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COLOMBIA DEMOCRACY AND GOVERNANCE ASSESSMENT

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CONTENTS

- EXECUTIVE SUMMARY 1**
 - Recommended Strategy 1
 - In Institutionalized Colombia 2
 - In Colombia in Conflict 3
- INTRODUCTION 4**
- PRINCIPAL PROBLEM 6**
 - The Failed State Issue 7
- ACTORS AND ARENAS 7**
 - Contextual factors 7
 - Regionalism 7
 - Economic Factors 8
 - Political History 8
 - Political Competition—Elections, Parties, the Media 10
 - The Current Situation 10
 - Freedom of Speech and Press 12
 - Governance, transparency and corruption 13
 - Governance in *Institutionalized Colombia* 13
 - Governance in *Colombia in Conflict* 13
 - Corruption in *Institutionalized Colombia* 14
 - Corruption at the Local Level and in *Colombia in Conflict* 16
- DECENTRALIZATION 17**
 - Background and Achievements 17
 - Problem Areas 18
 - State Presence 19
- ADMINISTRATION OF JUSTICE 22**
- CIVIL SOCIETY 24**
- DISTILLING THE STRATEGY 26**
 - USAID’s Role in Promoting Democracy 26
 - In Institutionalized Colombia 27
 - In Colombia in Conflict 30
- ANNEX 1. PERSONS INTERVIEWED 33**

EXECUTIVE SUMMARY

A quick overview of Colombia's history points to significant contradictions in its political order. Colombia has a long record, stretching back to 1958 of uninterrupted formal democratic representative government. It has a strong executive and a Congress that is one of the more effective in Latin America. Its constitution, written in 1991, calls for a degree of citizen participation and reinforces a process of decentralization that is considered one of the better examples in the continent. Colombia is a nation of significant urban centers, several of which such as Bogotá, the capital, and Medellín can be considered quite modern and well governed. One feels the modernity and connection of Bogotá, for example, to the broader global society.

But at the same time, Colombia exists in the midst of a protracted conflict that has lasted almost four decades, a conflict that has been generated by guerilla movements and spawned vigilante groups (referred to as 'paras' or 'auto-defensa') that have controlled large stretches of rural areas and even reached to the very outskirts of its major cities. Over the past decade, Colombia has been the principal cultivator of coca and poppies and the largest producer of cocaine and heroin in the Americas. That drug production and trafficking has fueled the conflict in recent years, providing the financial resources required by both guerilla groups and 'paras' to maintain their respective military forces.

The background to all analysis of Colombia's politics needs to be the **continuing internal conflict** that has served to divide the country into different universes of occurrence. The principal problem facing Colombia is that politics in Colombia operates in two distinct universes of occurrences. One universe that we call *Institutionalized Colombia* characterized by a representative democracy, with relatively well functioning institutions (although not without their problems), possessed of liberty of expression, a general respect for human rights, a high degree of democratic competition, state presence and social investment. This universe, largely urban, has a high degree of socio-economic polarization but within a framework of a set of operating institutions. The other universe that we call *Colombia in Conflict* can be characterized as possessing little if any space for democratic process; rather it is dominated by a continuing conflict, by the imposition of governance by force and by the lack of freedom of expression. There is little state presence, little in the way of democratic competition. In fact, the force exercised by armed bands—guerrillas, auto-defense forces—that do not recognize the rules of democratic governance, stifles competition.

Thus, the problem that we need to face is how to overcome the exclusion that marks the nation of Colombia divided as it is into two universes of occurrence with effectively different operating rules. Given that all Colombians exist within one national entity--how can Colombians put together the two pieces in a way that ensures the continuance and expansion of democracy?

RECOMMENDED STRATEGY

USAID/Colombia democracy and government program's role in resolving the principal problem facing Colombian democracy is most clearly tied to assisting in enhancing state presence in its broadest sense—building democratic local governance, greater citizen participation and local level dispute resolution and conflict mitigation.

At the national level, in *Institutionalized Colombia*, the primary focus of USAID/Colombia's democracy and governance program needs to be on promoting policy reform through approaches that generate constituencies for change and not on institution-building. Working in *Colombia in Conflict* to establish

more effective and democratic state presence, however, does mean a process of institution building and strengthening. USAID will need to focus the greatest amount of its resources in that portion of its democracy and governance program that directly addresses the problems of *Colombia in Conflict*.

IN INSTITUTIONALIZED COLOMBIA

Within Institutionalized Colombia (i.e. at the national level) USAID/Colombia's democracy and governance efforts should be focused on strengthening the forces that will serve to institutionalize policy change and reform through methods that incorporate USAID 'best practices'. Use of a programming approach at the national level that employs USAID's understanding of implementing policy reform would serve that end. This includes focuses on identifying appropriate stakeholders, including civil society and private sector actors, to promote such reform. This also means working with those stakeholders to define and implement their policy agendas. Some of the issues that are likely to form a part of this policy agenda would include:

In the Short-term

Political Competition:

- Efforts to ensure fairness in the electoral process through support for implementation by the National Electoral Council of the law of electoral guarantees.
- Efforts to ensure more effective observation of the electoral process, both using national and international observers, above all in the regions likely to be affected by the demobilization of the 'paras'.
- Attention should be paid as well to issues of freedom of expression above all in the conflict areas, as well as issues arising from the newly established norms of re-election and party strengthening.
- Finally, attention should also focus on the implementation of norms regarding campaign financing.

Management of the Justice System:

Policy changes should be directed at:

- Establishing legal connections between informal and formal justice systems;
- Providing meaningful alternatives to the overburdened formal system, such as expansion of the Casas de Justicia, above all to be able to reach into conflict areas;
- Engaging in exposure and prosecution of corrupt practices in the system;
- Formulating policy decisions as to how to close the multi-year backlog of cases, including consideration of general amnesties for certain crimes, and
- Engaging in policy reform to rationalize authority and oversight responsibilities at the highest levels of the system.

Human Rights: A policy advocacy effort directed at expanding Government of Colombia commitment expressed in building sustainability of the human rights program once donor funding is reduced or eliminated might be another policy agenda item.

In the Medium and Longer Term

Political Competition:

- Support for efforts by civil society groups to promote changes in the behavior of political parties, to reduce clientelism and ensure greater responsiveness to citizen concerns;
- Support for efforts to ensure greater accountability of parties in Congress to their constituents through institutionalization of primaries for candidate selection, at the departmental as well as the national level;

- Promoting the capacity of civil society to more effectively lobby for policy reform in Congress and through the executive including support for greater transparency and freedom in the flow of information on governmental operations;
- Re-focusing current efforts at legislative strengthening to promote greater interaction between civil society and Congress, directed at ensuring greater oversight of the national budget and the implementation of reforms;
- Promoting reforms that continue to strengthening controls over campaign financing.
- Supporting experiments in expanding innovative approaches to use of modern media to enhance citizen participation and expand political dialogue, and
- Support for reforms in the operation of the system of electoral administration directed at ensuring greater independence of the electoral process from political interference.

Strengthening and Deepening Decentralization:

- Policy reforms that devolve greater authority and flexibility to lower levels of government including promoting local government autonomy in day to day operations;
- Policy reforms that address rigidities in inter-governmental transfers and approaches to locally generated revenues taking into account the differential levels of development across regions, and
- Policy reforms that address the need to examine changes in the way controllers and *personeros* are appointed in order to enhance local accountability.

Enhancing Transparency and Accountability in Governance:

- Support for CSOs to conduct professional *veedurias* over large government initiatives with significant impact on the country that require sophisticated professional skills and competencies and requires significant levels of financing;
- Reforms in the administration of *regalias*, and reforms in the implementation of new policies for administration of *recursos regionales* (formerly *auxilios parlamentarios*) that ensure more effective transparency and accountability in their use.
- Support should also be considered for enhanced efforts at civic education in support of greater transparency and accountability within the framework of a policy reform strategy.

Promoting Better Administration of Justice:

- Develop citizen support for policies to provide better GOC training for key actors in the new accusatory system including the role of public defenders;
- Support to secure greater funding by the GOC of the expansion of alternative dispute resolution mechanisms including those represented by the Casas de Justicia;
- Support to enhance the flow of information regarding the operations of the justice systems. This could include establishment of publicly available, accessible official reports of judicial decisions and development of reliable and complete data sets related to the performance of the justice system.

IN COLOMBIA IN CONFLICT

Regarding Local Governance

- Selection of municipalities for USAID ADAM interventions taking into account not merely their economic potential, but their potential to develop into effective democratic local governments. This means that selection criteria should include an evaluation of the capacity and willingness of municipalities to engage their citizenry in participatory planning, open systems of accountability and transparency and a willingness improve the quality of service delivery.
- Selection of municipalities needs to be guided by the realities of departmental boundaries as well as economic criteria.

- USAID/Colombia should look for ways to enhance the role of departmental development agencies such as IDEA in supporting municipal development.
- Local government programs supported by USAID/Colombia should not only emphasize participatory, accountable and transparent governance in their selection criteria, but should see as their principal role the promotion of this open and democratic style of local governance to build the necessary social capital to contribute to diminishing the basis for protracted conflict.
- In a similar vein, importance needs to be given to the role of citizens in determining local economic plans for promoting economic development through and within the municipalities selected for ADAM. Repeated studies suggest that social capital provided through community action enhances the ability of communities to avoid cultivation of drug crops and to increase their independence from external pressure by armed bands including that of the guerilla.
- Efforts should also be made to ensure maximization of the use of Colombian CSOs specializing in citizen participation and local governance in USAID supported local governance programs in order to both promote greater sustainability over time of the programs and to enhance the role of these citizen organizations.
- Efforts should be made to continue efforts to work with appropriate and effective municipal associations, again as part of an effort to promote greater sustainability of USAID programs.
- Anticorruption efforts, in the form of transparency, accountability and citizen participation, should be explicit elements in all Mission programs, especially at the local level. Just as justice efforts should be focused in municipalities selected for USAID interventions in local government and citizen participation, programs such as the current effort to promote social audits (veedurias sociales) should be focused on those same municipalities.

Regarding Rule of Law

- To ensure the development of integral state presence, USAID/Colombia should focus its rule of law efforts in large measure on promoting community level justice, through rural Casas de Justicia, through linkages between informal and formal conflict resolution systems and other appropriate means in the municipalities for USAID interventions under ADAM.

Regarding Political Competition:

- Provide support to development of departmental efforts such as those currently underway in Putumayo to build cadres of community leaders;
- Provide support to civil society organizations working in conflict departments to develop civic movements that embrace groups of communities;
- Provide support to organizations of disadvantaged and women's groups seeking to build national level citizen advocacy networks;
- Provide support to political party groups seeking to develop local leadership for the parties in conflict areas, particularly those directed at building support for youth involvement in the political process. Models such as those used by organizations in Nicaragua such as Grupo Fundemos might be of relevance in these efforts.

INTRODUCTION

A quick overview of Colombia's history points to significant contradictions in its political order. Colombia has a long record, stretching back to 1958 of uninterrupted formal democratic representative government. It has a strong executive and a Congress that is one of the more effective in Latin America. Its constitution, written in 1991, calls for a degree of citizen participation and reinforces a process of

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The government of President Andres Pastrana (1998-2002) had sought to negotiate a peaceful solution to the conflict with the guerilla movements but without success. His successor, Alvaro Uribe (2002-2006) has taken a different tack, focusing on what he has called a policy of democratic defense and security¹. Over the past three years, the Uribe government has emphasized the need to fight what it has labeled as a terrorist threat by expansion of the use of military force, by seeking to establish the presence of the national state, understood as the ability of the state to place its security forces, police and military, throughout the country in every municipality. Its actions have resulted in a visible decline in the extent of guerilla activity. The government has also presided over a reduction in the levels of homicide, kidnapping and other related violence, although this decline actually began under the previous administration. The end result has been that the government has developed a reputation for promoting higher levels of citizen security, although it has not ended the protracted conflict with the guerilla. In turn, this broadened sense of security has been a major contributing factor to the very high levels of popularity enjoyed by Uribe in public opinion polls that show his approval rating at around 70%.

In the past two years, the government has also begun a process of negotiation with the para-military armed movements (paras) that have developed over the past fifteen years. That negotiation has led to a process of demobilization, both of individuals and of whole paramilitary units that the government believes will reach as high as 20,000 members of these organizations by the end of December 2005. The process of mass demobilization has been given legal sanction by a law entitled the 'Justice and Peace' law that in principle applies to both paras and guerrilla, but at this time only is being applied to the paras. Major sections of the democratic opposition to the current administration have advocated against the adoption and application of the law because it fails to provide adequate protection and restitution for the victims of the crimes committed by the paras and does not adequately punish the paras for the variety of violent crimes they engaged in during their years of operation as organized military forces. The opposition also believes that the demobilization process and the legal framework that supports it does not address issues of the insertion of the paras as a political force in various departments of the country and even in the national political process.

¹ See Presidencia de la Republica, Ministerio de Defensa Nacional, **Política de Defensa y Seguridad Democrática**, (Bogota: Republica de Colombia, 2003).

PRINCIPAL PROBLEM

The background to all analysis of Colombia's politics needs to be the **continuing internal conflict** that has served to divide the country into different universes of occurrence. It is also important to remember that **drug production and trafficking** are the principal fuels that drive the internal conflict.²

In applying the DG Assessment framework, the first step is identifying the principal problem that a country faces. We need to begin that process by recognizing that politics in Colombia operates in two distinct universes of occurrences:

- A universe that can be characterized as possessing a representative democracy, with relatively well functioning institutions (although not without their problems), possessed of liberty of expression, a general respect for human rights, a high degree of democratic competition, state presence and social investment. This universe, largely urban, has a high degree of socio-economic polarization but within a framework of a set of operating institutions. We can call this universe: *Institutionalized Colombia*.
- A universe that can be characterized as possessing little if any space for democratic process; rather it is dominated by a continuing conflict, by the imposition of governance by force and by the lack of freedom of expression. It is largely present in rural areas. There is little state presence, little in the way of democratic competition. In fact, the force exercised by armed bands—guerrillas, auto-defense forces—that do not recognize the rules of democratic governance, stifles competition. Major actors regularly violate human rights in this universe. Here there are problems of consensus, of competition and of governance, rule of law and of inclusion. We can call this universe: *Colombia in Conflict*.

These universes are not mere geographic divisions, but represent separate political worlds where the overall rules of the game are different. The consensus evident in the operations of *Institutionalized Colombia* is absent in *Colombia in Conflict*—the presence and dominance of armed groups in the latter serve as a constant reminder that there is not acceptance of the legitimacy of state authority and of the rules of democratic governance in *Colombia in Conflict*. Similarly, while there are certainly limitations in the operations of the rule of law in *Institutionalized Colombia*, by and large, a rule of law exists. Within *Colombia in Conflict*, the rule of law is limited by the action of the armed groups who impose their own kind of order. The state is present in all its institutional forms in *Institutionalized Colombia* and is effectively absent in *Colombia in Conflict*, making in the latter case real governance impossible. Armed groups limit political competition in *Colombia in Conflict* and distort the operations and outcomes of the competitive process and the related possibilities of freedom of expression. And the end result of the split into two universes is a process of exclusion from the democratic polity for those within the universe of conflict.

The problem that we need to face is how to overcome the exclusion that marks the nation of Colombia divided as it is into two universes of occurrence with effectively different operating rules. Given that all Colombians exist within one national entity--how can Colombians put together the two pieces in a way that ensures the continuance and expansion of democracy?

² Kidnapping, extortion and other forms of forced extraction also play a role, but drugs have grown to be the most significant element of the revenue stream of both guerillas and paras.

THE FAILED STATE ISSUE

In applying the DG assessment framework, we need to address the issue of Colombia's classification as a failed state. Colombia at the national level is clearly not a failed state as has been suggested in some of the literature³, but it certainly has to be seen as a state with a significant challenge to its legitimacy and effectiveness in a portion of its national territory. Hence, we need to take into account the two universe of occurrence described above. Colombia's areas of highest instability scoring according to the Foreign Policy Failed States Index came on factors of: demographic pressure, human flight, uneven development, and de-legitimization of the state. We would agree that several of these factors (with the exception of demographic pressure) constitute issues of concern, but we would argue that as Colombia has demonstrated for several decades it is possible to maintain a political structure that encapsulates these elements without threatening state collapse. In fact, that very capacity to live within the realm of two Colombias is a part of the problem that, as we note above, needs to be addressed in moving toward a more democratic future. Recognizing the duality of the political process, therefore, as this assessment is presented, we will take into account differences in levels of state legitimacy and effectiveness.

ACTORS AND ARENAS

CONTEXTUAL FACTORS

Three sets of factors influence the quality of the political process in Colombia: the regionalism that has developed over the past several centuries, shaped in large measure by the geography of the country; the economic situation, above all the deep divisions between rich and poor, and the history of political development including the significant role played by political violence.

REGIONALISM

Colombia is the third largest country in population in Latin America after Brazil and Mexico⁴ with a total population estimated at around 44 million. It covers a land area roughly three times the size of Montana (1,138,910 sq. kilometers). Its most salient features are the three separate mountain ranges that divide the country into distinct regions and that historically made travel from one region to another extremely difficult.⁵ These mountain ranges, largely unbroken by rivers and other natural transportation corridors moving west-east led to the development of separate regional cultures and economies, elements of which still remain a feature of modern day Colombia. Population as well was concentrated in the mountain valleys and not in the lowland and coastal areas, creating what one analyst has described as an island of population and resources in the center of the country. The Atlantic coastal plain until recently was not heavily populated; neither is for that matter the Amazon basin.

³ See 'The Failed State Index', **Foreign Policy**, July/August 2005. The authors of this index ranked Colombia 14th of 60 states designated as failed states. The ranking was a result of the existence of 'episodic fighting, drug mafias or warlords dominating large swaths of territory'. Colombia's areas of highest instability scoring came on factors of: demographic pressure, human flight, uneven development, and de-legitimization of the state.

⁴ CELADE, Boletín Demográfico, Economic Commission for Latin America: Santiago, 2004, pg.15.

⁵ As Frank Safford and Marco Palacios note in their book on Colombian history, 'Until the end of the nineteenth century all (the routes across the three cordilleras) had to be traveled by mule or, in good conditions, by horse'. Safford and Palacios, **Colombia, Fragmented Land, Divided Society**, (New York: Oxford, 2002) pg. 4.

These differences in regions also reflect differences in resource bases for development, with the highest levels of economic development focused in the interior regions including the departments of Cundinamarca (Bogotá), Antioquia (Medellín) and the Valley of the Cauca (Cali). Many of the outlying regions in the south such as Putumayo, Caqueta and Amazonas, in the east such as Vaupes, Guainia and Vichada and the Guajira in the north are under-populated and lacking resources.

ECONOMIC FACTORS

Colombia has begun a process of recovery from the economic decline it faced in the 1990s, but that recovery is taking place within the context of significant levels of poverty and uneven distribution of the rewards of development. While Colombia has seen the growth of a middle class over the past fifty or so years and also has had small numbers of artisans and self-employed farmers in certain regions, it has maintained throughout its existence wide gaps between a small elite and the mass of the population, contributing directly to the economic basis for the phenomenon of the Two Colombias. Colombia's economy is marked by widespread disparities between rich and poor. As of 2001, it was estimated that around 55% of the population was below the poverty line although some sources suggest that the percentage may be as high as 64% (the latter figure coming from the World Bank). Colombia's richest 10% of the population accounts for 46.1% of the country's total income or consumption, while its poorest 10% accounts for only 1.1%. According to the 2005 UNDP Human Development Report, Colombia had a ranking of 69 (Chile was ranked 37) on the human development index.⁶

Not only is there a skewed distribution of income, but other vital economic factors serve to limit opportunity for the poorest. There is high level of inequality in land tenure with Colombia having a gini coefficient for land distribution of .85 (as compared with .59 for Mexico).⁷ This inequality in land tenure is associated with underutilization of productive lands, with lower shares of investment by local governments who pay greater attention to the needs of large landowners and contributes as well to the incentives for illegal cultivation and for recruitment into illegal armies.⁸

Colombia's labor force is characterized by a high degree of informality. According to a recent calculation by the Colombian National Statistical Department (DANE) based on its labor survey for April-June 2005, 59% of the labor force works in the informal sector, with those in the informal sector receiving lower wages than those in the formal sector, without the benefit of health and pension benefits. Moreover, the same source notes the existence of an unemployment rate of 11.8% and an underemployment rate of 33.9%.⁹

In short, poverty contributes to political instability and above all to the division of Colombia into two universes.

POLITICAL HISTORY

Colombia has a long tradition of electoral competition¹⁰ that has existed hand in hand with a tradition of political exclusion. That exclusion has manifested itself through the use of violence, establishing what can be considered the hallmark of Colombian political history: a great respect for electoral formalities living alongside the cruelest form of political exclusion--the physical annihilation of political opponents.

⁶ Human Development Reports--Colombia, HDR2005, UNDP. See also Table 1.

⁷ David de Ferranti, Guillermo E. Perry, Francisco H.G. Ferreira and Michael Walton, **Inequality in Latin America**, (World Bank: Washington DC, 2004), pg.191.

⁸ 'Colombia: Land Policy in Transition', (World Bank: November 19, 2003) pg.5-6.

⁹ **Portafolio**, September 2, 2005, pgs. 1 & 6.

¹⁰ See Eduardo Posada Carbó, La tradición electoral, in Fernando Cepeda Ulloa, Editor, Fortalezas de Colombia. Ariel Ciencia Política, Banco Interamericano de Desarrollo, Editorial Planeta, Bogotá, 2004.

Colombia survived several civil wars in the 19th century. During the period from 1948-1953 known as *La Violencia*, the politics of partisan strife reached a zenith with thousands killed for their political affiliations.¹¹

Coming out of a political coup that created a de facto government under the leadership of General Gustavo Rojas Pinilla (1953-1957) followed by a military junta (1957-58), the two major traditional political parties, the Liberals and the Conservatives, signed an accord to establish the National Front (1958) that eliminated party strife regarding control of the national government through a system of alternation in office among the two parties as well as a 50-50 split in all principal public positions. This reduced a major source of political violence. But, the National Front pact did not eliminate all forms of political exclusion. In fact, it generated further limitations on competition, leaving out of the political process all but the two traditional parties. This policy of exclusion provided support to the ideological arguments of the various guerilla movements, thus initiating a new cycle of violence that has persisted to this day.

Traditional patron-client relationships had been a dominant characteristic of politics in the first century of the existence of the Colombian state. Political bosses in both urban and rural settings defended the interests and acted in the name of their clients, receiving in return deference and respect as well as material benefits from that clientele. In the period of *La Violencia*, this patron-client relationship cloaked in the mantle of partisan politics even led to a willingness to fight and die for a given patron. That form of clientelism began to break down in the 1950s, to be replaced by what John Martz has characterized as corporate clientelism, linked to the expanding role of the state and the limitation of competition engendered by the National Front.¹²

While the National Front limited the scope of Liberal-Conservative conflict it did not still the internal conflicts within each party. Animosities continued between supporters of rival leaders in both parties. Regional and local party leaders fought for control of jobs available through an ever stronger state apparatus. They also fought for access to control over state provision of health care, housing, educational and other services and lucrative state contracts. Over time the dominance of the state, as Martz suggests, resulted in a reduction of the relevance of the regional party bosses and an increase in the importance of national political leaders who controlled the state apparatus.¹³

In 1991, the adoption of a new political Constitution attempted to deal with the problem of political exclusion by seeking to eliminate all restrictions on electoral competition. To that end, the constitution established a wide-open system of participation denoted as ‘democratic participation’. That participatory system was expressed principally through the initiation of a series of mechanisms for direct democracy including legislative initiatives, plebiscites, referendums, open town meetings, recalls and the development of opportunities for participation by civil society in public policy-making through planning councils, citizen audits, and advisory councils among others.¹⁴

In terms of Congressional electoral politics, the constitutional decisions of 1991, added to a personalistic political tradition and the weaknesses of the political parties (which behaved as we have noted more like a

¹¹ Gonzaleo Sanchez and Donny Meertens in their work on *La Violencia*, **Bandits, Peasants and politics: the case of La Violencia in Colombia**, (University of Texas press: Austin, 2001) characterize violence in Colombian politics as a form of political participation for peasants. “ For peasants, armed mobilization in support of one or the other side (of a political conflict) demonstrated incorporation into the nation’s political life.” (pg. 9.)

¹² John D. Martz, **The Politics of Clientelism: Democracy and the State in Colombia**, (Transaction Publishers: New Brunswick, 1997) pg. 309.

¹³ Ibid. Pgs. 310-311. This situation is what Martz dubbed corporate clientelism.

¹⁴ See Juan Fernando Londoño, Compilador. **Democracia participativa y fortalecimiento de la sociedad civil**. Ministerio del Interior, Bogotá, 1996.

collection of national patrons and their respective clientele) lead to a great electoral dispersion. The candidates for election understood that they could maximize their opportunities for election focusing on residuals, given that the system of proportional representation by quotient favored such a situation. The consequences for democracy were (1) weaknesses in the capacity for representation by the system as a whole (given that an enormous quantity of votes went to candidates that were not elected); (2) the loss of clarity of political programs presented to the public (given the enormous number of candidates and the personalistic character of the campaigns), and (3) a great dispersion of financial and electoral resources¹⁵.

POLITICAL COMPETITION—ELECTIONS, PARTIES, THE MEDIA

Political competition has as its purpose to guarantee citizens the possibility of choosing among distinct political alternatives in order to have the best possible government. This basic principle has been distorted in Colombia for two reasons: (1) the weaknesses of the party system that has wiped out the differences among the options offered and does not guarantee the development of better electoral options and (2) the intimidation of citizens and candidates by armed groups who have threatened and in fact killed voters and candidates.

The set of institutions with the responsibility for the electoral process and political representation have the lowest levels of support among all the institutions of the country. According to the study undertaken for USAID under the title ‘Public Opinion Project in Latin America’, political parties, the Electoral Council, the Congress and the electoral process itself are all located in the lowest levels of confidence by Colombians¹⁶.

Colombian democracy faces two great challenges in the area of political competition:

- Consolidate a new system of parties, product of the recent political reforms and the ideological re-alignments generated by the present government, and
- Ensure that the political incorporation of armed paramilitary groups through the current demobilization process is carried out with full guarantees for all competing parties and individuals without coercion and in conditions of full liberty for all citizens and candidates, above all in the areas that were and continue to be under the influence of the paras.

THE CURRENT SITUATION

Party Transition within Institutional Colombia: To counteract the growing difficulties in the competitive process, demonstrated above all by the dispersion of political parties reaching to around 60 represented in the national Congress, the national government adopted a constitutional reform in 2003 that established new electoral rules of the game.(Legislative Act 1, 2003). That reform obligated parties to present single lists for each level of electoral office; established a new system for distributing seats in legislative bodies (using the D’Hondt method) and established a minimum threshold for participation in the process of distributing seats in legislative bodies. The reforms also included establishing measures designed to promote greater party discipline through a law regulating membership in parliamentary

¹⁵ In **La política importa. Democracia y desarrollo en América Latina**. Capítulo 5, Sistemas de Elección Legislativa y gobernabilidad democrática, página 129. Banco Interamericano de Desarrollo e Instituto Internacional para la Democracia y la Asistencia Electoral. Washington D.C. 2003.

¹⁶ The figures are: political parties 35.8%, electoral council 47%, Congress 47.3%, elections 50.7%. In **La cultura política democrática en Colombia, 2004**. Juan Carlos Rodríguez-Raga, University of Pittsburg, Michael A. Seligson, scientific coordinator and editor de la series Vanderbilt University. National Democratic Institute United Status Agency for International Development, Fundación Buen Gobierno. Colombia, 2004. Pg. 24.

parties (ley de bancadas) and a prohibition against dual affiliation of members of legislative bodies (in effect members need to belong to the party that elected them).

The reform has generated the need for greater electoral cohesion within parties in order to overcome the electoral threshold. This regrouping coincides with a reconfiguration of ideological positions resulting from the positions assumed by President Uribe, although not specifically promoted by him.

Uribe's victory as independent presidential candidate in 2004 created a schism in the previously majority Liberal Party.¹⁷ The President, who had been a member of the Liberal Party prior to his election, has governed with the support of the Conservative party, independents and some sectors that were previously part of the Liberal Party, putting together a center-right coalition. That has obligated the opposition parties, the Liberal Party and the Democratic Pole, among others, to accentuate their positions as center-left in order to establish them as a clear alternative to that represented by the government coalition. It has also pushed the parties, above all the Liberal Party, to implement plans to strengthen the internal organization and operations of the party. The Liberal party elected a former Liberal President of the Republic, Cesar Gaviria, as its new party president to provide leadership in that re-organization effort. It has also begun efforts, working with a civil society organization, to provide training to youth leaders for the party.

Given that re-election has been accepted by the Constitutional Court, the most likely scenario will be to see two large blocs of parties, center-right and center-left vying for control, both blocs more coherent in terms of their ideologies and more cohesive in terms of their organization than in previous elections—pushed by the new legal framework and also by the issue of a response (positive or negative) to the Uribe administration. These two blocs would have to function as disciplined party groups within the next legislative period, and as more organized parties in facing public opinion. This might well lead to the possibilities of a new level of governability in Colombia through a different relationship between the executive and the legislature.

In this sense, the principal challenge facing *Institutionalized Colombia* is the area of competition is the institutionalization of a system of effective and democratic parties. That will serve as a guarantee of governability by increasing the political will to act against corrupt practices, will assist in increasing political representation, and will help develop better public policies and greater State capacity to deliver services to citizens.

From Armed Groups to Political Actors in Colombia in Conflict: The definitive consolidation of democracy in Colombia requires the end of the current armed conflict. The best imaginable scenario to end that conflict is a process of political negotiation between the government and the various armed combatants. Such a process of political negotiation has been initiated with the 'paras' by the Uribe government, resulting, as has already been noted, in a process of demobilization scheduled to conclude at the end of December 2005 although of late that process has encountered resistance on the part of certain 'para' leaders.

The process of demobilization and reinsertion of the paras represents a potential benefit for democratic processes and a potential threat. A benefit will result if the paras cease to use violence as a coercive mechanism. The threat, as has been noted, comes from the high probability that the paras will continue to use their strength in certain regions to intimidate others for political as well as economic ends.

¹⁷ With the exception of the 1970 election, prior to 1991 the two majority parties, Liberals and Conservatives, secured around 90% of the vote. In the 1990s, as a consequence of the reforms contained in the 1991 constitution, the traditional parties saw their share of the vote reduced such that by the 2002 election won by President Uribe, the Liberal and Conservative parties received a total of 40% of the vote for the Senate (30% Liberal, 10% Conservative).

Unfortunately, there are a variety of indicators and testimonies that suggest that the demobilization process to date has not led to a dismantling of the illegal structures that sustain the power that the paras exercise in the regions they control. There are concerns that the quantities of arms surrendered do not represent the totality of arms available to the paras and, equally important, that the paras still have the economic capacity to rearm if needed. There is a concern that the organizational structures that form the basis of the paras' illegal activities have not been dismantled and that in certain regions of the country paras have undue influence governmental apparatus, including the organizations that deliver vital services such as government-subsidized health insurance. Finally, journalists, candidates, local government officials and even members of the national Congress continue to face threats to their very existence if they act counter to the interests of leaders of the paras.

In this regard, it is worth noting recent comments made by an international observer of the level of freedom of expression in a recent visit to Colombia:

“...During the visit to Colombia numerous testimonies of social communicators were received, especially in the regions outside the capital, which recognized that they do not publish articles on certain themes or have had to change their editorial policy for fear of retaliations. Even some authorities admitted that civil society, the mass media and the population in general, fear to participate in public discussions and to report on themes related to the internal armed conflict, the action of armed groups at the margin of the law, drug trafficking and the corruption”¹⁸

Securing full exercise of democracy in regions that have a tradition of control by armed illegal groups will be a task that will take various years. That objective will only be possible if coupled to an effort to ensure the effective establishment of the rule of law and of state presence broadly defined in those regions. While this process is taking place, it will be necessary to take actions that ensure the possibility of electoral freedom for diverse political groups and that send a clear signal that coercion of voters and candidates will not be tolerated.

This implies that during the 2006 electoral process, both for Congress and the President, there is a need to take actions that permit the protection of all political groups within the areas of paramilitary control. This includes ensuring protection for candidates, for journalists in the regions just mentioned, and for citizens groups engaged in electoral observation and oversight.

FREEDOM OF SPEECH AND PRESS

A key element of political competition is the degree of freedom enjoyed by the media. Colombia's constitution guarantees freedom of speech and press and the national government has demonstrated in general a respect for these freedoms. However, there is a high degree of self-censorship by journalists, above all journalists outside the major cities in regions associated with a strong presence of illegal armed groups, to protect those journalists from possible retaliation. As the State Department's human rights report for 2004 notes 'at least 4 journalists went into voluntary exile during the first 9 months of the year, joining 20 who left in 2002 and 2003'. Moreover, the report notes that '3 journalists were killed, 2 kidnapped, 1 tortured and at least 37 threatened with death'.¹⁹ These actions were taken both by guerrilla groups and paramilitaries. Paramilitaries and guerrillas also threatened university professors and schoolteachers. The government as well as private groups has organized efforts to protect journalists and schoolteachers.

¹⁸ Preliminary observations on concluding the visit to Colombia by the Special Reporter for freedom of expression. Inter-American Commission of Human Rights. www.cidh.org.

¹⁹ US Department of State, Country Reports on Human Rights Practices—2004, February 28, 2005, pg. 14-15. Freedom House and Reporters without Borders both give Colombia relatively (for Latin America) the lowest scores on freedom of the press, undoubtedly related to issues of coercion of journalists.

At a lesser level of threat, but certainly of some degree of preoccupation, there has been a gradual process of consolidation of the media over the past years, with more and more media outlets, newspapers, journals and broadcasts outlets in the hands of fewer and fewer private owners. While it is not clear that this has resulted in a decline in the expression of opinions, it remains an area for concern, one noted even by journalists who have to a certain extent benefited from this consolidation.

GOVERNANCE, TRANSPARENCY AND CORRUPTION

GOVERNANCE IN *INSTITUTIONALIZED COLOMBIA*

Governance in Colombia is something of a paradox. Clearly the successive governments in Colombia have exhibited sufficient governance capacity to sustain South America's oldest democracy, and to achieve solid economic performance over the long haul. Indeed, many of the key institutions of governance control continue to make impressive strides towards modernization and increased capacity. For example, the *Procuraduría General de la Nación* and the *Contraloría General de la Nación* (CGN) are both institutions of significant capacity that have been modernizing and improving their performance for successive administrations. Not only are such institutions improving their own records, they are overseeing the improvement of the entities which they oversee. An annual report by the CGN released in August 2005 showed that 64% of the entities that they monitor for appropriate financial management meet minimum standards, an improvement of more than 100% in three years. *El Instituto para el Desarrollo de Antioquia (IDEA)* is an example of a territorial entity (in *Institutionalized Colombia*) of world-class capacity and management.

An example of Colombia's capacity to tackle difficult reforms is the recent effort by Colombia's internal revenue agency, the National Directorate for Taxes and Customs (*Dirección de Impuestos y Aduanas Nacionales*) (DIAN), to increase tax collections. Traditionally, only a very small portion of Colombian citizens or businesses actually paid taxes. DIAN has begun a program that crosses data from a variety of bank, credit, government and business sources to identify individuals and entities who should be paying taxes but who have not been. It is too early to tell if this program will be successful; however, the existence of data on financial transactions to use as evidence suggests that it might well lead to increased compliance. What is noteworthy is the technical sophistication of the effort.

Nonetheless, many critical governance institutions in the country remain weak or politically manipulable. For example, both the Administrative Department for Public Operations (*Departamento Administrativo de Función Pública*) and the National Civil Society Register (*Registraduría Nacional del Estado Civil*) are widely seen to be both ineffective and politically captured. The recent news reports on the ongoing concerns regarding the contracting for identity cards amply illustrates the kind of problems such institutions face. An additional challenge to good governance in Colombia is the fact that oversight from the legislative and judicial branches is also politicized or ineffective. Weaknesses persist in other areas of governance such as meritocracy and the implementation of career civil service laws (*leyes de carrera*), contracting and transparency.

Despite the weaknesses and criticisms of certain aspects of governance in *Institutionalized Colombia*, it is obvious that the country possesses the human, technological and financial resources to design, implement and manage world-class governance institutions. Where it has failed to do so, this failure can more likely be traced to a lack of political will or prioritization than to a need for donor funds or technical assistance.

GOVERNANCE IN *COLOMBIA IN CONFLICT*

The situation in *Colombia in Conflict* is strikingly different. The government of Colombia does not have effective control over vast portions of the country. Indeed state presence is totally absent from some

areas; where it is present at all, it is extremely weak. Governance in *Colombia in Conflict* has been described as semi-feudal, and a very paternalistic attitude by government prevails. In these rural areas or underdeveloped municipalities there are extremely high levels of poverty and few if any opportunities for economic activity. Given this lack of opportunity, it is easy to understand the attraction of cultivating of illicit crops. And it is easy to understand how armed groups have filled the governance vacuum created by the absence of any effective state actors.

The Uribe administration has made much of the fact that there is now state presence in 100% of Colombia's municipalities. However, the existence of a small number of soldiers or policemen cannot be said to represent effective state presence. Such a limited democratic security presence would be clearly insufficient militarily against any of the armed groups or against narco-traffickers. State presence must be defined by effective operation of health, education, and justice actors as well as support for increased economic activity. It also requires broad levels of citizen interaction with and participation in the decision-making and oversight of local government service delivery.

CORRUPTION IN INSTITUTIONALIZED COLOMBIA

Colombia has long been thought of as a country plagued by high levels of corruption²⁰. And indeed, the country continues to struggle with corruption in many of its manifestations in both Colombias. However, we must acknowledge the impressive strides made to date in addressing corruption in a number of key areas.

Key control institutions such as the *Procuraduría* and the *Contraloría* have proven to be quite successful in improving not only their own performance, but also in improving the performance of the entities that they oversee. Civil society in Colombia is extremely well developed in the area of anti-corruption. Indeed Transparency for Colombia (*Transparencia por Colombia*) is internationally recognized as a leader in the development and use of anticorruption tools and programs. NGOs across a range of sectors implement sophisticated and effective anticorruption programs and regularly offer policy proposals to government. Colombia is also fortunate to have free and sophisticated media, both press and broadcast, which provide investigative journalism, analysis and opinion.

One of the three key planks of President Uribe's campaign platform was the reduction of corruption. Most interviewees acknowledged that while he personally is committed to this agenda, it is not a priority for him. The anti-corruption function of his government remains in the office of the Vice-President, an office that traditionally lacks power in the Colombian government. Despite some increases in funding, other government actors do not accord it much importance. In fact, the directorship of the anti-corruption office in the Vice-Presidency was vacant for six months and recently (during the course of this assessment) the newly appointed director resigned.

An example of the lack of prioritization of anticorruption is the Single Contracting Gateway (*Portal Único de Contratación*). This e-government application designed to host all government procurement activities is currently functioning, and the government claims it as a success. However, a recent study has shown that many entities do not use this portal, and the percentage of procurement that passes through it is low. The study also demonstrates that the information it contains is often different from information provided by the various entities, and that the actual bidding documents provide yet another set of data. This sophisticated application is not serving its intended purpose, either in terms of government efficiency

²⁰ Transparency International's Corruption Perceptions Index scores Colombia at 3.6 (2002), 3.7 (2003) and 3.8 (2004), indicating a steady positive trend for the last 3 years. The World Bank Institute's Governance Matters Control of Corruption Index also shows a positive if uneven trend with scores of 37 (1996), 29 (1998), 42 (2000), 38 (2002) and 52 (2004). It should also be noted that Colombia compares favorably to both the regional average (45) and the average for countries of similar economic characteristics (37) in 2004.

or in terms of increasing transparency and reducing corruption. But it is not for a lack of technical or administrative capacity or apparently resources²¹. It is a failure of the government commitment to its implementation.

Civil society and academics complain of the continued lack of accountability and responsiveness of the government and the legislature. While significant efforts are made to influence the policy and/or legislative process, civil society actors claim that decisions continue to be made on the basis of clientelistic and partisan relationships, and that the state often fails to act in the interest of the public good. Another common complaint is the lack of transparency of state actors. For example, the mission of the NGO, Visible Congress (*Congreso Visible*), is the collection and dissemination information on the actions of the legislature, information which should be proactively made public by the Congress itself. Requests for information under various constitutionally established mechanisms often result in a refusal, or in outdated and opaque data that does not create the kind of transparency envisioned by the framers of the constitution. A recent study²² has shown that the single most common reason for which citizens make *peticiones de tutela* is to demand access to information. (These petitions represent a judicial process established under the '91 constitution designed to protect citizen rights.)

While this demonstrates that a mechanism to seek information exists and is being used, it also suggests that there is a lack of transparency in government operations, forcing citizens to demand by law information that should be readily available to them. As the study cited above notes:

In the area of availability of information regarding state entities, and of access by citizens to that information, Colombia has advanced towards the construction of a constitutional and legal framework and towards a better use of communications and information technology to ensure that citizens can, on a permanent basis, have access to information.

Notwithstanding, there is a structural problem that still remains resulting from the inadequate provision and processing of information by the various entities that make up the public sector. The problem derives, in part from the lack of sufficient and timely information of a quality required to meet the demands of citizens, *but it also derives from a culture of refusal on the part of public officials to provide access to information because of a traditional fear of the use that citizens can make of that information.*²³ (Italics added)

The other critical challenge facing Colombia is the issue of political party financing. While the state provides generous subsidies for candidates, there are no laws requiring disclosure of either sources of income or expenditures of funds. Given the resources available to illegal actors and ongoing claims of drug money used for campaigns, it is hard to believe that requirements for such transparency have not been put in place. With the possibility of reelection, the use of state assets for political purposes, largely avoided by single-term limits, becomes a concern as well.

Finally, the concept of meritocracy, rhetorically favored by Uribe, has made little progress in public hiring; cronyism and clientelism remain very strong. These elements, together with widespread impunity, continue to be major contributing factors to continued corruption and the lack of public confidence in democratic institutions.

²¹ USAID/Colombia offered support for this activity, but the Government of Colombia turned the offer down, suggesting that it had sufficient resources for this purpose.

²² 'Estudio Sobre La Tutela Por Vulneración Al Derecho De Petición De Información Como Herramienta Ciudadana Para Acceder A La Información Pública En Colombia', a report published in 2005 by Transparencia por Colombia, showed that the single largest use of the tutela was in relation to requests for access to information. From 1995 to 2002, access to information represented between 18% and 30% of all tutelas.

²³ Ibid. pg. 4

As with the question of governance capacity at the national level, it appears that the government of Colombia possesses the capacity to address the institutional challenges of corruption. It should be noted that the Inter-American Development Bank is supporting many of the national control institutions to this end. However, it is less clear that the government possess the necessary political will to carry out some of the needed reforms. In an environment of ample institutional, technical, human and financial resources but inadequate political will, USAID should reconsider its support for national-level anticorruption efforts.

CORRUPTION AT THE LOCAL LEVEL AND IN COLOMBIA IN CONFLICT

Decentralization is one of the strong contributors to the strengthening of democracy in Colombia. However, the process of devolving both resources and authority to sub-national levels almost always brings with it significant challenges, especially in terms of capacity at the sub-national level. A central challenge thus created is typically increased opportunity for corruption. Colombia's experience with decentralization is no exception, and levels of corruption appear to have grown dramatically at the territorial levels. Irregularities in the award of public contracts are a major area of concern. Another is the management of transferred health sector funds that are targeted to subsidies for health care for the poor. Mayors, who are responsible for maintaining the lists of those eligible for subsidies, have sometimes engaged in corrupt practices to siphon off money by manipulating the lists. In other cases they have contracted with health care providers in ways in which they line their own pockets in the process.

The Controller General's Office, which has oversight responsibility with respect to central government funds and other special authorities that it can use to look into local government finances, has recently removed three governors and two mayors from office for misconduct. Municipal governments themselves have institutional controller functions, but the controllers' independence is often compromised. Local councils elect the controller, and newly elected mayors work hard to build a supportive majority on the councils in order to elect a pliant controller. Improper political deals often accompany this process, especially as regards the award of municipal contracts. While this should not be unexpected, it is essential that it be addressed.

There are a number of factors that contribute to this increase. The presence of armed actors and narco-traffickers are an obvious one. Levels of education are generally low and poverty is extremely high. Thus citizen awareness is limited as is their ability to participate effectively. Likewise, weak or non-existent local governments offer few if any opportunities for such participation. Demand for reform is weak. Some cities also receive *regalias*, or royalties on extractive activities, which can be as much as ten times the amount of transfers. However, these resources are often poorly administered and subject to high levels of corruption.²⁴ The existence of *regalias* combined with the lack of effective state presence and the dominance of armed groups in various regions has resulted in high levels of misappropriation of these funds.

Where local government does operate, the political and structural arrangements are not conducive to transparency and accountability. Weak parties and mayors without a majority in the municipal council create incentives for mayors to cobble together a majority through clientelistic, if not patently corrupt, practices. The municipal council appoints both local *Personeros* and *Contralores*. Thus these two critical oversight functions are vulnerable to political manipulation. This, together with a lack of capacity and appropriate job qualifications, means that oversight, if it exists at all, is generally ineffective. Territorial entities often lack appropriate financial management, human resource management and project

²⁴ Interviews with Antonio Hernandez Gamarra, Controller General of the Republic and German Cardona, Former Director of the National Office for Anti-corruption, each of whom presented the issue in the context of the work they had undertaken.

management capacity. Financial information either does not exist or is completely inadequate from an audit perspective, or is not made available by local government actors who are neither transparent nor accountable.

Local media are subject to a variety of pressures (from armed actors, business interests and political forces) that diminish its capacity to report on subjects such as corruption and political malfeasance. All of these factors contribute to a very limited degree of oversight and accountability.

DECENTRALIZATION

BACKGROUND AND ACHIEVEMENTS

Strengthening of the decentralization process in Colombia begun in the mid-1980s is of fundamental importance to improved governance of the country. Colombia has gone farther in the decentralization process than any other non-federal nation in Latin America. At present some 55% of national government revenues are transferred to sub-national entities (*departamentos* and *municipios*) along with the responsibility for delivery of certain services, particularly primary health and education.

As part of the structural changes in the political system beginning in the late 1980s and written into the 1991 Constitution, departmental governors and municipal mayors are now popularly elected, as are the legislative bodies at both levels, with the intent of bringing elected government closer to the people and making it more directly accountable. The revenue sharing provisions cited above also were made part of the 1991 Constitution.

Although Colombia used to be a highly centralized state, a strong sense of regionalism has pervaded the country's political and economic systems almost since independence, as was already noted above. Major cities developed outside the capital, Bogotá, and the largest of these – Medellín, Cali and Barranquilla – became powerful regional centers in contrast to countries like Peru and Chile where the bulk of urban development was centered in the capital city.

Once mainly rural, Colombia is now mainly urban. Nonetheless, a still large rural population is spread out in often difficult to reach locations and is the segment of the population suffering the highest level of poverty and lack of social services. The presence of the State in many of these areas is minimal, as is the delivery of services. It is no coincidence that these rural areas are the parts of the country where the internal armed conflicts are centered and where illegal armed groups have moved in to take over in the absence of effective State presence, the areas we define as a principal locus of *Colombia in Conflict*. They are the areas where illicit growing of opium poppies and coca leaf are prevalent and where most of the cocaine and heroin processing facilities are located. In addition to the narcotics traffickers operating simply as “businessmen,” both the guerrilla groups and the paramilitaries are heavily involved in the drug trade as the principal means of financing their operations. The battles among them and against the State for control of territory are as much to gain secure growing areas and transport corridors as any political objectives.

Matching the existence of *Colombia in Conflict* defined in part as the country's rural realities with USAID's overarching goals of reducing illicit crop production and achieving peace almost demands special attention in assistance programs in the democracy/governance sector (and other strategic objective sectors as well) targeted to those geographic areas where the problems of poverty, armed conflict, narcotics and weak governance are greatest.

Most of the people with whom the team met described both the political decentralization and revenue sharing (transferencias or participaciones) in highly positive terms. Direct popular election and broader avenues of citizen participation, they said, had strengthened Colombian democracy and made local government much more legitimate in the eyes of the people. Used to being governed by appointed officials linked to the elite of the political class, they now had the freedom to choose who among them would hold public office and deal with the most relevant issues affecting people's daily lives. In a country with a long history of political party partisanship, mainly between the two traditional dominant parties – Liberal and Conservative – more than 50% of current mayors in the country's 1,097 municipalities have been elected as "independents" or at the head of "civic movements" rather than as candidates of national political parties. This is evidence of citizen activism and empowerment at the local level. However, it is also a sign of the decline of the national political parties.

The political popularity of direct elections led to later constitutional amendments that lengthened the term of office of mayors from three years to four years and allowed for re-election although not immediately after completing their initial term.²⁵ Council members (concejales) are not bound by term limits.

PROBLEM AREAS

However, further inquiry and examination revealed downsides to decentralization that must be factored into the democracy/governance equation. Many municipalities were ill prepared to assume these greater responsibilities, especially financial management. Some smaller local governments have only two or three permanent employees, and in most municipalities, political patronage customs often led to complete changeovers in personnel following elections, to the detriment of good management and institutional memory.

Many mayors and councils used their new authority irresponsibly and borrowed short-term from the banking sector more than they could afford to repay, leading to a widespread crisis of indebtedness at the municipal level in the late 1990s. By and large, municipalities were too heavily dependent on the new central government fiscal transfers and did not have sufficient own-source revenue to assure financial stability. The poorest municipalities, and many fit into this category in the rural areas we have denoted as *Colombia in Conflict*, had almost nonexistent revenue-raising capacity of their own and were of questionable viability as formal units of government.

Responding to the demands placed upon Colombia by the International Monetary Fund as part of Colombia's efforts to recover from its fiscal crisis during the 1990s, the Colombian national government enacted Law #617 that required a significant reduction in local and departmental spending. The net result of the application of that law has been a reduction in the costs of operations through downsizing of personnel at the local level, making large cities like Medellín and well-off departments like Antioquia more efficient in their operations. This has limited to some extent the drain on the national budget resulting from the cost of local government.

Local governments have moved from an overall deficit of three billion pesos in 1999 to an estimated three and one half billion-peso surplus in 2004. Part of this is a real surplus, but some of it represents a pipeline backup of funds already committed for projects but unspent due to weak implementing capacity in the municipalities.

²⁵ Currently there is a constitutional amendment under consideration in Congress to permit mayors and governors to be re-elected after completing their term in office. It has been passed once out of the eight times required for a constitutional amendment.

The 1991 Constitution, while clearly favorable to decentralization and in line with strong popular support in the elected Constituent Assembly, created rigidities in public financial management that caused national fiscal problems. With the large earmarked transfers to the regions, the central government was left with much less maneuvering room in the rest of the budget to deal flexibly with revenue shortfalls and attempts at tax reform.

As already noted, the biggest problem with decentralization cited by observers was corruption in local governments in areas such as the awarding of public contracts and the management of health transfers.

Another “problem,” but one which should be viewed differently, is the impact on good governance of intimidation, threats and violence directed against local government officials by the illegal armed groups. For example, since the year 2000 more than 200 council members have been murdered. So far this year, 18 have been murdered, as many as in all of 2004. According to the Colombian Association of Municipalities, in 2002 more than 350 mayors were in exile, unable to live and exercise their offices in their own municipalities due to threats against them. In 2003 that number had dropped to 107. Thus far in 2005, the Association reports that no mayor has moved his or her office out of the municipality, an indicator of greater security in rural areas credited to President Uribe’s policy of democratic security.

Another aspect of the same problem is intervention by the armed groups in local election processes. By threats or actual violence would-be candidates are dissuaded from running, and only candidates acceptable to the armed group in question are allowed to run. This phenomenon, known as “*candidato unico*,” resulted in three gubernatorial and ten mayoral candidates running unopposed in the latest electoral cycle. It is not possible to quantify how many other local officials are beholden to the various armed groups, but in the areas where the armed groups are strong and State presence is weak it can safely be said that democratic governance is threatened. The paras have taken a stronger direct role of this sort in local government than the FARC or ELN.

The financial transfers system is also subject to some criticism for being comprised mainly of payroll costs for teacher and health worker payrolls, with not enough available for investment purposes or the flexibility at the local level to change the mix of uses of transferred funds. One critic has described this by referring to local officials simply as “check writers.”

The above problems notwithstanding, the political decentralization process appears to be on balance highly positive. It also appears irreversible, given broad popular support and the space it has opened for the emergence of more elected officials with stronger claims of local legitimacy and more financial capability to deliver visible results to local voters. Without question, the figure of the mayor has taken on much greater political importance, especially in the larger cities but also in the rural municipalities.

STATE PRESENCE

As has been stated earlier, the lack of effective State presence in areas we have designated as *Colombia in Conflict* has led to the armed groups dispensing “justice” instead of citizens receiving the protections of law and order from a sovereign, democratic State. The Uribe administration has adopted an aggressive military posture against the guerrillas and has to date succeeded in shrinking their territorial control, gaining widespread public popularity in the process.

State presence and the security policy are meant to go hand in hand, with entry or reentry of civilian authorities following on after public security is restored with the presence of army and police units on a permanent basis. Essential justice system officials from the national government, such as judges and prosecutors, are to be assigned in the municipal capitals (*cabeceras*). Mayors and councils, if displaced, will also return.

But this minimal State presence does not constitute effective State presence across a whole range of public services that were previously nonexistent; and it is this sustainable State presence that is needed for economic revitalization and democratic local governance with active citizen participation. However, the reality is that the central government has neither the financial resources nor the institutional capacity to provide that level of presence now or in the foreseeable future.

Essential to effective governance is strengthening and deepening the decentralization process, devolving even more authority and responsibility to sub-national units, both the departments and the municipalities. But the percentage of national government revenues transferred, some 55% of the total, has probably reached its limits, as has the government share of GDP, some 31%, in terms of desirability of the size of government and its affordability for a country at Colombia's income levels. High current world oil prices help the government but can only be considered transitory for budget planning purposes.

Much greater own-source revenue raised at the departmental and municipal levels will have to finance needed investments to reach and sustain effective State presence. It is local governments that must meet the revenue and service delivery challenge to support democratic local governance. The real property tax is an important and underutilized source of revenue. Municipal governments will need both technical and political support, preferably from departmental governments, to enhance their capacity to structure and collect property taxes. Citizens should have a significant opportunity to engage in transparent and participatory budget making for the destination of own-source revenues such as the real property tax if sustained support for the taxation is to be achieved. Local government has to show tangible results or else the otherwise unpleasant burden of taxation, especially of wealthy landowners, will not be politically sustainable.

Real property tax systems are dependent on a good cadastral survey kept up to date and a reliable process of land valuation for tax assessment purposes. The cadastre is the responsibility of the national geographic institute (the Instituto Geográfico Agustín Codazzi), which we were told has a serious backlog of survey requests and thus represents a bottleneck of sorts. This work might be outsourced or decentralized to the departmental level with quality control exercised by the Institute. Technical advances such as the use of GPS systems make it easier to do survey work in remote rural areas.

The situation is likely to be distinct in municipalities within the universe of *Colombia in Conflict*. Significant own-source revenues may be difficult to raise in those municipalities, due to the conflict itself and the typically low-incomes to be found there. In these circumstances, the central government should consider special additional funding beyond normal transfers. A better alternative, if constitutionally and politically feasible, would be to change the revenue sharing formula so that the conflict-impacted and poorest municipalities can receive a greater share per capita. Chile has had notable success in reducing rural poverty by using formulas for central government transfers or expenditures that are carefully targeted to the poorest segments of its population.

In terms of effective State presence capable of effecting transformational change at the local level, recent World Bank research (done in Brazil dealing with marginalized inner-city communities) suggests that a "flooding effect" is required, i.e. the concentration of needed resource inputs applied simultaneously with active citizen participation to ensure "ownership." It is not clear whether the GOC strategy, in concert with international donor support, USAID in particular, will reach such a level in the municipalities in order to avoid a piecemeal approach that yields little sustainable impact.

The team has not had the opportunity to study in detail the form in which Mission's "81 municipalities" strategy in alternative development will be implemented. At the time of the assessment, the contract had not been signed and therefore no work plans or implementation strategies were available. But, it is of critical importance that the alternative development program and the local governance program (not managed by the Democracy and Governance [DG] office) be recognized as essential to the realization of

DG objectives. This means that the selection of municipalities needs to respond to DG as well as economic development criteria, looking to meet the needs of establishing state presence in *Colombia in Conflict* municipalities. It also means that implementation has to assign a significant role to enhancing a close relationship between local governments and citizenry. Those linkages depend on the use of such mechanisms as social audits (veedurias), participatory budget making, citizen inputs into service delivery plans and the establishment of effective community level justice systems.

The importance of departmental boundaries should also be taken into account. Linkages of municipalities in any given department to departmental government should be explicit and strong. Technical assistance needs in planning and budgeting, and even in such areas as citizen participation, will not be met by the central government. USAID contractors need to build the capacity of what the Mission calls “legacy institutions” at the decentralized level. National entities, both public and private, whose missions are to support local government, have received USAID assistance and can play an important part in this effort; but the size and regionalism of Colombia argue in favor of having such institutional capacity at the intermediate level, especially in zones (corridors) of special priority.

The team found an example of “best practices” in this area in Medellín at the foundation IDEA (*Instituto para el Desarrollo de Antioquia*). Starting from an initial endowment from the sale of the state railway to the central government, IDEA has built a full-service structure of technical, financial and management support to or on behalf of municipalities. It also lends to local governments for investment projects and has access to rediscount facilities in Fondos Nacionales. Its current default rate is 0.7%. Significantly, it can also operate in departments other than Antioquia and its current loan portfolio is two-thirds in Antioquia and one-third in other departments. IDEA is a sustainable, decentralized model of support to local governments that should be studied carefully, especially because it captures municipal savings, leverages them and re-channels them into development at the local level.

Effective State presence driven mainly by local actors is what will help create critically needed social capital, or to use Robert Putnam’s perhaps more precise term, “institutional civic capital,” which captures not just the notion of civil society actors but also the institutional relationships between public and private institutions that provide the foundation for effective democratic local governance. “Veedurias” (social audits) are a specific Colombian manifestation of this form of social capital, but the quality of participation and oversight they provide appears to be very uneven across the country and is often co-opted or is more a formality than real oversight. Nonetheless, veedurias are a legally established citizen oversight mechanism and should receive assistance to make their role more dynamic.

Another vexing problem with the usual face of “State presence” is that development investments are often captured by local elites and heavily concentrated in the municipal centers, leaving the rural areas of the municipalities, where the need is greatest (and where illicit crops are grown), with very little of the benefits. Popular election of mayors and council members can counteract this tendency, but civil society activism to maintain transparency and accountability in local government budgeting is very important and deserves targeted support

Decentralization has “strength” within the Colombian system to a degree unmatched in most other Latin American countries. But most importantly, democratic local governance based on a popularly supported political philosophy of decentralization offers the best prospects for improving the quality of governance and living standards in “Colombia in Conflict” enough to eventually bring an end to the growing of illicit crops in rural areas and the presence of illegal armed groups that prey on campesinos.

But, equally, it must be recognized that decentralization and democratic local governance is not a panacea. Job creation to offer decent opportunities for young people will be the strongest incentive for them to avoid becoming hired hands of the armed groups and growers of illicit crops. One senses that

rural Colombians are growing weary of living their lives in the shadows and want to be a part of modern, legal, democratic Colombia if given the chance.

ADMINISTRATION OF JUSTICE

Effective administration of justice resolves criminal and non-criminal issues through formal as well as through informal systems of presentation of facts and decisions, applied to established norms. When this operates successfully it increases physical, commercial, and social security. It also encourages the belief that participation in the institutions that represent the Rules of the Game does not bring with it personal risk. The ripple effects are well known. They include greater financial investment, both domestic and foreign, greater political participation, and a strong bond within the community and between communities and organs of government. A working assumption that is still subject to much debate in Colombia is that a well-functioning administration of justice system operating in the universe we refer to as *Colombia in Conflict* will also reduce the incursion of armed movements. When operating in conjunction with government security measures, it would push armed groups out of the community, or at least reduce their influence.

What we see in Colombia at present is that the formal mechanisms of the resolution of conflict -- the administration of justice system -- are well established as institutions and procedures, albeit with some significant weaknesses, within *Institutionalized Colombia*. What is not present is coverage for the majority of the country that does not have proximate access to courts, police, and institutional forms of relief for civil disputes. This does not divide cleanly between urban and rural areas. In general however it is accurate to say that the formal system is functioning much more as it should in urban and peri-urban areas. In rural areas, corresponding to what we have defined as *Colombia in Conflict*, there is often an absence of justice institutions and justice personnel. Where they are present, skills are often sub-optimal, resources are poor, and there is significant corruption reported. In their absence, informal systems operate. The informal systems are not uniform at all throughout the country, nor linked. The greatest distance between what exists and what is needed to ensure a stable democratic society is in the conflict areas. A number of factors, however, need to be evaluated in determining where the greatest impact is likely.

Considerable change took place under the 1991 Constitution, giving a great deal of power to the Constitutional Court in ways that have allowed it to influence executive and legislative efforts. The Constitution also memorialized numerous specific rights and requirements, including spending levels for public benefits at the local level. The effect of this has been to provide protections for many who were previously even more disenfranchised than they are today, but also to limit the ability of Government to adjust as circumstances change. For the administration of justice this will mean that some desirable reforms to the laws, including the addition of *fiscales* and other officers will require legislation, rather than remaining in the hands of institutional authorities to decide.

The Mission should assess the degree to which the justice system addresses conflict resolution -- civil and criminal -- in a way which makes access available to the vast majority of the population extending to areas of *Colombia in Conflict*, and which assures that checks and balances exist, in the form of appeals and other measures, to protect against impunity in the society.

The basic structure of the justice system is being modernized and at this stage is not in need of a great deal of foreign assistance. In the medium and long term, such difficulties as the relative roles and responsibilities of the senior court offices -- the Consejo Superior de la Justicia, Corte Suprema de Justicia, Consejo de Estado, and the Corte Constitucional, weaknesses in the Fiscalía and Defensoria, and in general the administration of the courts, management of cases, oversight of judges, and preparation of

judges and the other actors in the system will need greater attention by the Government of Colombia. In particular, there is a weakness in the number and caliber of prosecutors, in the availability of public defenders and in the existence of corrupt practices particularly at the local level. A key policy issue which needs to be revised at the senior levels in the various branches of the justice system is the degree to which major crimes are being accorded a level of effort equivalent to minor crimes, and which of these categories need to be attended to more thoroughly. Such policy concerns might form a focus of a policy dialogue between the US government and the Colombian Government. It also might form part of a policy project supported by USAID/Colombia.

Where the obstacles arise more urgently is at the level of criminal and civil cases in the lower courts, and in the lack of access to those levels of conflict resolution for the majority of Colombians.

The primary contact citizens have with the justice system, apart from the police, is in small matters. For that reason, a priority for assistance needs to be in the adjudication of minor crimes and of family and other local disputes. This is particularly true in rural areas, where effective State presence is weak and illegal armed groups operate—in *Colombia in Conflict*.

While criminal matters get more press and more political attention, and vastly more resources, civil cases make up the majority of concerns to the population in its day-to-day life. The absence of the organs and actors in the civil justice system is especially problematic in cases of local disputes. Family violence is one of the more common complaints, though there is the wide range of problems that arise. The Casas de Justicia accomplish a number of objectives, not least of which is that civil matters can be dealt with quickly, avoiding a clogged formal judicial system. The Casas are also a mechanism by which criminal cases can be mediated and taken out of the system (80% of complaints are mediated), and more easily evaluated at the initial phase. Their success raises an important reminder however, that there needs to be a careful balance between assistance to the criminal side of the system and to the civil side. It may well be that the justice system spends too much of its resources on criminal matters at a time when civil matters resonate more strongly within local communities.

For a great deal of the country, local matters are handled through informal systems. The systems are not uniform throughout the country, but generally include traditional authorities such as community elders. Of all cases that arise, less than half are brought to full conclusion in the formal system. The rest of the cases avail informal mechanisms. In some cases these are structured, as in the case of some indigenous groups. In others, as with the Afro-Colombians and the Roma, it is less so. Informal processes can arise for current day necessities as well as from traditional practices: In Popayan an NGO has set up an informal justice system within the community of internally displaced persons (IDPs.)²⁶ Of the cases that proceed through an informal system, paramilitary, narco-traffickers, and guerilla fora handle roughly half of those, in the absence of state presence or any formal alternative.

A high priority for development assistance is a connection between decisions reached in the informal system and the protections and legitimacy of the formal system. Caution should be paid however that the formal system does not invade the informal with its heavy burden of weaknesses and requirements. It will take a great deal of time before the formal system can be widely established throughout the country in a meaningful way. Until then, and perhaps even then, the informal vehicles serve a critical function. What is needed is to have a means available to reach up into the formal system if necessary. The Department of Tolima for example has established a tribunal made up of different groups, from which appeals can be taken to the courts. The Consejo Superior has recognized this procedure. The tribunal generally applies the principles found in the formal system, which allows for an easy link. Whether through similar arrangements, Casas de Justicia, or some other approach, the connection between popular informal

²⁶ Interview with Cristian Acuna, USAID/Colombia.

systems and the authority and protection of the formal system needs to be strengthened in Colombia as a means both to resolve the disputes and for the many benefits which flow from it, including time savings, lower costs and greater public confidence in the state as well as fuller citizen participation.

The U.S. has done a great deal over the years to assist the improvement of the criminal justice system, as a component of the Administration of Justice work. This has included long assistance to law enforcement officials, police, prosecutors, and judges at various levels. The work with Public Defenders has been notable as well, in part because it represents a very new but essential addition to the Colombian system. The majority of citizens are affected most by resolution of civil cases. However, the sense of security and confidence in Government that comes from effective law enforcement and the successful operation of criminal justice is a necessary component to a complete assistance package. It will be important to ensure that the Department of Justice and USAID recognize where their relative strengths are, and coordinate activities, and costs. Historically the objective of justice programs is not sustainable development as much as it is critical skill development to cover current needs. USAID only recently has authority to work with law enforcement, but is well served by Justice Department programs and staff already well established in Colombia.

In conclusion, the list of inadequacies is long. Among them: unclear authority among central actors at the senior levels of the system; inadequate preparation of prosecutors, judges, defense attorneys, and administrative staff; lack of minimal representation of the different justice organs at local levels; demands on judges, investigators, prosecutors and defense attorneys in the accusatory system which prohibit resolution of the endless backlog of cases which began under the old inquisitorial system; inadequate security for judges who are widely dispersed in the country; local police with no investigative skills; informal systems with no link to the formal institutions and protections; a declining administration of justice budget; lack of judges in areas outside municipalities (corregimientos); corruption at the national and local level; and difficulties which arise from a Constitution which provides, for example, for sweeping and often disruptive involvement by the Procuraduria in decisions by prosecutors, judges, and defense attorneys, and which allows unlimited numbers of cases to be brought through *tutelas*.

Of special note are weaknesses in the operation of the Justice and Peace Law, which provides the basic legal framework for the demobilization of paramilitary and potentially guerrilla forces. There are effectively no skilled prosecutors yet engaged, no meaningful forensic investigations, and little or not likelihood that this situation will be improved to a degree that would provide confidence that justice will be done. Some of this is the result of the poorly written structure of the Law. Other failures or apparent failures are the result of a lack of strong attention to the requirements of the Law and its implementation.

Essential to development impact will be that whatever assistance is provided be part of a unified approach in targeted communities or regions. A stronger justice system and presence will be ultimately ineffective unless combined with political competition, a stronger participatory culture, a stronger local government, economic growth, and transparency on the part of national and local government.

CIVIL SOCIETY

Colombia has a generally friendly enabling environment for free civic association. But in this area as in others, Colombia is a paradox. The positive statements above must be highly qualified once the level of political violence and criminality affecting large parts of the country are taken into account. In fact, life is cheap in many areas of Colombia, and Colombia has the dubious distinction of having the highest murder rate per capita in the world (although that rate has been declining since 2002). Vocal CSO and community leaders in *Colombia in Conflict* face a lack of state protection because of the strong influence of illegal

armed groups. To be denounced as subversive or collaborators by one or another group may be equivalent to a death sentence.

This juxtaposition is important because it is not just meant to highlight problems of citizen security. In the context of the assessment, civil society is defined narrowly to include those civil society organizations (CSOs) that aspire to play a role in the political and public policy arena of the country. Leaders and activists in such organizations are “at risk” persons because of the high level of politically based violence and intimidation practiced by illegal armed groups toward individuals and organizations that they disapprove of. That is to say, Colombia has a serious human rights violations problem even though it is home to a large number of civil society organizations. This is especially acute in those areas of the country, primarily rural, where armed conflict is prevalent and the presence of the State is weak to nonexistent.

We take as a given that a large stock of institutional civic capital is essential for a well-functioning democratic society. Violence against people who exercise their rights of participation depletes social capital and has a chilling effect on citizen participation in civic life. Surveys show that the fear factor does inhibit participation in Colombia. Despite the threats, many civil society activists and journalists continue to speak out, often at great risk to their lives. Thus, measures to improve public security and protect persons at risk not only serve to protect human rights but also to improve governance in a broader sense.

The wide range of CSOs in Colombia include organizations that have been involved for considerable periods in such issues as women’s rights, for example, the *Union de Ciudadanas* (Union of Women Citizens) that began its existence demanding the right of women to vote. The Union today engages in civic education including work in conflict areas seeking to contribute to greater participation for women. It also includes organizations like PROMUNI that have sought to enhance citizen participation in local governance, working as well in some of the more conflictive and isolated areas of the country. And it includes organizations like *Corporación Región* in Medellín that focus their efforts on human rights, social audits and other efforts to make effective the promises of the 1991 constitution of greater citizen participation. Civil society organizations also include the range of organizations that defend business interests such as the Colombian Confederation of Chambers of Commerce (Confecamaras), the National Association of Industries (ANDI) and the Chamber of Commerce of the Construction Industry (CAMALCO).

Advocacy CSOs and CSO networks can be identified at the national and local levels. Examples include the Colombian NGO conference and *Corporación Viva la Ciudadanía*²⁷. But, with the exception of those representing business interests, they appear to have little effective influence in the Congress or with the Executive. This lack of influence stems in part from the government’s mistrust of those CSOs that the government feels offer excessive criticism of its core policy of democratic security. But it also represents a more profound structural problem in that CSOs often compete for influence with the clients of national legislators who see more value in courting those clients than in advancing the policy issues of the advocacy CSOs.

Colombian NGOs in general are at a much more advanced level of development than those in most countries where USAID works. They do not need international assistance on many of the institutional development topics usually a part of assistance packages, especially the “national” CSOs, which can be very sophisticated in their programming and management. What do appear to be needed are stronger horizontal and vertical linkages among CSOs. In plain English this means the building of coalitions to

²⁷ Corporacion Viva la Ciudadania is an organization founded in 1990 that currently consists of Foro Nacional por Colombia, Casa de la Mujer, Podion, CINEP, Corfas, Corporación Región, Conciudadanía y la Escuela Nacional Sindical.

advocate effectively on big issues. It means selection of key issues and organizations and working to help them develop common strategies and plans of operation that will give them the clout that seems to be lacking when they enter the public policy arena. It means greater organized efforts to bring smaller regional and local CSOs into the national coalitions that will give them voice they can never achieve on their own in isolation. Such results can only be achieved by a targeted intervention specifically designed to those ends. It will not happen if civil society programming is an add-on to programs that have different primary objectives.

DISTILLING THE STRATEGY

Given that the principal problem that Colombian democracy faces derives from the division of the country into two separate and unequal parts, the focus of a solution needs to be on contributing on means to end that division. That requires addressing the short and long-term conditions that promote the division.

A key issue is the protracted conflict that has faced Colombia over the past approximately forty years. The effort to end the conflict in the short term is a problem of political negotiation, complicated by the current lack of will on the part of the government and the guerrilla to seriously engage in a process of dialogue. In the medium term over the next five years, considerable advances can be made if the state expands its effective presence in the areas of conflict, not as a simple matter of positioning troops and police, but by establishing the effective delivery of state services. That effort addresses as well the issue of drug production and trafficking as Eduardo Gamarra recently pointed out in an analysis of the drug problem in the Andean region, ‘One of the main lessons from decades of alternative development strategies is that these efforts are unsustainable in areas where state institutions are absent.’²⁸

This expansion of state presence needs to be coupled to efforts at enhancing the role of citizens in determining the priorities of their local governments, in ensuring that those governments are transparent, accountable and effective in the delivery of those priorities, and expanding the availability of the justice system, above all in the resolution of small-scale conflicts. Otherwise, expanded state presence will not lead to the promotion of a more democratic and equitable political process.

In the longer term, at both the national and local level, Colombian democracy needs to address the underlying causes of the problems that generate the guerrilla and promote the illicit production and trafficking in drug crops that fuels the conflict. This means addressing the sources of rural poverty and the continued under and unemployment throughout the economy, of the isolation of certain regions of the country from the mainstream of Colombian development, and in effect ensuring that the benefits of development are more evenly enjoyed.

USAID’S ROLE IN PROMOTING DEMOCRACY

USAID/Colombia democracy and government program’s role in resolving the principal problem facing Colombian democracy is most clearly tied to efforts in the medium term, assisting in enhancing state presence in its broadest sense—building democratic local governance, greater citizen participation and local level dispute resolution and conflict mitigation. Because USAID/Colombia’s resources for democracy programming are finite even though they are relatively large when compared to elsewhere in

²⁸ Edward Gamarra, ‘State, Drug Policy and Democracy in the Andes’, **Andean Working Paper** (Inter-American Dialogue, Washington DC, June 2005) pg.12.

Latin America, USAID/Colombia needs to choose where it ought to concentrate its resources to have the greatest impact in strengthening Colombian democracy. This assessment points to the need to focus the greatest resources proportionally on programs that are directed at the universe we have defined as *Colombia in Conflict* and not at *Institutionalized Colombia*.

Stated simply, the primary focus of USAID/Colombia's democracy and governance program needs to be in addressing the problems outside the institutions at the national level that operate more or less well enough and where the principal need is for greater political will in addressing key issues. We believe that in dealing with these national level institutions the focus needs to be on promoting policy reform through approaches that generate constituencies for change and not on institution-building.

Working in *Colombia in Conflict* to establish more effective and democratic state presence, however, does mean a process of institution building and strengthening. Such an effort requires greater levels of resources than are currently being applied in these most needed areas. Hence, USAID will need to focus the greatest amount of its resources in that portion of its democracy and governance program that directly addresses the problems of *Colombia in Conflict*. USAID needs also when working at the local level to recognize the importance of regionalism and its institutional expression in the political organization of Colombia—the link between departments and municipalities. Therefore it needs as a part of its efforts to think in terms of programming for the purpose of enhancing state presence by clustering the municipalities it chooses to work in by department as well as by economic factors.

We recognize that the source of the high level of USAID/Colombia resources is Plan Colombia. That assistance centers on a concern to eliminate drug production and trafficking while at the same time ensuring a high degree of protection for human rights and an enhancement of state presence. These conditions need to be taken account in programming democracy and governance resources. There is, as already noted, a clear link between building state presence and controlling drug production. Hence, we believe, that an emphasis on work in the universe of *Colombia in Conflict* responds to the underlying logic of Plan Colombia. As noted in the US Embassy's description of Plan Colombia:

Plan Colombia is a social and political strategy to bring government presence to the country's frontier territories and re-unite them with the rest of the country. In other words, it seeks to strengthen public institutions and the rule of law in an area overwhelmed by lawlessness.²⁹

Based on these considerations, we would propose the following guidelines for programming.

IN INSTITUTIONALIZED COLOMBIA

Within Institutionalized Colombia (i.e. at the national level) USAID/Colombia's democracy and governance efforts should be focused on strengthening the forces that will serve to institutionalize policy change and reform through methods that incorporate USAID 'best practices'. USAID/Colombia's program works more directly with the government than is the case in most USAID programs in today's world. This is understandable given that Plan Colombia, the framework for the Mission's program, overall is a bi-lateral cooperation agreement focused largely on government-to-government activities. Nonetheless, USAID and its contractors and grantees work with a large number of CSOs in implementing a large and complex country program.

The assessment, however, identifies what seems to be a strategic gap in dealing with civil society to achieve democracy and governance program objectives. CSOs appear largely as tag-ons to government-directed programs or as smaller, discrete Mission targets of opportunity. In other words, the Mission lacks a strategic vision for the role of civil society in addressing Colombia's problems.

²⁹ As stated on the US Embassy website.

These larger objectives and impacts, critically important to extending the participation and influence of civil society to the entire country and to improving governance, will not be achieved with the scattered civil society activities the Mission currently supports. Without detriment to these many useful connections to civil society, the Mission should have a powerful strategic vision for civil society's contributions to democracy and governance that takes form in a sharply focused intervention designed to create real "critical mass." This will occur only through helping to create and support networked coalitions of CSOs including private business interests, both foreign and domestic, that share a common agenda on major national issues and work together in systematic fashion to advance it as well as to educate the public and key stakeholders about it in order to draw in their participation. It needs to be able to cut across sectors and not be boxed into segments of Mission programming.

Use of a programming approach at the national level that employs USAID's understanding of implementing policy reform would serve that end. This includes focuses on identifying appropriate stakeholders, including civil society and private sector actors, to promote such reform. This also means working with those stakeholders to define and implement their policy agendas. The focus on policy reform needs to include short, medium and longer-term concerns for two reasons. First of all, there are immediate issues that the political process has to address. Secondly, there is a need to join these reform efforts to more fundamental issues that will build state presence and will deal with the underlying factors promoting the conflicts that threaten the long-term viability of democracy.

Some of the issues that are likely to form a part of this policy agenda would include:

In the Short-term

Political Competition: the forthcoming 2006 presidential and congressional elections, given the possibility of presidential re-election and taking into account the likely re-shaping of the party system, and the presence of a demobilized but still politically significant 'para' movement would require attention in several areas. These might include:

- Efforts to ensure fairness in the electoral process through support for implementation by the National Electoral Council of the law of electoral guarantees.³⁰
- Efforts to ensure more effective observation of the electoral process, both using national and international observers, above all in the regions likely to be affected by the demobilization of the 'paras'.
- Support for freedom of expression above all in the conflict areas, as well as issues arising from the newly established norms of re-election and party strengthening.
- Finally, attention should also focus on the implementation of norms regarding campaign financing, again reflecting the new set of political circumstances.

Management of the Justice System: Policy changes should be directed at:

- Establishing legal connections between informal and formal justice systems;
- Providing meaningful alternatives to the overburdened formal system, such as expansion of the Casas de Justicia, above all to be able to reach into conflict areas;
- Engaging in exposure and prosecution of corrupt practices in the system;
- Formulating policy decisions as to how to close the multi-year backlog of cases, including consideration of general amnesties for certain crimes, and

³⁰ This law seeks to ensure fairness in campaigning by among other things regulating the role that public officials can play in an election. The need for this law arose out of the change in the constitution permitting presidential re-election that opened up the possibility of a sitting president, running for re-election, using state resources.

- Engaging in policy reform to rationalize authority and oversight responsibilities at the highest levels of the system.

Human Rights: The human rights program of the current Colombian administration represents an area where there has been little effective policy will towards implementation except as a direct response to external pressure. One measure of that is the fact that after approximately five years of human rights support from USAID/Colombia, the early warning implementation office in the Defensor del Pueblo is still virtually entirely financed by USAID. A policy advocacy effort directed at expanding Government of Colombia commitment expressed in building sustainability of the human rights program once donor funding is reduced or eliminated might be another policy agenda item.

In the Medium and Longer Term

Political Competition: Strengthening both political parties and the advocacy capacity of civil society groups will enhance the level of political competition in the medium and longer run, as will efforts to ensure greater freedom of expression on the part of the media. It is important that efforts at party building look beyond the existing members of these parties and especially look at the possibilities of expanding the participation of youth and the disadvantaged. It is also important to look at the means of ensuring greater access of civil society advocacy groups to the leadership of the parties—looking to limit any continued clientelism. Thus, specific programs should focus on:

- Support for efforts by civil society groups to promote changes in the behavior of political parties, to reduce clientelism and ensure greater responsiveness to citizen concerns;
- Support for efforts to ensure greater accountability of parties in Congress to their constituents through institutionalization of primaries for candidate selection, at the departmental as well as the national level;
- Promoting the capacity of civil society to more effectively lobby for policy reform in Congress and through the executive. This includes support for civil society efforts to ensure greater transparency and freedom in the flow of information from regarding the operations of the executive and the legislature;
- Re-focusing current efforts at legislative strengthening to promote greater interaction between civil society and Congress, directed at ensuring greater oversight of the national budget and the implementation of reforms, and
- Promoting reforms that continue to strengthen controls over campaign financing.
- Supporting experiments in expanding innovative approaches to use of modern media to enhance citizen participation and expand political dialogue.³¹
- Support for reforms in the operation of the system of electoral administration directed at ensuring greater independence of the electoral process from political interference.

Strengthening and Deepening Decentralization: The decentralization process is deeply rooted in the operation of Colombia's governance process. But, it faces a variety of policy issues, related to areas such as the form of fiscal transfers, the need to better manage mandated funding and the need to ensure greater flexibility at the local level in personnel management. Therefore, at the national level, concern needs to focus on promoting:

- Policy reforms that devolve greater authority and flexibility to lower levels of government (including reforms directed at national regulations that hamper local government autonomy e.g. pay scales for mayors, composition of councils, etc.);

³¹ One such experiment underway in Bogota are the video kiosks that form a part of the TV show City Capsula that permits ordinary citizens to express their opinions on the air.

- Policy reforms that address rigidities in inter-governmental transfers and that address as well approaches to locally generated revenues that take into account the differential levels of development across regions, and
- Policy reforms that address the need to examine changes in the way controllers and *personeros* are appointed in order to enhance local accountability.
- **Enhancing Transparency and Accountability in Governance:** Efforts need to be directed at enhancing national programs that continue to expand levels of transparency and accountability. These include both greater support of civil society and support for policy change, both elements that can be bound in a constituent building policy project:
- Support for CSOs to conduct social audits (*veedurias*) over large government initiatives with significant impact on the country (El Dorado airport renovations, international games in Cartagena, contract for cedulacion, etc.) that requires sophisticated professional skills and competencies and require significant levels of financing;
- Reforms in the administration of *regalias*, and reforms in the implementation of new policies for administration of *recursos regionales* (formerly *auxilios parlamentarios*) that ensure more effective transparency and accountability in their use.³²
- Support should also be considered for enhanced efforts at civic education in support of greater transparency and accountability within the framework of a policy reform strategy.

Promoting Better Administration of Justice: The justice program at the national level needs to focus as well over time on certain policy changes. These include:

- Develop citizen support for policies to provide better GOC training for key actors in the new accusatory system including the role of public defenders;
- Support to secure greater funding by the GOC of the expansion of alternative dispute resolution mechanisms including those represented by the Casas de Justicia;
- Support to enhance the flow of information regarding the operations of the justice systems. This could include establishment of publicly available, accessible official reports of judicial decisions and development of reliable and complete data sets related to the performance of the justice system.

IN COLOMBIA IN CONFLICT

The bulk of Mission resources are already committed to work in areas that are in or near conflict zones and that address some of the economic concerns that require developmental assistance. Current Mission policy focuses that effort primarily on economic criteria while incorporating a certain component on local governance and citizen participation. While that focus can be understood from a purely economic perspective, the assessment team believes that greater emphasis needs to be placed on the democratic governance criteria for investments at the local level, and that these investments need to be enhanced by concentrating the full range of democracy and government activities (justice programs, promotion of

³² *Auxilios parlamentarios* were funds allocated by the president to parliamentarians for their use in their districts. There was no oversight or accountability whatsoever over these funds, and, popular sentiment is that the majority of them were pocketed at the top, or administered so corruptly that little if any investment ever made it to the local level. Recent changes in the law renamed these as *recourses regionales* and provided for public discussions and planning of their use. A website was created to host information on the uses and administration of these funds. All but 12% of the funds were managed in this fashion. While this is a significant step toward transparency and accountability, follow up has been poor. Few if any entities have posted information on the actual contracting for projects or on project execution. However, if this system could be implemented across the lifecycle of these funds, a great deal of corruption could be eliminated. A similar system could be designed for the oversight of *regalias*.

social audits, building community and party-based citizen involvement etc.) in the Mission's portfolio in the municipalities selected.

The aim as we have stated at various points in the assessment is to build an integrated and effective state presence that combines USAID resources with those of local, departmental and national government, reinforced by higher and more skilled levels of citizen participation.

The components of this approach at the local level include:

Regarding Local Governance

- Selection of municipalities for USAID ADAM interventions taking into account not merely their economic potential, but their potential to develop into effective democratic local governments. This means that selection criteria should include an evaluation of the capacity and willingness of municipalities to engage their citizenry in participatory planning and in open systems of accountability and transparency linked to those processes of participatory planning. It means that municipalities should be willing to look at a variety of approaches to quality service delivery, that involve innovative leadership and partnering with the private sector.
- Selection of municipalities needs to be guided (as stated earlier) by the realities of departmental boundaries as well as economic criteria. Municipalities ought to be clustered by departments and commitments secured from governors and departmental development agencies regarding support of USAID efforts.
- USAID/Colombia should look for ways to enhance the role of departmental development agencies such as IDEA in support for municipal development in the set of municipalities (and departments) where USAID projects are operating.
- Local government programs supported by USAID/Colombia should not only emphasize participatory, accountable and transparent governance in their selection criteria, but should see as their principal role the promotion of this open and democratic style of local governance in order to build the necessary social capital to contribute to diminishing the basis for protracted conflict.
- In a similar vein, importance needs to be given to the role of citizens in determining local economic plans for promoting economic development through and within the municipalities selected for ADAM. Repeated studies suggest that social capital provided through community action enhances the ability of communities to avoid cultivation of drug crops and to increase their independence from external pressure by armed bands including that of the guerilla.³³
- Efforts should also be made to ensure maximization of the use of Colombian CSOs specializing in citizen participation and local governance in USAID supported local governance programs in order to both promote greater sustainability over time of the programs and to enhance the role of these citizen organizations.
- Efforts should be made to continue efforts to work with appropriate and effective municipal associations, again as part of an effort to promote greater sustainability of USAID programs.
- Anticorruption efforts, in the form of transparency, accountability and citizen participation, should be explicit elements in all Mission programs, especially at the local level. Just as justice efforts should be focused in municipalities selected for USAID interventions in local government and citizen participation, programs such as the current effort to promote social audits (veedurias sociales) should be focused on those same municipalities.

³³ Maria Clemencia Ramírez has studied the civic movements in Putumayo for several decades and in several of her studies has noted how those movements have been able to limit external efforts to impose coca cultivation on their member communities. See Maria Clemencia Ramírez, **Entre El Estado Y La Guerrilla: Identidad y ciudadanía en el movimiento de los campesinos cocaleros del Putumayo**, (Instituto Colombiano de Antropología y Historia: Bogota, 2001).

Regarding Rule of Law

- To ensure the development of integral state presence, USAID/Colombia should focus its rule of law efforts in large measure on promoting community level justice, through rural Casas de Justicia, through linkages between informal and formal conflict resolution systems and other appropriate means in the municipalities for USAID interventions under ADAM.

Regarding Political Competition

Critical to the long-term viability of Colombian democracy is the incorporation of citizens in the universe of Colombia in Conflict into political participation in forms that break the bounds of the protracted political conflict and the various forms of clientelism. Building greater citizen participation in local governance through the variety of mechanisms already suggested is one piece of that effort, working municipality by municipality. But, a second piece of the effort needs to be developing means of aggregating citizen power in conflict areas in a way that protects the rights of citizens to express their positions and also links them to broader regional and national efforts. To that end, we would conclude this assessment by suggesting certain lines of action that would promote this process:

- Provide support to development of departmental efforts such as those currently underway in Putumayo to build cadres of community leaders³⁴;
- Provide support to civil society organizations working in conflict departments to develop civic movements that embrace groups of communities;
- Provide support to organizations of disadvantaged and women's groups seeking to build national level citizen advocacy networks;
- Provide support to political party groups seeking to develop local leadership for the parties in conflict areas, particularly those directed at building support for youth involvement in the political process. Models such as those used by organizations in Nicaragua such as Grupo Fundemos might be of relevance in these efforts.

³⁴ Under the leadership of the Governor of Putumayo, the Department has developed a training program for community leaders that recognizes the need to protect those leaders from likely targeting by guerilla and para groups, using such techniques as providing training not to individuals but to whole groups of potential leaders in a community.

ANNEX 1. PERSONS INTERVIEWED

- Mauricio González, Judicial Secretary of the Presidency
- Clara Inés Ospina, Director, Transparencia por Colombia
- Maruja Pachón, Director Instituto para la Democracia Luis Carlos Galán
- Alfredo Rangel, Director Fundación Seguridad y Democracia
- Reginald Todd, Chief of Party ARD
- Gloria María Borrero, Director, Corporación Excelencia en la Justicia
- Ian Rose, COP CHECCHI
- Elizabeth Ungar, Director Programa Congreso Visible, Universidad de los Andes
- Fernando Giraldo, Universidad Sergio Arboleda, Consultant for the Instituto Interamericano de Derechos Humanos
- Pedro Medellín Torres, Profesor, Department of Government and Public Administration, Instituto Universitario de Investigación Ortega y Gasset de Madrid
- Eugenio Marulanda, President, COMFECÁMARAS
- Mauricio Cárdenas, Director FEDESARROLLO
- Germán Cardona, Ex Governor of Caldas, Ex Mayor Manizales, Ex Corruption Tsar.
- Rafael Merchán, Director Instituto de Ciencia Política.
- Lucía García, COP MSD
- Eugenio Prieto, Director IDEA (Medellín), Ex Gobernador de Antioquia
- Rubén Fernández, Director Corporación Región (Medellín)
- Clara Patricia Restrepo, Director Fundación Empresas Públicas de Medellín (EPM)
- Claudia Elena Posada, Executive Director, Unión De Ciudadanas (Medellín)
- Gustavo Villegas, Director Programa de Reinsertados de Medellín
- Monseñor Luís Augusto Castro, President, Conferencia Episcopal other members of the Comisión Nacional de Conciliación: Augusto Ramírez Ocampo; Padre Darío Echeverri, Executive Secretary Comisión Nacional de Conciliación; Juan Pablo Arteaga, Executive Secretary, Conferencia Episcopal; Juan Salcedo Lora, Retired General, Patricia Cleves, Consultant.
- Gilberto Toro, President, Federación Colombiana de Municipios
- Alejandro Santos, Director Revista SEMANA
- Rafael Pardo, Senador, Presidencial Candidate for the Liberal Party
- Samuel Moreno Rojas, Senador, Polo Democrático Independiente.
- Rodrigo Rivera, Senator, Liberal Party
- Edgardo Maya Villazón, Procurador General de la Nación
- María Margarita Zuleta, Ex director Programa Anticorrupción
- Diego Arisi, Specialist in State Modernization, Banco Interamericano de Desarrollo –BID-.
- Sandra Ramírez, Advisor to Luís Carlos Restrepo, Alto Comisionado para la Paz
- Antonio Hernández Gamarra, Contralor General de la Nación
- Lucía Arbeláez de Tobón, Member Consejo Superior de la Judicatura
- Volmar Pérez, Defensor del Pueblo
- Paula Gaviria, Director for Human Rights, Fundación Social
- Sandro Calvani, Director, UN Office for Drug and Crime
- Julieta Ramos, NDI

- Diego Beltrand, Chief of Mission OIM; Marcelo Pisani, Jefe Adjunto; Marta Yolanda Gómez, Directora Programa de Paz
- Carlos Alberto Palacios, Governor of Putumayo
- Guillermo Rivera, Deputy for Putumayo
- Esteban Casas, Director Proyecto Canoas (Soacha)
- Catalina Valencia, Director, PROCOMÚN
- Christina Schultz, COP Cassals