



USAID | COLOMBIA

FROM THE AMERICAN PEOPLE

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Thank you again for participating in the April 23rd human rights consultations and for your June 19th letter that offers constructive feedback and recommendations. We hope you find our responses useful.

Human Rights Program

Integration of Human Rights Defenders into Programs and Strengthening the Role of the Inspector General's Office (Procuraduria) in Upholding the Rights of Human Rights Defenders

We fully agree with you on the importance of protecting the rights of and strengthening the legitimacy of human rights defenders. Regarding your proposal to train justice sector staff on the critical role of human rights activists, we are exploring the possibility of funding this activity through our Human Rights Program in coordination with the U.S. Department of Justice (DOJ).

The DOJ is working closely with the Prosecutor General's Office (*Fiscalia*) to ensure there is timely review of accusations and detentions of human rights defenders as well as to train investigators and prosecutors to base investigations and prosecutions on solid evidence. The USAID Human Rights Program is also supporting the Inspector General's Delegate for the Public Ministry (*Procurador Delegado para el Ministerio Publico*) to develop specific (soon to be published) criteria for intervention of judicial inspectors in criminal proceedings initiated against human rights defenders. We have also provided training for judicial inspectors on this matter.

With respect to your concerns regarding the implementation of the oral accusatory criminal system, USAID and the DOJ will continue to work closely with all justice sector institutions to effectively implement the new Colombian Criminal Procedure Code. USAID, the Department of State, and the DOJ believe that this new system holds great promise for a more effective and equitable Colombian criminal justice system. With respect to your concern regarding prosecutors using the "old inquisitorial code," as you are aware the old code remains in force depending on when the criminal offense occurred (i.e. the date of the offense determines which code is to be applied).

We will engage the Inspector General's Office in monitoring baseless prosecution of human rights defenders, and will propose this issue to the new Inspector General to determine if this is an activity we can support with the Inspector General's Delegate for Human Rights and Ethnic Issues (*Procurador Delegado para los Derechos Humanos y Asuntos Etnicos*). Also, within the framework of our project to promote dialogue between civil society and the Ministry of Defense, we will encourage the follow-up of the review of the intelligence reports that refer to the Ministry's Comprehensive Human Rights and International Humanitarian Law Policy, with the participation of the Inspector General's Office and human rights NGOs.

Ensuring Adequate Funding to the Human Rights Program:

We completely agree with your points. Earmarked funds for the Inspector General's Office should ideally be additional funds to guarantee the integrity of the original resources assigned to the Human Rights Program as a whole, and to ensure that funds earmarked for this office do not affect the resources allocated to other equally important activities such as activities strengthening civil society.

Benchmarks for the Inspector General's Office and the National Ombudsman's Office:

We agree with the need to closely monitor progress toward meeting project benchmarks with earmarked funds. In August-September, we will work with the Human Rights Program to develop a first draft of indicators. Once prepared, we will share them with the NGO community for feedback. NGOs will serve an important role in monitoring and overseeing the achievement of these benchmarks.

Early Warning System (EWS) and Publication of Reports:

We agree with the recommendations made in the evaluation conducted in 2008. In this regard, we are funding a consultant to make methodological improvements to the EWS to make the system function more efficiently and effectively through the establishment of clear timelines, common definitions, and improved communication systems with other government entities.

We also worked with the Ministry of Interior and Justice, the National Ombudsman's Office (*Defensoria*), the National Planning Department, and the Ministry of Treasury to achieve a Colombian budgetary allocation of 70 percent toward the funding of the EWS in 2010, achieving a key milestone toward "nationalization" and financial sustainability of the system. With respect to making the Risk Reports public, USAID management has made this request to the National Ombudsman (*Defensor*) on various occasions. He has expressed his willingness to publish a brief summary of these reports. We will continue to follow up on this issue with the Ombudsman's Office.

Regarding the need to strengthen the monitoring and methodology of the Inter-Institutional Committee on Early Warnings (CIAT), we have been working with the Technical Secretariat of the Committee and have agreed to support the following:

- i) Modification of CIAT regulatory decree 2867 of 2007, which includes as permanent observers the National Ombudsman's Office, the Inspector General's Office, and the Office of the United Nation's High Commissioner for Human Rights (UNHCHR). We have also proposed to include the National Police as a permanent member and allow mayors and governors from the areas under analysis to participate in the sessions as guests, as well as other civilian institutions such as the Landmine Observatory and the Colombian Institute of Family Welfare, among others.
- ii) Progress has also been made on adjusting the methodology of the CIAT, specifically with regard to its conceptual framework; definition of objective criteria to establish levels of risk; definition of risk levels according to the stipulations of the Constitutional Court; and definition of typologies of measures according to established risk levels. These changes should improve CIAT's quality of work and the recommendations it makes. We will continue to provide technical assistance on this matter through 2010.

Support to the National Commission of Missing Persons:

Since 2008, the Human Rights Program has provided support to the Equitas Foundation to develop protocols and best practices for the internment of unidentified bodies in cemeteries. The results of this work will be presented by November 2009. Also, and as part of the Human Rights Program's 2009 workplan, we are working with the National Search Commission of Missing Persons to train families of missing persons on their patrimonial rights. Despite these efforts, we are aware that there is still much work to be done and, consequently, will continue our work with the Commission. In addition, within the framework of USAID's attention to victims program, the International Organization of Migration (IOM) has been accompanying victims during exhumation processes.

Justice and Peace Process:

We share your concerns about the Justice and Peace Process and are working to strengthen the reparations process and improve and expand attention to victims. To date, the Victims Reparation Fund has received property valued at over \$4.2 million and 40,477 victims have received legal representation.

The Human Rights Program has awarded ten grants to NGOs to provide legal and psychosocial assistance to victims in the departments of Santander, Norte de Santander, Atlántico, Antioquia, Cordoba, Sucre, Cauca, Bolivar, and Cesar, and has been working with the National Ombudsman's Office to strengthen the psycho-juridical teams that provide integral assistance to victims. Despite these efforts, we are aware that the demand for these services is immense and exceeds the financial capacity of any international donor. Therefore, with regard to the recommendation to support the National Ombudsman's office to hire more public defenders to assist victims, we believe that this is an effort that must be made with resources from the national budget, so that the personnel hired will be sustainable in the medium- to long-term.

Through our victims assistance program, implemented by IOM, we support 13 teams of lawyers and psychologists in Regional Ombudsman's Offices in regions with large numbers of victims, including Arauca, Bogota, Cordoba, Guajira, Valle del Cauca, Magdalena Medio, Antioquia, Sucre and Putumayo. These teams provide legal and psychosocial assistance. Although this is not legal representation within the framework of the Justice and Peace Process, this legal assistance does orient the victims to the process, connects them with the Prosecutor General's Office to present their claims, provides legal assistance in preparing necessary documentation, and refers them to the public defender. The teams are already established in the regional offices that are already providing services.

With respect to threats and attacks against victims, our Human Rights Program has been working with the Protection Program of the Ministry of Interior and Justice on the design, development and implementation of a program of attention to victims within the framework of the Justice and Peace Law.

To this end, improvements have been made to the instruments that determine risk and threat levels, the protection route has been disseminated, and work has been done to integrate a gender perspective into the protection program. We encourage the international and Colombian NGO communities to closely monitor these activities to verify their effectiveness. The issue of family member protection in Colombia of extradited AUC leaders is one which the GOC must address and provide.

Measures Taken with Regard to Public Statements that Undermine Human Rights:

We agree that USAID and other relevant Embassy offices should regularly emphasize within U.S. Government policy discussions and to the Government of Colombia (GOC) the importance of supporting the critical work of human rights activists and their provision of guarantees necessary for the activists to carry out their work. Senior Embassy Management, including the Ambassador and USAID management, regularly seek out such opportunities to highlight the important work of human rights defenders to the GOC and Colombian society at large. For example, the Ambassador has spoken very strongly on the importance of human rights and labor rights at recent launch events for new USAID programs to support the labor movement and the Inspector General's Office. In addition, the Public Affairs Section within the Embassy produces a weekly news report, *Estados Unidos Informe*, which is disseminated to 23 television stations across the country, reaching a viewership of approximately 13 million, which often includes segments from speeches delivered by Senior Embassy Management on human rights advances and challenges in Colombia.

National Action Plan:

We agree with the recommendation to continue to promote negotiations on the National Action Plan, and to insist that the NGOs that were originally committed to the Plan be consulted. In this sense, we are funding a methodology consultant who has been accompanying the process through a series of national-level workshops to establish the type of guarantees that the government should provide, so that the organizations involved feel that conditions are appropriate to continue these negotiation and conciliation activities.

However, recent developments with regard to the Administrative Department of Security's (*Departamento Administrativo de Seguridad*, DAS) intelligence activities against organized human rights defenders, and in particular against those that are members of the National Action Plan coordinating body, make it ever more difficult to create the conditions for the parties to come to the table.

Alternative Development

Thank you for your support of USAID's new livelihoods approach. This was developed with the support of extensive analysis and consultations with diverse groups, including civil society. We encourage you to participate in the next round of Alternative Development consultations as we refine the strategy and move towards implementation. In your letter, you mention that you are conducting a review of Alternative Development. We would be happy to support this work with consultations, visits to our projects, review of a draft, or other activities that may be of assistance.

Government of Colombia policy requires that an area be free of illicit crops before alternative development assistance can begin and, as a bilateral international donor, USAID is required to follow this policy. As a result of our continuous dialogue with the GOC, the specifics of each case are being taken into account to help ensure that implementation of the policy does not reduce effectiveness of alternative development efforts. To address the need to prevent accidental fumigation of USAID-supported projects, we have worked out a process with the U.S. Embassy's Narcotics Affairs Section. If there are allegations of spraying of a USAID-funded activity, then that receives priority attention in the GOC's complaints process. In addition, USAID officials often participate in the complaint review process. We agree that all efforts should be made to avoid accidental spraying of alternative development projects. We invite you to continue to advise us when there are allegations that this has occurred. USAID agrees that it is extremely important to ensure that Alternative Development beneficiaries are neither in danger nor threatened. We will closely monitor the situation and explore opportunities for coordination between the Alternative Development and Human Rights Programs to expand human rights protection activities to Alternative Development Program beneficiaries.

Lastly, we look forward to reviewing WOLA's study on lessons learned in promoting alternative livelihoods. This may provide some very useful insights as we proceed with implementation of the Mission's new strategy.

Afro-Colombians and Indigenous Communities

USAID appreciates your interest and commitment to indigenous and Afro-Colombian communities and we welcome the comments and recommendations set forth in your letter. USAID believes it important to engage all actors to develop appropriate and sustainable responses to the multiple and complex needs of Afro-Colombian and indigenous communities. The exclusion of local and regional governments in the development process would be detrimental to Afro-Colombians and/or the indigenous that are part of community councils and indigenous governing bodies (*cabildos*). Thus, USAID highly values the need to foster a constructive relationship between the community councils and the municipal authorities. As such, for the past few years USAID has worked extensively with community councils not only to strengthen their organizations but also their interaction with local authorities. Specifically, USAID is incorporating communities' development plans (*planes de etnodesarrollo*) into local development plans to assure greater community participation and inclusion of the communities' needs in the local development planning process.

Regarding your specific comments on the Productive Ethnic Territories (*Territorios Étnicos Productivos*, TEP) Program, it is important to underscore that TEP is based on direct consultation with community councils, indigenous governing bodies (*cabildos*), in coordination with all levels of government - local/municipal, departmental, and national. This close coordination has allowed TEP to leverage significant resources (over US\$18 million) for 35 projects which are being implemented in 94 community councils and 29 indigenous reservations (*resguardos*).

With respect to the Presidential Commission, the Commission in reference is the Inter-Sectoral Commission for the Advancement of Afro-Colombians, which was comprised of, among others, governmental representatives, one representative from Congress, one from the group of elected Afro-Colombian representatives (*Consultiva de Alto Nivel*), and one representing the community councils.

Throughout the year and a half in which the Commission operated, there were consultations with over 4,000 Afro-Colombians, over the course of 18 workshops held throughout the country. The Commission delivered its recommendations in May and, as a follow-up action, the GOC is designing a general policy document and a Law for Equal Opportunities which will be presented in Congress in July. USAID values the recommendations issued to the GOC by the Commission and will be closely monitoring and supporting their implementation.

Regarding land rights, USAID recognizes and values the need to foster a constructive relationship between community councils and municipal authorities. As mentioned above, for the past few years USAID has worked extensively to strengthen community councils and to ensure that the needs of Afro-Colombian communities are effectively incorporated into the local municipal development planning process. Furthermore, USAID has developed a Land Protocol and an Afro-Colombian strategy that includes consultation as an underlying principle and prerequisite of any activity implemented in an Afro-Colombian community and/or territory.

With respect to your concern about USAID providing technical assistance for the development of the Rural Development Statute, while USAID does provide technical support to the Government of Colombia in drafting various legal instruments, USAID is neither involved in the legislative process nor the consultations with indigenous and Afro-Colombian communities required before a proposal can be presented in Congress.

We share your support for the efforts led by the Constitutional Court through its sentences and rulings to improve the conditions of displaced Afro-Colombians and indigenous. We will continue to work with the Government of Colombia and civil society to adopt mechanisms to respond to these rulings. For example, under Constitutional Court Orders 004 and 005, the Human Rights Program has been working with the Ministry of Interior and Justice on the response required by the Constitutional Court, as well as on the implementation of its recommendations regarding the elaboration of the risk assessments, and the design of prevention, protection, and contingency plans for these communities.

To this end, the Program conducted two workshops to present the methodology for analysis, diagnosis and projection of risk scenarios, and formulation of prevention plans, with the participation of all institutions responsible for protecting the human rights of indigenous and Afro-Colombian communities. We have also conducted workshops with the Alto Mira and Frontera Community Councils on identification of risk and levels of threat, and on the design of prevention and protection measures, that will be replicated with other community councils in the southern Pacific region, specifically in Nariño.

We value the international human rights community's interest and commitment to Afro-Colombian and indigenous communities and will gladly share the indigenous strategy and information on our projects in future consultations.

Internally Displaced Persons

USAID is aware of ongoing difficulties with Acción Social's system for registering internally displaced persons (IDPs), including those identified by the Constitutional Court in its Order 011 issued this year. We continue to support efforts to strengthen this system, including the existing Orientation and Attention Units (*Unidades de Orientación y Atención*, UAOs), and the development of new UAOs in areas with high indices of IDP expulsion and reception. For a number of years, USAID has promoted establishing an UAO in Tumaco, Nariño. After much effort, land has been provided by the Tumaco Mayor's Office and USAID, through the International Organization for Migration (IOM), will begin construction shortly. Acción Social has committed to staffing the UAO upon its completion.

USAID, through IOM, has also committed to supporting Colombia's National Planning Department which has been tasked with developing measures to specifically address the problem of sub-registration. Additionally, USAID will support the Follow-Up Commission's (*Comisión de Seguimiento*) efforts to develop policy proposals to address the gaps identified by the Constitutional Court related to IDP land, housing, income generation, registration and displacement prevention. USAID will incorporate the recommendations developed by the National Planning Department, the Follow-Up Commission, and the Constitutional Court in future programming and policy work.

In recognition of the problems noted above, USAID's IDP program does not solely attend to individuals registered with Acción Social. USAID also attends to IDPs referred by Pastoral Social, the Episcopal Church, the U.N. High Commission for Refugees, and Afro-Colombian community councils. Through our programming, we also assist IDPs in the registration process. The goal under the current program is to reach 70 percent of all IDPs and 30 percent of the vulnerable populations. Therefore, we are also reaching individuals affected by the conflict that the GOC may not officially designate as displaced persons.

With regard to prevention and returns, USAID recognizes the importance of these issues and we are focusing greater attention these issues as we develop our new strategy. Meanwhile, the Human Rights Program has worked with the National Roundtable for Prevention of Forced Displacement, under the direction of the Presidential Human Rights Program, in response to Constitutional Court Order 008. The Program is providing technical assistance to define the obligations of the State to help them comply with international human rights standards and law in the areas of prevention, methodologies for conducting risk diagnoses, and the design of contingency plans. We have also begun to apply these instruments at the local level through training of departmental and municipal functionaries and have created prevention roundtables in eight departments in the country.

**Approach of CCAI and Regional Coordination Centers
(formerly known as Fusion Centers)**

The GOC's National Consolidation Plan (*Plan Nacional de Consolidación, PNC*) defines the principal cause of the illicit economy and accompanying conflict in 40 percent of the country as the lack of state presence which enables the existence of conflict, and therefore considers establishing and consolidating state presence to be the solution to the conflict. The USG fully supports this model. The consolidation model - which consists of civilian, police, and military engagement - is easily adjusted to meet the needs of a given region.

The Regional Coordination Centers coordinate this multi-tiered approach to consolidating state presence. They are comprised of coordinators for the three legs of the consolidation strategy - military, police, and civilian - each coordinating his/her area of responsibility on a daily basis to ensure that the actions of each support the joint goal of consolidating state presence. In the area of operation of the Consolidation Plan for La Macarena (PCIM), each of the three coordinators have differing levels of responsibility in a given geographic area depending on how much that area has progressed in the transition from reliance on primarily military operations to primarily civilian support for the consolidation effort. For instance, in combat zones the military would have primary responsibility for road repairs, while in the transition and consolidated zones this responsibility would fall to the mayors and governors working closely with the National Roads Institute (*Instituto Nacional de Vias, INVIAS*). In the area of operation of the Consolidation Plan for Montes de Maria, the role of the military coordinator is much smaller than that of his counterpart in the PCIM given that armed combatants no longer pose a security threat there. That area's security issues mainly involve criminal rather than terrorist activities, and thus fall to the police coordinator to mobilize an appropriate police presence. In all cases, the civilian coordinator has the sole responsibility for coordinating the consolidation of civilian entities.

In the consolidation zones, the primary civilian face of the State is the municipal and departmental entities - a point on which CCAI is clear. Strengthening local governance capacity - especially at the municipal level - has been a fundamental PCIM focus and is now a primary focus in Montes de Maria. Institutional strengthening efforts include technical assistance for planning, public and financial management, citizen participation, and outreach to constituents. The mayors' offices have key decision-making and project planning and implementation roles such as prioritizing and repairing tertiary roads and mobilizing local resources to support income generation and social infrastructure projects. The mayor or her/his delegate is represented at all community assemblies or "*mesas de concertacion*," the community-led mechanisms for prioritizing vereda-level projects.

Similarly the governor's office is a key player given the resources managed by this entity, their access to national-level entities, and their clear interest in supporting the consolidation process.

Signals that the consolidation process is positively changing the dynamic in the PCIM area of operation include citizens being absolutely clear and vocal that they want to move past the coca era and its accompanying violence. They are emphatic in their support of the security provided by the armed forces and police and in their hope for a future based on legality. Increasingly, communities are collaborating with eradication efforts to ensure that they will be able to benefit from the progressively visible development efforts. Community contributions to the development process - not only in the project prioritizing phase but also their contributions of labor, materials, lobbying of mayors' offices, and sometimes small funding - clearly demonstrate their commitment to the consolidation process.

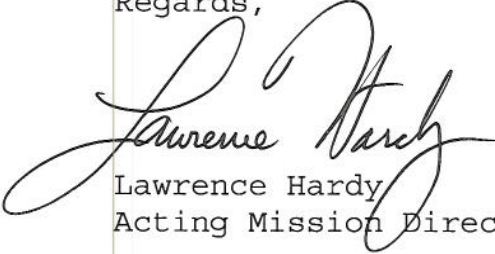
Given that the pilot effort in La Macarena has only recently been incorporated as the basis for the *Plan Nacional de Consolidacion* and as one of the foci of the Embassy and USAID Mission's new strategy, there remain a number of issues still to be worked out. These include coordination efforts at the national and local levels to ensure that consolidation theory is reflected in reality and that roles and responsibilities are more clearly defined; that appropriate funding and staffing levels for the various consolidation efforts are in place; and that these efforts become incorporated into the institutionality of the state rather than risk being merely a part of the current government administration.

We greatly welcome continued dialogue with civil society at the national and international levels to ensure that the consolidation model best incorporates a wide range of opinion and expertise so as to facilitate Colombia's moving beyond the conflict and serving the needs of its citizens in currently ungoverned parts of the country. To help inform this dialogue, we suggest, and would be happy to help coordinate, visits to the PCIM and Montes de Maria areas of operation to provide you the opportunity to speak directly with the communities involved, local authorities, and the staff of the Regional Coordination Centers.

Finally, I would like to inform you of several changes in USAID/Colombia's leadership. Susan Reichle has departed Colombia and will assume her new position as Deputy Assistant Administrator, Bureau for Democracy, Conflict, and Humanitarian Assistance, in Washington in September. Ken Yamashita will become the new USAID/Colombia Mission Director when he arrives in mid-September. Ken is serving as Acting Assistant Administrator for the Bureau of Eastern Europe and Eurasia. He has also served in several LAC Missions. After seventeen consecutive years overseas, I am returning to Washington to work on priority programs for the LAC Bureau Front Office. No doubt our paths will cross in the future.

Thank you again for your thoughtful and constructive comments. We look forward to continuing discussion on these important issues.

Regards,

A handwritten signature in cursive script that reads "Lawrence Hardy". The signature is written in black ink and is positioned above the typed name and title.

Lawrence Hardy
Acting Mission Director