

Workshop on the UN Guiding Principles on  
Internal Displacement and the National IDP  
Legislation in Colombia

Santa Fe de Antioquia, Colombia 15-17 May  
2001

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## Introduction

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### **The Colombian IDP context and legal framework**

Colombia, a country affected by internal armed conflict during the last 35 years, is one of the countries with the largest internally displaced population in the world. Since 1985, over 2 million persons have been displaced, according to NGO figures. During the last couple of years, some 300.000 persons have been displaced each year. Most displacements take place in the framework of the armed conflict between the Colombian army, the armed insurgency groups and the extreme right-wing paramilitary groups. The latter is responsible for 43% of the displacements while 35% has been blamed on the insurgents. Displacement, which has become a common war strategy of the armed actors, normally follows a pattern of rural farmers being accused of collaborating with the enemy, and then direct threats on the life, which ultimately forces them to flee to urban centers. For a more comprehensive understanding of the IDP situation in Colombia, please access the Colombia Country Profile in the Global IDP Database ([www.idpproject.org](http://www.idpproject.org)). A summary of that Country Profile has been annexed to this report.

Just as Colombia is one of the countries with the highest number of displaced, it is also the country with the most comprehensive and judicially advanced IDP legislation. A legal framework made up of laws, presidential decrees, government policy documents and court decisions regulate the prevention, protection, assistance and return/resettlement of the displaced persons. This framework also sets up coordinating structures and defines concrete responsibilities of each government institution.

The centerpiece of this legal framework is IDP Law 387 from 1997. Since it was promulgated, certain aspects of the law have

been further developed in two Presidential Decrees. In addition, the government has developed an extensive array of IDP policy documents: the most recent one being the CONPES from 1999. Based on this legislation and policy framework, government failure to adequately care for IDPs has been repeatedly challenged in court. The Colombian Constitutional Court has issued several decisions and opinions interpreting the legal rights of the displaced, often basing their opinion on the UN Guiding Principles. A brief review of the content of these legal and policy instruments can be found in Annex 1 to this report.

According to the comprehensive legal policy framework, displaced persons in Colombia should theoretically enjoy advanced legal protection. Unfortunately, those rights are not being upheld and important parts of the legislation remain to be implemented. Much of the oversight, and to some extent the very implementation of this legislation, falls on the Public Ministry, made up of the National Human Rights Ombudsman's Office and the Prosecutor General's Office. On the municipal level, where most of the displacements take place, the Municipal Human Rights Ombudsperson ("Personero Municipal") represents the Public Ministry. As such, the Municipal Ombudsperson has a legal obligation to oversee government and state agencies' compliance with IDP Law 387. This role of the MOs is described in Law 387, in several presidential decrees and in the government's official IDP policy.

In addition to their oversight function, the Municipal Ombudspersons (from now on "MOs") also have concrete responsibilities related to the assistance and protection of displaced persons. They have the obligation to hear the legally required IDP declaration, which details the circumstances under which the person was displaced. The MOs are also encouraged to promote the set up and funding of the Municipal Displacement Committee, and make sure that the

Committee includes IDP representatives, meets regularly and develops programmes in favor of the displaced. Given this key role of the MOs, the training workshop held in Santa Fe de Antioquia exclusively targeted members of this institution.

### **Description of the workshop**

From the 15-17 May 2001, the Global IDP Project of the Norwegian Refugee Council (NRC) and the Colombian Human Rights Ombudsman's Office organized a workshop in Santa Fe de Antioquia (Colombia) on the UN Guiding Principles on Internal Displacement and the Colombian IDP legislation.[1] The workshop was part of a global NRC effort to disseminate and explain the Guiding Principles to representatives of governments, NGOs and the UN agencies, in order to ensure better protection and assistance to internally displaced persons. Previous workshops have been held in the Philippines, Thailand, Uganda, Angola, Sierra Leone and in Georgia.

In the Colombia workshop as much time and attention was dedicated to the Colombian IDP legislation as to the UN Guiding Principles. In addition to Colombian Law 387 on internal displacement (1997), the workshop analyzed and discussed the government's latest IDP policy document (CONPES 3057 from 1999), two presidential decrees on displacement (Decree 173 from 1998 and 2569 from 2000) and several decisions by the Colombian Constitutional Court (SU-1150 from 2000, T-327 from 2001, etc.). These instruments - more than in any other country affected by internal displacement - thoroughly regulate the authorities' responsibility to provide for the prevention, protection, assistance and return/

resettlement of displaced persons in Colombia.

Unlike previous workshops, which targeted a wider audience the Colombian workshop focused specifically on MOs. Forty-three recently elected Municipal Ombudspersons were selected from the province of Antioquia, the region most affected by internal displacement. As mentioned above, the Ombudspersons, and the institution they represent, play a key role in Colombian legislation as it relates to IDPs. The Public Ministry, and particularly the Human Rights Ombudsman's Office within that ministry, has been assigned a lead role on prevention as well as the protection of IDPs during displacement, and once they are returned or resettled. In addition, the Ombudsman's Office has been called upon by the Colombian Constitutional Court to target civil servants for dissemination of relevant laws and norms, which regulate the authorities' treatment of IDPs (Decision SU-1150/2000, par.40). Responding to that court decision, the Ombudsman's Regional Office in Antioquia and the Global IDP Project exclusively targeted Municipal Ombudspersons for this workshop.

The three-day programme also received support from the National Ombudsman's IDP Unit in Bogota, the Social Solidarity Network [2], the UN High Commissioner for Human Rights and the UN High Commissioner for Refugees. Each of these institutions presented and facilitated the development of a respective agenda item.

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[1] When referring to Colombian IDP legislation this report includes not only Colombian IDP Law No. 387 but also presidential decrees regulating the law (Decree 173 and 2569), the government's latest IDP policy document (CONPES 3057) and some key sentences by the Constitutional Court on the protection and assistance to IDPs.

[2] The Social Solidarity Network is a social welfare agency charged with the coordination of the Colombian government's efforts to prevent, protect and assist IDPs.

## Objectives, contents and methodology

The objectives of the workshop in Santa Fe de Antioquia were the following:

- Introduce the MOs to the UN Guiding Principles and the international community's institutional response to the phenomenon of internal displacement
- Train the MOs in the content and use of the Guiding Principles as well as the Colombian IDP legislation
- Discuss the particular role and responsibilities of the MOs in relation to prevention, protection, assistance and return/resettlement
- Identify obstacles to the full implementation of the international and national instruments and suggest ways of overcoming those challenges
- Facilitate an exchange of experiences between MOs from different municipalities and between the government IDP institution (The Social Solidarity Network) and the MOs

These workshop objectives were reached through the review of the following topics:

- 1) Introduction, legal background and International and national definition of the internally displaced
- 2) Prevention of displacement
- 3) Protection during displacement
- 4) Emergency assistance and durable solutions
- 5) Return, reintegration and resettlement
- 6) Role and responsibilities of the MOs in regards to IDPs

Each agenda topic was introduced through a presentation by one of the facilitators followed by extensive group work and discussion in

plenary. In preparation for the workshop, participants had received the relevant documentation, which was also actively used through out the exercises.

The workshop was formally inaugurated by Mr. Felipe Aguirre (Director of the Governor's Office for Disaster Prevention and Assistance), and by Mrs. Maria Girlesa Villegas, Regional Ombudsperson for Antioquia.

## International and national legal instruments on internal displacement

During this session, the MOs were made aware of the drastic increase in the global number of IDPs during the last 20 years and the response by the United Nations: to create through the Commission on Human Rights a Special Representative of the UN Secretary General on Internal Displacement, Mr. Francis Deng. Mr Deng's elaboration and launch of the UN Guiding Principles, as well as their origin, content and judicial status were further described.

Next, the main Colombian IDP instruments were briefly introduced (Law 387, Presidential Decrees 173 and 2569, Government Policy Document CONPES 3057 and several decisions by the Colombian Constitutional Court). Once this legislative and normative framework had been introduced the issue of national and international institutional responsibility was addressed. It was made clear that national governments have the prime responsibility to protect and assist the displaced. However, when necessary the UN agencies have a responsibility to complement that effort. The international response is currently organized according to a "collaborative approach", which means each UN agency has a responsibility to contribute according to its specific mandate and comparative advantages. In Colombia, however, the UN High Commissioner for Refugees has informally been assigned "lead agency" for the issue of internal displacement.

## Definition of a displaced person: when does displacement end ?

As an introduction to this session's group work, participants were familiarized with the definition of an IDP according to the Guiding

Principles and in Law 387. It was made clear that by excluding development induced displacement [1] and displacement as a result of natural and human-made disasters the definition of an IDP in Law 387 is narrower than the definition in the Principles.

The exact moment when displacement ceases is not defined by the Principles. However, a recent Colombian presidential decree (Decree 2569) attempts to define when displacement ends. The criteria are somewhat subjective and open to interpretations: 1. Successful return or resettlement, 2. Exclusion from the central government IDP registry, or 3. Upon request by the displaced person. Participants were therefore asked to discuss in groups when they consider displacement ended, taking into consideration issues of security, sustainability of solutions, property and land issues etc.

In general terms, workshop participants suggested the use of a broader and more elaborate criterion for determining successful return/resettlement. Presidential Decree 2569 only mentions the need for returnees/resettling IDPs to "gain access to an economic activity"; while participants suggested that returning IDPs should also receive economic and social restitution. Additionally, the government should facilitate access to income generating projects and invest in social and economic infrastructure in order for the return/resettlement to be a durable solution.

The working groups also underlined the government's constitutional responsibility to provide security and to remove the original causes of displacement. Not until those two conditions are met can displacement formally end. However, some participants argued that the social and emotional impact of displacement never ceases to affect those

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[1] Internal displacement caused by "large-scale development projects not justified by compelling and overriding public interests" (Guiding Principles 6.2c)

who are once displaced.

Finally, it was highlighted that Colombian legislation makes a distinction between someone who is in a “situation” of displacement and a person who has achieved the “status” of being formally recognized as displaced. The former is simply a *de facto* situation (someone considers himself displaced) while to be recognized and included in the government’s IDP register

(achieve the “status” of being displaced) the displaced person has to make a formal declaration to the authorities within a year of the displacement, which then has to be analyzed and approved by the Social Solidarity Network. This distinction - which is challenged by the Constitutional Court, the Ombudsman’s Office and many Colombian NGOs - gives the government the power to decide when a persons’ “status” of being displaced ends.

## Emergency assistance and durable solutions

The MOs serve under the Public Ministry but are elected for a three-year period by the Municipal Council. When the workshop was held most of them had taken up office recently, while some had been re-elected. In order for the new MOs to gain a better understanding of the governments’ emergency assistance and support to durable solutions for IDPs, the Representative of the Social Solidarity Network (SSN) in Antioquia was asked to present the government’s programme and procedures designed to benefit the displaced. In addition to direct provision of assistance, the SSN also coordinates support from different ministries and government agencies.

First, the representative of the SSN reviewed the expected role of the MOs in the process of accreditation of an IDP. This role is limited to the reception and submission to the SSN of a personal declaration provided by the person displaced. The final decision and registration is then made by the SSN in accordance with the criteria discussed above (see definition). The representative of the SSN underlined that the government can only provide assistance to those IDPs included in the Central IDP Registry. However, some MOs reported that in order to safeguard IDPs’ immediate access to, for example health care, they often issue

an informal certificate of displacement, which assures the hospital administration that they will be reimbursed by the Ministry of Health.

### Resources to tap

The representative of the SSN also reviewed the assistance and services currently available to those IDPs with displaced “status” and explained how the MOs could facilitate IDPs’ access to these services. Some currently underutilized opportunities for IDP support were drawn to the MOs attention. The representative of the SSN encouraged the Municipal Ombudspersons to:

- A) Submit income-generating projects for IDPs. (When municipal financial resources are lacking compulsory municipal co-financing can be provided in kind.)
- B) Keep in mind that infrastructure projects submitted by the municipalities to the regional government receive priority if these provide employment for IDPs
- C) Inform the SSN when IDPs can be considered particularly vulnerable (elderly, handicapped etc). Special support is budgeted for these groups.

## Identifying the most urgent assistance needs

Following the presentation, participants broke up into groups and were asked to identify the most urgent needs of the displaced in their respective municipality and how they could best be met. MOs were also asked how they themselves could facilitate increased IDP access to basic assistance.

Participants quickly identified a serious lack of municipal infrastructure to provide shelter and food for the displaced as well as to provide a minimum service in the fields of health care and education. These deficiencies are clearly linked to budgetary limitations but MOs also argued that there is a lack of operational capacity on the municipal level. The Municipal Displacement Committees [4] are not set up in all municipalities and do not always operate efficiently. Participants therefore stressed the need for a general strengthening of the Committees and their member institutions. There is a need for increased awareness building of IDP rights, coupled with improved capacity to deliver goods and services to the displaced. Some participants also expressed concern regarding the limited commitment by both municipal authorities and the community at large to solve the plight of the IDPs.

## The role of the Municipal Ombudsperson in assuring assistance to IDPs

Participants agreed that the Municipal Ombudsperson should play a key role by advocating for the IDPs' assistance and protection rights. Awareness building activities should target both authorities and the general public. The MOs should provide the members of the Municipal Displacement Committee with information on the Guiding Principles and the Colombian IDP legislation,

on the services provided by national institutions and, of course, on the most immediate needs of the IDPs. Furthermore, it was suggested that the Ombudspersons could play an important role stimulating and supporting organizational efforts by the IDPs themselves.

At the same time, participants reminded each other that the MOs must not neglect their control and oversight function ensuring that civil servants comply with the law. When IDPs are clearly neglected as a result of the authorities' direct action or omission the MOs have the possibility to resort to judicial measures.

Finally, a representative from the Ombudsman's Office in Bogotá addressed the issue of insufficient budget allocations for IDPs on both the central and local level. Referring to a recent decision by the Constitutional Court he reminded the MOs that they should have an important influence on the municipal budget allocation for assistance to IDP. In this sentence (SU-1150/2000), the Constitutional Court, in a reference to Article 350 of the Colombian Constitution, reiterates that public social spending should give priority to IDPs. The Court thereby suggests that in a situation of limited resources, assistance to IDPs should be prioritized.

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[4] The Municipal Displacement Committees are headed by the local mayor and made up of the key institutions (governmental and non governmental) providing assistance and protection to IDPs. The establishment, composition and activities of this important coordinating forum are contemplated in Law 387.

## Protection during displacement

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This session was facilitated by two representatives of the UN High Commissioner for Human Rights in Colombia. The presentation highlighted how the recent Constitutional Court sentence T-327 from 2001 considers the Guiding Principles an important point of reference for Colombian legislation, which has reinforced the normative framework protecting IDPs in Colombia. To large extent, the Court basis its opinion on the Guiding Principles and even places the Principles above national legislation. In theory, this means that the Guiding Principles should prevail over IDP Law 387 in case of ambiguity or legal contradictions between the two instruments.

In light of the decision by the Constitutional Court, the facilitators discussed some controversial aspects of the Presidential Decree 2569 (see Annex 1). It was suggested that the Colombian Constitution through its concept of “assumption of good faith” (“presuncion de buena fe”) puts the burden of proof on the authorities, rather than on the IDP, when it comes to determine who is a displaced person and who is not. Such an interpretation would avoid situations where IDPs have to return to their areas of origin to collect “proof” of the events that caused their displacement.

In relation to Presidential Decree 2569, the representative of the UNHCHR also discussed the difficulties around the need to protect the displaced from possible misuse of the information collected on each IDP. It was suggested that the low figure of officially registered IDPs could be linked to widespread fear among the displaced that their personal data could end up in the hands of the armed actors.

### **Hands-on exercise using the Guiding Principles and Colombian IDP legislation**

Next, participants were introduced to a group exercise aimed at comparing the coverage of

the Guiding Principles to the content of Colombian IDP legislation. The purpose of this group work was to facilitate participants’ hands-on experience with the instruments, making them search for the content of the Guiding Principles in Law 387 and in Presidential Decree 173. During the same group exercise, the MOs were asked to discuss how a particular set of Principles are being respected in their municipalities and what they could do to contribute to the full respect for those same Principles.

The comparison between the Guiding Principles and the national legislation showed that almost all aspect of the Principles are covered by Colombian IDP legislation. Some aspects, such as the subsistence rights, are even more developed in Law 387 than in the Principles. In general, it can be argued that Colombian IDP legislation is very comprehensive and highly protective of the displaced. In theory, it probably provides more rights to IDPs than any other legislation in the world. However, participants voiced frustration over the lack of implementation. Some participants argued that elaborate institutional arrangements and advanced legislation, contrasted by unsatisfactory levels of delivery, is a common phenomenon in Colombia.

Looking at application on the municipal level, most MOs regretted that protection for IDPs is far from satisfactory. The very right to not be displaced was reportedly violated in every municipality represented. Examples were also given of physical violence against displaced persons and pressures exerted on them to return or not return, depending on the strategic agenda of the armed actors in a particular municipality. Protection rights related to living conditions (food, housing, health care) and education were often incompletely fulfilled in municipalities experiencing massive influx of IDPs.

## **MOs can strengthen IDP protection with the support of the international community**

A rich discussion followed on the possibility of the Ombudspersons to remedy the situation of insufficient protection of IDPs. Many MOs saw a very limited space for them to explore a more active role in IDP protection, given the violent methods used by the armed actors and the exposed situation of the Ombudsperson. Rather, faith was put in the international community to play a more engaged protection role. It was repeatedly suggested that current UN operations in Colombia should be drastically expanded in order to encompass international presence and monitoring, even on the municipal level.

This presence could monitor the implementation of the Guiding Principles and deter new displacements caused by violent acts against the civilian population.

The Ombudspersons thought their major contribution should be on the level of dissemination and awareness building of the rights of the displaced, without neglecting their constitutional obligation to provide oversight and control of the local authorities. Many participants felt that MOs' possibility to do active human rights monitoring and intervention on behalf of the displaced is often very limited.

## **Return, reintegration and resettlement**

In Colombia, a majority of IDPs expect to stay in areas to which they fled. According to the Colombian NGO Codhes, only 24% would like to return to their places of origin. This figure reflects IDPs' low confidence in the government's ability to provide safety in areas of return. Resettlement in other areas depends on the availability of arable land, which is linked to the government's (so far) unsuccessful land reform. Few farmers have been assigned new land through the governmental land reform institute (INCORA) and even fewer of them are former IDPs. Despite insecurity in return areas and lack of land in areas of possible resettlement, some IDPs are returning and resettling. A number of these processes are supported by the government, but generally IDPs return/resettle without any institutional backing.

A representative of the UN High Commissioner for Refugees in Colombia presented a number of fundamental issues related to return, reintegration and resettlement. He reviewed some of the key concepts for

successful return/resettlement in both the Guiding Principles and in the Colombian legislation, including:

### **Voluntary, safe and dignified return**

The Guiding Principles clearly spells out the authorities' responsibility to create conditions, which guarantee voluntary, safe and dignified return. This obligation can also be found in Colombian Law 387, but is unfortunately not so clear in Presidential Decree 2569. The latter instrument (Article 28) states that the government takes no responsibility for the safety of citizens having returned to unsafe areas. Also, the decree suggests that part of the monitoring burden could fall on national and international humanitarian organizations accompanying the returnees.

## **IDP participation in return and resettlement**

The right of the displaced persons to participate in the design and implementation of their own return is explicitly included in the Guiding Principles. In Colombian legislation this is not as clearly expressed, but could be derived from their obligation to “co-operate in the improvement, [...] and stabilization of their own situation” (Law 387, Art. 18). This obligation should also create a corresponding right to participate in the design of measures aimed at improving the situation for returning or resettling IDPs.

## **No discrimination**

The Guiding Principles as well as Law 387 include explicit and clear references to the importance of protecting IDPs from discrimination. This protection is particularly important during return and resettlement when IDPs need to reintegrate, or live close to, communities, which have not been displaced. Both instruments have therefore prohibited discrimination on the basis of someone being internally displaced. Additionally, discrimination is of course prohibited for the standard reasons included in international human rights law and in the Colombian legislation (race, color, sex, language, religion, national origin etc.)

## **Recovery or compensation for property and land lost during displacement**

On this very important aspect of return, the UN Guiding Principles go one step further than the Colombian IDP legislation. The Principles not only highlight the need to recover property and land but also stress the need to receive compensation for property lost during displacement.

## **Access to the returning or resettling population**

It is important to remember that the primary responsibility for the voluntary and safe return/resettlement of the displaced falls on the Colombian government. In order for return and resettlement processes to be sustainable, governmental or non-governmental assistance is often required. Access by humanitarian organizations to the returnees is therefore of crucial importance. The Guiding Principle No.30 advocates this access. Law 387 also guarantees access by humanitarian organizations.

The UNHCR representative’s review of these key concepts provided an introduction to the group work on return and resettlement. During the group exercise, participants were asked how they could support (before) and monitor (after) voluntary, safe and sustainable return and resettlement processes.

Most groups painted a fairly gloomy picture of the prospect of return and of the role the MOs could play to assure the sustainability of return. Once again it was highlighted how powerful the armed actors have become on the local level and how exposed the MOs really are. However, participants agreed that they are in a better position than any other local players to support the IDPs during return and resettlement. They saw themselves as an important link between the IDPs and the government agencies. As such, they could provide information on available resources and support during return/resettlement. It was also suggested that they could contribute to the organizational strengthening of the displaced communities.

The role as an intermediary could even extend to the armed actors. One Ombudsperson suggested that in some situations the MOs could informally explore

the attitude of the armed actors in relation to planned return or resettlement and pass on the message to the displaced. Others thought the ICRC should be responsible for such “mediation”.

Once again, the control and oversight function of the MOs was brought up as an important role. An efficient control of the use and distribution of municipal resources to returning or resettling IDP communities would maximize support to IDPs.

Finally, the MOs underlined the importance of assuring that return/resettlement projects also benefits those who have stayed behind, in order to avoid tensions and open confrontations with host communities.

## Prevention of displacement

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The Colombian NGOs report that a total of some 2 million persons have been displaced in Colombia. What is even worse, during the last couple of years close to 300.000 Colombians have been displaced - every year! This alarming figure indicates that our foremost concern should be focused on preventing new displacement. A representative of the National Ombudsman's Office in Bogotá was therefore asked to discuss the issue of prevention and to present the latest developments of “early warning” systems.

His review of the existing legal instruments protecting IDPs showed that prevention has in theory been given quite a lot of attention. The Guiding Principles address prevention in general terms, highlighting the need for all actors to respect human rights and humanitarian law in order to avoid displacements (Principle 5). Colombian IDP legislation and policy documents are more concrete, suggesting preventive activities to be taken by different institutions. One of these measures is the need for a system of “early warning”.

### **Prevention and timely response requires “early warning”**

So far, “early warning” to prevent displacement has most efficiently been carried out by the Colombian NGOs and the Catholic Church. However, given the need to link such efforts to rapid and forceful responses by civilian and military state institutions it has been suggested that “early warning” should also be generated by state structures. Therefore, the National Ombudsman's Office, in co-ordination with the Office of the Vice President, the Ministry of Interior and the Social Solidarity Network, has elaborated an “early warning” project, which also foresees the close collaboration with the Ministry of Defense and the Office of the Attorney General.

The representative of the Ombudsman's Office explained the three components to the system. The first element of “early warning” is the collection of information indicating that displacement could be eminent. This information would be based on, for example, the appearance of painted threats or propaganda in public places, circulation of

threatening fliers, direct threats to individuals, presence of armed groups, roadblocks and restrictions on the circulation of goods. Marked increase in the rate of disappearances and homicides, and of course open conflict are other indicators that should trigger the system of “early warning”.

As part of a second component, this information would be rapidly analyzed and quickly channeled to institutions with capacity to respond to the threat of violent acts leading to displacement. Lastly, “early response” measures should be taken. These could range from the deployment of troops charged with the physical protection of the civilian population, to an increased presence of civilian state institutions. Among the latter, the most important being the judicial system.

This system has not been formally implemented yet, but the Ombudsman’s Office in Bogota has recently received additional human and financial resources earmarked for further design and implementation of an “early warning” system to prevent displacement.

### **How can the Ombudspersons contribute to improved prevention of displacement ?**

For the group work, the MOs were asked to discuss their role in regards to the prevention of displacement and how they could better contribute to the prevention of displacement. A lively debate followed and it was clear that the MOs have both a number of comparative advantages and disadvantages when it comes to playing an active role in prevention.

In terms of advantages, it was pointed out that the MOs is often a community leader and enjoys a high level of acceptance and trust in the municipality. Also, the Ombudspersons’ direct contact with a number of individuals and organizations on the very local level provide them with an excellent access to information, even in small

villages and in the rural areas of the municipality. MOs often personally know the leaders of community organizations (Juntas de Accion Comunal). They also interact with representatives of other institutions who frequently visit the remote rural areas, such as the church, the teachers or the local agronomist (UMATA). Furthermore, the Ombudspersons have a direct channel where the information can be passed on: the Regional Ombudsperson’s Office.

But MOs also identified some disadvantages. Given the exposure of the Ombudspersons, active collection of sensitive information could therefore subject them to pressures and threats by the armed actors. The intelligence capacity of the armed actors, particularly on the local level, is astonishing. They are said to know about the authorities’ every move. Participants also expressed concern that in the past, many “early warning” activities have not been acted upon by the police and the army. Well known cases of such inaction in the Llanos, Norte de Santander and Antioquia were mentioned. In these cases, the Ombudspersons and other actors risked their lives collecting and disseminating the information without achieving an appropriate response by the armed forces.

Finally, it was agreed that despite the difficult situation of the Ombudsperson more could be done to prevent displacement. It was suggested that the MOs pursue and further enhance their network of contacts in the villages and in the rural areas in order to access reliable “early warning” information at a very early stage. Secondly, some MOs suggested they should establish clearer channels for dissemination of information indicating that displacement may take place. The Regional and National Offices of the Ombudsman’s Offices would be natural recipients of such information, but information could also be channeled directly to the judicial system, the police and the armed forces, when appropriate.

# The constitutional responsibilities of the Municipal Ombudsperson in relation to the internally displaced

Throughout the workshop, MOs' current best practices and potential support to IDPs were discussed in detail. However, the functions of the MOs in relation to the displaced are also clearly determined by law. These legal obligations were reviewed and discussed by the Regional Ombudsperson from Medellin.

IDP Law 387 clearly spells out the obligation of the Public Ministry (under which the MOs fall) to protect and promote the rights of the displaced under both human rights and humanitarian law. In addition, the MOs have an obligation to oversee the compliance of other institutions under the National Plan for Comprehensive Assistance to Displaced.

The first obligation can effectively be carried out through the promotion and dissemination of human rights and humanitarian law among the authorities, the displaced and the host communities. More specifically, the Ombudsperson should recommend to the local authorities that the Municipal Displacement Committee be set up and provided with a budget for its activities. The Ombudsperson should further oversee that the Committee includes IDP representatives, meets regularly and develops programmes in favor of the displaced. The Ombudsperson should also promote the design and set up of a municipal contingency plan to effectively respond to a sudden influx of displaced persons.

It is also the MOs obligation to receive the legally required IDP declaration, which provides the circumstances under which the person was displaced, and to facilitate the inclusion of the displaced in the Central IDP Registry. This should be done making use of the form issued by the Social Solidarity Network and the guidance given by

Presidential Decree 2569. The process should be dignified, transparent and speedy. And presumption of "good faith" should be applied when receiving the declaration. The MOs should also monitor arbitrary rejections and unfounded exclusions from the Central IDP Registry.

In order to effectively promote and protect the rights of the displaced the MOs should have a thorough knowledge of the Colombian legislation relevant to IDPs. It is also important that the Ombudspersons are familiar with the IDP support programmes offered by government and state agencies.[5]

Following the Regional Ombudsperson's presentation on the legal responsibilities of the MOs, a discussion ensued on the most effective role of the MOs in relation to the Municipal Displacement Committee. Some argued that the Ombudspersons should not be part of the Committee in order to exercise effective control of the performance of its different member institutions. At the same time, it was acknowledged that the active participation of the Ombudspersons in the Committees would be an important contribution to its effectiveness. The MOs should therefore try to find a middle way, without compromising their constitutional control function vis-à-vis the local authorities and the decentralized government agencies.

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[5] Colombian Institute for Agrarian Reform, Ministry of Agriculture and Rural Development, Institute of Industrial Promotion, General System of Social Security, Social Solidarity Network, National Board for Women's Equality, Colombian Institute for Family Welfare, National System of Co-financing, Ministry of Education, National Service for Vocational Training, National Ombudsperson's Office, National Commission of Television, National Institute for Urban Reform.

## Concluding Remarks and Recommendations

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### Concluding remarks

- Colombian IDP legislation is probably the most advanced in the world. The government has also expressed its commitment to the UN Guiding Principles, which are being used by the Constitutional Court and many non-governmental organizations. Unfortunately, this excellent normative framework has not been fully implemented by the Colombian government.
- IDP Law 387 clearly spells out the obligation of the Public Ministry (under which the Municipal Human Rights Ombudspersons fall) to protect and promote the rights of the displaced under both human rights and humanitarian law. Therefore, the Municipal Ombudspersons (MOs) have a very important role to play, facilitating the protection and assistance of displaced persons.
- The Ombudspersons often have a very direct and close contact with the IDP communities and are therefore well positioned to facilitate better support to the displaced.
- As local human rights defenders, the Ombudspersons are often exposed to the pressures and threats of the armed actors. They therefore need political support by national and international agencies in order to better contribute to the prevention, protection and assistance of displaced persons.
- The Ombudspersons have a clear responsibility in relation to the registration of IDPs. Making use of a unified format, they are charged with the reception of the displaced person's description of the developments leading up to his/her displacement. The acceptance of a person as displaced and the consequent inclusion of the IDPs in the Central IDP Registry is however the responsibility of the regional office of the Social Solidarity Network.
- Recent Colombian presidential decree (Decree 2569) attempts to define when displacement ends. The criteria are however open to interpretations. The Ombudspersons suggested a broader and more elaborate criterion, including economic and social restitution, as well as the removal of structural causes to displacement.
- Colombian legislation makes a distinction between someone who is in a "situation" of displacement and a person who has achieved the "status" of being formally recognized as displaced. The former is simply a *de facto* situation (someone considers himself displaced) while to be recognized and included in the government's IDP register (achieve the "condition" of being displaced) the displaced person has to make a formal declaration to the authorities within a year of the displacement. Then the declaration has to be analyzed and approved by the Social Solidarity Network.
- Assistance to IDPs is not sufficient, but there are still some underutilized resources: The Social Solidarity Network encouraged participants to submit income-generating projects and projects creating employment for IDPs to the regional authorities. Also, particularly vulnerable groups of displaced (elderly, handicapped etc) can access earmarked funds.

- The Ombudspersons concluded that the Municipal Displacement Committees, created by Law 387, are not set up in all municipalities and do not always operate efficiently.
- Protection for IDPs is far from satisfactory. The right to not be displaced was reportedly violated in every municipality represented and participants gave example of physical violence against IDPs.
- The Municipal Ombudspersons did not think they could do much to ensure the physical safety of IDPs. Instead, they underlined their oversight and control function in relation to institutions charged with the physical protection of the civilian population.
- In regards to prevention of displacement, the Ombudspersons can play a very important role. The MOs easily access crucial “early warning” information through their direct contacts with community leaders and representatives of institutions working in the rural areas. At the same time, MOs expressed frustration over passed experiences of “early warning” efforts not leading to prompt and effective preventive action by the appropriate state institutions, particularly the armed forces.

## Recommendations

1. The Municipal Human Rights Ombudspersons’ capacity to support IDPs should be strengthened. The MOs need improved basic infrastructure such as telephones, faxes, computers and vehicles in order to better oversee and facilitate the prevention, protection and assistance to IDPs.
2. All authorities, including the Social Solidarity Network, should make an effort to speed up processes of assistance to displaced persons.
3. The workshop, backed by Constitutional Court Decision SU-1150, called on the government to prioritize public social spending on the assistance needs of the displaced communities, in accordance with Article 350 of the Colombian Constitution.
4. The Ombudspersons asked the international community to play a more important role in the protection and assistance to IDPs. It was suggested that a permanent UN presence on the municipal level could prevent the violent acts currently causing large flows of displacement.
5. Participants recommended that the Ombudspersons exercise more of their oversight and control function in relation to the design, financing and implementation of contingency plans, municipal action plans and the Municipal Displacement Committees.

6. It was suggested that the MOs should participate actively in the Municipal Displacement Committee, without forfeiting their right and obligation to exercise a control function vis-à-vis the local authorities and the decentralized government agencies.
7. Participants agreed that the MOs should play a key role in the Municipal Displacement Committees by advocating for the IDPs' assistance and protection rights. The MOs should provide the members of the Municipal Displacement Committee with information on the Guiding Principles and the Colombian IDP legislation, on the services provided by national institutions and, of course, on the most immediate needs of the IDPs.
8. When IDPs are clearly neglected as a result of the authorities' direct action or omission the MOs should consider judicial measures against these authorities.
9. The Ombudsperson should also play an important role stimulating and supporting organizational efforts by the IDPs themselves.
10. On the issue of return and resettlement, participants stressed the government's obligation to provide for safe and sustainable return through the identification and removal of the causes of displacement.
11. Finally, participants recommended that MOs in other regions be targeted for similar training on the Colombian IDP legislation and on the UN Guiding Principles.

## A brief review of the Colombian IDP Legislation [6]

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### **IDP Law 387**

Law 387 from 18 July 1997 provides a relatively comprehensive coverage of the protection and assistance needs of the displaced during the different phases of displacement (emergency phase, long term displacement, return and resettlement). It also gives some general guidelines on how to address prevention of displacement.

In addition, the Law creates and lines out the structure of the National System of Comprehensive Assistance to IDPs. It also establishes the Municipal Displacement Committees as responsible coordinating entities on the local level. The responsibility of specific government agencies and state institutions are explicitly mentioned. A special fund for IDP assistance is also set up.

The Law's definition of an IDP differs somewhat from the Guiding Principles by excluding victims of natural disasters as well as persons displaced by development projects.

### **Presidential Decree No.173**

In accordance with Law 387, Presidential Decree No.173 from 26 January 1998 creates the National Plan on Comprehensive Assistance to IDPs. It lines out what should be done and by which institution in regards to prevention, protection, assistance and durable solutions. The plan is lengthy and comprehensive but it fails to specify how the proposed measures should be implemented. It further develops some aspects already addressed by Law 387: the National Information Network on Assistance to Displaced, the Observatory on Internal Displacement and the financing of the support to IDPs.

### **Presidential Decree No.2569**

Presidential Decree No.2569 from 12 December 2000 specifies in more detail some crucial aspects of Law 387. It determines the responsibilities of the Social Solidarity Network, the government agency coordinating the National System of Comprehensive Assistance to IDPs. It further develops the responsibilities of the Municipal Displacement Committees in regards to prevention and assistance. The government's obligations and procedures in regards to emergency assistance and durable solutions are also lined out in more detail, as well as the procedures for official registration of the displaced. Additionally, controversial issues such as the cessation of the "condition" of being displaced and the involuntary exclusion from the central IDP registry are addressed (see Constitutional Court Sentence T-327 below).

### **CONPES 3057**

The current IDP policy document, CONPES 3057 from 10 November 1999, up dates the two previous CONPES from 1995 and 1997. It provides an analysis of the current (1999) IDP situation and the existing mechanisms to attend to IDPs, including a graphic presentation of the institutional arrangements in place. Next, it goes on to present the activities foreseen in the

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[6] When referring to Colombian IDP legislation this report includes not only Colombian IDP Law No. 387 but also presidential decrees regulating the law (Decree 173 and 2569), the government's latest IDP policy document (CONPES 3057) and some key decisions by the Constitutional Court on the protection and assistance to IDPs.

field of prevention, protection, humanitarian assistance and return/resettlement. In the introduction to the document, the government explicitly states its commitment to “promote and respect the implementation of the Guiding Principles”.

### **Constitutional Court Decision SU-1150**

This decision, from August 2000, is elaborated and handed down in response to three different IDP situations reportedly not attended to by the authorities. In one of the three cases, the Court orders the President of Colombia to assure the provision of shelter to a displaced community in Medellin and to include them in existing IDP support programmes. More importantly, as a result of its exhaustive analysis of the IDP situation the Court calls on the President to further develop and regulate (“reglamentar”) existing legislation in order to better define the government agencies’ responsibilities in relation to IDPs.

The court sentence reviews the Special Representative, Mr. Francis Deng’s two reports on Colombia as well as the UN Guiding Principles. It suggests that the Principles be the “parameter for any new legislation on displacement as well as for the interpretation of the existing IDP legislation, and the assistance to displaced persons”.

### **Constitutional Court Decision T-327**

Decision T-327 from 26 March 2001 is a 40-page analytical document deciding in favor of a displaced person refused entry into the government’s Central IDP Registry. Through out its analytical deliberations leading up to the decision, the Court emits important and critical opinions on the government’s distinction between the “condition of being displaced” vs. “a *de facto* situation of being displaced”. The former is a requirement for access to government support, but requires the displaced’s formal “certification” as an IDP. The Court, holding up the concept of “presumption of good faith”, argues that displacement is a *de facto* situation, which does not have to be “certified” by the authorities. It further emits a critical view of the government’s concept of “cessation of displacement” and the exclusion from the IDP registry.

In this decision, the Constitutional Court frequently uses the UN Guiding Principles as a yardstick, when commenting on national norms. It even places the Principles above national legislation, referring to them as “supranational legislation”. It also stresses the need for training in the Guiding Principles, particularly for recipients of IDP declarations, e.g. Municipal Human Rights Ombudspersons.

Finally, it should be mentioned that even if the instruments above could be seen as the most important, a large number of other laws, presidential and ministerial decrees, court decisions etc., refer to and affect the response to the situation of the displaced.

## Annex two: Summary of IDP Country Profile<sup>1</sup>

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Most national and international agencies rate Colombia among the countries with the largest internally displaced population in the world. According to local NGO sources, as of July 2001, over 2 million people had been displaced as a result of violence since 1985, with 317,000 persons displaced in 2000, and 92,000 persons displaced the first quarter of 2001 (CODHES 2001, Boletín 35). These numbers are disputed by the Colombian government, which claims that the country currently hosts 525,000 IDPs, with 125,000 persons displaced only in 2000 (TGD 19 January 2001). The total estimate does not include the displaced persons who returned to their places of origin or resettled elsewhere, nor does it provide information on the percentage of persons who were displaced more than once (TGD 19 January 2001).

Displacement is the direct consequence of an internal armed conflict, which has dominated Colombian modern history. Originally triggered by confrontation over land, the current violence involves state military forces, paramilitary groups and armed insurgent groups. Since the 1970s, there has been a pernicious activity of Colombia's powerful drug-trafficking networks (UN HCHR 8 February 2001). It is expected that the further intensification of the armed conflict is to result in persistently high levels of forced displacement in 2001 (UNHCR 2001).

Much anticipated peace talks between the government and the Revolutionary Armed Forces of Colombia (FARC) began in January 1999, but quickly hit a snag and were suspended until October 1999. In 2000, revived peace talks with the FARC, but also with the ELN (National Liberation Army), continued sporadically in Colombia, Venezuela and Spain, with constant ups and downs but so far no concrete results. A U.S. financed development plan for 1998-2002 ("Plan Colombia") has been criticized because of its military component and for leading to increased forced displacement (USCR June 2001).

During the year 2000, the forced displacement of civilians continued to be used as a military strategy in the armed conflict. According to NGO figures, paramilitaries are allegedly responsible for the majority of displacement incidents (43%). Guerilla groups come second in causing displacement (35%), followed by state forces, such as the army and the police (6%) (CODHES 2001 "Rostros"). Displacement caused by unknown parties rose to 16% of the total, which would seem to indicate that the protagonists in the conflict do not always want to claim responsibility for the acts of violence that cause displacement (IACHR 2000, chapter IV, para. 43). According to the Colombian Commission of Jurists (CCJ), many of the crimes are committed by paramilitaries, and there is both active and passive participation of government forces (USCR June 2001).

Displacement reflects the forced movement of populations from rural to urban and semi-urban areas, and triggers accelerated urbanization processes nationally (WFP 14 June 2001). Indigenous communities however generally flee to rural areas to stay with other indigenous communities (U.S. DOS 2001). The displaced persons move primarily to the poor areas of the cities, and places of concern are the situation in Bogotá, Barranquilla, Medellín, Cali and Cartagena. The three departments which receive the most displaced are traditional receptor sites: Antioquia, Bolívar and Valle de Cauca (CODHES September 2000). Forced displacement has also spread to the departments of Putumayo, Nariño, Meta, Tolima y Huila (UN HCHR, 8 February 2001). A total of 480 municipalities are now affected by forced displacement (RSS 2001).

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[1] The full Country Profile on the Colombia IDP situation can be found in the Global IDP Database ([www.idpproject.org](http://www.idpproject.org))

Most displaced have a rural background and flee in small groups (family) or individually but a significant number of the displaced have fled in larger groups (22% according to CODHES) (CODHES 2001 "Rostros..."). Women, children, indigenous and Afro-Colombian ethnic minorities form the majority of the displaced population (TGD 19 January 2001). Protection programs set up by the Colombian government proved insufficient to counter the harassment and attacks against human rights defenders, often leaders of displaced communities (AI 2001). Displaced persons remain politically suspect even *after* they have abandoned their homes and communities. The very fact that displaced persons have fled areas of fighting provokes suspicion of them as people with an allegiance to a particular armed actor (Cohen and Sanchez-Garzoli May 2001).

There is an alarming drop in the living conditions of families following displacement, especially in urban areas, and 18% of displaced men and 57% of the women have neither job nor any source of income. Single mothers are particularly vulnerable, as they are often unemployed and depend on male relatives for economic support (WFP June 14 2001). The Government's neglect of education affects especially the internally displaced population, and teachers are among those workers most often affected by violence-related displacement (UN HCHR 8 February 2001).

Displaced Colombians have deliberately remained silent and invisible for many years for fear of becoming targets for new attacks, and people taking part in public protest often suffer cruel treatment (UN HCHR 8 February 2001). Recently, however, uprooted Colombians have begun to assert their demands. Representatives of 60 displaced persons' organizations formed a national coordinating body in early 2000 to advocate for better government services for the country's massive displaced population (USCR June 2001).

Many people do not register as displaced, since the lack of flexibility and the highly bureaucratic procedures make them view registration more as an obstacle to obtain benefits than as the way to gain access to them. Under-registration contributes to make it impossible to estimate the extent of displacement in Colombia. (UN HCHR 8 February 2001).

The government has been pursuing initiatives to solve the problem of internal displacement. In 1997, Law 387 was enacted to provide measures to prevent displacement, as well as to protect and assist the displaced. This law was however criticized for not containing specific measures to prevent displacement and for imposing a three months time limit for families to receive aid (HRW October 1998). On 12 December 2000, Decree 2569 was issued to regulate and complement the provisions of Law 387 concerning the responsibilities of the Social Solidarity Network, i.e. the agency coordinating the national system for IDPs. The law also specifies the government's obligations at the local and national levels in regard to prevention and assistance. Durable solutions for the displaced are also detailed, as well as registration procedures (RSS 2001). It is still unclear how adequate and effective the regulatory decree will be in coping with forced displacement (IACHR 2000). Another law passed in 2000, Law 589, formally criminalized forced displacement (IACHR 2000). The UN High Commissioner for Human Rights recognized that these are all steps forward, but noted that the legal framework to respond to forced displacement was still not really implemented. It also pointed out that there has been no progress regarding prevention, and that the establishment of an early warning system was still pending. Also, there is still no appropriate legal mechanism for the return and resettlement of

the displaced population, and displaced people that have gone home have often done so on the basis of fragile agreements with illegal armed groups, without protection from the government (UN HCHR 8 February 2001).

Local and international NGO assistance is vital when the government's response to displaced people is inadequate. ICRC is the only organization, which covers the entire country with its 16 subdelegations and offices (ICRC July 2001). The United Nations system has given priority to 23 projects for the return of the displaced (TGD 19 January 2001). The UNHCR will continue to support major institutional and policy changes needed to enhance the protection of the displaced, and will give priority to the implementation of the revised national registration system, to ensure effective and safe access by IDPs to State benefits (UNHCR 2001). Other agencies dealing with IDPs include in particular United Nations High Commissioner for Human Rights, WFP, UNICEF, IOM and the World Bank. Managed by the Humanitarian Aid Office (ECHO), the European Union will extend aid to areas like emergency aid, post-emergency assistance, and help for the return and resettlement of displaced persons (ECHO 5 April 2001). The U.S. has also allocated funds to humanitarian relief activities. The largest international NGOs present in Colombia coordinate their work under the umbrella organization DIAL, which seeks to influence policies and programmes on displacement and humanitarian action (DIAL 30 November 1999).

Global IDP Database ([www.idpproject.org](http://www.idpproject.org)),  
Colombia Country Profile, July 2001

## Annex three: List of Participants

<u>Name</u>	<u>Municipality</u>
1) Leon Augusto Arango Llano	Jardin
2) Juan Gomez Gutierrez	Santa Barbara
3) Sergio Escobar Holguin	Belmira
4) Juan Paulo Velez	Angelopolis
5) Jaime Arturo Roldan Alzate	Yarumal
6) Hilda Maria Cano	Yarumal
7) Roberto Mira Restrepo	Peque
8) Franchesco Peron Rosa	Uramita
9) Francisco Garzon Cardano	Caramanta
10) Juan Camilo Restrepo Velez	Caldas
11) Ligia Ines Sierra Pena	San Pedro de los Milagros
12) Adriana Mabel Hurtado	Fredonia
13) Gloria Cecilia R.	Sabanalarga
14) Leila Lucia Tamayo Quiroz	Caicedo
15) Hamid Amparo Rendon	Betania
16) Celina Hinestroza Toro	Anza
17) Maria Carlota Velez	Don Matias
18) Nora Saldarriaga Henao	Betulia
19) Luisa Paulina Ortiz Gonzales	Sopetran
20) Maria del Carmen Mazo	Titiribi
21) Luz Esteala Sanchez Gomez	Heliconia
22) Isneida Bermudez Vanegas	Venecia
23) Juan Guillermo Escobar	Urrao
24) Jose David Morales Gonzales	San Jeronimo
25) Oliver Zuluaga Gomez	Salgar
26) Victor Manuel Lopez	Santa Fe de Antioquia
27) Roberto Jairo Gonzales Gil	Briceno
28) William Munoz Gomez	Giraldo
29) Ramiro Hernandez Mora	Valparaiso
30) Jairo Henao Zapata	Pueblo Rico
31) Wilson Alberto Perez	Canas Gordas
32) Paula Andrea Carmona	San Andres de Cuerquia
33) Fanny Lucia Correa Osorio	Santa Rosa de Osos
34) Jorge Hernan Rua Zapata	Guadalupe
35) Marta Oliva Zuleta C.	Angostura
36) Alvaro Londono Gutierrez	Ituango
37) Ramiro Gonzales Roldan	Dabeiba
38) Alvaro Diego Parejo	Andes
<u>Name</u>	<u>Organisation</u>
39) Rodolfo Zapata	Social Solidarity Network
40) Maria Girsela Villegas	Human Rights Ombudsman's Office
41) Gabriel Arias	Human Rights Ombudsman's Office
42) Gerard Fayoux	UNHCR Colombia
43) Roberto Mignone	UNHCHR Colombia
44) Alejandro Valencia Villa	UNHCHR Colombia
45) Eduardo Leon Navarro	Project Counseling Services
46) Eigil Kvernmo	Norwegian Refugee Council
47) Hanne Melfald	Norwegian Refugee Council
47) Bjorn Pettersson	Norwegian Refugee Council

## Annex four: Workshop Agenda

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### **Day One**

- 9:00-9:40 Opening statements by Mr. Felipe Aguirre, (Director of the Governor's Office for Disaster Prevention and Assistance) and Mrs. Maria Girlesa Villegas, Regional Ombudsperson Antioqua.
- Presentation of participants, workshop agenda, objectives and methodology
- 9:40-10:20 Introduction, legal background and international and national definition of the displaced
- 10:20-10:35 Coffee break
- 10:35-12:30 Cont. Introduction, legal background and international definition of the displaced
- 12:30-14:00 Lunch
- 14:00-16:00 Emergency Assistance and durable solutions (Rodolpho Zapata, Representative of the Red in Antioqua)
- 16:00-16:15 Coffee Break
- 16:15-17:30 Cont. Emergency Assistance and durable solutions

### **Day Two**

- 9:00-10:45 Protection during displacement (Roberto Mignone / Alejandro Valencia Villa, OHCHR Colombia)
- 10:45-11:00 Coffee Break
- 11:00-12:30 Cont. Protection during displacement
- 12:30-14:00 Lunch
- 14:00-15:45 Return, reintegration and resettlement (Gerard Fayoux, UNHCR Colombia)
- 15:45-16:00 Coffee Break
- 16:00-17:00 Cont. Return, reintegration and resettlement
- 16:00-18:00 Responsibilities of the Municipal Ombudsperson in relation to IDPs (Maria Girlesa Villegas, Regional Ombudsperson)

### **Day Three**

- 9:00-11:00 Prevention of displacement (Gabriel Arias, National HR Ombudsman's Office)
- 11:00-11:15 Coffee Break
- 11:15-12:30 Cont. Prevention of displacement
- 12:30-13:30 Lunch
- 13:30-14:30 Conclusions and recommendations