground, most notably, the country's enhanced security policies and the government's unprecedented program of demobilizing more than thirty thousand paramilitary forces. These policies led to an expectation during the design period and outset of Phase II that the conflict would be considerably transformed and would inexorably evolve into a post-conflict scenario.

The new focus continues the work begun in Phase I in the areas of prevention, protection and assistance to state, civil society and government institutions and also moves to "nationalize" these efforts through greater government responsibility in financing, integration and implementation of specific program goals. Phase II has also expanded into new areas including assistance to state and civil society groups to support the search for truth, justice, and accountability after decades of a conflict that still has not ended. Moreover, the program is poised to launch a major new program to work with labor unions designed to increase their organizational capacity, effectiveness and societal outreach as part of a comprehensive effort to stem the violence that has been directed against this vital democratic sector.

The program is impressive and well administered. Most of the specific Phase I program goals were achieved and many of the intermediate benchmarks for Phase II have also been met or soon will be, though there is some variation from program to program. USAID's human rights program is therefore on track in its specific efforts to assist and to strengthen the Colombian government's ability to address human rights violations and to enhance civil society's capacity to monitor, advocate, provide assistance and participate in human rights public policy efforts. However, no foreign assistance program can single-handedly improve human rights. That will take greater political will and, likely, require concrete steps toward resolving Colombia's deeply entrenched armed conflict.

The situation of human rights in Colombia remains grave. Extrajudicial killings, forced disappearances, forced displacements, sexual violence as an act of war, the illegal seeding of landmines, and many other activities and violations continue at unacceptably high rates. Colombia remains the site of the worse human rights violations in the hemisphere and in many categories of abuses leads the world or ranks near the top.

Because of the country's security policies, there has been general improvement in public order, violent crimes, citizen security and the fight against illegal armed groups. Homicide rates have been cut in half and kidnappings and massacres have declined significantly. The United States has assisted Colombia in these efforts through a variety of justice, governance and other aid programs and rightfully lauds these improvements. Moreover, in the wake of a failed peace process from 1998 to 2002, the Colombian government, with U.S. assistance, began a multifaceted program – Plan Patriota – aimed at seriously weakening the FARC, ELN and other illegal armed groups. By all accounts, the FARC has been pushed back from strategic strongholds in the eastern cordillera near Bogotá, and after six years the subordinate units protecting the top leadership were penetrated, leading to the deaths of two senior FARC commanders, the first such military successes in more than forty years.

Yet improvements in citizen security and successful counterinsurgency operations have not always been accompanied with a corresponding respect for human rights by state authorities and security forces. On the contrary, the evidence shows an increase in violations by certain state actors. Moreover, following an ambitious program of negotiations and demobilization of armed paramilitary groups, it was expected that the most severe human rights abuses and violations would be reduced or eliminated. However, the demobilization left intact many illegal armed groups that continue to act in ways that resemble the old paramilitary forces, the Unified Self-Defense Forces of Colombia (AUC), and that continue to target human rights activists, campesino leaders, Afro-descendent population, indigenous communities, and labor leaders.

Focus groups and workshops held throughout the country by the evaluation team with local NGOs and municipal authorities underscored the gravity of the human rights situation in area after area, from Sincelejo on the Atlantic Coast, to Quibdó on the Pacific, to Medellín and Eastern Antioquia, to Popayán in the Southwest. In each locale, civil society human rights leaders, victims' associations, regional human rights ombudsman (*Defensores regionales*) and local human rights officials (*personeros*) told stories and provided evidence that reveal:

- Individuals and communities continue to be forcefully displaced by re-armed paramilitary groups, guerrillas, and sometimes, by omission or commission, state actors.
- Land continues to be illegally confiscated in areas of forced displacement.
- Activists and communities perceived to have ties with subversive groups continue to be victims of extrajudicial killings and forced disappearances
- Security forces have regularly and systematically abducted and killed young people and then claimed their bodies as trophies of successful counterinsurgency operations (what Colombian human rights groups have long labeled as *falsos positivos* or “false positives,” transforming the language from within the armed forces that a guerrilla death is a “positive” that is often rewarded by superiors).

- Innocent civilians continue to be subjected to forced recruitment, kidnapping, massacres, selective homicides and other forms of violence against unarmed civilian population, [outlawed under International Humanitarian Law.]
- Rural populations face death and disfigurement as a result of the illegal use of landmines, primarily by the FARC.
- Victims' groups report increased incidences of sexual violence as a weapon of war.

As this list reveals, the situation of human rights violations by state and nonstate actors is as challenging and critical at the close of 2008 as when Phase II of USAID human rights program was initiated in 2006. After two years, the context has changed in distinct and noticeable ways that make it imperative to continue and strengthen certain components of the U.S. human rights strategy in Colombia, while at the same time re-thinking others. When the program began, there was hope that the country would move into a "postconflict situation." However, today it is clear that the armed conflict is not over. It has been transformed. The U.S. assistance program has helped civil society actors better respond; it has helped protect victims; and it has increased the state's capacity to prevent some violations, as well as to alert key authorities before they are committed. Overall, state capacity to deal with the human right crisis is greater, and the U.S. human rights program has greatly contributed to this improvement. But since the conflict is fluid, with geographical regions, modalities of violations, and strength of actors continually changing, the program must be able to quickly adapt to changing circumstances and to increase its overall effectiveness to prevent violations.

Given the persistence and the degradation of this very complex, multifaceted armed conflict, human rights need to be placed front and center on the bilateral agenda. Moreover, the diplomatic leverage of the United States needs to be more forcefully applied to better address the human rights crisis, even while recognizing gains in other areas. Such diplomatic efforts will amplify the effectiveness of the USG's human rights program and will also leverage the work of other nations, international organizations, and the network of national and international NGOs working to prevent human rights violations, promote truth and justice, and provide humanitarian assistance to victims.

#### **b. Colombia's international treaty commitments and constitutional guarantees**

Colombia has made a clear commitment to respect human rights. It has signed practically all relevant international human rights and International Humanitarian Law treaties, including, the Universal Declaration of Human Rights, the Covenant on Civil and Political rights, the American Convention on Human Rights, the Geneva Conventions including the Additional Protocol to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), and the Rome Statute establishing the International Criminal Court (1998). Moreover, Colombia's Constitutional Court has been bold and forceful in its rulings, demanding that state authorities adhere to international treaty obligations, expressly stating that international law takes precedent over na-

tional law.<sup>1</sup> In specific areas, there is little room for ambiguity, as Colombia's treaty obligations, legislation and Constitutional rulings make clear:

*Landmines:* Colombia was one of the original signatories of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997 Mine Ban Treaty). Before the historic passage of the treaty in Ottawa, Colombia had already passed national legislation committing the State to provide economic and social assistance for those injured by landmines.<sup>2</sup> The Mine Ban treaty was subsequently incorporated into national law.<sup>3</sup>

*Forced displacement and land confiscation:* Colombia has signed the International Bill of Human Rights (which consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols), the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the UN Commission on Human Rights resolutions on housing and property restitution in the context of the return of refugees and internally displaced persons,<sup>4</sup> on prohibition of forced evictions<sup>5</sup>, on the promotion and protection of human rights and the principles on housing and property restitution for refugees and displaced Persons as well as the explanatory notes on the Principles.<sup>6</sup>

Nationally, the Constitutional Court has ordered the government to take the necessary steps needed to guarantee the right of restitution of property for Internally Displaced persons in line with the UN referred principles.<sup>7</sup> The Constitutional Court has also endorsed emerging international norms on the State's obligation to protect its citizens from human rights violations.<sup>8</sup>

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<sup>1</sup> T-568 of 1999 and C-010 of 2000. The latter declares: "According to this jurisprudence, in a strict sense, human rights and international humanitarian law treaties ratified by Colombia as well as the jurisprudence of international organizations who are charged with interpreting those treaties are part of what is constitutional." ("De acuerdo con dicha jurisprudencia, del "bloque de constitucionalidad" en sentido estricto hacen parte tanto los tratados de derechos humanos y de derecho internacional humanitario ratificados por Colombia como la jurisprudencia de los órganos internacionales a cuyo cargo está la interpretación de esos tratados".)

<sup>2</sup> Law 318/1997.

<sup>3</sup> Law 554/ 2000.

<sup>4</sup> UN Commission on Human Rights resolution 2003/109 of 2003.

<sup>5</sup> UN Commission on Human Rights Resolution 2004/28 of 2004.

<sup>6</sup> UN Sub-commission on the Promotion and Protection of Human Rights and the Principles on Housing and Property Restitution for Refugees and Displaced Persons, Resolution 2005/21 of 2005.

<sup>7</sup> Constitutional Court Sentence T-821 of 2007. This decision built on Sentences T-025/2004 that underscored both the condition of victim of human rights violations for those persons that have been forcibly displaced as well as the government's obligation to provide special assistance.

<sup>8</sup> For emerging international norms to protect, see Patricia O'Brien, Under-Secretary-General for Legal Affairs, "Responsibility to Protect": United Nations Torino Retreat 2008," *Int J Refugee Law*.2008; 20: 710-714. For Colombian court rulings and legislations, see Constitutional Court sentence T 719 of 2004, which states that "when a person's ... fundamental rights, such as life or personal integrity are threatened, the state must act to prevent the harm from materializing"; and Law 975 of 2005 (Justice and Peace law") which asserts "there can be no repetition of violent acts" and officially mandates "programs to prevent human rights violations as a fundamental right."

*Illegal detention, torture, ill treatment and forced disappearances:* Colombia has subscribed to: the Geneva Conventions of 1949 (and the additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II of 1977),<sup>9</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Inter-American Convention to prevent and punish torture (1985), the UN body of principles for the protection of all persons under any form of detention or imprisonment,<sup>10</sup> the Rome Statute of the International Criminal Court (ratified by Colombia in 2002), the Inter-American convention on Forced Disappearances of 1994 (ratified by Colombia the same year), and Article 12 of the Constitution and Law 589 of 2000 that condemns forced disappearance and torture. Additionally, Colombia's Constitutional Court's has specifically addressed ruled on the forced disappearances in relation to indigenous people.<sup>11</sup>

*Extrajudicial killings:* Colombia has endorsed the United Nations General Assembly declaratory texts on the Protection of All Persons from Enforced Disappearance and the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions that urge the states to legislate in order to prevent such acts.<sup>12</sup> In compliance, Colombia directly outlawed these practices in its Criminal Code.<sup>13</sup> Further, Colombian Courts have moved to substantially limit the jurisdiction of the Military Courts in cases involving human rights violations committed by members of the Armed Forces and have expressly excluded extrajudicial killings from the Military Court's jurisdiction.<sup>14</sup> After ignoring the ruling on extrajudicial killings for almost a decade, in 2005 the Armed Forces finally accepted the jurisdiction of civilian courts for these types of crimes.

*Sexual Violence:* Colombia formally endorsed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, sometimes described as an international bill of rights for women; the Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women, signed in Belém do Pará, Brazil in 1994; and UN Declaration for the Elimination of Violence against Women<sup>15</sup>

*Transitional Justice:* Two laws frame the existing process transitional justice process in Colombia: the 2002 Public Order Law<sup>16</sup> and the 2005 Justice and Peace Law.<sup>17</sup> The former provides in effect an amnesty for individuals engaged in paramilitary or guerrilla activity or charged with organizing, supporting, or engaged in complementary activities, as long as the crimes do not rise to the level of crimes against humanity. In practice this covered most lower-ranking combatants as well as intermediate-level and senior commanders. The latter permits paramilitary or guerrilla leaders convicted of certain war

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<sup>9</sup> Protocol II was recognized by Colombia through accession – the process by which states adhere to international treaties after the deadline for signatures has expired - following the passage of Law 171 on December 16, 1994.

<sup>10</sup> General Assembly resolution 43/173 of 1988.

<sup>11</sup> Sentence T-380/93.

<sup>12</sup> Resolution 44/162 of 1989

<sup>13</sup> Article 135 of the Colombian Criminal Code (*Código Penal*).

<sup>14</sup> Sentence C-225 of 1995.

<sup>15</sup> General Assembly Resolution 48/104 of 1993.

<sup>16</sup> Law 782 of 2002 (*Ley de Orden Público*)

<sup>17</sup> Law 975 of 2005 (*Ley de Justicia y Paz*).

crimes or crimes against humanity to receive lighter sentences in exchange for confessing all their crimes and forfeiting all illegally obtained assets.<sup>18</sup>

In Colombia, human rights and international humanitarian law are not contested concepts. Colombia has fully accepted its constitutional and international obligations. The U.S. human rights program was designed to provide support and help build capacity in such a way as to assist the Colombian government to meet its own stated human rights commitments, while also strengthening civil society's role in public policy advocacy and human rights accountability. In several letters of understanding between USAID and collaborating institutions, such as the Ministry of Interior and Justice, the National Police, the Human Rights Ombudsman's Office, and the Inspector General's Office, the Colombian government has expressly welcomed this assistance and recognized the need to develop the specific human rights and IHL programs discussed in this report.

## **II. HUMAN RIGHTS PROGRAM, Phase II**

### **a. Phase II Goals and Accomplishments: 2006 – 2008**

The objectives of the Human Rights Program, Phase II are to:

- Strengthen national and local capacity for *prevention* of human rights abuses
- Improve government capacity to *protect* individuals and Communities-at-Risk
- Enhance State and civil society capacity to design, develop and monitor human rights public policies
- Strengthen civil society's role and capacity to promote public policy, dialogue, and accountability
- Promote victims' rights to truth, justice, and reparations.

The program builds upon *USAID's Human Rights Program, Phase I (2001-2006)*. Key objectives and programs of Phase I were:

- **Prevention:** One of the key programs in this area was the creation of an Early Warning System operated by the Human Rights Ombudsman Office (*Defensoría del Pueblo*) and present in most conflictive areas of the national territory, designed to alert authorities of imminent, ongoing, or potential human rights violations.
- **Response:** the development of an Inter-Institutional capacity at the highest levels of government to analyze risk analyses provided by the Early Warning System and then to emit an Early Warning to local and regional authorities accompanied by a series of recommendations.

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<sup>18</sup> Interview with Rafael Barrios Mendivil, Human Rights Lawyer, Corporación Colectivo de Abogados José Alvear Restrepo.

- **Development of institutional capacity to confront human rights violations:** focused on the strengthening of state institutions, including the Human Rights Ombudsmans Office *Defensoría del Pueblo*; government institutions such as the Vice Presidency, charged with overseeing the Presidential Program on Human Rights; the Ministry of Interior and Justice; the National Police; and civil society organizations at the national and local level.
- **Protection:** the establishment of an individual protection program run by the Ministry of Interior and Justice for human rights workers, defenders, and community and social leaders. The development of the *Communities-at-Risk Program*, designed to create contingency plans and provide protections for communities at living with a high risk of violence, including Afro-Colombian and indigenous communities.

In developing Phase II, 2006-2011 the program aims to:

- Consolidate, strengthen, and expand programs and achievements begun in Phase I while making reforms to those programs that proved to be less effective.
- “Nationalize or “Colombianize” the programs – that is, to ensure, where relevant, GOC financial and political commitments to institutionalize and carry out many of the programs initiated in Phase I and Phase II.
- Promote a greater balance in the support provided to state control institutions (such as the IGO and Human Rights Ombudsman Office), the GOC (such as the Vice Presidency, National Police and the Human Rights Directorate of the Ministry of Interior and Justice), and civil society organizations.
- Promote more effective and transparent public policies relating to human rights with increased monitoring and accountability through work with both state and civil society institutions.
- Place a greater emphasis on Afro-Colombian, indigenous populations, and women who have been affected by the armed conflict.
- Develop a component related to the Justice and Peace law and the search for truth, justice and reparations and the protection of fundamental rights affected by the internal armed conflict.

In addition, USAID has sought to build in regular consultations with national and international NGOs in Bogotá and Washington, DC, while more actively seeking to work with international allies. USAID also began to provide direct support to the Special Office in Colombia of the United Nations High Commissioner for Human Rights.

Phase II has opened up new initiatives in each of the areas that continue from Phase I. These include:

**In Prevention:**

- Assistance to Human Rights Unit of the National Police
- Expanded public awareness of the Constitutional Court's decision relating human rights and international human rights law
- Institutionalization through decree of the Inter-Institutional Committee on Early Warnings (Comité Inter-Institucional de Alertas Tempranas – CIAT) charged with responding quickly and effectively to alerts issued by the Early Warning System. Previously this had been an ad hoc committee.
- Greater coverage of the Early Warning System.

**In Protection:**

- The program has supported the Ministry of Interior and Justice (MIJ) protection program, protecting 4,618 at-risk individuals from 2001-2007 (122 in Phase II); provided hard protection (including armored walls and secure doorways) to 114 sites from 2001-2007 (30 in Phase II); trained 1,367 at-risk persons (trade unionists, journalists, political candidates and civil society leaders) on preventive security measures from 2001-2007 (1,131 in Phase II); prepared 44 MIJ officials to be trainers on preventive security strategies in Phase II; and implemented a mass communication campaign to orient political candidates on preventive security issues.
- Further developed the Communities-at-Risk Program, which by 2008 was operating in 10 regions that included 49 communities at-risk of violence, including the development of strategic plans for protecting at-risk communities through contingency planning, training of local officials and communities in prevention strategies, and protection of vulnerable groups, rapid response projects to address principal risk factors, and psychosocial assistance.

**In Human Rights Public Policy:**

- Worked with national and local officials to incorporate human rights policies in local development plans.
- Supported civil society organizations participation in the formulation of municipal development plans in the Caribbean and Pacific coasts, Antioquia, Santander and other areas.
- Supported efforts to fight impunity at the Office of the Inspector General and the Attorney General.
- Developed a communications campaign to urge election candidates and voters to incorporate human rights issues in their platforms.
- Conducted 16 workshops at the regional level to orient candidates on human rights public policy.

- Worked with government and civil society organizations in an effort to find common ground on a National Human Rights Action Plan.

### **Strengthening Civil Society Organizations:**

- In 2007, the Human Rights Program awarded 29 grants to civil society organizations to work on issues in the areas of public policy; human rights advocacy; monitoring of the human rights situation; institutional strengthening of human rights organizations and networks, including indigenous and community councils; and efforts to combat impunity.

### **Promoting Victims' Rights to Truth, Justice and Reparations**

- Trained a total of 210 National and Regional inspectors in the Inspector General's Office (*Procuraduría General*), 160 in the Justice and Peace Unit, on international human rights standards, particularly related to sexual crimes and crimes against minors, and on international standards of truth, justice and reparation.
- Developed procedures for victims' assistance and trained, as of August 2008, 540 regional officers and public defenders in the Human Rights Ombudsman's (*Defensoría del Pueblo*) Justice and Peace Unit on legal assistance and representation of victims,
- Trained 107 prosecutors and assistants in the Attorney General's (*Fiscalía General*) Justice and Peace Unit on victims' rights to truth, justice and reparations.
- Created a civil society network (15 organizations) that has provided legal and psychosocial assistance to 4307 victims.
- Trained 240 lawyers and civil society advocates on legal representation of and assistance to victims, serving a total of 600 victims for 2008.
- Created new civil society network (15 organizations) that has provided legal and psychosocial assistance to 4307 victims.

Phase II is also more national in its geographic scope, placing emphasis on populations most affected by violence and internal conflict, both in marginalized urban sectors and rural, high-conflict zones.

### **b. Overview of the Evaluation and Analysis**

The program is well administered and has, in general, met most of its specific benchmarks and targets. Yet there remains a nagging concern that the situation of human rights remains critical. The program's efforts to strengthen GOC prevention and protection measures have not been able to stop the ongoing massive violations of human rights.

There is a need to more tightly orient the program to address the ongoing crisis, which is a crisis of "first generation rights" – designed to address the most egregious abuses such

as forced disappearances, forced displacement, massacres, extrajudicial killings, and sexual violence as an act of war. Although Colombian armed actors rarely use the language associated with “ethnic cleansing and genocide,” the fact remains that the Afro-Colombian and indigenous populations remain victimized by the armed conflict.

Moreover, even such rights as the right to form labor unions, a fundamental right in the Colombian Constitution, need to be understood and addressed in the context of violence against the physical integrity of individual leaders. Indeed, this is the premise behind the new labor component that will soon be inaugurated as a part of the program.

### **Orienting the Program**

In order to address adequately the ongoing crisis of political violence in Colombia, it is necessary operate within a framework of both human rights and international humanitarian law. Conceptually and legally, human rights are a state responsibility and human rights law refers to the actions of state actors. To hold illegal armed actors accountable, International Humanitarian Law (IHL) is the appropriate framework. IHL mandates the protection of the civilian population amid an internal armed conflict and holds all actors to the conflict accountable, both state and nonstate.

The Government of Colombia at times denies that there is an internal armed conflict, while at other times asserts that the country is in a postconflict situation. Neither is accurate. Colombia’s cooperation agreements with such organizations as the International Committee for the Red Cross, the Office for Humanitarian Assistance of the United Nations, the OAS, and even USAID’s human rights program, implicitly recognize the application of International Humanitarian Law and the existence of an armed conflict in Colombia.

Moreover, Colombia’s own laws explicitly recognize the application of IHL in Colombia, as can be seen in the excerpt from the Constitutional Court ruling cited in footnote 1. The Human Rights Ombudsman’s office alerts state and governmental authorities to potential violations as a result of the armed conflict. Indeed, the lead Colombian human rights agency, led by the Vice President, is called the Presidential Program for Human Rights and International Humanitarian Law. See <http://www.derechoshumanos.gov.co/>

As such, the goals of USAID’s human rights program should be:

- Contribute to GOC and civil society efforts to prevent massive Human Rights violations
- Contribute to GOC and civil society efforts to protect vulnerable civilians and Communities-at-Risk as a result of armed conflict, according to principles of International Humanitarian Law
- Support actions by the State and civil society to fulfill victims’ rights to truth, justice and reparations

The Human Rights Program, though part of a broader U.S. strategy in Colombia, should exclusively be focused on these goals.

As designed, USAID's human rights strategy is multipronged and works with civil society groups, NGOs, government, and state agencies such as the Human Rights Ombudsman's Office and the Inspector General's Office (IGO). Phase II has sought to better balance this relationship. For the most part, it has succeeded. The more balanced program positions USAID to more effectively use its good offices to promote dialogue and, where possible, consensus among the various sectors.

Consensus has thus far proved particularly challenging as there continues to be great tension and animosity between the government and the most prominent national-level human rights NGOs. This has been particularly evident in the frustrating experience of trying to forge a consensus on a National Human Rights Action Plan, an effort mandated by the United Nations 14 years ago as an exercise in consensus building among state and civil society actors. Developing this plan through the consultative mechanisms originally envisaged has been a major goal in both Phase I and during the first two years of Phase II. USAID has (so far unsuccessfully) attempted to bridge differences and the U.S. Embassy and USAID could do more, particularly in concert with other donors, especially the G24 and UNDP's donor coordination efforts. Because of the good will engendered by its Human Rights program, USAID remains in a good position to help both sides overcome the formidable odds to coordination.

In sum, the human rights program should maintain its focus on first generation human rights and on the protection of civilian populations caused by armed conflict. These represent the foundation of the democratic house, particularly in a conflict-torn society. We recognize that human rights are integrated and indivisible. However, Colombia, through its international treaty commitments, is obligated to guarantee fundamental human rights (first generation rights). If the Colombian government fails to do so, it can be investigated, prosecuted and held liable in international tribunals, such as the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights. Such accountability does not apply to second and third generation rights, even though human rights are considered indivisible and integrated. Second and third generation rights of health, education, employment and housing, for example, can be the focus of other programs that do not have the label "human rights program." To continue with the metaphor of the democratic house, to start building a second story before the foundation is complete is to invite collapse. To open up new avenues of intervention at this time by the same team and program, particularly into the areas of economic and social rights, will reduce the impact and coherence of the primary intervention.

Nevertheless, without losing its focus on its primary mission, the program should also be sufficiently flexible that it can work with particularly vulnerable or targeted sectors, such as indigenous groups, labor unions or civil society organizations, in ways that strengthen their broader missions and capacities. Such support is given so as to enhance their ability to defend themselves, monitor, advocate for, and when necessary denounce violations of their fundamental rights.

Further, the program needs to build in greater flexibility to adapt to such monumental transformations of the conflict, as those that occurred during the first two years of Phase II. From 2006 to 2008 the country witnessed the massive paramilitary demobilization followed by the subsequent proliferation of illegal armed groups, some of which are re-armed former paramilitaries while others represent new forces. The conflict is dynamic; it transforms geographically, its actors transform, and the modalities of violations change. The program needs to be constructed in such as ways as to be able to adapt to such changing circumstances.

To this effect, the program needs an overall strategy – not just goals and projects – for a changing human rights landscape. The strategy should focus on reducing, eliminating and ameliorating the consequences of the most serious human rights violations in the country, post-demobilization of the AUC. Today, the most serious abuses are: (1) forced internal displacement; (2) extrajudicial killings, massacres, and multiple selective homicides; (3) forced disappearance; (4) HR and IHL violations resulting from armed confrontations that affect the civilian population; (5) forced displacement of the civilian population; (6) torture, land confiscation and destruction of civilian assets; (6) forced recruitment; and (7) though less reported, sexual violence as an act of war (see Table 1). These abuses are all included within the rights of life, liberty and physical integrity, and the state is obligated to respect these rights. The strategy should aim, therefore, to strengthen the capacities of the government, state and civil society institutions to prevent the most serious human rights violations in the country, to protect those who are at greatest risk, and to provide victims with the means to access truth, justice and reparation. In practical terms this would mean keeping the same five objectives that the program has today but ensuring that indicators are developed based on current threats that are affecting the target population.

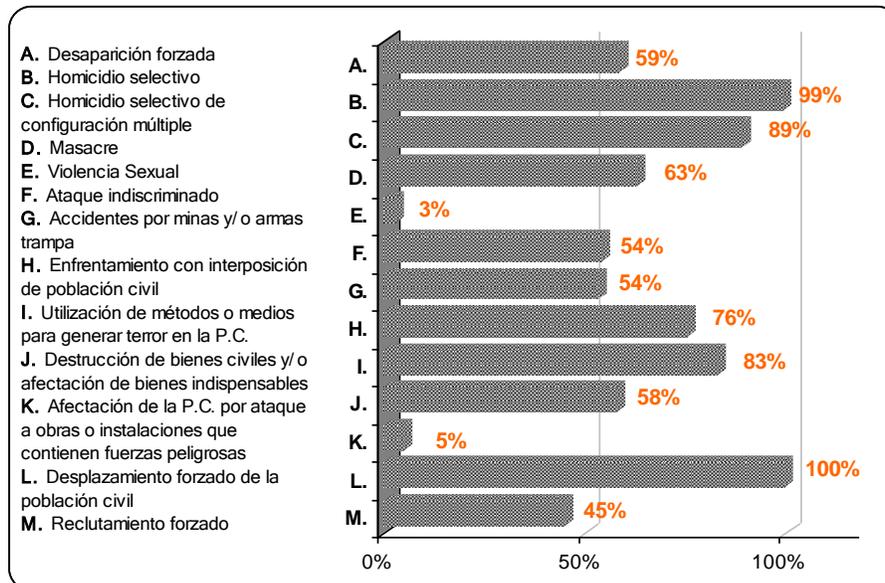
The strategy should not deviate from current goals but rather should better integrate all of them: protection, prevention, public policy, civil society and state capacity, and the search for truth and justice. Projects should be periodically reviewed to determine if they meet overall strategy.

The program should also develop a set of indicators, parallel to the program benchmarks that attempt to measure the overall dynamic of human rights violations in Colombia. For example, several institutions closely associated with the program collect data relating to political violence, the armed conflict and violations of HR and IHL, including the Human Rights Ombudsman's office, CINEP, and the Vice President's office. MSD, the contractor charged with implementing the program, also has an in-house capacity to monitor areas of the conflict. All of these institutions should be charged with systematically tracking human rights violations within their areas of competence, basically following the list enumerated above. They should do so within a framework to be developed by the human rights program that look at all regions of the country and that provides an annual analysis of the central transformations of the conflict.

This quantitative data collection should be complemented by an annual or biannual series of focus groups organized by the contractor involving targeted sectors, such as indigenous people, IDPs, Afro-Colombians, women, labor leaders, human rights advocates, and

others, across different geographic regions. Such an effort would provide a systematic, objective and in-house monitoring of the central dynamics of the conflict as well as the evolution of the situation of human rights in the country. It will also readily reveal areas that are being neglected, that appear impervious to progress, or, on the contrary, that indicate areas of improvement. This analysis should then be used to review the basic operations, priorities and objectives of the program. To be clear, these quantitative and qualitative indicators should not be used as indicators of success or failure of the program, since there are too many uncontrolled variables. The indicators should be used as a compass to make adjustments and re-think programs.

Table 1  
**Percentage of Violations of Specific Categories of International Humanitarian Law reported in each Risk Report (*Informes de Riesgo*) or Monitoring Notes (*Notas de Seguimiento*) issued by the Human Rights Ombudsman Office (2005-2008)**



Risk Reports and Monitoring Notes covered situations of risk 269 municipalities in 30 Departments. Total # of Municipalities in Colombia = 1092, total number of Departments = 32. *Source: Defensoría del Pueblo 2008*

### Indigenous and Afro-Colombian Communities

Most of the components of the Human Rights program include, in some capacity, indigenous and Afro-Colombian populations who have been disproportionately represented within the larger victim population.

USAID needs to conduct more systematic assessments on the human rights situations and needs of Afro-Colombian and indigenous populations as it develops integrated programs for vulnerable populations. Thought should be given to developing special civil society programs such as is currently being developed for labor unions. The program has already begun to move in this direction. Seeing that many Caribbean and Pacific Afro-Colombian and Indigenous organizations from the Caribbean and Pacific Coasts lacked enough ca-

capacity to participate in the grants program available for civil society, the program initiated a series of training program to redress the issue. This approach should be more systematically incorporated into MSD's basic programming.

Specific programs that could be developed or expanded to increase the program's impact in these communities might include:

- Land titling for Afro-Colombian Communities, as part of program on civil society strengthening, prevention, reparations.
- Full return of land to internally displaced Afro-Colombian and indigenous communities. The HRP already is working with the Inspector General's office on a program that addresses this issue, which is discussed further in the section on truth and reparations of this report.

### III. EVALUATION FINDINGS

#### a. PROGRAM AREA 1: Strengthen National and Local Capacity to Prevent Human Rights Violations

*Strategic objective: Strengthen the capacity of the state, government and civil society to prevent violation of fundamental rights by improving the ability to evaluate and monitor emerging risks; implement and improve inter-institutional mechanisms for prevention; prepare contingency action plans that are viable; disseminate this information rapidly and cost-effectively.*

The HRP's prevention strategy consists of support to programs representing multifaceted strategies of prevention. The principal programs center on:

- *Defensoría del Pueblo's Early Warning System (EWS)* to analyze imminent, gathering and structural threats of major human rights violations.
- *Inter-Institutional Committee for Early Warning (CIAT for its Spanish acronym)*, an intergovernmental committee designed to provide a response mechanism to the EWS analysis of threats and potential violations. The CIAT is composed of representatives of the Vice Presidency, Ministry of Defense, DAS (the state intelligence agency), Acción Social (the presidential program that provides assistance to IDPs), and the Ministry of Interior and Justice.
- Work with National Police's Human Rights Unit to integrate human rights into the training, operations and community outreach programs of the Colombian National Police.
- Other programs including support to the *Defensoría del Pueblo* for several projects, including the development and promotion of a National Human Rights Education Plan and for the establishment in the *Defensoría* of the *Observatorio de Justicia Constitucional* ("Constitutional Jurisprudence Watch")

that makes available Constitutional Court sentences dealing with fundamental rights. The *Observatorio* analyzes and categorizes rulings around specific constitutional issues: 12 themes relating to individuals subject to special protections such as children, ethnic minorities, or the internally displaced, and six themes based on basic rights such as *habeas corpus* or the right to petition.<sup>19</sup>

### **Early Warning System - Inter-Institutional Committee for Early Warning (CIAT)**

The centerpiece of the prevention program is Colombia's Early Warning System designed to prevent massive and systematic violations of human rights and international humanitarian law (IHL). Although there is a growing experience of early warning systems for refugee crises, humanitarian assistance and natural disasters, as well as data collection and methodologies to monitor and provide early warnings for potential ethno-political conflict and genocide, there is no system in the world that resembles Colombia's Human Rights Early Warning System. The more developed early warning methodologies involve NGOs and international agencies periodically collecting data and monitoring events within the conflict or crisis areas.<sup>20</sup> Colombia's Early Warning System is uniquely designed to prevent massive human rights violations; it is the only such system involving armed conflict that is run by the state amid the conflict, as opposed to by an NGO or international organization.

The EWS is housed in, and is in the process of being institutionalized within, the *Defensoría del Pueblo*. It deploys an extensive team of analysts, in Bogotá and in the field, permanently collecting and analyzing data and then submitting its risk assessments to national authorities in real time. Its uniqueness relative to other experiences across the globe helps explain both its great potential and many of its shortcomings.

Since its initial implementation in 2001 as part of the first phase of the Human Rights Program, the EWS has successfully prevented many violations by analyzing the conflict at the local and regional levels, anticipating threats, alerting the appropriate authorities and implementing protective measures. Up to 50 percent or more of alerted violations are prevented in some years. Yet the evaluation team found multiple weaknesses throughout the system involving methodologies, coordination and, at times, issues of political will and politicization. Many of these issues were identified in an evaluation of EWS-CIAT in 2004. These flaws need to be addressed, without further delay. All of these issues will be discussed below.

Despite its problems, Colombia early warning system has extraordinary potential to avert major human rights violations, as demonstrated by its early successes. If its flaws are corrected, it can serve as a model for other parts of the world, though at present it is little known outside of Colombia.

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<sup>19</sup> Rulings and analysis are available at: <http://www.defensoria.org/? s=oic& es=0& a=0>. The site also makes available relevant rulings from the Inter-American Court of Human Rights.

<sup>20</sup> Alex Austin, *Early Warning and The Field: A Cargo Cult Science?* (2004) [http://www.berghof-handbook.net/uploads/download/austin\\_handbook.pdf](http://www.berghof-handbook.net/uploads/download/austin_handbook.pdf)

**Map 1**  
**Coverage of the Early Warning System**

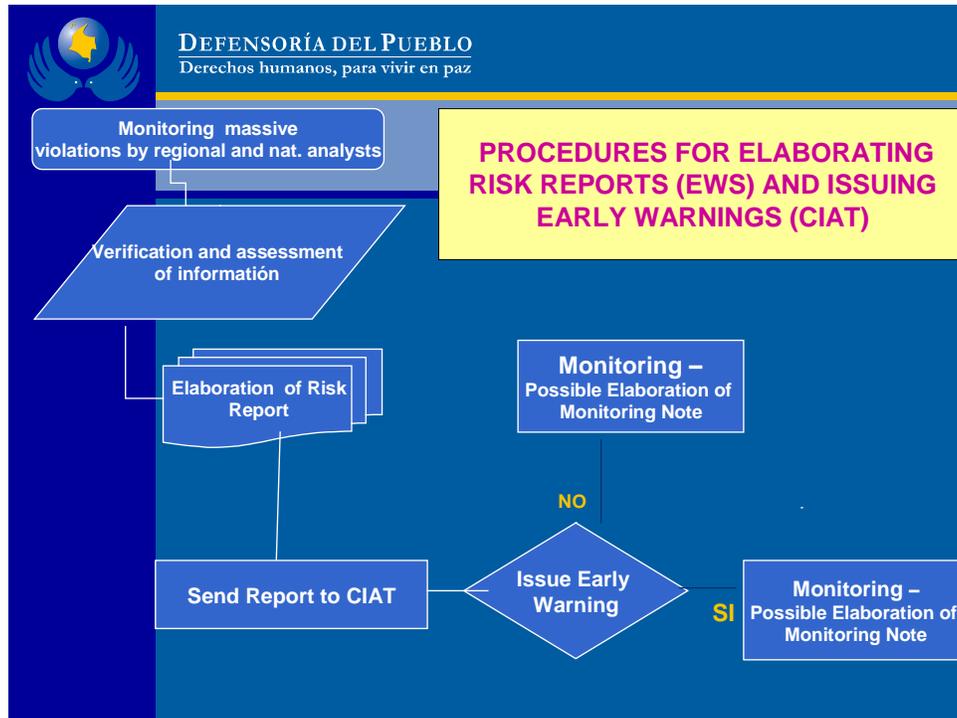


**How the System Works**

The EWS now has 22 regional offices and analysts (see above Map ) answering to a team of six national analysts, all led by a Delegate Human Rights Ombudsman for Early Warning. The 22 regional analysts monitor conditions on the ground, together with the national analysts based in Bogotá. The entire system follows the procedures and paths of decision outlined below: regional and national analysts assess risk, and the Human Rights Ombudsman issues a Risk Report and sends it to the Inter-Institutional Committee on Early Warning (CIAT).

There are three categories of Risk Reports: imminent, gathering and structural. When risks are viewed to be imminent, then the EWS bypasses the CIAT and directly communicates with local authorities. Gathering Risks are sent to the CIAT for analysis and action. Structural Risk Reports are long-terms studies of specific regions identifying structural risk factors and early preventative measures that might be taken. The latter is a new category and is only recently being incorporated into the regular operation of the system. Once the EWS sends a Risk Report to the CIAT, national and regional analysts will con-

tinue to monitor the situation. If conditions worsen or change, the EWS will issue a Monitoring Note on the situation and send it to the CIAT for further action. It may happen that the EWS will issue a Risk Report and several follow-up monitoring notes before CIAT elects to issue an Early Warning.



Once CIAT receives a Risk Report, CIAT members are asked to verify risk reports through their own institutional channels before the next meeting of the Committee. If there are pending reports, the Committee meets once a week to deliberate and make a decision on how to respond to the Risk Report and whether to issue an Early Warning. Regardless of the decision, the CIAT sends recommendations to local officials on how to address either the Risk Report or Early Warning.

## Meeting Benchmarks, Accomplishments during Phase II, (2006-2008)

### *Institutionalization*

A major goal of Phase II is to institutionalize both the EWS and CIAT and to hand over responsibility to the GOC. Since 2006, the EWS has been better integrated into the Human Rights Ombudsman's Office and the CIAT has been established as an inter-institutional committee by a decree that regulated the functioning of the CIAT and that includes the adoption of protocols and procedures for its operations. Previously, CIAT had operated as an ad hoc committee without legal standing. The decree calls for the Committee to be comprised of representatives at the highest levels of government, though in practice the agency heads send relatively junior officials.

Beginning on October 1, 2008 and running through September 30, 2009, the Ombudsman has agreed to assume 50 percent of the costs for the EWS. The following year (Oct 2009 - Sept 2010), this budgetary responsibility will rise to 70 percent. As of this writing, Congressional approval of the funds is pending and the HR Ombudsman's Office is assuming 100 percent of the EWS staffing costs from October 1 to December 31, 2008. From 2001 until the new arrangements began this year, USAID assumed almost all of the costs of the program. The schedule for nationalization or *Colombianization* of the program thus represents an important step toward institutionalization.

Some have argued that the GOC's move to assume greater institutional responsibility was spurred by a ruling of the Constitutional Court (T-719 of 2004) that specifically held the government responsible for preventing human rights violations and for protecting the civilian population.<sup>21</sup> Although this ruling was not related specifically to the EWS, the Court ruling obligating the state to do everything in its power to assess risk and to prevent violations did bring renewed focus on the EWS. This ruling was reinforced by several other rulings and laws that further reiterated the state's obligations, including the Justice and Peace Law of 2005 that asserts that "there can be no repetition of violent acts" and officially mandates "programs to prevent human rights violations as a fundamental right."<sup>22</sup> A subsequent law explicitly called for the strengthening of the Early Warning System and the CIAT and mandated that, "Governors and Mayors must urgently heed the recommendations and early warnings issued by the national government, especially the Ministry of Interior and Justice, which attempt to prevent and address situations of risk that alter public order and could lead to possible violations of human rights and international humanitarian law."<sup>23</sup> Another ruling states that governors and mayors will be held directly accountable for massive human rights violations occurring as a result of their "actions or omissions."<sup>24</sup>

Collectively these sentences and laws have created a strong legal and constitutional foundation for the work of the EWS and CIAT. The challenge now is to muster the political will to turn these legal dictates into effective action.

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<sup>21</sup> See Constitutional Court sentence T 719 of 2004, which says that "when a person's ... fundamental rights, such as life or personal integrity are threatened, the state must act to prevent the harm from materializing; such action can only be preceded by a particular understanding of the diverse risk factors that surround the individual." CIAT and which mandated that, "Governors and Mayors should urgently heed the recommendations and early warnings issued by the national government, especially the Ministry of Interior and Justice, which attempt to prevent and address situations of risks that alter public order and could lead to possible violations of human rights and international humanitarian law.

<sup>22</sup> Law 975 of 2005

<sup>23</sup> Law 1151 de 2007 authorizing the National Developing Plan 2006-2011.

<sup>24</sup> Decree 2862 of 2007 states that that the "Delegate Ombudsman for the Evaluation of Risk as a Consequence of the Armed Conflict should institute a national system of prevention of massive violations as a result of the armed conflict." It then goes onto say that "governors and mayors must adapt preventive measures, according to their competence, administrative capacity, and available resources or will be held accountable for their actions as a result of their actions or omissions."

### *Standardizing Methodologies*

A lack of a consistent methodology for assessment and response has hampered both EWS and CIAT. Until now, the two components of the system have not developed systematic criteria or uniformity on what constitutes a gathering risk, or on how to assess specific violations, such as forced displacement or acts of terror. MSD contracted consultants to develop standardized methodologies, one consultant working with the CIAT and two others working with the EWS. Earlier consultants had compellingly documented the methodological weaknesses in the EWS, explored methodologies used in other Early Warning Systems, and suggested ways in which some of the international discussion could be used to inform the work in Colombia.<sup>25</sup> Their work was used to help develop terms of references for the contracting of the two new consultants. When this work is completed, it should greatly increase the efficacy of the SAT and reduce wide discrepancies of analyses across the 22 EWS regions and among the six national analysts.

CIAT, too, which operates in the more politicized environment of an intergovernmental committee composed of government and security officials, needs to have a more systematic way to verify incoming Risk Reports. There also is a need to define criteria for when Early Warnings should be issued. Once this decision has been made, CIAT needs to have at its disposal a broader range of responses and recommendations that can be associated with different classes of violations, threats and risks. Finally, the criteria and methodology used by both the EWS and the CIAT will need to be harmonized.

### *Creating Information Systems*

MSD is currently working with both EWS and CIAT to upgrade technology and information services. The creation of a private, secure information system accessible only to the members of CIAT is being developed, (*Sistema Informativo CIAT or SICIAT*) A parallel system uniting the 22 regional analysts with the national has also been designed (*SISAT*) but has encountered more difficulties, in part due to the lack of connectivity to the Internet of some of the regional offices. This is a problem that the Human Rights Ombudsman must resolve to facilitate the implementation of a viable information system.

### *Need to Re-Focus*

#### *EWS-CIAT*

The system operates in the context of an internal armed conflict that is geographically dynamic and whose central actors have been transformed. When it began in 2001, the conflict was witnessing a rapid expansion of paramilitary activity and steady aggression by guerrilla forces against civilian and military targets increasingly deploying relatively large military units. By 2008, guerrilla forces had been weakened and the scope of operation of the larger guerrilla fronts had been pushed back from the country's major cities. Large-scale military operations by guerrilla fronts had dramatically diminished, replaced

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<sup>25</sup>Michael Reed Hurtado and Harvey Danilo Suárez Morales, "Informe de Valoración de las metodologías de trabajo aplicadas en el sistema de alertas tempranas (SAT) de la Defensoría del Pueblo," unpublished, 2007.

by more traditional guerrilla tactics involving smaller, more mobile and less identifiable units. At the same time, paramilitaries went through a period of demobilization followed by an almost instantaneous re-emergence of new, illegal armed groups operating in many cases with similar tactics and committing similar types of human rights violations as their predecessors.

The Early Warning System has great strengths, but there are also weaknesses. The *Defensoría* or Ombudsman Office is an independent control agency of the state – part of what in Colombia is called the Public Ministry (see Appendix 5). Yet despite the Ombudsman’s formal independence, the EWS was designed principally to warn of violations by nonstate actors and can only indirectly signal potential violations by state actors. In these cases, the proper course of action is to directly alert the Inspector General’s Office (*Procuraduría General de la Nación*) to investigate and take disciplinary action if necessary. However, this channel is not well developed, and the IGO is not well integrated into the actions of the EWS and does not participate in the deliberations of the CIAT.

Infractions and violations by state actors are even more problematic at the level of the CIAT. CIAT members are drawn from the government and security forces of the state (Ministry of Defense, DAS, Vice Presidents Office, Minister of Interior and Justice and *Acción Social*). Only the Ministry of Defense and *Acción Social* have an extensive network in the field. All members but particularly DAS and the Ministry of Defense are reluctant to issue warnings that they view as reflecting negatively on the state or its ability to maintain public order, especially if the situation may involve the actions of state actors.<sup>26</sup> As such, both the EWS and the CIAT are not designed to adequately address violations from state actors. This represents a serious shortcoming compared with the type of early warning methodologies in other conflict situations in other countries where all actor—state and nonstate—are monitored, and all potential and actual violations are considered.

### *CIAT*

From the outset, there has been a lack of coordination and integration between the two component parts of the system: the EWS in the Ombudsman office and the CIAT. The CIAT often minimizes the events cited in the Risk Reports issued by the EWS, especially when its members cannot confirm the Reports’ findings or when its members are divided over their contents. Members reported and the Evaluation Team was able to observe that there is an established dynamic of alliances and divisions among the five members of the CIAT. There are two votes that are more or less open to issuing an Early Warning if the situation merits: the Ministry of Interior and Justice and the Vice President’s Office. On the other side, DAS and Ministry of Defense rarely see a need to issue an early warning. A review of voting patterns at the level of CIAT will confirm this observation. In recent years, the swing vote appears to be held by *Acción Social*. When they ally with the other two civilian agencies, CIAT is able to respond more forcefully. When they withhold their

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<sup>26</sup> Interviews with CIAT members, SAT analysts, and local level officials responsible for receiving the recommendations of CIAT when Risk Reports and Early Warnings are emitted (September –October 2008).

vote, it is rare that an early warning will be issued. Some maneuvering seems to go on before meetings.<sup>27</sup>

Even when the Vice President's Office, *Acción Social* and the MIJ concur and an Early Warning is issued, analyses and recommendations have until now been principally weighted toward security and public order concerns, reflecting the strong presence of the Ministry of Defense (Army and Police) and DAS on the committee. That is to say, despite the presence of the civilian agencies on the CIAT, there exists a substantial gulf between the Human Rights and International Humanitarian Law orientation of the Ombudsman's office and the public order and security orientation of the CIAT. While the Human Rights Ombudsman issues Risk Reports within the context of IHL, the CIAT principally provides responses within the framework of maintaining public order and pursuing the wider security strategy of the government.

These two spheres of public policy are not the same. A human rights and IHL focus seeks to protect the civilian population from the ravages of the armed conflict; a security focus seeks to implement a set of military and police strategies to maintain public order. The EWS was originally conceived as an instrument of the former. There are many other state programs designed to ensure the efficacy of democratic security and public order. The separate realms of public policy can—and should—be complementary. To be credible, however, an Early Warning Strategy for massive and systematic human rights violation must stand alone.

Indeed, military and police officials often complain that the Early Warnings divert them from their essential responsibilities and that they do not have the resources or manpower to protect every community. The concern reflects the fact that in the response function of the system, too much weight has been placed on the shoulders of the police and military and too little attention has been placed on other forms of state response. Though some security measures will almost always be necessary, other responses include establishing a broader civilian state presence within the at-risk communities, emergency assistance, state investment, or support for international or NGO accompaniment.

### **Human Rights Program of the National Police**

In 2007, USAID HRP began an ambitious project of working with the Colombian National Police as an integral part of its human rights protection program. Key objectives were to: (1) assist the Police in developing a comprehensive human rights strategy at the national and departmental levels; (2) harmonize the Police's internal norms for the use of force and firearms with international standards; (3) increase the capacity of the Human Rights offices at National Police headquarters and in each of the 32 Departments in the country; and (4) implement a regular program of consultations with civil society organizations.

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<sup>27</sup> These observations on the voting patterns and alliances of the five CIAT members is based on interviews with CIAT members, with staff of the CIAT technical secretariat housed in the MIJ, with CIAT consultants, and with others who have had ample opportunity to observe the process over a period of time.

### ***About the National Police***

The Colombian National Police is a centralized force, responsible for policing all 32 Departments and 1,119 municipalities. There are no local or regional police forces in Colombia. The National Police is on the frontline in terms of citizen security, prevention of human rights violations and maintaining public order.

Administratively, the National Police is located within the Ministry of Defense, and perhaps more than any other state institution, has a physical presence in almost all areas of the national territory. This fact alone places the institution at the center of the armed conflict. Police are often the sole state representatives in conflict zones. During the 1990s when guerrilla groups had sufficient forces to temporarily take over entire towns and even small cities, the police would often be the only line of defense and received the greatest number of casualties compared with soldiers and other members of the security forces. This has abated somewhat in recent years though the police today still represent 40-50 percent of the security forces killed in combat or assassinated as a result of the armed conflict.<sup>28</sup>

Given these facts, assisting the National Police with a national human rights strategy has the potential to substantially increase the state's ability to protect the civilian population and prevent human rights violations.

### ***Meeting Benchmarks***

USAID's program with the National Police is relatively new. Yet the early signs are encouraging. At the time of our visit:

- A draft Strategic Plan for human rights had been completed.
- Two prominent international consultants, Susana Villarán, a former Commissioner of the Inter-American commission of Human Rights, and Iván González, former prosecutor general for the Supreme Court of Justice, had been contracted to prepare a report on international norms for the use of force and firearms and the adaptation of these standards for Colombia's National Police Force. Their findings had already begun to be incorporated in police training manuals and training programs at the time of our visit.
- Meetings have been held with civil society leaders in six regions across the country often led by Brigadier General Guillermo Aranda Leal, the Inspector General of the National Police, and other senior officials. This police initiative complements a program begun by the Early Warning System to convene local forums for protection (*mesas locales de prevención*) that bring together civil society groups, the Human Rights Ombudsman office, and local authorities, including the police.

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<sup>28</sup> Ministerio de Defensa, Logros de la política de consolidación de defensa y seguridad democrática [http://www.mindefensa.gov.co/descargas2/anexos/5625\\_Logros\\_de\\_la\\_Politica\\_de\\_Consolidacion\\_de\\_Defensa\\_y\\_Seguridad\\_Democratica\\_-\\_Power\\_point.ppt](http://www.mindefensa.gov.co/descargas2/anexos/5625_Logros_de_la_Politica_de_Consolidacion_de_Defensa_y_Seguridad_Democratica_-_Power_point.ppt), p. 61

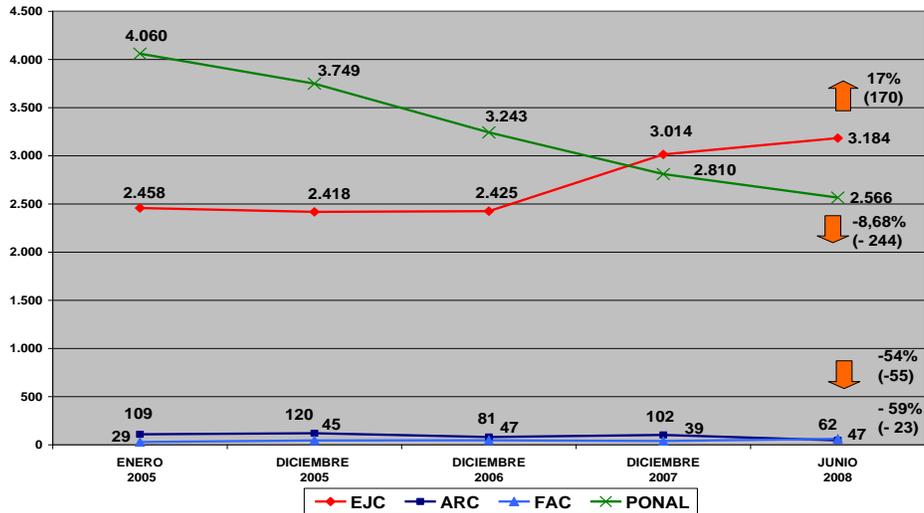
- A review of curricula for basic police training (*Escuela de Formación Policial*) incorporating human rights has been completed. As General Aranda, the Inspector General stated in an interview with the evaluation team, “The goal is to fully integrate a human rights policy in the day-to-day operations and into all areas of police training and not have the human rights curricula simply be an additional course that stands apart from other areas of police training.”

It is of course too early to determine the success of these programs in the Interim Evaluation. Nevertheless, the commitment of senior commanders of the National Police impressed the evaluation team. This factor alone may be the most determinative one. According to statistics provided by the Police Inspector General’s Office, preliminary judicial investigations opened against members of the police have steadily declined in recent years, a trend beginning before USAID’s assistance was instituted. These trends reflect the seriousness of the senior leadership of the police and underscore their commitment to work with USAID to instill a genuine culture of human rights within the institution.

 **Policía Nacional  
Inspección General**

**Justicia Penal Militar**

**Evolución carga laboral por preliminares**



National Police x  
Army ♦

**b. PROGRAM AREA 2: Strengthen Government’s Capacity to Protect Individuals and Communities from Human Rights Violations**

*Strategic objective: Strengthen the capacity of the Colombian Government to protect the right to life, liberty and the physical integrity of individuals and Communities-at-Risk,*

*from the effects of the internal armed conflict in a manner that is permanent, opportune and effective.*

## **Problem**

Human rights workers, journalists, academics, union leaders and many others continue to be threatened in Colombia as a result of the country's enduring and multipolar armed conflict. Indigenous and Afro-Colombian leaders and communities, many located in some of the most violent and conflict-prone areas of the country, have been inordinately targeted and are particularly vulnerable, highlighting a dangerous ethnic and racial dimension to the conflict. Women leaders also find themselves under threat. Hundreds of individuals from these sectors continue to organize, protest and advocate for their interests and for greater pluralism and human rights. Each year, hundreds of individuals are forcefully disappeared or assassinated and hundreds of thousands are internally displaced from their homes. Without adequate protection for vulnerable individuals and communities, many social movements will be effectively silenced—through death, intimidation or involuntary exile—as the conflict continues.

## **Programs**

### ***Strengthening the Ministry of Interior and Justice's Protection Program.***

A limited strategy to physically protect selected civil society leaders was first put into place by the GOC in mid-1997. Phase I of HRP sought to expand this program to better protect human rights advocates and union leaders and to diversify its coverage to include journalists, humanitarian relief workers, professors, threatened political leaders and others. The strategy was two-pronged: the provision of "soft" protection (i.e., communication devices, emergency assistance services, relocation, and transportation services for those under threat) or hard protection (i.e., e.g. radio communications networks, bullet-proof vests, armored protection of headquarters, armed bodyguards and armored vehicles) depending on the level of threat. For each vulnerable group, the MIJ has created a Commission of Risk Evaluation and Regulations (CRER) to analyze and address specific risks in the targeted population. Each CRER includes public authorities charged with protection, such as the National Police and DAS, oversight agencies such as Inspector's General Office, and representatives of the beneficiaries. The Protection Program is designed to address an already dangerous situation.

Phase II is oriented toward increasing the effectiveness and building capacity of the program through training of personnel, development of strategic plans, monitoring, development of databases, development of cautionary and provisional measures, and expanding the program scope to include IDPs and victims recognized under the Justice and Peace Law.

### ***Preventive Security Program, Self-Protection, and Decentralization***

The MIJ's Human Rights Program has also initiated, with the assistance of USAID, a Preventive Security Project (PSP), aimed at providing training in prevention and self protection among vulnerable groups. At the outset, this program was aimed particularly at

labor leaders and IDPs in three regions, Valle de Cauca, Caquetá and Tolima. As of December 2007, the program had trained a total of 1,367 (1,131 in Phase II) at-risk persons (trade unionists, journalists, political candidates and civil society leaders) on preventive security measures, prepared 17 MIJ officials to be trainers on preventive security strategies, and implemented a mass communication campaign to orient political candidates on preventive security issues.

USAID is also working with the MIJ to decentralize the program and consolidate it at the Departmental and Municipal levels. The Decentralization Program aims to include a human rights perspective in every Development Plan at the department level and to implement protective and preventive measures at the regional and local levels.

### ***The Communities-at-Risk Project (Programa de Atención a Comunidades en Riesgo - PACR)***

The Communities-at-Risk Project is discussed at length below.

#### **Meeting Benchmarks**

In Phase I of HRP, there was a considerable amount of financial assistance given to the Protection Program of the MIJ, to strengthen its operations and improve its institutional capacity.

In Phase II, and building upon the lessons learned in Phase I, the program has focused on improving Government's ability to protect individuals. The protection program has therefore evolved from financing operational capabilities and specific protection measures for individuals to giving mainly technical support for improving procedures, re-designing methodologies and adjusting approaches to protection. As such, the benchmarks established for this program were met and include completing an assessment of processes and procedures, as well as the issuance of two decrees that extended the scope of the Protection Program to include IDPs and victims under the Justice and Peace Law. As of December 2007, the MIJ Protection Program had protected 4,618 (122 in Phase II) at-risk individuals, and provided hard protection (including armored walls and secure doorways) to 114 (30 in Phase II) sites.

There have been delays with the selection of consultants needed to redesign the Protection Program as a whole, however. The consultant who will prepare the recommendations for the renewed Protection Program for Victims under Law 975 has only recently been hired, even though his conclusions need to be ready by December, according to rulings by the Constitutional Court.

With respect to the regional strengthening of the MIJ's Protection Program, the activities were aimed at developing methodologies to elaborate prevention and protection plans at the local level (*departamentos* and *municipios*). Currently these actions are only in an experimental phase. At the regional and local levels, the program is being built from scratch and is relying on lessons learned from a previous, parallel project (PACR). This is a reasonable strategy, maximizing the impact of HRP in different areas without duplicating efforts.

The PSP promises to strengthen MIJ's Human Rights Unit in developing preventive mechanisms with its targeted population. Benchmarks for PSP have been fulfilled almost entirely. 17 officials of the Human Rights Unit of MIJ have been trained to become trainers on preventive security. Training has also been given to members of targeted populations with the objective that they will multiply such training within their communities, and a media strategy to promote self-protection awareness for candidates during the 2007 local and regional elections was designed and implemented.

### **Impact – MIJ Program**

The main impact of USAID's cooperation for MIJ's Protection Program took place during Phase I, when the level of financial support was quite high. In Phase II, USAID's financial role has decreased as MIJ undertook considerable efforts to assume the financial burden of the program. Today, USAID contributes 6 percent of the budget of the Protection Program.

However during the last two years, MSD undertook a critical technical cooperation role, designing procedures and methodologies for the Program. Differential approaches were designed according to the needs of the targeted populations and a cross-sectional gender perspective was introduced in adherence to the Constitutional Court's rulings. In particular, MSD provides direct technical assistance to the Protection Program for Internally Displaced Populations, which has its own staff. It should be noted that the CRERs have in general maintained an open and transparent relationship with participants, public entities and representatives of the beneficiaries. The Commissions have been willing to compromise and reach fair agreements on protective measures on a case-by-case basis. Nonetheless, as will be discussed below, some further adjustments to the program are still necessary to address the specific circumstances of internally displaced people who are members of minority ethnic groups.

Adjustments also need to be made to take into account the requirements established by the Constitutional Court for victims under the Justice and Peace Law. MSD plans to contract a consultant to provide technical assistance in this area. The Inspector's General Office is currently preparing a document to be presented to the MIJ outlining the applicable changes to the law, jurisprudence and applicable doctrine, for these victims.

#### Continued Difficulties with the program:

- In practice, the program is often slow and unreliable. The *Level of Risk and Threat Study*, which is required to grant protective measures, continues to be beset by unnecessary, and sometimes fatal, delays, due to requirements such as the mandatory risk evaluations. In practical terms, this means that protective measures are granted long after they are requested, three months on average.
- Public officials in charge of program admission are sometimes ill-prepared to make the life and death decisions confronting them, and there are many complaints concerning the often wide disconnect between the results of the risk study and the real situation of the victims. Officials often have an insufficient

understanding of the specific threats and risks facing target populations. In most cases they have had only limited exposure to or contact with the targeted communities themselves. In some cases, the way in which the study is conducted is itself threatening, or at a minimum fails to acknowledge the specific needs of the victim. When asked about this, several experts expressed their doubts and opposition to the way this tool is being used, saying that generally the risk study classifies a situation as one of “minimum risk,” and thus, no protective measures are adopted. When no protective measures are adopted, human rights organizations often will step in and adopt their own measures to protect this person’s life. The Program has made an effort to expedite the procedure by locating personnel from DAS and the National Police in its own headquarters dedicated exclusively to this matter. It needs to be underscored that the Constitutional Court developed the concept of constitutional risk presumption, permitting IDPs access to temporary protective measures while risk studies take place.

- As part of its technical cooperation and in accordance with its objective to adjust the processes and procedures of the Strategic Plan of the Human Rights Unit of MIJ, MSD plans to undertake a thorough evaluation of the risk studies to determine if all the appropriate variables involved are being considered.<sup>29</sup> Within this same review of the Human Rights Unit, the specific criteria of each CRER will need to be evaluated. To achieve this goal, it is crucial that a differential approach be incorporated, not only on gender, or according to what the Constitutional Court has mandated, but also according to the differences between all the different populations on which the Program focuses. This will respond to the continued requests from different social sectors about the need to take into account the particularities of each population, their customs, beliefs and needs, before adopting protective measures.
- The issue of a differential approach has particular relevance in the case of protective measures for indigenous and Afro-Colombian communities. Indeed, there is a great disarticulation between human rights entities, specifically MIJ’s Human Rights Unit, and MIJ’s Indigenous Affairs and Afro-Colombian Affairs Units. These entities are not systematically incorporated into the process of granting individual protective measures to persons of different ethnic origin and are only occasionally invited to CRER meetings. They do not participate permanently and consistently in the CRER for internally displaced population, although there are many cases of displaced indigenous and Afro-Colombians that request protection. This is a matter that needs to be reviewed in detail and that will be referred to in the recommendations
- Finally, the Evaluation team wants to express its deep concern with the proposed policy of outsourcing protective services to private contractors, known

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<sup>29</sup> An evaluation of this kind would only be able to produce recommendations given the fact that it involves different agencies that are not USAID’s counterparts on HRP. However, it would be a rather useful input for the Protection Program and would likely be appreciated by members of the different CRER.

in Spanish as *tercerización*. This is a GOC decision, yet many people involved in this program are troubled that the Government is privatizing its obligation to protect the citizens of Colombia. If this decision goes forward, there must be adequate vetting and screening of private guards, and there must be strong mechanisms for oversight and accountability.

### *Tercerización*

The Constitution establishes in Article 2, regarding the essential purposes of the State, that “the authorities of the Republic are established in order to protect all persons residing in Colombia, their life, dignity, property, beliefs, and other rights and freedoms, and in order to ensure the fulfillment of the social duties of the state and individuals.” The Constitutional Court has ruled that it is acceptable for security to be provided by private agents,<sup>30</sup> but it is unlikely that the Court considered the effects that might arise when such policies are applied to situations covered by the Protection Program. Given the current situation in Colombia where, for instance, many reinserted members of criminal groups have been driven to join private security companies as a means of economic survival, it is at the very least risky, not to mention ironic, that the protection of members of vulnerable groups would be provided by those who were formerly involved in abuses. USAID should refrain from working with MIJ on privatization matters and should ask the GOC and Colombian courts to review this decision, as it is a potential source of human rights violations. Moreover, many beneficiaries have said that once the privatization of the protective measures takes place, it will decline diminish their level of protection because private security forces are generally less willing to assume the same level of risk as members of the National Police or DAS. This policy has the potential to undermine years of work in developing an effective protection system. This situation should be carefully monitored as the new program moves forward, particularly by the IGO and the Human Rights Ombudsman.

### **Impact – Decentralization**

At the regional and local levels, there is a very little awareness of the Government’s Protection Program. This may be because the Project is working initially on training at the local level as well as using mechanisms developed by other USAID’s initiatives, particularly the *Communities-at-Risk Project*. Although USAID’s cooperation with the Protection Program has been rather successful, there still are many difficulties to overcome. It is essential that the regional program start smoothly with minor activities and evolve as it demonstrates results. Such a strategy will allow sufficient time to fix some of the problems at the national level before implementing them at the regional level.

### **Impact – Preventive Security**

Despite meeting the established benchmarks for this program, its impact is still quite limited and isolated. Although training on prevention is important and necessary, it needs to be framed within a larger component of the Program that should be developed as part

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<sup>30</sup> Constitutional Court, C-199 de 2001.

of the rethinking of the MIJ's Human Rights Unit's strategy. What is needed is the elaboration of a more ambitious and comprehensive prevention program. Currently, the Protection Program is operating at the full extent of its capacity and is unable to develop additional strategies in areas beyond protection.

The impact of the activities of training of trainers for civil society needs to be measured from the perspective of lessons learned. The MIJ Protection Program, with MSD support, needs to create a program of self-protection that generates enough interest to produce a multiplier effect. Likewise, attention needs to be paid to the evaluation of the advertising campaign of self-protection for candidates during the last election period to determine whether the efforts were worthwhile, and should be continued in the future.

The progressive evolution of HRP cooperation with MIJ on protection demonstrates that a solid, constructive and positive relationship between the executor of the Program and the beneficiary, MIJ's Human Rights Directorate, can be productive and fruitful. It is evident that MIJ has demonstrated its commitment to institutionalizing a protection program by progressively assuming the financial burden that once USAID/MSD covered. Even though there still is a minor financial contribution to the MIJ's Human Rights Directorate, MSD's current, crucial input is technical assistance in developing methodologies and procedures that respond to changing protection needs. In that sense, many of the goals of Phase I have been consolidated. Yet there is a limit to how far the protection program can be expanded. It needs to maintain its focus and improve its effectiveness, but the program now needs to develop a more comprehensive and integrated strategy of prevention, building on the limited experience it has acquired with the Communities-at-Risk and self-protection programs.

### **Need to Refocus**

HRP's protection objective for Phase II has evolved toward a greater emphasis on developing new preventative tools and has largely handed over to the GOC its constitutional obligations to protect vulnerable individuals.

Yet this evolution should not circumvent the great need—essentially technical—to redesign and adjust many of the established protection procedures, including greater incorporation of a gender perspective and the application of a differential approach reflecting beneficiaries' needs.

### **Sustainability**

MIJ's Protection Program has progressively assumed the responsibilities and financial burdens of the program and MIJ has consistently increased both budget and personnel to meet the program needs. It is clear that MIJ's Human Rights Unit has significant political support that has allowed it to expand and strengthen the scope of its work.

Nevertheless, a thorough review of MIJ's Human Rights Unit is necessary in order to address persistent difficulties and to identify and promote more comprehensive prevention and protection strategies. Although the Protection Program has been relatively successful,

it is also true that protection requests continue to increase, underscoring how serious the human rights situation continues to be in Colombia.

### **Cost-Effectiveness**

Through the *Colombianización* (nationalization) process there is no doubt that USAID's investment on the Protection Program has obtained the expected results to justify the co-operation. Indeed, the great investment made during Phase I can be viewed today as installed capacity that was assumed almost entirely by the Government. The current cooperation has specific technical purposes that need to continue as they have demonstrated their utility and benefits to the ongoing evolution of the program.

### **Performance Measurement Systems**

The Protection Program does not have an independent performance measurement mechanism. The Commissions of Risk Evaluation and Regulations (CRERs) conduct follow up on cases in which protective measures were granted. However, an assessment mechanism for the performance of each CRER to make necessary adjustments is needed. According to the first benchmark, the processes and methodologies of the Human Rights Unit will have to be revised and adjusted strategically; this will of necessity affect its functions and organizational structure.

### **Program Component: Communities-At-Risk Project**

The Communities-at-Risk Project (*Programa de Atención a Comunidades en Riesgo - PACR*), is an inter-institutional initiative designed to address the needs of communities that are particularly vulnerable to attack and human rights violations due to their location, limited state presence, geographical isolation, significant presence of illegal armed groups, and often illegal crops. Aimed to design prevention and protection strategies built from the communities' own experiences, the project sought to strengthen state capacity in these areas, and work with the communities to minimize risk through development of effective public policies. The program supports 10 regions and 49 specific at-risk communities through a multi-institutional working group, and development of strategic plans for protection through contingency planning, training of local officials and communities in prevention strategies and protection of vulnerable groups, rapid response projects to address principal risk factors, and psychosocial assistance.

### ***Meeting Benchmarks***

Taking into account the various difficulties that the Communities-at-Risk Project (PACR) has faced, which are discussed below, meeting benchmarks has been particularly difficult, especially regarding inter-institutional coordination.

In HRP phase I, PACR designed several tools that established frameworks for planning and implementation methodologies. Accordingly, results from this phase include documents on each participating agency's roles and responsibilities, parameters for selecting eligible communities, baseline and structural analyses of at-risk communities, Rapid Risk

Diagnosis, workshops on institutional strengthening and Action Plans on prevention and protection.

As originally envisaged, the Human Rights Ombudsman Office's was to design and administer training programs for promoting prevention and protection for at-risk communities. However, the Ombudsman did not have sufficient funds to develop a special methodology for populations with literacy difficulties and the training was not provided. Indeed the Human Rights Ombudsman's office has not allocated any resources to PACR, but it has provided some training through its participation in workshops for creating contingency plans.

The assessment of self-protection experiences for communities (benchmark 2) has not been undertaken by the Ombudsman's Office due to operational difficulties. However, some exchange of experiences between regions has occurred.

The technical abilities to train civil authorities and control agencies in the regions were provided during the first stage of PACR to all targeted regions. A second phase of training was postponed due to the local shifting of authorities in late 2007. Later, once the contents were designed, ESAP (*Escuela Nacional de Administración Pública*) will conduct training on MIJ's areas under PACR.

PACR has been included in the government's National Development Plan, with financial appropriations made by some of the participating entities. Additionally, PACR had been included in the deliberations for elaborating the Human Rights National Action Plan, discussed in the next section on Public Policies. However, institutionalization of the program has made only very limited headway.

The MIJ has begun developing Action Plans for at-risk communities according to the proposed benchmark. However the second institutional partner, the Presidential Program for Human Rights and IHL, led by the Vice President's Office, has decided to follow its own implementation model as well as assume the cost of personnel for the project.

Design and implementation of contingency plans through technical training is probably the most significant achievement of PACR. So far, communities have validated the methodology designed by MSD and the Colombian Red Cross (*Cruz Roja Colombiana*) for building these plans, and the benchmark of 50 percent of communities developing contingency plans by mid-2008 has been met. The Technical Committee has made an important effort to make this happen, and cooperation from regional agencies has also helped on this matter.

A psychosocial assistance model for PACR's targeted communities has been developed by MSD's consultants. Now that the diagnosis has been made and a framework agreement is in place, the methodology for its implementation is ready to be used once the Ministry of Social Protection assumes its role in this regard.

The creation of three prevention forums (*mesas de prevención*) on PACR's targeted areas is still pending due to inter-institutional struggles and lack of political guidelines. Moreo-

ver, its expected coordination with the Ombudsman's Early Warning System has not yet occurred.

Finally, Rapid Impact Projects (RIPs) have been implemented as prevention and protection mechanisms with some financial contribution from local agencies. These projects, designed by the communities, emerged as a by-product of PACR's Action Plans. They cover a wide range of community needs in areas such as health, food, leadership training, networking and strengthening of local institutions. Many RIPs have been designed and implemented or are ready to be implemented with the technical assistance of MSD.

### ***Impact – Communities-at-Risk (PACR)***

Since its design PACR has had only a limited impact, primarily because it is focused on small, targeted communities in specific, high conflict regions of the country. Nevertheless, according to the data collected, beneficiaries have a positive perception of the State's accompaniment through PACR, especially in developing their own human rights' prevention strategies such as contingency plans.

As such, at the local level where the program has been implemented, PACR is recognized—within its small radius of action—as a valuable tool for developing prevention mechanisms and methodologies for those communities. Moreover, the specific actions that PACR undertakes to raise the protection standards of the Communities-at-Risk, known as Rapid Impact Projects, are greatly appreciated and recognized by community members and external actors alike. However, this perception can also be attributed to the fact that these communities have long been neglected and have had only minimal, or no, presence of state institutions until the advent of PACR.

PACR has been able to develop prevention methodologies and agreement mechanisms with targeted communities through the development of an institutional presence in the regions. However, its work under Rapid Impact Projects has been isolated, without being part of an integral and comprehensive prevention strategy going beyond local communities.

There is a Political Committee and a Technical Committee that operate PACR. In both instances, representatives of MIJ's Human Rights Unit, the Presidential Social Action Agency (*Acción Social*), the Vice President's Human Rights and IHL Program, the Human Rights Ombudsman and Inspector General's Office participate. In 10 regions of the country, 49 communities had been targeted; 5 of the regions are managed by MIJ and the remaining 5 by Vice-president's Human Rights Program, both with local representatives. In addition, the Human Rights Ombudsman has delegates in the regions for PACR, paid by MSD.

Currently, a continuing, internal struggle between the participating institutions threatens PACR. The information collected leads us to conclude that the Presidential Program of Human Rights (PPHR) and *Acción Social* are not working with the rest of the institutions, and have developed a PACR strategy on their own, without articulating it with the rest of the participating institutions. MSD is no longer financing any personnel in the Presiden-

tial Program or *Acción Social* for the project and has no recent record of their activities within PACR. PPHR, without openly recognizing the crisis, says that it has Colombianized PACR. It is not possible to Colombianize a project that has not been able to generate consensus among the responsible participating agencies and whose impact is not yet clearly established and measured.

Moreover, there has been a complete lack of political input and guidance from the Political Committee, which has not met since its creation. The result has been that PACR has been operating according to the subjective criteria of each institution. In practice, this means that, at the moment, PACR depends on personal rather than institutional commitments. The involvement of MSD has been a key element to prevent the project's complete collapse. Given the fact that members of the Technical Committee lack decision-making and financial authority, many actions have been limited or require extraordinary involvement by MSD.

The lack of political guidance for PACR also limits the possibilities of incorporating other agencies in responding to community demands. Prevention and protection plans designed under PACR require other entities' commitment, even if they do not participate permanently in PACR. This is also true regarding local agencies' actions that are participating without adequate national-level political guidance.

The Inspector General's Office, as a member of PACR, has called attention to these difficulties many times. It considers the implementation framework involving three governmental institutions, which makes it extremely difficult to reach agreements and undertake concerted actions with the participating communities, to be seriously flawed. This institutional reality limits the ability of the IGO to provide oversight and follow up. The Inspector General's Office has submitted a proposal to MSD calling for a reevaluation of PACR as a whole.

Currently the Communities-at-Risk Project is deadlocked and is not able to produce the expected results. The intention was to bring together agencies that might have responsibilities related to its purposes.

The lead agencies charged with implementing the Communities-at-Risk program do not share the same view of the project; each one has approached it differently. Decision-making difficulties are limiting the impact of a project that was originally designed as an experiment to move away from a sole reliance on protection strategies. The obvious links that should exist with the Early Warning System, as a crucial prevention mechanism, have not been developed due to internal struggles within PACR. Unfortunately, today PACR has generated more questions than answers, and has not been able to consolidate strategically on GOC's human rights agenda, yet it needs to be underscored that important tools have been developed from the PACR project which could and should be used in the development of a comprehensive prevention strategy.

### ***Need to Refocus***

The GOC needs to redesign the Communities-at-Risk Project within a broader, more comprehensive prevention strategy with the support of USAID, MSD and its USG counterparts, integrating other prevention initiatives such as the EWS and the Self-Protection program, as well as the programs and methodologies developed so far under PACR. MSD's role in this issue will be critical in providing technical assistance to develop a broader, more comprehensive prevention strategy. Ultimately, prevention is the best way to protect -- the GOC cannot provide bodyguards for every individual at risk. This does not mean that protection should be left unattended, nor does it mean that at-risk communities should be denied further support. Rather the successful programs developed within the PACR should be used as key inputs to the development of a comprehensive protection strategy, which could still benefit the current communities. Transition from PACR to the new prevention strategy needs to be acknowledged; this means that targeted communities have to maintain the benefits developed on their behalf under PACR until a new strategy is implemented.

### ***Other Donors***

Designing a new, comprehensive preventive strategy will also provide an opportunity to incorporate initiatives supported by other donors or agencies, including MAPP-OAS, UNHCHR, UNDP, and European countries, among others. The GOC, with technical support from MSD, should take the lead in designing a coordinated proposal to be presented to other sponsors.

### ***Sustainability***

Political sustainability of PACR is provided by the decree that established it,<sup>31</sup> and also by its inclusion in the National Development Plan 2006-2010. Its plans have been disseminated to all elected mayors and governors under the Decentralization Plan, and human rights and prevention plans should be considered in all regional and local development plans.

As to strategic sustainability, MIJ and the PPHR had already incorporated PACR into their institutional action plans. There is an adequate reporting system within different areas in each agency that works on the project.

Financially, PACR is registered both by MIJ and PPHR in the National Planning Department's Projects Registry, with specific financial resources dedicated to it. MIJ is progressively assuming the financial burden of its consultants in the regions. PPHR has been doing so since January 2008.

As to the activities that are still pending, according to MSD it is necessary to evaluate the consultants in the regions, as well as the commitment level of PACR's beneficiaries with respect to its sustainability. This review must be done within the context of redesigning the whole Project within a more integral and comprehensive strategy.

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<sup>31</sup> Decree 250 of 2005.

As an inter-institutional strategy of intervention, PACR needs clear direction, which has not been present so far. This absence of clear guidance is the most critical limitation on its sustainability.

Practical difficulties and lack of political input into the PACR from high ranking officials call into question the GOC's willingness to sustain it without USAID's cooperation, and MSD's implementation support. Several sources indicated that MSD's role has been critical for the continuance of PACR and the convening of Technical Committee meetings. MSD has been a key facilitator in all phases of the project and has participated in coordinating and undertaking concrete activities for PACR, such as in the development of contingency plans.

In light of the difficulties enumerated in this section, *Colombianización* of PACR by the Vice President's Office does not represent an assumption of responsibility or a successful process of nationalization. Rather its actions represent a unilateral response to unsolved problems between participating agencies.

As the program moves to develop a more comprehensive prevention strategy, it should work toward gathering all the preventive initiatives that currently exist (i.e., regional tables, committees) and determine which programs have shown results and which efforts are being duplicated. This is a difficult task given how many programs and authorities are involved, yet it will be decisive in achieving the original goals that PACR was designed to achieve.

### ***Cost-Effectiveness***

PACR needs to be redesigned due to the many factors that are preventing its proper functioning. However, the investment should not be considered a waste of time or resources. PACR developed many important tools and methodologies that will serve as valuable inputs in developing a new prevention strategy.

Also, the very fact that PACR has been able to bring institutions and communities together to work on common goals, is in itself a great achievement that makes the cooperation worthwhile thus far. However, PACR cannot go on in current form. In the next phase, focus must be made on taking advantage of the tools that already exist and the abilities and experiences that have been developed and redirecting them toward a more robust and comprehensive prevention strategy.

### ***Performance Measurement Systems***

PACR's difficulties have a lot to do with the fact that a monitoring system to assess its performance and follow up of its activities, strategies, initiatives and agenda was never created. The fact that public officials at the technical level have had to agree on all the procedures and actions of PACR has indefinitely delayed the realization of concrete results. Therefore, it is important to incorporate in the new prevention strategy a permanent monitoring system or mechanism to track the project performance as a whole, and of each institution that might have responsibilities under it. This will not prevent a role from

oversight agencies such as *Procuraduría General de la Nación* and *Defensoría del Pueblo*.

### **c. PROGRAM AREA 3: Formulating Human Rights Public Policies**

*Strategic objective: Strengthen state, government and civil society entities at the national, departmental and municipal levels so that they can formulate and implement public policies in human rights, oriented to prevent, protect and safeguard human rights in the most vulnerable populations.*

The programs in this section seek to strengthen the ability of government, state agencies, and civil society organizations to advocate for the prevention, protection and safeguarding of human rights of the country's most vulnerable populations. To carry out this objective, the program has defined and signed cooperation agreements with state agencies such as the Inspector General's Office (*Procuraduría General de la Nación*) and government agencies such as the Presidential Program on Human Rights and International Humanitarian Law, and the Ministry of Interior and Justice.

This program area of the HRP seeks to support the formulation of a National Plan of Action on Human Rights through dialogue and common agreement between the GOC and civil society organizations, a process which has been stalled for fourteen years. To promote the process of decentralization of human rights public policy, the program seeks to incorporate a human rights perspective into municipal and departmental plans, through international cooperation agreements with the Ministry of Interior and Justice and the Presidential Program on Human Rights and International Humanitarian Law.

This component also aims to strengthen the disciplinary role of the IGO in the field of Human Rights and International Humanitarian Law. This has been done through multiple efforts to clarify the IGO's role in the (disciplinary) supervision of security forces with respect to compliance with the norms of Human Rights and International Humanitarian law.

Likewise the program works to support the fight against impunity with the production of a legal road map and through the establishment of guidelines for prosecutors (*procuradores judiciales penales*) tasked with supervising due process in criminal cases related to violations of Human Rights or International Humanitarian Law. In the same vein, the program also supports the establishment of guidelines to ensure that human rights violations are tried in civilian courts as mandated by the Constitutional Court and are not improperly referred to military courts. These initiatives were complemented by the purchase of some equipment for the National Division of Special Inquiries at the IGO.<sup>32</sup>

#### **Meeting Benchmarks – Government Agencies**

In general terms, there has been partial compliance with the objectives and outcomes stated in letters of understanding between MSD and several government agencies. Impor-

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<sup>32</sup> Dirección Nacional de Investigaciones Especiales

tant advances in the formulation of national human rights policy have been made during the preparation of the National Plan of Action (PNA) on human rights. This can be seen in the elaboration of documents, the inclusion of regional inputs, and the formulation of a common methodology designed to seek compromise and consensus with the major human rights organizations in civil society. On the other hand, beyond the early proposals and consultations, no advances have been made in finding common ground between the government and civil society. All discussions have broken down amid mutual recriminations, with the government continually accusing the human rights organizations of supporting a subversive agenda, and with civil society organizations accusing the government of advancing the agenda of paramilitarism. In a meeting with the evaluation team, the Vice President said that he did not think it would be possible to negotiate with the major national-level human rights organizations as long as the Uribe Government was in office and indicated that the government would attempt to work with regional NGOs if national-level ones were not willing to participate.

The original government draft document of the National Action Plan proposed a common agenda of: (1) culture and citizenship on human rights; (2) right to life, integrity and personal freedom; (3) fight against all forms of discrimination and recognition of the identity; (4) economic, social and cultural rights; and (5) access to justice and the fight against impunity. The draft reveals considerable progress, depth and specificity relating to the cluster of economic, social and cultural rights, and the fight against all forms of discrimination and recognition of identity. The issues of contention revolve around the cluster of rights relating to life, integrity and personal freedom. In addition, some key human rights violations such as extra-judicial executions, enforced disappearances, arbitrary arrests, targeted killings, freedom of expression and/or affiliation have not been made explicit and/or they are presented in a very general manner. These violations are regularly registered in reports on the situation of human rights in Colombia presented by the CSOs. Moreover, the Office of the High Commissioner of the United Nations for Human Rights in Colombia (OHCHR) in its annual reports has repeatedly and explicitly made recommendations to the GOC on the need to eradicate, prevent, investigate, punish and make public the situations concerning these violations in Colombia.

With respect to the decentralization of human rights policies, we have reached the conclusion that MIJ is the institution best positioned to play the most effective role in this process. Municipal and departmental development plans have already begun to place greater emphasis on incorporating a human rights perspective. This reflects significant progress in this area, although the achievements are still quite modest. The Ministry of Interior and Justice and the Presidential Program for Human Rights and IHL should make an effort to technically evaluate national, departmental and municipal teams responsible for the decentralization programs in the content and application of international standards and rights, the design of public policies and sector plans, and budget planning.

The commitments made with the Human Rights Observatory in the Vice President's Office have changed since the inauguration of Phase II. Beginning in January 2008, the Presidential Program for Human Rights and IHL began assuming complete responsibility for this program, including support for personnel and the provision of technical and financial support.

In sum, the objectives established for the first two years of the program were realistic in terms of the need to strengthen GOC agencies in the design of human rights policy. Nevertheless, it is necessary to redouble these efforts in facilitating greater dialogue and consensus with civil society organizations. The same is true for the effective implementation of human rights policies at the regional level. Concrete goals should be set with respect to the type and impact of programs to protect specific rights in each municipal and departmental development plan, according to regional differences.

## **Impact**

Taking into account that a principal objective of this component is to strengthen the capacity of the government, state and CSOs at a national, departmental and municipal level, there has been a moderate impact to the extent that there has been progress in strengthening government institutions at all levels. Nevertheless, progress has not been made in advancing trust and consensus between GOC and the principal human rights organizations.

At the regional level, the impact of public policy on human rights has had both positive and negative effects: among the positive effects are the initiatives for dialogue and consultation between CSOs and local governments on political issues of special population groups. Such dialogue was facilitated through the provision of grants to seven CSOs as well through initiatives begun in 25 municipalities throughout the country in coordination with OACNUDH. However we found that there is little communication and coordination between national and regional levels of the government on human rights policy.

At the state level, the program is about to end an important phase dedicated to the preparation of concept documents and training IGO staff in preventive, disciplinary and judicial skills to confront Human Rights and IHL violations by police and military officials. This phase now needs to be followed up with a complex and longer lasting effort to put this training and analysis into practice.

The move to a successor stage will also empower victims' access to truth, justice and reparations once a violation has occurred. One of the major challenges of the envisaged new phase will be whether it can be implemented nationwide, especially in rural regions, since Human Rights and IHL crimes are largely, though not exclusively, committed in the countryside. To achieve such goal, the program will need to overcome strong centripetal inertia.

There are also external factors that limit the impact of the program. Among these is the mistrust and skepticism on the part of CSOs toward GOC initiatives. The greatest external, limiting factor, however, is the continued lack of improvement in the situation of human rights and the continued activities of illegal armed groups—some with apparent ties to state actors—that still victimize the civilian population and place human rights activists at great risk.

## **Need to Refocus**

The GOC, with HR program support, should continue to define strategies for HR public policy formulation at both the national and regional levels. Moreover, there is a pressing

need to work in areas that represent both high risks and institutional weaknesses. Indeed these are important parts of the criteria for the Communities-at-Risk program, discussed above. However in order to successfully promote a process of constructing public policy through dialogue between civil society and local governments, there must exist minimum social and political conditions and enough local capacity within the CSOs. Otherwise, one runs the risk of pursuing multiple initiatives with little impact.

As such, it is important to focus the programs in regions where local civil society exhibits some degree of strength and where there is evidence of political will on the part of local governments.

### **Sustainability**

To date it is not clear what the sustainability perspective is for human rights policy in Colombia. The Vice President's office and the MIJ have both been assigned responsibilities in human rights yet there is often great difficulty in coordinating their efforts. It is recommended that in relation to their involvement with the HRP, the Presidential Program for Human Rights should focus its role in the design of GOC human rights policy, while the Ministry of Interior and Justice should center its role on decentralization and implementation.

### **Cost-Effectiveness**

In general terms, the initiatives designed to meet the objectives of the HRP public policy component show a positive relationship between effectiveness and cost. However the impact of the actions is still modest. To optimize effectiveness, there is a need to develop a regional and thematic focus and to emphasize approaches to sustainability mentioned above.

### **Performance Measurement Systems**

There is a system for evaluating and monitoring each of the objectives proposed by the program, using verifiable information. According to sources consulted, project monitoring and follow up by the area of civil society is considered especially relevant, accurate, and qualified though not always timely, as evidenced in some delays in feedback from projects.

### **Meeting Benchmarks of IGO Projects on Public Policies**

MSD and the IGO have developed a high level of cooperation and are both meeting the responsibilities set in their agreements. GOC officials interviewed recognize and value the relationship that has developed with MSD and USAID, and they categorize the relationship as one of respect and mutual support. Yet the evaluation team noticed there is still a need for better coordination among the different areas and programs within the IGO.

As for the timelines established for the first two years, there has been a general delay of two to three months in the finalization of most of the benchmarks. The documents, proto-

cols, and manuals subcontracted to consultants are being furnished but generally on about a three month delay. These delays are justifiable, since they are usually due to consultant availability, the fact that the IGO and MSD require modifications to draft documents, or other unforeseen and unavoidable setbacks. It may be helpful therefore to add a period of three months of “reasonable delay,” although this may bring the current three month delay to six months.

## Impact

In a midterm evaluation it is difficult to effectively measure impact since the projects and activities are in process. Yet there are several issues regarding this program element that might have a negative effect on expected program impact. One would be that training so far has not been provided systematically to all officials at the district and provincial levels; to ensure consistent geographical impact, training should be expanded. Thus far it has centered on functionaries within the regional and provincial Inspector General’s Offices following protocols established in the technical and financial cooperation agreements. Thus far, the training has focused on the areas of prevention, public policy and victims. This training could be extended to the very local levels through a “training of trainers program,” which would disseminate this knowledge to all IGO officials and other local stakeholders.

Projects with the IGO are generally well conceived, but subsequent phases need to focus on practical “on-the-job” follow-up training, specifically oriented so that all public servants of the IGO are prepared to carry out preventive and disciplinary actions where violations may have taken place. It is clear, however, that officials of the IGO are not exempt from risk, so this may not be always feasible.

### Box 1

#### **The work of the Inspector General’s Office and the Role of the *Personeros* in the Search for Truth and Justice**

For the IGO to work effectively, it must promptly receive claims of Human Rights and IHL violations. Yet filing claims is often difficult and cumbersome for victims and their survivors. A person living in an isolated rural area that wants to report the disappearance of a person must travel to the municipal center (which may be a long distance away by foot or bus) and look for an appropriate official. Yet once there, he may not be able to find such an official. Each official he asks simply does not know what to do. Frustrated, the person returns back home and the case is never reported.

Alternatively, the official may have been well-trained in Human Rights and practical procedures and forwards the victim to the *personero* who is the representative at the municipal level of the both the Inspector General and the Ombudsman alike.

Yet even after locating the appropriate official, the *personero* will be of little help if she is not well trained to fill out the six page National Search Form of missing persons. Moreover if she

has access to Internet—unusual in remote areas—she could immediately type the information into the SIRDEC<sup>33</sup>, the web portal of the National Register of Missing Persons. If she does not have access to the Internet, she should forward the form to the nearest Ombudsman or IGO office.

Finally once the form has been entered into the National Registrar for Missing Persons, if the victim has declared that he believes that a forced disappearance has been carried out by the police or the military, the IGO should automatically initiate an investigation, using all the training provided so far by USAID and move to activate the rapid response mechanism (USM) regulated by law.

The training of regional and provincial IGO officials is critical to the search for truth and justice. The *personero*, as the official who is often geographically closest to the victim, often plays a decisive role.

#### **d. PROGRAM AREA 4: Empowering Civil Society to Accompany the Processes of Strengthening Human Rights**

*Strategic Objective: Strengthen the capacity of civil society networks and organizations to develop actions to prevent human rights violations and infractions of International Humanitarian Law, protection of populations at risk, and reparation of victims through accompaniment and support of vulnerable populations, dialogue with the State, and intervention in the formulation, monitoring and evaluation of public policies.*

**Programs:** By mid-2008, the Human Rights Program awarded 43 grants to civil society organizations to work on issues in the areas of public policy; human rights advocacy; monitoring of the human rights situation; institutional strengthening of human rights organizations and networks, including indigenous and community councils; and efforts to combat impunity. In July 2008, the program received an additional 102 proposals to consider for the upcoming year.

#### **Meeting Benchmarks**

In general terms, there has been compliance with the objectives and outcomes set out in the agreements of cooperation. Civil society leaders interviewed by the team recognized and valued the existing respectful and cooperative relationship and the high quality and knowledge of the MSD staff.

This component has increased the number of counterparts and opened up dialogue with many CSOs, including groups of vulnerable populations (indigenous, Afro-Colombians, women, victims and, to a lesser extent, persons with disabilities). The program has worked to improve capabilities in such aspects as planning, management and administration of resources. To this end, MSD used a process of initial training and later, an ap-

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<sup>33</sup> *Sistema Red de Desplazados y Cadáveres*, managed by *Medicina Legal* under the supervision of the *Comisión de Búsqueda de Personas Desaparecida*.

proach to strengthen local capacity through institutional accompaniment and knowledge transfer on specific issues.

Progress is clearly visible in proposals made by women's organizations for human rights policy reform. Increased capacity for policy development and articulation, organizational management, and fiscal controls were also clearly evident through the review of documentation related to the small grants program, interviews, and site visits to CSOs in Antioquia, Chocó and Cauca. In visits to these regions, we also found support and participation of sectors of civil society in the formulation of local development plans, particularly in Chocó in Cauca. Additionally, we found groups engaged in specialized studies on public policies in areas of restoration of patrimonial rights of the victims, specially the right to land, such as a study carried out in the eastern Antioquia.

There is also a moderate level of development in the follow-up and monitoring processes on the situation of human rights and peace processes within the scope of the Justice and Peace Law. It is here that civil society initiatives stand out, particularly from those groups that provided psycho-judicial processes toward the victims (see next section on the rights of victims to truth, justice and reparations).

There is fledgling development in the area of civil society with respect to non-traditional rights and to initiatives to prevent human rights violations associated with specific problems (such as corruption, human trafficking, corporate social responsibility, independent press and persons with disabilities). These issues and actions have not been well articulated in relation to fundamental rights. As such, the program's impact is still not clear and, to date, the capacity to prevent human rights violations associated with these challenges appears to be limited.

Dialogue at the regional level between government agencies and CSOs remains, for the most part, stalled. As expressed by those attending workshops the team conducted in Medellín, Sincelejo and Quibdó and corroborated by observation, these dialogues mostly depend on national governmental initiatives through its human rights decentralization strategy. This decentralization strategy has not been successful in the regions visited and the existing local networks have come mostly from civil society initiatives, a situation that makes them more vulnerable and with fewer possibilities of having an impact.

In terms of management and timely operation of the grants program, some delays are evident (an average of 2 months) in meeting goals and completing approved activities. Also delays are evident in processes and procedures in the management of resources, specifically in disbursements and signature of agreements by MSD. These results indicate that the established benchmarks/results/timelines for the first two years of the program were realistic. Future benchmarks need to prioritize inter-institutional coordination and the strengthening and creation of formal and informal networks around the protection of human rights and the prevention of violations.

## **Impact**

The HRP's civil society activities have had a moderate impact, given their broad objectives to strengthen civil society capacity to promote public policy, dialogue and accountability. There has been significant progress in strengthening the capacity of civil society to promote public policy, but conditions for meaningful dialogue on human rights among CSOs, state institutions and the GOC do not yet exist and discussions on accountability thus far have not had a significant impact.

Positive effects of the civil society initiatives include: the strengthening of civil society organizations among vulnerable populations, particularly regarding the monitoring of systematic human rights violations, the construction of legislative agendas by sector, the will for dialogue with local government among certain local CSOs (as the team documented in its visits to Quibdó, Medellín, Popayán and Montería), and the legitimacy and trust that the Human Rights Ombudsman and the *Personero* and the state control agencies in general have gained among CSOs at the local and regional levels.

At the same time, there is little understanding and a general lack of visibility of the HR program in the regions that the team visited. The human rights program was often confused with other USAID and USG programs. Compared with other international organizations (Embassies, United Nations, cooperation agencies, other donors, etc.), USAID had little presence in the regions we visited. Finally, with a few exceptions such as the ones cited above, the animosity found at the national level among state, government and civil society could also be found at the regional and local levels.

The process of consultations between USAID and CSOs, grassroots groups and victims' organizations has been particularly successful. This has built goodwill for USAID and has enhanced the legitimacy of the entire program.

## **Need to Refocus**

There is a need to better focus the grants program to match grant recipient agendas, skills and needs with the human rights program's primary objectives. At present, the distribution of grants is too diffuse, which dilutes the program's focus and impact. Similarly, the number of initiatives supported by the grant program hinders the process of monitoring and tracking projects, and thus it is not always possible to identify the contribution that each of these initiatives gives both to the area of civil society of the program and to the program as a whole.

As such, it is recommended that the grants program institute a few key thematic issues, such as:

- Fundamental rights (life, freedom, dignity, equality, security/protection, integrity).
- Truth, justice, reparations.
- Violence against Afro-Colombian and indigenous people.

- Sexual violence.
- Human Rights advocacy and public policy, accountability and documentation of cases.
- Land mines.

Issues such as corruption, human trafficking, reconciliation, and people with disabilities do not match the criteria suggested above, and therefore we recommend that grants in such areas be discontinued. Moreover, in a given year, the program should prioritize its initiatives and encourage grant proposals that fit program priorities.

**e. PROGRAM AREA 5: Promotion of the Rights of Victims to Truth, Justice and Reparations**

*Strategic Objective: To strengthen the capacity of state entities that have responsibilities for guaranteeing the rights of victims to justice, truth and reparations according to the Justice and Peace Law; and to assist victims and their organizations so that they can actively participate and have an impact on administrative, judicial and any other decisions that affect them, and so that they can follow and monitor justice and peace policies, with the goal of formulating policies to improve them.*

**Problems and Challenges**

Human Rights and IHL crimes vary depending on the specific moment of history, country, region and province. This is the case in Colombia. Moreover, Colombia's circumstances are unique. Unlike all other cases of transitional justice, truth seeking and reparation, the conflict is ongoing and continues to threaten large sectors of the Colombian population.

Using the workshops the team held in Sincelejo, Quibdó, Medellín, Popayán and Bogotá as focus groups, the most serious abuses in the country today appear to be: (1) forced internal displacement; (2) extrajudicial killings, massacres, and multiple selective homicides; (3) forced disappearances; (4) armed confrontations that affect the civilian population; (5) land confiscation and destruction of civilian assets; (6) forced recruitment; and (7) sexual violence as an act of war.

USAID provides most of its support for victims through a new victims' program implemented by USAID's demobilization and re-integration (DR) office. The victims' work under the Human Rights Program, while important, complements the larger victims' initiatives undertaken by the DR office, with IOM as the main implementer.

**Access to Truth**

To support victims' search for truth and justice—for them to discover what happened, where and why—it is necessary to enhance their ability to research their own cases. Phase II has provided support to NGOs and CSOs to facilitate this. This aid is timely and relevant and should, if possible, be expanded.

Nevertheless, the research and documentation of crimes should come first and foremost from the state itself, and, above all, from the Prosecutor General's Office (*Fiscal General de la Nación*). The amount of work required by the prosecutors is enormous. The U.S. is already providing this institution with considerable resources. It receives government-to-government assistance (which goes directly to the national budget to improve infrastructure, etc.), assistance from the Justice Department (OPDAT/ ICITAP), and assistance from USAID through the justice program managed by Florida International University (FIU). Likewise, within the Human Rights Program, USAID is providing training for prosecutors to make them aware of their responsibilities toward victims in Human Rights and IHL cases.

The capacity for investigation and documentation of Human Rights and IHL crimes by the Prosecutor and the Judicial Police (CTI), however, is still very weak. This greatly undermines the process of uncovering truth and administering justice.

There is general consensus that the implementation of the Justice and Peace Law has helped to identify many mass graves. In many cases the relatives of missing persons (victims themselves) have been able to recover the bodies of their family members. Yet it is also true that the proportion of unidentified bodies that are stored after every exhumation is great (see access to reparation section in this document, below).

Relevant actions are being taken to improve this situation. For instance, the Prosecutor General's office has established a "Virtual Identification Center," which is expected to enhance cooperation and coordination between the State Prosecutor's Office and other agencies and provide technical and scientific support in the process of exhumations and identifications. Likewise, the Department of National Planning has produced a comprehensive (draft) public policy document aimed at consolidating the mechanisms of search and identification of missing people in Colombia.<sup>34</sup>

Also, it is worth noting the work of the Search Commission, a permanent body at the national level with a mandate to coordinate efforts of its member institutions in supporting and promoting investigations into cases of forced disappearances.<sup>35</sup> The Search Commission designs, evaluates and supports the implementation of search plans, such as the National Search Plan (NSP), and establishes working groups on specific cases. Further, the Search Commission assisted in creating and establishing the National Register of Disappeared Persons (National Register) and should supervise the process of consolidating existing information in the National Register.

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<sup>34</sup> Document CONPES "Consolidación de los mecanismos de búsqueda e identificación de personas desaparecidas en Colombia", Draft October 2008 Prepared by the National Planning ministry together with the Ombudsman, the National Police, the Criminal Investigation Unit of the National Police, the Prosecutor and the National Institute of Legal Medicine and Forensic Science ( attached to the Prosecutor's office)

<sup>35</sup> The Search Commission is composed of representatives from: the Prosecutor's Office; the Inspector General Office, the Ombudsman, the Ministry of Defense (the Human Rights Office within the Ministry), the Presidential Advisor on Human Rights; the Director of the Presidential Commission on Protection of Liberty; the Director of the National Institute of Legal Medicine and Forensic Sciences; the Association of Families of Detained and Disappeared Persons (ASFADDES); a representative appointed by nongovernmental human rights organizations from among themselves (currently this seat is occupied by the Colombian Commission of Jurists).

The purpose of the NSP is to determine who is missing, what happened to them and where they might be located. If used properly, it could assist in determining the scale and patterns of enforced disappearances, including which population groups are victims of forced disappearances, the circumstances and socio-political context in which disappearances occur, the motives for such criminal acts, information regarding potential perpetrators, and whether state actors were involved.

The purpose of the National Register is threefold: (1) to serve as a technical tool to assist public authorities in the creation of policies to prevent forced disappearances; (2) to serve as an effective technical tool for judicial and other institutions to access information relevant to the search for and identification of disappeared persons; and (3) to provide civil society and victims' organizations with information to advocate to the relevant authorities for policies to prevent and/or respond to acts of enforced disappearance.

Unfortunately, the Search Commission does not have the strength to implement the NSP. This is likely the case because the level of de facto institutional representation within the Search Commission is insufficient to ensure proper coordination. The members are unable to make decisions on behalf of their own institutions and, moreover, are unable to commit their respective institutions to the implementation of Search Commission decisions.<sup>36</sup> The solution to this problem might be to support the Technical Secretary and its capacity to provide interdisciplinary training, assistance and monitoring to district and provincial level officials of the relevant NSP stakeholders all over the country.<sup>37</sup>

The Human Rights Program intervention in this field and proposals for new actions are presented below:

### **Access to Justice**

Colombia faces a difficult situation; it is implementing its "Justice and Peace Law," which is intended to be an instrument for accountability, historical memory and ultimately national reconciliation, while the conflict is still ongoing. This creates a situation of great uncertainty. Since violations continue, as they did not come to an end the day the Justice and Peace Law was enacted, the question is how many times will the society need to address this situation? In other words, is peace coming in pieces, or is it not coming at all?

Access to justice means that victims have the right to hold accountable those responsible for forced displacement, illegal detention, torture, ill treatment, disappearances, extrajudicial killings, land confiscation, sexual violence, and planting land mines.

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<sup>36</sup> See paragraph 39 of the report on Colombia by the ICMP, 2008.

<sup>37</sup> The NSP contemplates the establishment of a "specialized agency that will guarantee the implementation of this plan, with a mandate to provide information, attention and guidance to victims and their families and to coordinate relevant institutions. Initially, it is proposed that the Presidency and the Technical Secretary of the Search Commission assume this role." To date, such an agency has not been formed and the Search Commission has only partially assumed that role.

According to International Humanitarian Law, no party to the conflict is justified in engaging in attacks or in perpetrating violence and human rights violations against the civilian population. This dictate includes state actors. International human rights and IHL demand that the law be applied fully to any wrongdoing on the part of the military and the police, even while such institutions fulfill their mandate to fight crime and insurgency.

The Justice and Peace law applies only to illegal armed groups. Yet, the law's partial reach can be complemented by strengthening the investigative and disciplinary capacity of the Inspector General's Office, whose mandate is to prevent and pursue crimes committed by Colombian public officials. The USAID Human Rights Program recognizes this and has worked to strengthen IGO capacity on the subject. The IGO has disciplinary authority over state officials but is not able to open criminal investigations against state functionaries. This authority belongs exclusively to the Prosecutor General's Office (*Fiscalía General de la Nación*). The IGO can, through the judicial prosecutors (*fiscales*), intervene in a criminal process in the defense of human rights, the public interest or public good.

The Justice and Peace Law applies to persons who have committed violations of International Humanitarian and Human Rights Law and who confess their crimes, contribute to the uncovering of truth, and make reparations. In exchange, they will be eligible to receive an alternative sentence (with a maximum of eight years). The law covers only those crimes committed before the law was passed in 2005. Once a paramilitary leader or other war criminal has entered the process, the prosecutor needs to verify if he is indeed eligible to receive the benefits of the law. This is done through "free versions" (*versiones libres*) given by the applicant enumerating his or her crimes. These hearings are open to the victims, who are able to challenge the confessant. In theory, such hearings will provide the prosecutor with as much information as possible to start an inquiry. Victims are encouraged to participate. Ads are put in the newspapers and on the prosecutor's web site<sup>38</sup> announcing the "free versions" and inviting those that have suffered violations of their fundamental rights by particular groups of paramilitary forces to attend. Moreover the prosecutor's office, sometimes with the support of the OEA/MAPP mission, organizes "days with victims" (*jornadas de víctimas*) in areas where the paramilitary groups were active to persuade the victims to participate in the process. When the "free versions" take place, a room is set aside where the victims can watch, listen and ask questions to the suspected criminal without having direct contact with him.

The judgment is on the basis of all the crimes committed by the applicant, rather than any single offense. The confession of one mass killing is not enough to know how many people were actually tortured and murdered in that action; individual assassinations confessed (name by name) by an indicted paramilitary leader often are counted in the hundreds. Moreover, until very recently, the inquiry and subsequent judgment could not start until the end of the "free versions."

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<sup>38</sup> <http://www.fiscalia.gov.co/justiciapaz/Index.htm>

From 2005 to March 2008, only one investigation had started and no sentence had been given. As a result of the delays—and uproar from victim’s groups and national and international human rights organizations—the system has been modified so that prosecutors can start proper investigations with *imputaciones parciales*, that is to say, without waiting to have the file of the suspected criminal completed. In the meantime, many of the principal paramilitary leaders were extradited to the U.S. for unrelated crimes of drug trafficking. Human rights and victims’ groups fear that the extraditions have short-circuited the judicial process and undermined the possibility of uncovering truth and seeking justice. At the end of the day, the continuation of the judicial process depends on the will of the U.S. prosecutors and the U.S. justice system.

Unless the process is re-invigorated, impunity is likely to be the outcome for most war crimes. There is clearly a yearning among victim populations. More than 140,000 victims have stepped forward to tell their stories in the hope of finding justice and receiving some form of reparations.

From the perspective of victims’ rights, some issues could be addressed: (1) for the “free versions,” more equipment for videoconferences distributed all over the country could be made available to allow as many victims and witness to take part in the process without requiring expensive trips to court houses in distant cities; (2) security should be provided to those victims that take part in the process by, at least, restricting the entrance to the videoconference room only to those already registered as victims in the Prosecutor’s office; (3) for those who attend the “free versions,” legal and psychological assistance should be made available; and (4) assistance should focus not only on the victimizer but also on the victim as a key subject in the process. Programs should attempt to empower the victims, and not only view them as a witness.

The current Human Rights Program has already proposed some aspects of this orientation.

## **Reparations**

Reparations for IHL and human rights crimes are symbolic. No compensation or reparation can correct the injustice for crimes that are often unimaginable. Having said that, we can point out three major subjects related to reparation in Colombia: (1) economic compensation, (2) land recovery, and (3) most important, recovery of dead bodies by relatives.

## ***Recovery of Bodies***

The recovery of dead bodies is mainly tied to the exhumation of mass graves. Exhumation practices and documentation strategies of sites and forensic evidence, including human skeletal remains, vary among agencies. However, the protocols are largely in accordance with the 1991 “UN Manual on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,” better known as the Minnesota Protocol.<sup>39</sup> In Colombia, the task poses some problems and is not always possible because sometimes

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<sup>39</sup> Report on Colombia of ICMP, Paragraph 121, 2008

the graves are in areas where active conflict continues. As mentioned above, the Prosecutor's decision to establish a "Virtual Identification Center" with a mandate to carry out exhumations for all relevant agencies is a step forward to enhance coordination.

Problems persist that affect the victims' ability to qualify for the (symbolic) reparation of recovering the bodies of family members. First, the opening of mass graves does not imply identification of those found there.<sup>40</sup> Second, the proper management and storage of bodies or parts of bodies is essential to guarantee identification in later stages and is not always guaranteed. And, third, good preservation of the unidentified bodies is also of key importance to increase the likelihood of possible identification in the years to come.

The Human Rights Program is currently addressing these issues by providing support to EQUITAS, an NGO that has a key role in identifying the weaknesses of the current system and raising the standards. Nevertheless, this is very much a state responsibility; support for public institutions confronting these issues should be enhanced either by the Human Rights Program or through the other USAID programs involving truth, justice and reparations.

### *Economic Compensation for Human Rights and IHL Crimes*

In Colombia, victims of illegal armed groups have the possibility of receiving economic compensation for the equivalent of 40 times the annual minimum wage (18 million pesos).<sup>41</sup> As mentioned above, the Colombian Congress is considering a draft bill that, if approved, will define who is a victim. For the time being, those who have suffered violations of their human rights at the hands of a public official are not considered victims as such, nor are the relatives of a disappeared person by state agents considered victims.

Economic compensation is a positive thing if it is viewed as a small support to victims but is completely insufficient if it is considered as comprehensive reparation not compatible with a judicial process. The issue here is that the resources of the state are limited, and it is difficult to budget an expense of this type without knowing exactly how many victims there are. It will continue to be difficult as the conflict persists and reparations are eventually extended. Moreover, initiating reparations amid the armed conflict while new violations are occurring renders the payments somewhat arbitrary. Why is a person victimized in 2005 eligible but not one who was victimized in 2006?

Nevertheless, the project supports NGOs that accompany the victims through this process. It is an important beginning to what will likely be a long and difficult process.

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<sup>40</sup> According to the Justice and Peace Unit of the Prosecutor's Office, between February 2006 and 31 March 2008, 1,087 illicit grave sites have been processed and 1,293 sets of mortal remains have been recovered, of which only 162 have been identified. Currently, the State Prosecutor's Office has information on potential burial sites for approximately 4,000 missing persons, of which 1,500 – 2,000 are to be exhumed during 2008.

<sup>41</sup> Decreto 1290 por el cual se regula el programa de reparación individual por vía administrativa para las víctimas de los grupos armados organizados al margen de la ley. \$ US 1 = Col peso 2300.

## ***Land and Property Recovery***

Displaced people in Colombia have lost an enormous amount of land. It is estimated that the number of hectares reaches 1.7 million, which is 2.8 times the land distributed in the agricultural reforms carried out between 1993 and 2002. As for lost property, it is estimated that the average value of a displaced family's house is 9 million pesos. If all victims were compensated, this figure would reach the equivalent of 3 percent of the Colombian GDP.

The possibility of return is one of the major goals of IDPs. As such, the issue of restitution and recovery of lost property is relevant. Yet most displaced persons did not have title to their land in the first place. Others who did hold titles often sold them under pressure at prices far below their actual market value.

In this area the most important action to take is preventative; registering land and giving out titles in areas in danger of displacement could deter the displacement itself. The World Bank and the European Peace laboratories have had some success with such programs. Yet once the displacement has occurred, there must be mechanisms to claim the lost property. *Acción Social* is also working on such programs, as is CNRR (National Commission for Reparation and Reconciliation) with USAID support through OIM.

It should be pointed out that land for indigenous people is a collective property (*resguardos*) as is also the case in many Afro-Colombian communities (*territorios*).

The project currently supports efforts of the Inspector General's Office to monitor land issues and restitution of land with a focus on victims. The Human Rights Program is also addressing this issue through its civil society initiatives.

## **Meeting Benchmarks**

### ***Project: Strengthening the Inspector General's Office to protect the rights of victims.***

The first benchmark of the project to strengthen the Inspector General's office to protect the rights of victims was the elaboration of protocols and documents that would help to establish the victim protection role mandated to the IGO in the Justice and Peace Law. It was divided at the same time into three main activities: (1) truth, memory and documentation; (2) comprehensive attention to the victims; and (3) mechanisms for civil society participation.

The first phase of the truth, memory and documentation activity consisted of the establishment of an institutional policy on the matter, together with a protocol of action. The implementation of both consists of collecting documentation that, while is not necessarily useful for the judicial process, is important for keeping a record of atrocities that have occurred. The idea is that the storage and preservation of the files is not done in the IGO but within specialized institutions. A first pilot phase will be conducted with the District Archive of Bogotá.

The activity has not had a major delay. From the perspective of comparative analysis of transitional justice, however, there are potential problems that should be noted. Law 975 guarantees a role to the IGO to protect the interests of the victim. On one hand, the National Commission for Reparation and Reconciliation (CNRR) has a specific mandate to facilitate the creation of historical memory and receives support for this purpose from USAID through OIM's "demobilization and reinsertion" program. On the other hand, it may not be fair to lead a victim to believe that a document or other source of information that provides evidence of past atrocities will never be used in a judicial procedure. Not even the Inspector General can guarantee that the prosecutor or the defense at trial will use this material later on. The CNRR, however, is due to close its doors in a few years. It may be advisable to begin shifting more of the weight of this activity to the Inspector General and to facilitate its work with public archives.

The second activity, "Comprehensive attention to the victims," was structured with a manual and a protocol that was later used in the training foreseen in the next project.

***Project: Training the different branches of the IGO that may have contact the victims.***

The focus of training for different branches of the IGO has been threefold: (1) international standards of protection of victims' rights; (2) basic knowledge of victims' problems and reactions to provide the required sensibility and to better prepare legal support; and (3) training on the OIM system of property registration.<sup>42</sup> The Ombudsman has carried out similar work. Consistent with the objectives of the Justice and Peace Law, this activity will help improve sensitivity to victims.

***Project: Adjusting the protocols of IGO intervention in rural areas and establishing institutional policy on property protection, the latter with the goal of strengthening IGO preventive intervention.***

Although documents related to adjusting the protocols of IGO intervention in rural areas and establishing institutional policy on property protection have not yet been released, it seems that they will be soon. It is important to underscore the importance of actions related to property protection in the area of access to reparations as well as of prevention of forced displacement, which was pointed out above. This work should continue because it is crucial that the protocols be transformed into practical training to IGO officials in the field.

***Project: Strengthening the Ombudsman's capabilities to give advice to victims in the framework of the Justice and Peace Law.***

The project on strengthening the capabilities of the Ombudsman to give advice to victims has resulted in the elaboration of a protocol and guide to orient the functions of the Ombudsman toward victims and to accompany them in the judicial process. This activity has been the base of a program involving "comprehensive attention to the victims" related to the Justice and Peace Law that may receive financial support from the demobilization and reinsertion program that USAID is implementing with OIM.

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<sup>42</sup> Aplicativo para el registro Unico de Predios RUP.

The Ombudsman has also provided training to the Ombudsman office staff to familiarize them with: (1) the Justice and Peace Law and its rules; (2) the rights of victims, especially victims of sexual crimes committed against minors and women; (3) international standards of reparation for different crimes, in line with the definitions provided by the CNRR; (4) mechanisms of property restitution; and (5) psychosocial support to victims. At present, 200 officials in this office have been trained.

The Ombudsman's Office, however, does not have a strong presence in rural areas where the victims are mainly located. This project will greatly depend on the capacity to begin to reverse this trend as well as in greater training of *personeros*, the representative of the Public Ministry (Human Rights Ombudsman's Office and Inspector General's Office) at the municipal level (see Appendix 5).

***Project: Civil society support to the victims to access to truth, justice and reparation.***

As a central part of the activity on civil society support to victims, the Human Rights Program held workshops with NGOs working with victims in order to familiarize such NGOs with the Justice and Peace Law and the process and principles for reparations. The evaluation mission visited several NGOs that attended such programs; many credited the workshops for creating capacity and disseminating knowledge in this area. The CIJUS, a research center at the University of Los Andes, carried out the work under this project.<sup>43</sup>

The victims' associations have provide diverse assistance to victims. Many are orienting the victims and support them in the process of getting to know the truth and work toward reconciliation. But not many accompany them through the legal procedures necessary to get justice and/or economic reparation. The general perception is that the work done is good but that there are too few NGOs dealing with victims and that all together there are many victims left unassisted.

As far as the support provided in acceding justice it is important to underline few issues:

***Participation of the Victims in "Versiones Libres" (True Versions).***

One important pillar of the Justice and Peace law is the participation of the victims of International Humanitarian Law and Human Rights in the process. The hearings with the indicted persons are conducted in Barranquilla, Medellin and Bogotá. For those that cannot travel to these towns to attend such hearings, a space is made available in their village. There they can follow the audiences and put questions with video conferencing technology.

One problem of this remote participation is that security measures are more relaxed outside of Barranquilla, Medellin and Bogotá. The video conferences are often being held in the localities where the crimes being analyzed took place, and which often remain the home of victims and perpetrators alike. In some cases, this has resulted in situations where perpetrators or their families have attended videoconference sessions in order to intimidate victims.

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<sup>43</sup> [http://cijus.uniandes.edu.co/proyectos/cd\\_justicia/cd\\_justicia.html](http://cijus.uniandes.edu.co/proyectos/cd_justicia/cd_justicia.html)

Remote participation is important because it is simply not feasible to shuttle all the victims to Barranquilla, Medellín or Bogotá every time there is a hearing. Yet the security measures should be at least as strict as they are for in those three towns for the hearings themselves, with only registered victims are allowed to attend. The quality of the internet/phone connection is often another problem with remote participation in the free versions.

### ***Cost to Claim Reparations***

As already mentioned, victims have the possibility of receiving administrative, as well as judicial, reparations. The latter is only possible for those considered victims of the crimes judged under the Justice and Peace Law. However, documenting their cases often entails considerable expense.

## **Box 2**

### **Initiating a Reparations Claim: Example of Lucia Mendoza<sup>44</sup>**

Lucia Mendoza is from Apartadó (Urabá) and her husband was killed by the *Frente Bananero* of the AUC. She now lives in the city of Monteria. She traveled to Medellín to attend a free version related to crimes committed by the *Frente Bananero* and she decided to go forward with the judicial process to qualify for reparation.<sup>45</sup> For that she had the support of the association IMP. To document her case she went to Apartadó to get both her own and her husband's birth certificates, the certificate certifying her husband's death, and their marriage certificate.

In this case, Lucia had to pay the documentation cost as well as roundtrip transportation from Medellín to Apartadó, and the 5,000 pesos for each of the three certificates.

Other cases are more complicated and expensive. Had Lucia not been legally married, she would have needed a "declaración notarial" where witnesses can certify that she was living together with the dead person (12.000 pesos). If her parents-in-law were economically dependent of her husband, they would also need to provide proof and register it in a "declaración notarial." In the case of non-registered children, she would have had to initiate a "proceso de filiación" which requires another judicial process and added expense.

### **Brief Summary of Other Donor Support regarding Victims' Access to Truth, Justice and Reparations**

Since the massive demobilization programs in 2005-6, the international community has paid much attention to the issue of victim's access to truth, justice and reparations. Key programs including the following:

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<sup>44</sup> The names are fictitious.

<sup>45</sup> The law of Justice and Peace contemplates economic reparation for direct inflicted damage, moral reparation for psychological damage (also susceptible to be evaluated in money) and land restitution.

- The UNDP is spearheading a basket fund on transitional justice with the participation of many European countries. In addition, the European Commission is about to launch a program on transitional justice. These two are and will be mainly dedicated to support victims' access to truth, justice and reconciliation.
- The OEA/MAPP initiative is focused on supporting the demobilization and reintegration. OEA/MAPP representatives also accompany victims in the judicial process and coordinate (with the prosecutor) sessions to inform victims of their rights in the rural areas. In addition, they work with the *personeros* and municipal officers in the field.
- The USAID/OIM program for demobilization and reintegration has assisted the CNRR to start implementing productive projects for the demobilized in coordination with the *Alta Consejería para la Reintegración*.
- The World Bank is supporting *Acción Social* in a project "*Programa de Protección de Activos*" that helps in the registration of land and property in rural and poor areas. The program has a system that helps prevent the transmission of property in areas where forced displacement has taken place.

There is a need for greater dialogue and coordination among donors in this area to be sure that the major challenges for victims are confronted and overcome. This will require more than just responding to requests from the government, state and civil society organizations.

Although the tasks ahead are enormous, the situation is ongoing. Each day, the number of victims increases and their geographic concentration shifts. Ongoing and future international assistance should be closely coordinated with Colombia's public institutions and civil society organizations. Developing a strategic plan in a situation where the needs are constantly changing is not easy. If the current model continues, however, the risk will remain that efforts will be concentrated where the institutions have their national and regional bases rather than where the victims live. Programs need to obtain better access to the countryside where the majority of victims live.

As for comprehensive U.S. and USAID support, the division of the victims' support component between two contractors (MSD and OIM) is not an efficient way to provide this assistance. Counterparts often must deal with two USAID programs, generating confusion among partners, weakening program coherence, and reducing the visibility of the entire effort.

One way to solve this problem is to divide the work between programs relating to perpetrators and those related to victims. In other words, support for demobilization and reintegration of former fighters should be the focus of one program, and support for victims to access to truth, justice and reparation should be the focus of the other. These are two clear cut and differentiated aspects. If USAID wants the Human Rights Program to continue developing this work, then it should clearly focus on the victims. It would be preferable, however, to give both components to one contractor.

Finally, the program supporting civil society has delivered the most results and should be strengthened, particularly programs designed to accompany victims, teach them about their rights, and help them exercise such rights. This CSO support should be coordinated with other international assistance in order to increase the size, expertise and number of civil society organizations dealing with victims. As for work with the public sector, probably the most significant area that should be strengthened is the support for the Secretary of the Search Commission of Missing Persons. This body remains weak; strengthening it would help key stakeholders respond more quickly to potential crimes such as forced disappearance and other violations.

**f. ADDITIONAL AREA OF HRP SUPPORT: Direct funding to the Special Office in Colombia of the United Nations High Commission for Human Rights**

In 2005, the GOC was on the verge of shutting down the Office of the United Nations High Commissioner for Human Rights in Colombia due to confrontations with its representative. Nonetheless, UNHCHR survived the crisis and remains an important voice on the situation of human rights in Colombia.

The role of the Special Office of the UN High Commissioner for Human Rights in Colombia is crucial. Because the GOC denies the existence of an armed conflict even though the enduring dynamic of Colombia's violence is palpable for communities and victims, it is even more essential that an authoritative, neutral international actor attempt to publicly hold the government accountable, while shedding light on the violations of all actors.

The Special Office in Colombia has taken various steps and has developed activities to promote respect for human rights in the country. It receives complaints, maintains a permanent dialogue with agencies and civil society representatives, gives technical assistance, promotes and disseminates respect for human rights, and conducts follow up to the recommendations that it presents in its Annual Report.

Yet for almost a year, the United Nations has not appointed a permanent representative of the High Commissioner, and the office has been headed by a deputy. The selection of the permanent representative has been postponed several times due to qualifications required in a newly designed profile for the job. This affects the Office's political relevance and ability to act and should be a matter to be resolved as soon as possible.

In 2007, both USAID and UNHCHR in Colombia signed a document to work together with a grant from the U.S. Government. At the time, the UN said that it was better to give the money directly to the Office in Colombia, given Geneva's procedures and delays.

USAID does not oversee how the UN Office uses its grant money, but the two institutions have a positive relationship and share reports. USAID does approve the operational plan. The only requests that USAID has made are (1) to use the money for programs or activities that complement rather than overlap with USAID programs, and (2) not to use it for administrative expenses.

On occasion, the two programs have come together on issues such as decentralization (for regional development plans), work with the Global Compact in Corporate Social Responsibility, and work with other UN agencies. USAID understands that UNHCHR opens many doors that sometimes are closed to the United States.

Until 2006, cooperation funds for Colombia's UNHCHR Office were sent to Geneva, where they were included in the general budget of the agency and then distributed among the field offices around the world. Each office prepared a report for USAID regarding the manner in which funds were used. Beginning in 2006, and pursuant to the Colombia Office's request, USAID decentralized the cooperation and directly sent the funds to Bogotá. Over time, this option generated an administrative difficulty because Colombia's UNHCHR could not directly access the funds and had to work with the UNDP. These difficulties place some strain on the cooperation.

Nevertheless, USAID's cooperation with UNHCHR in Colombia is crucial and necessary. The UN brings an authoritative, independent voice to the issue of human rights in Colombia, and after so many years its credibility is quite high. UN assessments shape international assistance programs to Colombia as well as bilateral relations with several key countries. For these reasons, the difficulties discussed above need to be overcome.

Given the fact that cooperation with the Office is important for both parties, everything possible must be done to overcome UN's administrative obstacles. In this regard, and once discussed with the UNHCHR Office in Colombia, we recommend returning to the original mechanism of sending the funds to Geneva. Although USAID would prefer to give the grants directly to the Office in Bogotá, it seems that the UN's lack of flexibility will not allow it to happen in a way that makes the cooperation useful for both USAID and UNHCHR. On the other hand, the flexibility that USAID has showed and that UNHCHR recognizes might enable USAID to send the funds to Geneva, with a prior arrangement to forward them to the Office in Colombia.

The funds forwarded from Geneva can be used for regular expenses of the Colombia Office, as well as for special activities. If the funds are sent directly to the Office, however, they can only be used for special projects, given the many necessary administrative maneuvers. Taking into account that USAID's cooperation with UNHCHR in Colombia is generous, it would be advisable to restore the option of using USAID funding for the Office's ongoing expenses, particularly staff payroll. The Office's staff is its most valuable resource. Indeed, at present, the Office faces budget difficulties because of an ongoing reorganization to provide give funding to other field offices around the world.

The Office informed the evaluation team that if USAID channels cooperation through Geneva, it could be conditioned both regarding specific countries and for specific projects. Otherwise, the funds might be rendered as a global sum to be distributed within the different Offices all over the World.

Colombia's UNHCHR Office is planning to invest current funding on public policy, prior consultations with indigenous populations, harmonizing policies, PLANEDH (human rights education plan), the National Action Plan, and victims of serious human rights vi-

olations, all of which is consistent with the priorities of USAID's Human Rights Program.

## **IV. RECOMMENDATIONS:**

### **a. General Recommendations**

- Because of the ongoing and transformed armed conflict in Colombia, USAID's Human Rights Program should be understood within the context of International Human Rights and International Humanitarian Law. The program's name should reflect this focus: USAID's Program on Human Rights and International Humanitarian Law. Its stated goals should be to:
  - Contribute to GOC and civil society efforts to prevent massive human rights violations.
  - Contribute to GOC and civil society efforts to protect vulnerable civilians and communities-at-risk as a result of armed conflict, according to principles of International Humanitarian Law.
  - Support actions by the state and civil society to fulfill victims' rights to truth, justice and reparations
- The United States should use its diplomatic leverage to strengthen its Human Rights Program in Colombia. The voice and integrity of the Human Rights Program should be unquestioned. Such legitimacy will increase the program's effectiveness as well as the efficacy of Colombian state and governmental human rights institutions with which it works.
  - Where possible the U.S. should use its good offices to mediate and ameliorate tension between prominent national and U.S. human rights organizations and the GOC.
  - The U.S. Ambassador, the USAID Mission Director, and other diplomats and officials in Washington and Bogotá should make clear in public and private the importance of key human rights issues for the United States, in general following the orientation of the Human Rights Program: prevention, protection, and the rights of victims to truth, justice and reparations.
- The Human Rights Program, though part of a broader U.S. strategy in Colombia, should focus on the goals of preventing human rights violations and respecting IHL. Human rights should not be subordinate to other goals and should not be used as an indicator of success or failure of other goals, such as establishing security or reducing illicit crops. There are security indicators and other criteria that can be used to measure progress toward such other objectives.

- USAID’s human rights strategy is multi-pronged and should continue to work with civil society groups, NGOs, the government, and state agencies such as the Human Rights Ombudsman’s Office and the Inspector General’s Office; USAID should actively use its good offices to promote dialogue and, where possible, consensus among the various sectors.
- The Human Rights Program should maintain its focus on first-generation human rights and the protection of civilian populations threatened by armed conflict.
- The program needs an overall strategy, not just goals and projects, to better address the complexity of a constantly changing human rights landscape. The overall strategy and specific component strategies should be determined through a series of workshops with the primary stakeholders, including the GOC; civil society organizations, including human rights and victims’ groups; and in some cases other donors. The strategy should aim to strengthen the capacity of government, state and civil society institutions to prevent the most serious human rights violations in the country, to protect those who are at greatest risk, and to provide victims with the means to access truth, justice and reparation. In general, the strategy should not deviate from current goals but rather should better integrate all of them: protection, prevention, public policy, civil society and state capacity, and the search for truth and justice.
- The program should build in flexibility. The conflict is dynamic; it moves geographically, its actors evolve, and the modalities of violations change. Change can occur quickly. Following normal administrative procedures, programs are developed and financed. Yet as the human rights situation changes, project activities might not adequately address the new reality. The program should be able to adapt activities to the changed environment. Activities should thus be reassessed annually to consider the overall strategy and the strategy for each component, as well as a set of overall human rights indicators developed especially for the Human Rights Program (see next recommendation).
- A set of indicators should be developed, parallel to the program benchmarks on establishing programs and building capacity, to measure the overall dynamic of the violations in the areas of the program’s focus. They might be designed around the major human rights violations identified in this report (see Table 1), all of which serve as indicators regarding the basic rights of life, liberty and physical integrity. USAID HRP partners, such as CINEP, the Vice President’s Office, and the Human Rights Ombudsman, should all share data and expertise in the development of indicators and the collection of data. A note of caution, however: these indicators should not be used as indicators of success or failure of the program, since there are too many uncontrolled variables. Rather they should be used as a compass to make adjustments and re-think programs. These data and indicators can then be used to assess basic HRP goals:

- **Prevention:**
  - *Right to life* – What actions have been taken to prevent extra-judicial killings, forced disappearances, etc., and have they been successful since the previous annual assessment?
  - *Right to Liberty* – What actions have been taken to prevent forced internal displacement or forced recruitment since previous report?
  - *Right to Physical Integrity* – What actions have been taken to prevent sexual violence or the use of land mines since the previous report?
  - *Right to Property* – What actions have been take to prevent land confiscation and destruction of civilian assets?
- **Protection:** similar to above
- **Public Policies:** similar to above
- **Civil Society:** How has CSO advocacy worked to ensure that the GOC meets its constitutional and international obligations to prevent human rights violations, to protect populations, and to ensure truth and justice as well as to provide support to victims?
- The program should develop a more coherent and integral decentralization focus within strategies and program. The tendency is for programs and training to remain in the centralized agencies or in national CSOs. The civil society grants are one way in which the program has been able to develop stronger links to the regions. Specific programs, such as the EWS or the Communities-at-Risk programs, also extend the reach of the program into the regions. There needs, however, to be a concerted effort to implement the multiple, integrated aspects of the program in several select regions. In the future, USAID might want to think about regional offices for the contractor. In the short term, it would be helpful to develop an integrated, decentralized approach covering the five central components of the program in a select number of regions.
- Most of the components of the Human Rights Program affect indigenous and Afro-Colombian populations who have been disproportionately represented among the victim populations. All USAID human rights programs, from protection to prevention to civil society promotion to truth and reparation, that involve Afro-Colombian and indigenous communities should first seek consultation and agreements with local community councils and *cabildos*. USAID should develop programs through a consultative process with such local leaders.
- Separate assessments should be made concerning the human rights situations and needs of Afro-Colombian and indigenous populations, and thought should be given to developing special civil society programs, such as is currently being developed for labor unions. Indeed, such initiatives have already begun through MSD's efforts to train Pacific and Caribbean Afro-Colombian and in-

digenous organizations through FUCLA and ESAP based on an assessment that they did not have sufficient capacity to participate in USAID's grants program, as well as a recent Congressional mandate and budget authorization to move more boldly into this area. Programs should include:

- Land titling for Afro-Colombian Communities, as part of program on civil society strengthening, prevention and reparations.
  - Full return of land to internally displaced Afro-Colombian and indigenous communities. Again the HRP has already begun initiatives in this area.
- In developing programs in this area, USAID should ensure that funding does not support projects on land acquired through violence as per the protocol developed by MSD in 2007 and discussed with USAID contractors.

## **b. Recommendations – Prevention Program**

### **Early Warning System**

- Military and police officials often complain that the Early Warnings divert them from their essential responsibilities and that they do not have the resources or manpower to protect every community. The concern reflects the fact that in the response function of the system, too much weight has been placed on the shoulders of the police and military and too little attention has been placed on other forms of state response. Though some security measures will almost always be necessary, other responses include establishing a broader civilian state presence within the at-risk communities, emergency assistance, state investment, and support for international or NGO accompaniment.
- At present there is no methodology, operations manual, or formal training for regional and national analysts or standardized procedure for assessing what constitutes a human rights violation. Analysts are left to develop their own criteria, drawing on their own background and experience (which is often considerable) and the work of other analysts.
- EWS needs to standardize definitions, categories and methodologies following acceptable international norms even while recognizing the great complexity and fluidity of the boundaries between armed conflict and crime in the Colombian case. Although there is no comparable human rights early warning system in other parts of the world, there is great accumulated knowledge and experience on assessing human rights violations in conflict and postconflict situations. Once consultants finish their assessment, these flaws need to be quickly addressed.
- The EWS is on the front lines of the conflict and is present in almost all regions. Its records will be essential for future documentation of the armed conflict and efforts to hold violators accountable. The system needs to archive all of its work and make it accessible to current analysts and future human rights

workers, historians, judges and others who will need these files to reconstruct an historical memory of the conflict.

- Since, November 2002 with the creation of the CIAT, all Risk Reports and Early Warnings have been cloaked under the cover of National Security, reversing the earlier public distribution of the Ombudsman's Early Warnings.
  - It is strongly recommended that the Risk Reports be made public and available to all concerned citizens and national and international actors. The greater openness will make the system more effective and responsive. The Ombudsman could place the Risk Reports on a special website.
  - CIAT, if it so chooses, could maintain the confidentiality of its recommendations. It is recommended, however, that the decision to convert a Risk Report into an Early Warning should be publicized.
- International organizations such as UN OCHA do not have regular access to Risk Reports and only occasionally receive summaries. All Risk Reports should be sent, following a first delivery to CIAT, directly to the United Nations OCHA's Humanitarian Situation Room, to ACNUR, and to a select group of humanitarian agencies and NGOs for their evaluation. These organizations should then be encouraged to verify the information and to work with CIAT and local officials in developing a rapid, nonmilitary and complementary response.
- The EWS and CIAT must function as a more integrated and responsive system, using common methodologies of assessment and evaluations:
  - The director of the EWS, as representative of the Human Rights Ombudsman and the EWS Analytical Team, should be present at each meeting of the CIAT in which a risk report is evaluated and recommendations are decided to further explain the reasoning that went into the report and to provide clarifications and greater detail.
  - The Ombudsman should automatically send copies of the Risk Report to the Procurator General's office so that this control branch is fully informed of human rights and IHL violations in conflict zones. This is critically important when violations involving state actors are involved since EWS and CIAT are mostly responsible for alerting of violations by nonstate actors. Similarly, the Procurator should be kept fully apprised of CIAT's issuance of Early Warnings and recommendations for state authorities to act in conflict zones.
  - CIAT needs to develop a set of protocols and criteria for determining when Risk Reports should be elevated to Early Warnings.
  - Early Warnings should carry a great sense of urgency and should compel local decision-makers to prioritize specific security and civilian response measures to address the situation.

- Risk Reports should be viewed with equal urgency. However, the response mechanism would be able to allow for a slightly longer time frame, allowing local authorities to develop more coherent, integral and enduring responses.
- EWS and the CIAT operate from within two different paradigms: EWS develops analysis based principally from a human rights, IHL and humanitarian analysis. CIAT views these analyses from predominantly a security perspective, although the divisions between civilian and security officials that comprise the committee create some tension among these approaches. Nevertheless, CIAT recommendations focus almost exclusively on the security issues. CIAT needs to develop a broader range of responses that include emphasis on security, humanitarian issues and human rights protection and prevention.

### **Recommendations – Protection Program**

- A main concern that affects all aspects of USAID’s HRP can be found in the language used by GOC on human rights issues. High government officials’ regularly declare that human rights advocates and civil society organizations are complicit with terrorists. Such stigmatization makes it very difficult to properly protect such groups. As long as political opposition and human rights advocacy groups are portrayed as subversive, their work will be questioned, their lives will be threatened, and democratic governance will remain unrealized. There is a huge gap between the money and efforts spent on MIJ’s Protection Program and the actions against its beneficiaries that result from the government’s political discourse. Unless the state takes seriously its responsibilities to protect its citizens according to the Constitution, the risk situation and vulnerabilities of some social actors will remain acute, diminishing the effectiveness of protective measures, and in many cases rendering them irrelevant and useless.
- USAID HRP should provide close technical assistance to the coming process of reviewing and formulating MIJ’s Human Rights Unit, particularly with respect to the Protection Program. This task must be undertaken in a conscientious manner in order to help build serious strategies of protection and prevention regarding the Protection Program’s difficulties, particularly with the *Level of Risk and Threat Study*; the differential approaches to gender, ethnic and other populations; and, more recently, the privatization of protective measures (*tercerización*).<sup>46</sup>
- MIJ’s Human Rights Directorate needs strengthening, particularly at the level of staffing, to be able to continue responding to the Protection Program’s increasing demands and in order to undertake a serious and coordinated effort to incorporate new strategies, such as decentralization, preventive security, re-

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<sup>46</sup> It would be useful to take into consideration the document that contains the results of a thorough evaluation of the Protection Program, undertaken on 2002 by consultants under ILO’s auspices: “*Evaluación del Programa de Protección a Testigos y Personas Amenazadas del Ministerio del Interior*”, Bogotá, D.C., August 2nd, 2002 (document supplied by MSD, no further reference available).

gional strengthening initiatives, and ultimately a new, comprehensive prevention strategy. At the moment, the Human Rights Unit's capacities only allow it to attend the Protection Program.

- Given USAID HRP's serious commitment to a differential approach on human rights issues, the MIJ's Indigenous and Afro-Colombian Units should be better articulated with the Human Rights Unit and with the Presidential Program on Human Rights (PPHR) to promote their direct participation in projects that involve these minority ethnic groups.
- It is necessary to closely monitor *tercerización*, or outsourcing, of protective measures to at-risk individuals. Legal action might be considered to return this activity directly to the state. If this is not possible, state control agencies must monitor this situation closely and be prepared to investigate any irregularity that may arise. MSD and USAID should periodically review the situation, especially in the early implementation phase.

### **Recommendations – Communities-at-Risk Project**

- The DI evaluation mission has reached the conclusion that the Communities-at-Risk project needs to be reconsidered. We recommend that MSD lead the development of a more integrated and comprehensive prevention program to replace the PACR. The new program should fully incorporate the successful practices and programs developed over the last two years with the PACR, such as contingency plans and potential Early Warning System tools, but should be designed to avoid the institutional inertia that has beset the current program. The new program should be the result of extensive consultation with all of the involved agencies at the national and regional levels with the goal of developing an integrated state prevention strategy.
- The Communities-at-Risk Program, however, cannot simply disappear as a result of this review. It must continue to operate at the regional level while this broader strategy is developed and implemented. To this effect, it will be necessary to establish a single governmental agency as the coordinator of all the rest. MIJ's Human Rights Unit should be the appropriate entity during the transition, since it is undertaking many actions to keep the project going. In addition, in case a new prevention strategy cannot be developed from the national level, a regional approach would represent an alternative strategy, since, despite its difficulties, PACR has had some success at the local level.
- The new strategy on prevention would require a better articulation within and between the institutions that would participate in this program, as well as at the national and regional level, in order to maximize technical, human, financial and logistical resources. It should also articulate policies on prevention, impunity and security.
- This new strategy should gather all the positive aspects of PACR and provide it from the beginning with the clear political support of high ranking officials that unequivocally express their agencies' commitments. The new program

should be coordinated from the beginning with the Early Warning System, CIAT and the Self-Protection Program and other established prevention programs such as those being developed by National Police for the prevention of human rights violations of protected individuals and vulnerable communities.

- A new, integrated prevention program must enjoy the greater levels of state financial and institutional commitments that were allocated as part of the development of the PACR.
- The new program must incorporate a documentation strategy, in order to keep track of the information arising from the execution of its activities. Currently, the PACR has not systematically kept track of its on-the-ground activities and the circumstances surrounding the selected vulnerable populations.

### **Recommendations – Public Policies and Truth, Justice and Reparations**

- USAID should consider uniting its truth, justice and reparations programs into one program, instead of the current situation of having two contractors, OIM and MSD.
- If the HRP is to continue to share responsibilities with OIM, then the Human Rights Program should be decidedly “pro-victim” in its approach and in its programs, while OIM can focus more directly on bringing to justice and holding accountable the violators and the demobilized.
- USAID should follow the suggestion of the MSD state coordinator to set up an interdisciplinary working group at the Inspector General’s Office. This group should be backed by technical support from the contractor. This support could consist, for instance, in a liaison officer that would be tasked to move around the country and facilitate the practical training among the regional and local officials.
- To support victims’ access to truth, the program should support the Technical Secretary of the National Commission for Missing Persons. At present, the protocols, manuals, guidelines and even a pilot project are already there. What is now needed is: (i) more leverage (political will) and resources to implement widespread training and assistance to all officials responsible for feeding information to the National Register of Missing Persons in each district, province and region of the country; and (ii) capacity to analyze and follow up on information from the National Registry, in short, to implement the National Plan.
- Media campaigns could encourage the participation of victims in the judicial process (not only related to the Justice and Peace Law) and enhance the fight against impunity. These campaigns would be focused on honoring the court system and the importance of denouncing violations of human rights and IHL.
- To support victims’ rights to reparation, it is important to continue and enlarge the work (started with the current project) of strengthening the IGO capacity in favor of victims’ property claims.

- There is a general consensus that supporting civil society actors is a key step in guaranteeing victim's access to truth, justice and reparation. Yet it is also believed that it is hard for victims' associations to provide professional and sustainable support to victims since they heavily depend on external funding. We propose that USAID consider replicating in Colombia an experience used in Pakistan to provide long-lasting financial sources for access to justice programs.<sup>47</sup> This initiative would consist of creating an endowment to support civil society initiatives in the area of supporting victims to access truth, justice and reparation. The fund would have a legal personality on its own and would be managed by a board that might include, for example, representatives of USAID, the contractor in charge of the USAID Human Rights Program, the university community, and the human rights associations. The board would produce rules and regulations and the work plan (strategy) for providing funding. The fund would ideally identify a few "partner associations" to accompany the victims of the (six) threats to fundamental human rights and IHL mentioned above in different parts of the country over the next five years. For the endowment to produce sufficient annual revenue, the initial contribution would have to be at least \$5 million. A separate financial board, different from the governing board mentioned above, would be in charge of overseeing the investment portfolio. The fund could, moreover, be created through existing modalities of U.S. financial cooperation such as the exchange of debt for investment. This initiative could provide the Colombianization of the USAID'S civil society programs and support the professionalization of key CSOs, benefiting sustainable human rights interventions in Colombia.

### **Recommendations – Civil Society**

The area of civil society should be viewed as strategic and critical for the success of the USAID Human Rights Program, since in practice, it is cross-cutting and supports other areas of the program. To consolidate this area of the program, there is a need to foster and empower coalitions, synergies and networks that can strengthen the sector and influence human rights public policy.

- The processes of consultation with civil society groups, both in the United States and in Colombia at the national and regional levels, should be continued in order to foster innovative ideas, get feedback and advance the recognition and legitimacy of the program.
- The program should participate in coordination and information exchange scenarios with international cooperation agencies (embassies, United Nations, NGOs, other donors) conducting programs directed toward the empowerment of civil society, both at a national and a regional level.

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<sup>47</sup> Few years ago the Asian development Bank gave a grant of 350 million dollars to Pakistan to implement an ambitious justice reform program. Out of this money 25 million were given as endowment fund to invest and use its revenue for soft reform projects.

- USAID and MSD should continue to coordinate networks among their own grant recipients, partners and allies, both at a national and a regional level.
- The HRP should continue to build on—and more visibly support—existing regional networks among state agencies, local governments and civil society counterparts, such as the experiences with the Mesa de Riesgo (Risk Forum)<sup>48</sup> in Cauca, Mesa Departamental de Desplazamiento (Departmental Forum on Displacement) in Chocó and a large number of local human rights committees.
- The program should work with civil society more strategically. The new labor project should be situated within the civil society program component. At the same time, how it should be cross-cutting throughout all other areas.
- In dealing with civil society organizations, particularly in the grants program, resource management needs to be streamlined to avoid, where possible, delays in disbursements and signing of agreements. This administrative confusion and delay has weakened the impact of the program.
- In working with CSOs, through the grants program or with other projects, a major goal should be to strengthen local capacity. Grants should focus on those sectors of civil society that are more closely identified with the portfolio of projects and initiatives within the overall HR program.
- Based on the previous recommendation, we recommend the design a ranking of agents of civil society and the international community that can play a role in the program, as follows:
  - **Allies:** actors from the international community such as intergovernmental agencies, the diplomatic corps, international NGOs and international cooperation agencies with a common interest in providing political and/or financial support to civil society initiatives that address issues of advocacy/ protection/prevention of human rights.
  - **Actors/strategic counterparts:** the main organizations (or networks) whose existence and strengthening are a key objective for the HRP program. They are mainly social movements, NGOS, and human rights groups.
  - **Counterparts with special expertise:** those groups that are key to working in a specific region or on a given issue. Their value is both in their understanding of regions and issues as well as their respected position among their peer groups and others. They will be extremely valuable in developing programs and in the training of other organizations. These groups are primarily NGOs with technical expertise and, often, political savvy, with experience and deep knowledge of a sub-

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<sup>48</sup> This consultative forum was launched by civil society and victims' group inviting local and national officials as well as NGOs and international agencies to meet regularly to assess and confront the upsurge in human rights violations that began to plague Cauca in the last year.

ject, such as IDPs or Afro-Colombian movements, and/or in the study of a specific region.

- **Accompanying counterparts:** mainly local authorities and NGOs that provide support and training to grassroots organizations.
- **Partners in Growth:** often grassroots social movements with limited technical expertise or capacity that require support to enable them to play more assertive roles in their subject areas.

There is a need for greater dialogue and coordination among donors in this area to be sure that the major challenges for victims are confronted and overcome. This will require more than just responding to requests from the government, state and civil society organizations.

The tasks ahead are enormous, and the challenges continue to evolve. Each day, the number of victims increases and the geographic concentration of violations continues to shift. Ongoing and future international assistance should be closely coordinated with Colombia's public institutions and civil society organizations. Developing a strategic plan in a situation where the needs are changing regularly is not easy. If the current model continues, however, the risk will remain that efforts will be concentrated where the institutions have their national and regional bases rather than where the victims are. Programs need to obtain better access to the countryside where most victims live.

As for comprehensive U.S. and USAID support, the division of the victims' support component between two contractors (MSD and OIM) is not an efficient way to provide assistance. Counterparts often must deal with two USAID programs, generating confusion among partners, weakening program coherence, and reducing the visibility of the entire effort.

One way to solve this problem is to divide the work between programs relating to perpetrators and those related to victims. In other words, support for demobilization and reintegration of former fighters should be the focus of one program, and support for victims to access to truth, justice and reparation should be the focus of another. These are two clear-cut and differentiated aspects. If USAID wants the Human Rights Program to continue developing this work, then it should clearly focus on the victims. It would be more advisable, however, to give both components to one contractor.

Finally, the program supporting civil society has delivered the most results and should be strengthened, particularly programs designed to accompany victims, teach them about their rights, and help them exercise such rights. This CSO support should be coordinated with other international assistance in order to increase the size, expertise and number of civil society organizations dealing with victims. As for work with the public sector, probably the most significant are that should be strengthened is the support for the Secretary of the Search Commission of missing persons. This body remains weak; strengthening it would help key stakeholders respond more quickly to potential crimes such as forced disappearance and other violations.

## **APPENDICES**

List of persons interviewed: organized alphabetically and by region

- a. Workshops conducted
- b. List of meetings, conferences, seminars attended
- c. Bibliography
- d. Selected maps and data: e.g. IDP's, Early Warning, Communities-at-Risk, etc
- e. Justice Sector Chart