

WRITTEN TESTIMONY  
“Human Rights and the Colombian Peace Process”  
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by  
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I would like to thank the co-chairs of the Tom Lantos Committee on Human Rights, Congressman Jim McGovern and Congressman Frank Wolf, and the members of this committee for holding this hearing and for the opportunity to speak with you today. This is an important hearing at a critical time for peace in Colombia.

I am Dr. Virginia M. Bouvier and I am a Senior Program Officer for Latin America and head of the Colombia Conflict Team at the United States Institute of Peace. The U.S. Congress created the Institute in 1984 with a mandate to contribute to the prevention, resolution, and management of international conflicts. USIP personnel are on the ground in some of the world’s most volatile regions, working with U.S. agencies, non-governmental organizations, and local communities to foster peace and stability. With your assistance, we have been supporting a political solution to Colombia’s internal armed conflict. The views I express today are my own and not those of the U.S. Institute of Peace, which does not take positions on specific policies.

As Colombian President Juan Manuel Santos recently noted, “Making war... is much easier than seeking peace.” We should applaud President Santos for his courage in taking the more difficult, and ultimately more stable, route.

Colombia's internal armed conflict has lasted half a century, and repeated efforts over the years have failed to bring peace. The toll in human lives has been enormous and includes some 5 million internally displaced Colombians and more than 220,000

deaths. Nonetheless, the prospects for peace are promising. Last year, peace talks between the Colombian government and the Colombian Revolutionary Armed Forces (FARC-EP), Colombia's largest insurgent group, opened in Norway. Yesterday, on October 23, the government and the FARC began their sixteenth cycle of talks in Cuba. Progress has been steady, though as Colombia's electoral season approaches, the pressures on the table are heightening.

While formal talks between the Colombian government and a second Colombian insurgent organization, the National Liberation Army (ELN), have not yet begun, on October 14, 2013, Nicolás Rodríguez Bautista ("Gabino"), the head of Central Command of the ELN, reiterated once again that group's disposition to also come to the peace table and called on the Colombian government to initiate exploratory talks to that end. Different agendas and priorities have precluded ELN participation at the peace tables in Havana; a more likely scenario is a parallel table. Peace will be more stable if it includes both the FARC and the ELN.

A peace accord with the FARC that successfully addresses the root causes of the Colombian conflict--as well as the factors that perpetuate it--will be the first step to staunching violence in Colombia and will enhance security in the region. Sustainable peace in Colombia is critical to U.S. national security interests and to regional peace and security more broadly. The United States should do everything in its power to ensure that the peace endeavor in Colombia is successful.

## **PROSPECTS FOR PEACE**

The peace talks in Havana between the FARC-EP and the Colombian government are the fourth such effort in three decades. This process has come farther than any previous attempt to end the internal armed conflict, and there are several causes for optimism.

1. The parties have already worked together and achieved a framework agreement that details the path ahead. The framework agreement includes a methodology, road map and modest agenda of six items. The agenda is more focused and manageable than previous agendas.
2. The parties reached a preliminary agreement on agrarian reform, one of the driving forces of the conflict for nearly five decades, and are working to find agreement on the second agenda item, political participation.

3. Both parties appear to have accepted that a military victory is not possible, although the longer the process goes on and each side scores military victories, there is a possibility that this calculus could shift.
4. The peace talks are taking place without benefit of a ceasefire (at the insistence of the Santos government.) Significant blows against the FARC leadership have not caused the insurgents to leave the peace table.
5. The process appears to be serious and for the most part well designed and the parties agree that the goal is to end the conflict.
6. A series of confidence-building measures, including a change in FARC policy to cease its practice of kidnapping and a law to restore usurped lands, have been successfully enacted.
7. Both parties are building on lessons from the past. The government negotiating team includes representatives from the military, police, and business—sectors that have been spoilers in past peace processes. Both sides have upheld the agreements they have made thus far, which has consolidated the working relationship and sense of mutual confidence at the table.
8. The international context is more favorable for peace today than it was during the last talks eleven years ago in Caguán. Armed struggle has fallen out of favor, as former guerrillas and progressive politicians throughout Latin America, and even within Colombia itself, have been elected to office and are seeking reforms without violence.
9. The international community, through Cuba, Norway, Venezuela, and Chile, is playing a quietly constructive role at the table in helping to move the peace process along. The United States has supported the peace process.

The United States Institute of Peace (USIP) has been modestly helping to shape the environment for a political solution in Colombia by supporting civil society initiatives for peace, and fomenting discussions on legal frameworks for peace, lessons from past peace processes, and new approaches that might have more success.

While there will undoubtedly be bumps and delays along the way, the prospects for peace look better than they have in many years.

### **SIGNIFICANCE OF A PEACE ACCORD**

A peace accord is a necessary, but insufficient condition for peace and reconciliation in Colombia. It would mark the beginning of Colombia's transition from

war to peace. It will potentially release resources for long-overdue structural changes and bolster the efforts of civil society to deepen democratic practice and have their rights respected and protected. An accord, if it is to lead to sustainable peace, will provide road maps to be followed in order to ensure that victims' rights to truth, justice, reparations and guarantees of non-repetition can be honored. The heightened violence in El Salvador and Guatemala in the aftermath of their peace accords teaches us that peace accords that don't address root causes, dismantle structures of violence, and anticipate new forms of violence will be less likely to hold.

It is important to manage expectations, both during the peace process and in a post-accord period, and not to assume that because a peace accord is reached the problems are solved. A successful negotiation between the Colombian government and the FARC may end Colombia's internal armed conflict, but it is unlikely to stop all of Colombia's violence. A peace accord with the guerrillas will not end drug trafficking, organized crime, sexual violence, or gang violence—and it may exacerbate these if precautions are not taken. Human rights violations in Colombia may well escalate as reforms are implemented and vested interests are threatened. A peace accord is merely the start of the next phase of building peace.

### **RISKS TO THE PEACE PROCESS**

There are, however, many enemies of peace. Colombian society is largely conservative and has resisted agrarian reform and the opening of the political system for centuries. In Colombia, just over 1% of the population owns half the land, and some 6.6 million hectares have been illegally usurped in the course of the conflict. Ex-President Alvaro Uribe has been a vociferous opponent of the peace talks in Havana. We are already seeing a backlash from powerful landed sectors and their allies, as efforts are made to implement the ambitious Victims and Land Restitution Law.<sup>1</sup> The Attorney General (Fiscal General) Eduardo Montealegre recently predicted that there would be a "dirty war" in Colombia during the post-conflict period, and that this will be a major challenge for the Colombian State.

### **IMPACT OF THE INTERNAL ARMED CONFLICT ON HUMAN RIGHTS**

A peace accord would close a chapter in Colombian history that has been marked by the failure of all conflict parties to observe the most basic legal obligations

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<sup>1</sup> See Human Rights Watch, *The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia*, September 17, 2013, at <http://www.hrw.org/node/118407>.

and principles of international human rights and humanitarian law—particularly those provisions of the Geneva Conventions and related protocols relating to the differential treatment warranted civilians and combatants, and the enactment of precautions that protect and spare civilians and their property from attacks—as well as a range of international human rights laws enshrined in the UN Declaration of Human Rights and other conventions to which Colombia is a signatory.

According to the July 2013 report of the Historical Memory Center, *Basta Ya! Colombia: Memorias de guerra y dignidad* (Enough Already! Colombia: Memories of War and Dignity), between 1958-2012, nearly a quarter of a million people have been killed in Colombia's internal armed conflict.<sup>2</sup> Eighty percent of those killed have been civilians. Guerrilla insurgents, paramilitary and neo-paramilitary groups (sometimes called *bandas criminales* or *bacrim*), and drug traffickers are responsible for the violence. The report tells of forced disappearances; extrajudicial executions; and the use of sexual violence as a strategy of war by all of the armed groups. The war has affected most regions of Colombia, albeit in unequal ways, and has included:

- 23,154 selective assassinations from 1981-2012 (40% of these were committed by private armies; 27% by unknown assailants; 16.8% by guerrillas; and more than 10% (2,300 killings) were carried out by public security forces (Fuerza Pública); the selective assassinations included at least 1,227 community leaders and 1,495 political party activists (not counting members of the Patriotic Union (Unión Patriótica), who will be the subject of a future HMC report);
- More than 6.6 million hectares of land usurped, causing the internal displacement of 4.7 million Colombians (from 1985 and 2012, 26 people were displaced every hour);
- 27,023 kidnappings in 919 municipalities between 1970-2010, mostly attributable to the FARC-EP;
- 10,189 deaths or amputees from anti-personnel land mines; and
- Illicit recruitment of more than 6,400 children.

## **IMPACT OF THE PEACE PROCESS ON HUMAN RIGHTS**

A peace process does not automatically translate into greater respect for human rights. Ironically, it often does just the opposite. Violence is likely to spike at key moments of the process as each side seeks to demonstrate its military power to gain

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<sup>2</sup> The report is available in Spanish and can be downloaded at <http://www.centrodehistoriahistorica.gov.co/micrositios/informeGeneral/descargas.html>.

leverage at the table. Before the peace accords were signed in Northern Ireland and South Africa, violence skyrocketed, nearly derailing the peace process in each of those countries.<sup>3</sup>

In the current talks, with no ceasefire in effect, the Santos government has escalated military activity against the FARC while the dialogues go on in Havana. Both the FARC and the ELN have also escalated their attacks. The strategy of using violence to gain power at the peace table has contributed to increased militarization of the conflict.

This increased violence is most deeply felt by the civilian populations, particularly in the regions populated by Afro-Colombian and indigenous communities. This contributes to the skepticism of the population, which is dismayed to find that engagement in a peace process is translating into more, not less, violence in their communities.

#### **THE FRAMEWORK AGREEMENT AND HUMAN RIGHTS**

The theme of human rights permeates the August 26<sup>th</sup>, 2012 framework agreement, which is the road map set out by both the government and the FARC for the peace talks.<sup>4</sup> While only one of the items on the agenda in Havana directly addresses the issue of victims, each of the agenda items is nonetheless inextricably linked to the theme of human rights and justice.

The introductory preamble to the framework agreement outlines general areas of consensus between the parties. It recognizes that “respect for human rights... is a goal that must be promoted by the State.” It establishes that “economic development with social justice in harmony with the environment will guarantee peace and progress,” and that “social development with equity and well-being for all will allow the country to grow.” The document also acknowledges the parties’ commitment to “deepen democracy as a condition for securing a solid basis for peace.”

The body of the framework agreement lays out the particular agenda items to be

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<sup>3</sup> John Darby, *Effects of Violence on Peace Processes* (Washington, DC: U.S. Institute of Peace Press, 2001).

<sup>4</sup> “Acuerdo general para la terminación del conflicto y la construcción de una paz estable y duradera,” Havana, August 26, 2012, at <https://www.mesadeconversaciones.com.co/sites/default/files/AcuerdoGeneralTerminacionConflicto.pdf>.

discussed during the peace talks. These also address different aspects of economic, political, and social rights. The first item, agrarian development policy, calls for agreement on measures to increase integration of the rural and urban areas, and enhance equitable social and economic development. Political participation is the second item under discussion. This topic includes security guarantees for the exercise of political rights, including the right to dissent (*oposición política*), and measures to increase the participation of the citizenry, particularly the most vulnerable populations, in local, regional and national politics.

The third item deals with the end of the conflict and considers the question of a definitive bilateral ceasefire and cessation of hostilities, disarmament and reincorporation of the FARC-EP into civil life, and the situation of political prisoners. Also under this point on the agenda are national commitments to end criminal organizations and networks and reduce corruption and impunity, especially for those organizations “responsible for homicides and massacres, or that have attacked human rights defenders, social movements or political movements.”

The agenda’s fourth item on illicit drugs includes the need for integrated development and environmental recovery plans drawn and carried out with the participation of the communities in the affected areas, and drug prevention and public health measures.

The fifth point of the framework agreement notes that respect and compensation for the victims is at the center of the accord between the government and the FARC. Under this item, the negotiators at the table will address the human rights of the victims and questions of truth. Here the parties pledge also to address the phenomenon of paramilitarism (as established in agenda Item 3).

In the final point of the agenda, implementation, verification, and endorsement of the agreement will be established.

Noticeably absent from the agenda are explicit reference to cultural rights and rights of minorities and women. The agenda is an ambitious one that promises reforms that will lead to improved prospects for the protection and promotion of democracy, peace, and human rights. Of course, as they say, “the devil is in the details,” and it remains to be seen how these agenda items will be addressed in the final peace accord. The agreement on agrarian development that was reached in May 2013 has been called “important” and “historic”. If implemented--and the actual implementation has often

been the Achilles' heel of Colombia's generally progressive legislation--it could herald a radical transformation of the countryside in which the rights and dignity of Colombia's peasant farmers will at long last be protected.

### **TRANSITIONAL JUSTICE AND THE PEACE PROCESS**

Peace processes today are infinitely more complex than in the years before the establishment of the International Criminal Court and the evolution of inter-American and international jurisprudence that uphold the rights of the victims to truth, justice, reparations, and guarantees of non-repetition, as well as the government's obligation to investigate, prosecute and penalize systematic violators of human rights.

In the past, in the name of political expediency, pardons and amnesties often left victims feeling that the demands of peace took precedence over the demands for justice. In Latin America, however, despite earlier peace deals, criminal prosecutions have often gone forward and amnesty arrangements have been ignored, overturned or disrupted. Inter-American jurisprudence now contends that blanket amnesties, particularly for war crimes, crimes against humanity, and genocide, are no longer viable.

At a recent event at USIP, political scientist Jo Marie Burt described an "international arch favoring accountability." She noted that the Inter-American Commission and Inter-American Court, as well as victims and human rights groups, have been important constituencies in securing the successful prosecution of heads of state in Argentina, Uruguay, Peru and Guatemala; and the criminal prosecution of mid-low ranking military and civilians, including former priests and judges.

The Colombians, who have incorporated international human rights laws and obligations into their domestic laws, are considering their legal options and international obligations carefully as they shape their peace deal. On September 24, Colombian President Juan Manuel Santos spoke to General Assembly at the United Nations and discussed some of the challenges of Colombia's peace process--including the search for appropriate transitional justice mechanisms that would comply with Colombia's international obligations to investigate and prosecute human rights violators; and the need to satisfy victims' rights to truth, justice, reparations, and guarantees of non-repetition. "It is not about sacrificing justice in order to achieve



peace," President Santos observed, "but about achieving peace with the maximum amount of justice."<sup>5</sup>

As the peace talks have advanced over the last year, we have witnessed an important transformation in the willingness of the conflict parties to accept responsibility for their actions. President Santos has spoken publicly of acts of commission and omission of State organs in association with illegal armed actors and called for "recognizing the errors of the past" in order to build a more just and peaceful country. Likewise, the guerrillas have begun to publicly recognize their own wrongdoings. In an August 1, 2013 interview with FARC leaders Iván Márquez, Rodrigo Granda, and Pablo Catatumbo, the latter, long considered one of the FARC hardliners, noted, "We have made mistakes, some serious indeed," and expressed the FARC's willingness to ask forgiveness.

These acknowledgements of responsibility for wrongdoing are merely the beginning, and they are a key ingredient to advancing truth, justice, reparations and ultimately reconciliation.

Debates are raging over how priorities might be established for past abuses-- Which crimes will be investigated and which parties will face investigation? Will both the military and the guerrillas be subject to prosecution? Will jail time be required or will alternative sentencing or restorative justice options be available? What would satisfy the victims without causing the parties to halt the peace process? The International Crisis Group has suggested a recipe that would include prosecution for the "most responsible" for the "most serious crimes."<sup>6</sup> The Constitutional Court has favored a prioritization of cases.

There is a tension between peace and justice, but it is no longer a matter of choosing one over the other. Peace and justice must go hand-in-hand. For any agreement to be accepted as legitimate, it must offer "sufficient" justice to the victims. As Monsignor Leonardo Gómez Serna has noted, "Every crime, every killing must have its consequence. It must be understood that even pardoning from the heart, there must

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<sup>5</sup> "No se trata de sacrificar la justicia para lograr la paz, sino lograr la paz con el máximo de justicia." Juan Manuel Santos, speech to the UN General Assembly, New York, September 24, 2013, at [http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130924\\_08-Palabras-Presidente-Santos.aspx](http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130924_08-Palabras-Presidente-Santos.aspx).

<sup>6</sup> International Crisis Group, *Transitional Justice and Colombia's Peace Talks*, Latin America Report, No. 49, August 29, 2013, at <http://www.crisisgroup.org/~media/Files/latin-america/colombia/049-transitional-justice-and-colombia-s-peace-talks>.

still be a sanction for those who have perpetrated these crimes... The important thing is that justice is done.”<sup>7</sup>

Victims have the right to truth, justice, reparations, and guarantees of non-repetition; and States have the obligation to investigate, prosecute and punish gross violators of human rights. Strong victims groups and human rights organizations can be important partners in ensuring both the rights of victims and the fulfillment of State obligations.

There is recognition, nonetheless, that transitions from authoritarian to democratic rule may differ from transitions from war to peace, particularly where military victory has not been achieved. Blanket amnesties are off the table for crimes against humanity, war crimes, and genocide, but there may be flexibility regarding questions of timing, sequencing, reduced sentences, alternative sentencing, or incarceration options. The question then is not whether there will be consequences, but what those consequences will be. At a minimum, for social and political reconciliation, there must be public acknowledgement of, accountability, and apologies for abuses. Society needs to know what occurred and why. In the case of disappearances, recovery of the bodies seems to be particularly important.

The U.S. Institute of Peace has learned from its work in societies transitioning from war to peace that enabling victims to tell their stories is one of the best ways to empower citizens, rebuild communities, and contribute to healing. Efforts to document, discuss, and disseminate the truth behind violence is the basic building for justice, reparations, reconciliation, and guarantees of non-repetition. In this regard, the U.S. Institute of Peace has supported the creation of computer databases in places like Guatemala, Iraq, Afghanistan, Democratic Republic of Congo (DRC), and Cambodia. It has funded work on truth commissions in East Timor, El Salvador, Chile, Argentina, South Africa, Uganda, Bosnia, East Timor, Peru, Sierra Leone, Cambodia, Rwanda, and Uganda. It has convened international conferences and established global networks to share best practices in documenting war crimes and mass human rights abuses, and facilitated meetings between human rights practitioners, forensic scientists and

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<sup>7</sup> Alberto Mario Suárez, “‘Hablar de perdón no es hablar de impunidad,’ Monseñor Gómez Serna,” *El Tiempo*, Sept. 22, 2013.

technology specialists to improve methodologies, mechanisms, and strategies for preserving the past.<sup>8</sup>

In Colombia, USIP has supported the gender unit of the Historical Memory Center to research the impact of the war on women, develop methodologies and training materials for communities to construct historical memory, and to ensure that the experiences of victims (most of whom are women) are part of the historical record of the conflict. It has supported the nongovernmental organization Equitas to pierce the silence around disappearances and clandestine cemeteries, to provide forensic evidence in the controversies around Colombia's "false positives," and to create a framework for epidemiological research on violent deaths in the context of armed conflict that we believe will be useful in other conflict zones. It has supported Global Rights and AFRODES to educate and build the technical capacity within displaced and Afro-Colombian communities to document and prevent human rights violations, and to engage with government authorities to address their claims; this work has contributed to greater visibility of the impact of the war on these sectors and was cited by Colombia's Constitutional Court's ruling that mandated increased State attention for these communities. USIP is also supporting programs at the University of the Andes to train youth as historical memory practitioners, and memory galleries and photographic exhibitions that open the door for difficult conversations about the impact of Colombia's war. Likewise, it has supported projects designed to provide psychosocial support to victims and to rebuild the fabric of communities torn apart by violence. The needs are tremendous and the resources are often inadequate to the task, but even small investments now can have huge payoffs in preventing conflicts in the future and helping peace to be sustained.

## **RECOMMENDATIONS**

The U.S. Congress has been an important ally for those seeking human rights and peace in Colombia. It can help ensure that U.S. government support is unequivocal and its messaging uniformly behind Colombia's peace talks. Congressional visits to the region or hearings like these can help ensure that this opportunity for peace is not lost.

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<sup>8</sup> Scott Worden and Rachel Ray Steele, "Telling the Story: Documentation Lessons for Afghanistan from the Cambodian Experience," *USIP PeaceBrief*, December 1, 2008, <http://www.usip.org/publications/telling-the-story-documentation-lessons-afghanistan-the-cambodian-experience>.

USG efforts to help Colombia “win the peace” should now match its efforts to “win the war”. To this end:

--The USG --in all of its agencies--should consistently support the peace process in Havana and encourage a peace process with the ELN.

--When the talks falter, as talks often do, the United States should anticipate, support, and encourage both sides to stay the course until an agreement is reached.

--The USG should actively persuade potential spoilers of the benefits of peace, and ensure that its messaging is clear.

--The United States and others in the international community should ensure that their policies, assistance, and training are sensitive to the delicate balance of civil-military relations during a time of transition from war to peace and that they contribute to civilian oversight and control.

--The USG should consider reasonable requests from the peace table that would facilitate peace. These may relate to U.S. counter-narcotics policies, extradition practices, release of U.S. records relating to the conflict, or other measures.

A peace agreement is a necessary but insufficient condition for peace. It is necessary because it will end a guerrilla insurgency of nearly 50 years; it is insufficient because the conflict with the insurgents represents only a fraction of the violence in Colombia. It will take many years to implement peace accords, heal the legacies of conflict, and transform attitudes and structures. In the wake of a peace accord, Colombia, a middle-income country with highly-skewed wealth and income distribution, risks being dropped from the priorities of the international community. This would be a mistake before substantive reforms can take hold and peace can be put on a secure footing. Given that half of all comprehensive peace accords fail within the first five years, the international community should scale up resources in the post-conflict period to ensure that peace holds.

Peace will not automatically trickle down with the signing of a peace accord. Capacity building will be needed to implement peace at the local and regional levels, as will efforts to link these to national peace-building initiatives. Therefore, in addition to supporting a national peace accord:

--The United States should support capacity building for implementing peace accords at the municipal and regional levels. The United States Institute of Peace has seen the impact of its small investments in historical memory initiatives, capacity building in human rights and conflict resolution (including mediation, facilitation, and dialogue), regional peace and development initiatives, and local reconciliation models. These are critical to long-term reconciliation and cost-effective in preventing future violence.

Just over 1% of the Colombian population owns half the land, and the usurpation of some 6.6 million hectares illegally has displaced about 5 million Colombians. Efforts to restitute lands have already generated a backlash and the Attorney General has warned of a “dirty war” in a post-accord period. Those who advocate change will need support and protection. Therefore:

--The USG should vigorously advocate for the legitimate right to non-violent dissent and the right to organize to defend human rights, and the U.S. government, and this Committee in particular, should continue to monitor its status. Protection of human rights is the cornerstone of sustainable peace.

--The USG should partner with traditionally marginalized groups in their efforts to redress discrimination, exclusion, and inequity. Women, Afro-Colombians, indigenous peoples, youth, and peasants are indispensable partners in the consolidation of peace.

--The United States and the international community should actively support civil society leaders, especially women, human rights defenders, and victims’ groups, to ensure that a peace accord meets the needs of victims, including those subjected to sexual or gender-based violence.

--U.S. policy should support victims to exercise effectively and safely their rights to truth, justice, reparations, and guarantees of non-repetition.

U.S. leadership has been critical in putting the gender issue on the global agenda, particularly with regard to women in conflict zones. The United States should be vigilant in ensuring that all of its programming meets gender-equity standards and empowers women to be partners in working for peace and development. Since violence against women has been strategically employed as a weapon of war by all sides of the conflict, and is part of a continuum of exclusion, discrimination, and inequity, empowering women by investing in their political participation, education, and leadership will

contribute to a culture that is more respectful of women and help prevent or reduce the risks of gender-based violence. U.S. leadership should be employed in Colombia to ensure that:

-- Men and women participate in decisions affecting their communities and benefit equally from the peace dividend.

-- Violence against women is addressed in any ceasefire or peace agreements.

-- Demobilization, disarmament, and reintegration (DDR) programs meet the differential needs of boys, girls, men and women, and include measures to prevent violence against women in communities where ex-combatants demobilize.

The United States Institute of Peace has a track record helping foster and secure peace, and prevent violent conflict. We look forward to working with the Committee to advance our shared goals.

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