



Colombia the Current Panorama: Victims and Land Restitution Law 1448

This document outlines how the Victims and Land Restitution Law (*Ley de Víctimas y de Restitución de Tierra, Law 1448*, June 2011) has been a positive step forward in recognising the existence of an armed conflict in Colombia, something that had previously been systematically denied by the State. This has allowed for a legal framework to be created for the reparation of victims and the restitution of the land from which they have been forcibly dispossessed. By recognising the existence of an internal armed conflict, the government has afforded protection rights to the population under international humanitarian law (IHL). Concerns, however, have been expressed regarding the limited nature of Law 1448 to return land in accordance with international norms.¹ As a result, a number of constitutional challenges have been filed against certain articles by national NGOs and other civil society actors.²

This report also highlights some major challenges to the implementation of Law 1448. These include the political and security context that surrounds the land restitution process, and the reality that victims are faced with in some rural areas due to a failure of the rule of law – in part as a result of collusion³ between the security forces, local elites and paramilitaries; the security of victims and the sustainability of the returns; and the ongoing internal conflict. This briefing points out that whilst Law 1448 is a major step forward, it does not address all victims equally and has some built in obstacles to the full realisation of the rights of victims to truth, justice, and reparation.

There are a wide range of actors and institutions involved in the restitution process. These include state institutions at the local and national level, civil society, the international community, as well as elements that have the potential to destabilise the process, such as illegal actors, elites opposed to the law with political and/or economic power, and a general lack of political will.

This briefing recommends that the government improves the security context by ensuring that land being restored under Law 1448 is first cleared of all the illegal actors and other occupants that do not have rights over the land.

In order to promote security it is essential to ensure the effective functioning of the rule of law in areas to which communities and individuals are returning. One measure of this is to tackle impunity and prosecute those responsible for crimes committed in these regions.

In order to guarantee the sustainability of the returns basic rights should be addressed in preparation for their return: civil authorities need to be established and /or reinforced, accessible health care and education provision established, and national, regional and local development plans elaborated with a focus on small scale farming and rural livelihoods. For this to happen, returning victims (*campesinos*, afro-Colombian and Indigenous Peoples) need to play a fundamental role in the formulation of rural public policies.⁴

Meanwhile the British and Irish Governments, and the European Union, must understand the complicated process of land restitution that is currently taking place in Colombia, and the consequences that promoting mining and agro-industrial development through foreign investment is having on communities. Last year alone foreign investment reached \$15bn, with oil and mining sectors proving the biggest draw.⁵

ABCColombia

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Context

The situation for the internally displaced people in Colombia continues to be grave, with 5.3 million persons internally displaced since 1985 according to non-governmental observers (3.9 million according to government data collated from 1997)⁶ making Colombia the country with the highest number of displaced people in the world (followed by Sudan, Iraq and Afghanistan).⁷

Estimates vary as to the scale of the land from which people have been dispossessed. According to the Commission to Monitor Public Policy on Forced Displacement the figure is approximately 6.6 million hectares, excluding collectively owned territory; meanwhile the Colombian government figure is approximately 4 million.⁸ These figures continue to rise annually. Between 2002 and 2010; people were displaced at an average annual rate of 269,000.⁹ In the first eight months of 2011, 103,000 people were reported as newly displaced.¹⁰ Indigenous and Afro-Colombian peoples have suffered disproportionately the effects of the armed conflict. The departments most affected by mass displacement continue to be those along the Pacific Coast, such as Chocó, Cauca and Nariño, a large percentage of the population in these departments are Afro-Colombian and Indigenous. These areas have rich natural resources, such as oil and gold, thereby attracting the interest of investors (foreign and national, legal and illegal) who frequently arrive with private security schemes and/or military security.

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA)¹¹ the number of mass displacements is increasing with roughly 5,500 people displaced in 20 mass events¹² in January and February 2012, compared to 18 mass displacement events during the same period in 2011. In December 2011, the Awa indigenous people, a partner group of ABColombia, suffered a mass displacement of 200 people; this was followed by a second mass displacement of 850 people in February 2012.

Conflict Continues

The Colombian conflict continues despite the demobilisation process and the introduction of policies normally seen at the end of a conflict, such as Law 1448 (2011). The implementation of Law 1448 will see land being returned to those who have been forcibly displaced, but it would be a mistake to think that the forced displacement had stopped. In fact, little has changed in respect to the factors causing this displacement: people continue to flee for their lives due to armed confrontations and aerial bombings, human rights violations and violations of international humanitarian law (IHL) together with the problems of 'inequality of income, gender, locality, and ethnicity, have led to an increase in the phenomenon of internal displacement'.¹³

Paramilitary groups continue to operate, albeit under different names (Los Ratrojos, Aguilas Negras etc.).¹⁴ In the departments of Cesar, Córdoba, Magdalena, and Nariño a new right-wing paramilitary group has emerged: the 'Army against the Restitution of Land' (Ejército Antirestitución de Tierras). Such a public stance against restitution can only increase the fear and the risk for those returning to their land. The paramilitary groups are estimated to number approximately 6,000 members.¹⁵ Collectively they are referred to by the Colombian government as BACRIM (*Bandas Criminales – 'criminal gangs'*), a misleading title, however, as they continue to carry out their criminal acts with political agendas and they continue to operate at times in collusion with some of the security forces.¹⁶ According to the UN High Commissioner for Human Rights:

*"The scope of organized violence committed by these (BACRIM) groups, their substantial economic power, capacity to corrupt authorities and State institutions, links with local authorities and local networks of influence, their impact on social actors and the alarming levels of violence against civilians make them a daunting challenge to the rule of law."*¹⁷

As a result of classifying the paramilitary groups as criminal gangs following the demobilisation process, victims displaced at the hands of the BACRIM do not qualify under Law 1448 for restitution and reparation.¹⁸

Guerrilla groups continue to operate in Colombia, although recently a series of key commanders were removed by the security forces. In several regions of the country the guerrilla has increased its offensive actions against the army. In areas like Chocó, there have been guerrilla actions against the local communities which have affected their freedom of movement and have led to communities being confined for several days. In March 2012, the guerrilla group *Fuerzas Armadas de Colombia – FARC* refused to allow any movement of transportation along the rivers in the department of Chocó. This blockade lasted for nine days. In January 2012, fighting between the army and the guerrilla resulted in the mass displacement of the community of El Charco, Nariño. Both paramilitaries and guerrilla groups restrict the movement of communities. These actions create precarious conditions for these communities, by preventing them from receiving humanitarian aid from state agencies and international cooperation.¹⁹

¹ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012.

² For further detailed information see: Colombia: The Victims and Land Restitution Law Amnesty International (April 2012) <http://amnesty.org/en/library/info/AMR23/018/2012/en>; and ABColombia, 'Returning Land to Colombia's Victims' May 2011, www.abcolombia.org.uk/downloads/ReturningLandReportforweb.pdf

³ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012 Page 5; UN General Assembly, Report of the High Commissioner For Human Rights on the situation of human rights in Colombia, A/HRC/16/22, 3 February 2011, para 45 'Colombia continues to be concerned about indications that these groups benefit from the collusion of some local authorities and members of security forces...'

⁴ Ibáñez, A.M., 'La concentración de la propiedad rural en Colombia: evolución 2000 a 2009, desplazamiento forzoso e impactos sobre el desarrollo económico' cited in 'Advances and pending issues during the first year of 'Democratic Prosperity', CINEP/ Programa por la Paz, October 2011 www.abcolombia.org.uk/downloads/FCB_Cinep_Report_1011.pdf

⁵ Financial Times, Investing in Colombia, Special Report, 8 May 2012.

⁶ The government does not count intra-urban displacement, displacement caused by BACRIM or displacement due to crop fumigations. Internal Displaced Monitoring Center, Global Overview 2011, page 57

⁷ ABColombia, Returning Land to Colombia's Victims, May 2011.

Guerrilla groups and paramilitaries continue to export drugs, import arms, grow drug crops and seek to establish zones of political influence. Alliances of right wing paramilitaries and entrepreneurs have formed to consolidate economic interests on illegally appropriate land for large scale projects, and both groups have become involved in illegal mining activities.²⁰

The International Red Cross, in its 2011 report on Colombia, recognised that along with the continuing forced displacement 'there have been over 760 violations of international humanitarian law (IHL) and other basic rules protecting human life, with a worrying rise in ... sexual violence, and attacks on civilian property.'²¹ According to the UN High Commissioner's Office, the responsibility for human rights violations is attributable to agents of the State, paramilitary, and guerrilla groups.²²

'In 2009, paramilitaries were responsible for the largest percentage of displacements where the perpetrators have been identified (32.9 per cent). The equivalent figures for other parties to the conflict are: 26.8% for guerrilla groups and 1.4 per cent for members of the armed forces.'²³ Between January and October 2011 the government recorded 32 massacres with 149 victims.²⁴ The Centro de Investigación y Educación Popular (CINEP) indicates that from January to June 2011 there were 201 extrajudicial executions,²⁵ 77 intentional homicides of protected persons,²⁶ as well as six forced disappearances and 64 arbitrary detentions.²⁷ It also reports that as

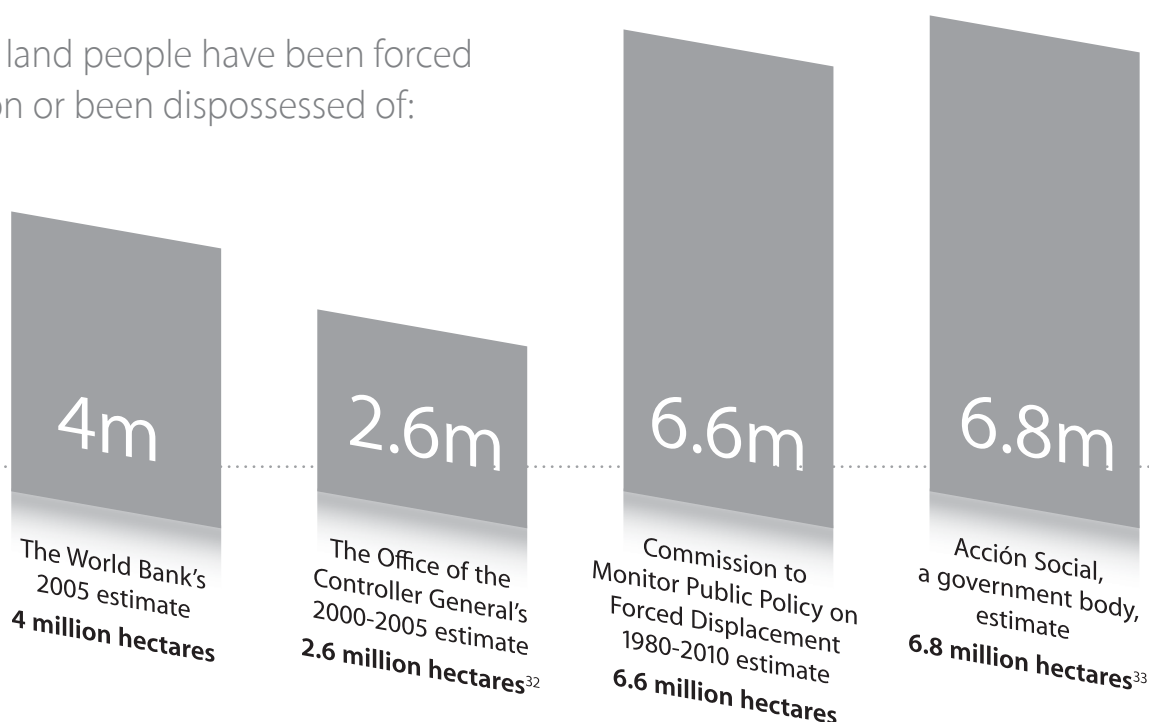
of June 2011 there were 102 victims wounded and 256 threatened by direct or indirect agents of the State.²⁸

The UN High Commissioner, in her January 2012 report, noted with concern the continuing expansion of illegal armed groups that have emerged following the demobilisation of paramilitary organisations. She highlighted the devastating impact these groups are having on the population, and the increasing violence directed against social leaders and public officials. According to the High Commissioners report 'the Police reported that 53 per cent of the members of these groups who have been captured or killed to date were demobilized paramilitaries.'²⁹

How much land will be restored?

How much land will be restored by Law 1448 appears to be an on-going issue. The Colombian government has re-iterated that it considers that only 2 million hectares have been stolen in the conflict and it is this amount that the government plans to restore under Law 1448.³⁰ This contradicts various other government departments, international and civil society estimates which place the figure between 4 and 6.8 million hectares (excluding collectively held territories). The figure of 2 million held by the government could actually end up restricting the rights of victims to reparation because a pre-set limit has been established which does not reflect the figures collated by other recognised bodies.³¹

Estimated land people have been forced to abandon or been dispossessed of:



⁸ Information given to ABColombia during a meeting with the Vice President Angelino Garzon, March 2011.

⁹ Colombian Humanitarian Crisis caused by the Armed Conflict. June 2011

¹⁰ Internal Displaced Monitoring Center, Global Overview 2011, page 56, www.nrc.no/arch/_img/9633536.pdf

¹¹ UN OCHA, Monthly Humanitarian Bulletin – Colombia, Issue 02, 01 – 29 Feb 2012, <http://www.colombiassh.org/site/>

¹² According to Colombian legal framework for IDP assistance, a mass displacement consists of 50 or more people and/or 10 or more families displaced in the same circumstances of time, cause and place.

¹³ IACHR, Annual Report 2011, Chapter IV Colombia, para 63

¹⁴ IACHR, Annual Report 2011, Chapter IV Colombia, para 21

¹⁵ Instituto de Estudios para el Desarrollo y la Paz estimates the groups have 6,000 armed combatants, and have expanded operations to 29 of Colombia's 32 departments cited in Human Rights Watch World Report 2011

Law 1448 and Forced Displacement

There remains a considerable lack of clarity over who will actually have their land restored to them. There is a level of inequality built into the Law in that reparation of victims will be from 1985, whereas land restitution will only take into account victims dating from 1991. Furthermore, whilst victims of politically motivated crimes have a range of entitlements **including land restitution and the right to truth, justice and reparation**, these are not available to those who suffer criminally motivated crimes, placing in doubt the situation of victims displaced by BACRIM.

Victims of forced displacement also encounter other disadvantages in Law 1448. The Financial Plan now lists the range of reparations that victims can expect. When compared to the previous reparations awarded to victims under Decree 1290 (2008), victims of forced displacement will see the maximum value of reparation fall from 25 times the minimum salary to just 17 under decree 4800 (2011). This is a retrogressive step that will see the monetary value reduce by approximately one third.

An aspect that remains unclear is that of the debts accumulated on the property whilst the victims were displaced. According to Amnesty international, whilst some of these debts will be paid it is in no way clear that they all will. If this is the case, victims may return with debts to pay, a situation that is unsustainable and unjust, given the levels of poverty that many have suffered as a result of displacement. The Constitutional Court cites research showing that 96.5 per cent of Afro-Colombians, registered as displaced, live below the poverty line.³⁴

There is also a conceptual and judicial confusion in terms of reparation that has not been clarified with the adoption of Law 1448. That is the difference between **social entitlements that citizens receive as part of public policies** (entitlements that all citizens hold) and reparation for victims of the conflict. Many of these social entitlements appear in the programmes of reparation e.g. access to subsidies or grants for housing benefit (*subsídios para el acceso a vivienda*). Social benefits should be paid for out of the social budget, not the budget for the reparation of victims.

The law will not restitute land to victims of forced displacement between 1985 and 1991, a period when forced displacement was high. Furthermore, where victims have been forcibly dispossessed of their land and that land is now under agro-industrial development, it will not be returned to them unless they agree to become 'associates' of the company that owns it. This means that

they cannot return to their traditional livelihood of farming, and will instead produce agro-industrial products. In the pacific coastal region, this model has left many small scale farmers in abject poverty, and forced many to sell their land to the company for the debts they owe.

According to UN Rapporteur Francis Deng 'economic interests (in Colombia) underlying the violence and conflict are also factors inducing displacement ... Displacement is often a tool for acquiring land for the benefit of large landowners ... (and) private enterprises planning large-scale projects for the exploitation of natural resources.'³⁵ Law 1448 makes provision for the confiscation of land held by agro-industrialists of 'bad faith'. However, this will be very difficult to prove, especially given the lack of resources identified for investigating ownership.³⁶ Amnesty International expresses concerns that Law 1448 could de facto grant 'effective immunity from prosecution to straw men (*testaferros*)' – individuals who put their name to illegally secured lands on behalf of paramilitaries.³⁷

Consultation of Indigenous and Afro-Colombian Communities

*"The regulation of the Law has raised some questions about the participation of victims and their organizations and their protection. Such participation is an essential condition of a human rights-based approach and for building a legitimate, sustainable and effective reparations process."*³⁸

(UN High Commissioner, January 2012)

For the first time, the right to land and territory for minority groups is considered as a measure of reparation in the Victims Law. For example, in the case of Afro-Colombians, Article 40 of Decree 4635 states that "...territory is recognised and understood as a fundamental part of their culture, spiritual life, integrity and autonomous development. In the case where the community or some members have lost or are at risk of losing their land or access to their territory, as a result of the armed conflict ... the state

³⁴ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012 Page 5; UN General Assembly, Report of the High Commissioner For Human Rights on the situation of human rights in Colombia, A/HRC/16/22, 3 February 2011, para 45 'Colombia continues to be concerned about indications that these groups benefit from the collusion of some local authorities and members of security forces...'

³⁷ Human Rights Council, Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 64.

³⁸ The law only covers politically motivated crimes, not criminal acts for reparation and restitution.

³⁵ OAS, Fifteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G, CP/INF. 6225/11, April 15, 2011, p. 3. Cited in IACHR Annual Report 2011

²⁰ Interviews with ABColombia partners during a visit to Colombia in March/April 2012

²¹ International Committee of the Red Cross (ICRC) 2011 Report

²² UN General Assembly, Report of the High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/16/22, 3 February 2011, paragraph 11.

²³ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012.

²⁴ The figures from the Observatory of the Vice-Presidency indicated 32 massacres that claimed 154 victims in the same period in 2010. See (in Spanish) at: www.derechoshumanos.gov.co/Observatorio/Paginas/Observatorio.aspx

²⁵ This sources makes reference to both "victims of extrajudicial execution by abuse of authority and social intolerance by direct or indirect agents of the State (human rights violations)" and "victims recorded simultaneously as extrajudicial executions perpetrated by direct or indirect agents of the State for political persecution (human rights violations) and as intentional homicides of protected persons (breaches of international humanitarian law)." See Banco de Datos del CINEP, Noche y Niebla No. 43, p. 59 www.nocheyniebla.org/files/u1/43/03Cifras43.pdf

²⁶ See in Spanish only Banco de Datos del CINEP, Noche y Niebla No. 43, p. 59

²⁷ Ibid page 60

²⁸ Ibid p.59

will guarantee these rights, as far as the security situation allows.” In this sense the Law promotes the legal protection of the right to land and territory of Afro-Colombian communities.

Despite this achievement, Afro-Colombian and Indigenous communities have encountered numerous obstacles in their efforts to participate in the process of drafting the Law and its related decrees.³⁹ Afro-Colombian and Indigenous communities have a legal right to be consulted on laws introduced that will impact upon their rights according to national legislation and international treaties. This consultation did not happen before the passing of the Law, rather transitional provisions were added giving the President extraordinary powers for six months to issue two decrees⁴⁰ that regulate and guarantee the rights of indigenous peoples and Afro-Colombians, however these processes were flawed.⁴¹ The consultations were rushed, insufficient information was provided to the communities and various pieces of legislation were discussed in one meeting.⁴² Furthermore, there was not enough time allowed for the appropriate consultation of indigenous and Afro Colombian representatives at different levels. For example, in the case of the Afro Colombian communities, the government decided to conduct the consultation process with representatives from the High Level Consultation (La Consultiva de Alto Nivel) – a body that only represents some of the Afro Colombian social leaders and community councils. Moreover, while the Constitution protected indigenous peoples’ rights to their ancestral lands, the provisional article recognised that Afro-descendants only have rights to so-called “vacant lands.”

As a result, the legitimacy of the process has been undermined, putting at risk the ability of Afro-Colombian and Indigenous communities to access their collective and individual rights. As the Law is implemented, the international community must monitor their participation in this process, in order to ensure that the Colombian government respects its legal obligation to free, prior and informed consent.

Institutional Framework

The implementation of Law 1448 started on 1 January 2012. Various structures have been created for its implementation, including: a National System for the Attention and Reparation of Victims, with an executive committee presided over by the Head of State; and a Special Administrative Unit for Assistance and Integral Reparation for Victims (*la Unidad Administrativa Especial para la Atención y Reparación Integral a las Víctimas*).⁴³ It is this unit that is responsible for creating the National Plan for integrated

assistance and reparation – including a programme of psychosocial assistance, an integrated health plan, and a programme of collective reparation for the victims. Fundamental procedural mechanisms have yet to be created, such as a National Register of Victims (Registro Único de Víctimas – RUV), which will be administered by the Department of Social Prosperity, and criteria for compensation for the victims.⁴⁴ Essential to the legitimate process of land restitution and reparation will be the design of the register and the procedures for the registration of victims.

In December 2011 the Colombian government announced the Financial Plan for the implementation of the Victims Law.⁴⁵ It provides a roadmap for public finances and identifies the main economic requirements for implementing this policy over the next 10 years. According to the figures provided the cost over the 10 year period will be 54 billion Colombian pesos (COP) (approximately US\$30 billion). There is US\$500 million (COP 6 billion) set aside in the 2012 national budget to support this year’s implementation.⁴⁶ The main expenditures will be in the areas of assistance (COP22 billion) and reparation measures (COP24 billion). However, the Financial Plan, and the reparations awarded, must conform to the principal of **fiscal sustainability**, a measure recently introduced and adopted under the Santos Administration. This states that the social expenditure of the Colombian state cannot increase in a manner that risks the macro economical equilibrium of the nation. However, it is important to remember that according to the UN the concept of reparation is a *measure which serves to restore the victim to the original situation before the gross violations occurred*.⁴⁷ A consequence of concentrating the discussion on fiscal sustainability may be that the focus will be shifted away from **the victims’ rights to truth, justice and integrated reparation**.

The process of restoring land will be administered by the Special Administrative Unit for the Process of Restitution of Dispossessed Lands (*Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas – UAGRT*) which is part of the Ministry of Agriculture. It has a strategic role in the process of land restitution. According to the Ministry of Agriculture and Rural Development, between 10 June 2011 and 5 January 2012, a total of 6,956 claims for land restitution were submitted to the Land Restitution Unit by victims, hoping to have restored to them a total of 416,218 hectares.⁴⁸ The aim is to return a minimum of 500,000 hectares per year until 2014. This is no small task given that only 60,000 hectares were returned in the 8 years of the Uribe Administration.⁴⁹ One of the main issues that this administration faces is accomplishing it in the midst of an ongoing conflict where thousands of people continue to be newly displaced annually.

³⁹ Annual report of the United Nations High Commissioner for Human Rights: Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, January 2012 para 34-35

⁴⁰ Statement by the Minister of Agriculture and Rural Development, Juan Camilo Restrepo, in an interview with Semana, September 2011

⁴¹ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012.

⁴² Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012.

⁴³ ABColombia, Returning Land to Colombia’s Victims, May 2011, page 2.

⁴⁴ Colombian Constitutional Court order 005, 2009, para. 55 (only in Spanish)

⁴⁵ Report of the Representative of the Secretary General on internally displaced persons submitted in accordance Commission resolution 1999/47, Addendum. Profiles in displacement: follow-up mission to Colombia, E/CN.4/2000/83/Add.1, 11 January 2000, para 23.

⁴⁶ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012

⁴⁷ *ibid* p10; and Article 120 of Law 1448 [in Spanish]

⁴⁸ Report of the United Nations High Commissioner for Human Rights on the situation of human rights, Annual Report 2011 Addendum Colombia, January 2012 para52

⁴⁹ See letter sent to President Manuel Santos by Afro Colombian communities on 10 December 2011. http://www.setianworks.net/indepazHome/attachments/707_Carta%20al%20Presidente%20Santos%20sobre%20el%20proceso%20de%20consulta%20previa%20de%20la%20Ley%20de%20Victimas.pdf

⁵⁰ Decreto Ley 4633 de 2011 “Por medio del cual se dictan medidas de asistencia, atención, reparación integral y de restitución de derechos territoriales a las víctimas pertenecientes a los Pueblos y Comunidades indígenas”. Decreto Ley 4635 de 2011. “Por el cual se dictan medidas de asistencia, atención, reparación integral y de restitución de tierras a las víctimas pertenecientes a comunidades negras, afrocolombianas, raizales y palenqueras”

According to Law 1448, in 2012 the new restitution unit will prepare roughly 14,000 applications and approximately 2,000 of these will receive judicial decisions.⁵⁰ Progress on this scale is a significant challenge for the government. It will be no small achievement if they manage to accomplish this, particularly in the face of opposition from some sectors of the political and economic elites, and paramilitary groups such as the 'Army against the Restitution of land'. Their success in this area will be measured by their ability to achieve sustainable returns and in stemming the tide of people who are being newly forcibly displaced.

There will also be tribunals for hearings at departmental and municipal levels for the judicial administration. The role of UAGRT is to support the communities in this process; they are responsible for documenting evidence for the Tribunal Judges. The Tribunals will have specially appointed judges to conduct a shortened judicial process. So far the government has opened eight land restitution centres⁵¹ which have received approximately 10,000 applications and collected information on just over 700,000 hectares of abandoned lands. It has also created 22 Tribunals at municipal level, specialised in land restitution.⁵² The UN High Commissioner (January 2012), highlighted a key issue in relation to the tribunals, which has particular resonance in respect to the regions, where the "protection of judges who will be responsible for ruling on land restitution cases will require special attention, in order to guarantee their independence and impartiality ... If these judges do not perform their duties adequately, the mechanisms may have a re-victimizing effect and the law would run the risk of legalizing illegal land appropriation, rather than providing justice for victims."⁵³

Law 1448 apparently requires people to present their cases in person to the local judge in the region in which the land they are claiming is located. If this proves to be the case the ongoing armed conflict could impede their access to land restoration. The insecurity of the region along with the fear many may have of returning to the region whilst the conflict continues could result in them being unable, by default, to have their land restored. A previous law passed in 1997 (Article 27 of Law 387) allowed them to submit their case for land restitution to judges in the areas in which they were currently living.⁵⁴

Ending impunity and guaranteeing the security of land claimants

The subject of security for victims is fundamental if Colombia is to address the issue of justice for a population that has suffered immense violence during the conflict. Some of the land included in the Government's restitution policies was originally stolen by paramilitaries and their networks, and it continues to be retained by illegal groups. Law 1448 allows for prosecution of those who endeavour to cover up land theft, but the Inter-American Commission on Human Rights (IACHR) observes that 'most of the lands forcibly dispossessed continue in the hands of the illegitimate possessors and their straw men.'⁵⁵ *This 'represents an undeniable risk for people seeking to recover their land and for the sustainability of the overall restitution process.'*⁵⁶

UNIQUE REGISTER OF VICTIMS (REGISTRO ÚNICO DE VÍCTIMAS RUV)

The *Registro Único de Víctimas* (RUV) will be the central register from which the government will work in terms of reparation of victims. The first challenge will be to unify all of the systems of information which refer to the different types of victims: the largest of these is the Unique Register of the Displaced Population that is coordinated by Acción Social. Uniting all of this information will not be a straight-forward task, in part because the methodologies for collection and registration differ. However, civil society initiatives exist that could help with this process and provide a point of reference for the construction of a robust system of solid information. In the past, local registers have proved to be an obstacle for the victims of forced displacement. As a result of the numerous complaints received, the Committee Monitoring Public Policy on Forced Displacement for the Constitutional Court investigated the situation and made recommendations on how to correct the policy deviations. These will be useful in formulating procedures and criteria for the RUV register.

This process is an opportunity to recognise the victims of this conflict and to ensure access for victims to their rights. It is therefore essential that the criteria are transparent and equitable. The register is being constructed at the moment; however, there has been no indication as to when it will be made public and even less information on the criteria for how it will function.

⁴¹ Internal Displacement Monitoring Centre and Norwegian Refugee Council, Building Momentum for Land Restoration. Towards property restitution for IDPs in Colombia, November 2010.

⁴² See statement produced by the Consultative Commission of the Valle del Cauca Department, October 2011.

⁴³ This unit will replace the National Reparation Commission, Decreto 4802 de 2011, original text: "Por el cual se establece la estructura de la Unidad Administrativa Especial para la Atención y Reparación Integral a las Víctimas".

⁴⁴ Decreto 4800 de 2011, original text: "Por el cual se reglamenta la ley 1448 de 2011 y se dictan otras disposiciones".

⁴⁵ Documento CONPES 3712/2011. Plan de financiación para la sostenibilidad de la ley 1448 de 2011, Consejo Nacional de Política Económica y Social. Departamento Nacional de Planeación [only in Spanish].

⁴⁶ Internal Displacement Monitoring Centre, Colombia: Improved government response yet to have impact for IDPs, 29 December 2011.

⁴⁷ United Nations General Assembly (2006), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006, para 19 A/RES/60/147

⁴⁸ 'Defensoras y Defensores Reclamantes de Tierras en Colombia' Campaña nacional e internacional por el derecho a defender los derechos humanos en Colombia, November 2011 (only in Spanish).

⁴⁹ *ibid*

⁵⁰ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012.

⁵¹ Informe de Avances Proceso de Reglamentación e Implementación de La Ley 1448 De 2011, En Materia De Restitución De Tierras A Las Víctimas Del Desplazamiento Forzado. Ministerio De Agricultura, February 2012 http://viva.org.co/pdfs/victimas/Informe_entregado_a_la_Corte_Constitucional_13_de_febrero.pdf

⁵² Consejo Superior de la Judicatura, ACUERDO No. PSAA12-9265 DE 2012. (Febrero 24 de 2012) "Por el cual se crean en el territorio nacional unos Juzgados Civiles del Circuito, especializados en restitución de tierras" 24 February 2012.

⁵³ Annual report of the United Nations High Commissioner for Human Rights: Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, January 2012, paragraph 54.

*“(A) number of difficult problems persist, critically the security situation for human rights defenders, which has if anything worsened with increasing threats and violence from illegal armed groups **that go largely unpunished.**”*

United Kingdom Foreign and Commonwealth Office⁵⁷

Whilst Colombia has seen the processing and conviction of some high ranking military commanders for human rights violations,⁵⁸ the vast majority of human rights violations remain in impunity. This continued existence of structural impunity, referred to by the UN High Commissioner in her report in January 2012, makes communities extremely vulnerable and is one of the factors that contribute to insecurity for returnees.

For communities it will be important also to see impunity addressed at the local level with businessmen and officials implicated in their forced displacement brought to justice. In Curvaradó, Chocó, 15 palm cultivators and/or cattle-ranchers were arrested as the result of well documented evidence by a local NGO and investigations by the Attorney General’s Office. The palm cultivators have been

formally charged for active participation with the paramilitaries in the violent displacement of the Afro-Colombian communities of Jiguamiandó and Curvaradó in order to obtain the land for palm cultivation. Moving forward on cases like this (which in the past have often been blocked and eventually dropped) will have a direct impact on land restitution. This is because **the complexities that present themselves in terms of security are at a local level**, where there is often strong opposition from sectors of society who fear it may jeopardise their control of land which has been obtained illegally through human rights violations.⁵⁹

In 2007, some businessmen and paramilitaries sought me out and asked “how much would it take to make me happy” so that I give up my fight. I told them that they would never buy me because my community had entrusted me as their leader and I was not willing to betray my community.⁶⁰

CASE STUDY: CURVARADÓ IN CHOCÓ



Children pounding rice in Curvaradó

Manuel Ruiz and his 15 year-old son Samir from the Afro-Colombian community of Curvaradó were forcibly disappeared and subsequently killed in March 2012. Manuel was a member of the Curvaradó Community Council and took an active role in the ongoing processes to have their territory restored. The land restitution in the Curvaradó and Jiguamiandó river basins is one of the cases included in President Juan Manuel Santos’ Action Plan (to prioritise and accelerate land restitution).

This incident occurred just before Manuel Ruiz was due to guide government inspectors in connection with an order by the Constitutional Court instructing that a census of the area be carried out to help determine the rightful owners of land.

⁵⁴ Colombia: The Victims and Land Restitution Law: An Amnesty International Analysis, April 2012.

⁵⁵ Para 42

⁵⁶ ibid

⁵⁷ United Kingdom FCO ‘Human Rights and Democracy: the 2011 Foreign & Commonwealth Office Report p.205 emphasis added by writer.

⁵⁸ For example in the cases of the Palacio de Justicia and Mapiripán

⁵⁹ AI Report

⁶⁰ WOLA, ‘We Have Faith that through Our Legal Struggle We Will Achieve Justice’, 18 December 2010.

⁶¹ PBI Colombia, Mining in Colombia: at what Price? Bulletin no. 18, November 2011.

⁶² Annual Report of the Inter-American Commission on Human Rights 2011, Chapter IV, Colombia, para42

⁶³ United Kingdom FCO ‘Human Rights and Democracy: the 2011 Foreign & Commonwealth Office Report

⁶⁴ Verdad Abierta, ¿Una nueva generación de parapolíticos? (A new generation of parapolitics?) October de 2011 http://www.verdadabierta.com/index.php?option=com_content&id=3633 only in Spanish.

⁶⁵ ‘Second Report on the Situation of Human Rights Defenders in the America’ Inter-American Court on Human Rights (IACHR), December 2011, paragraph 30 www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf

⁶⁶ Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 79.

⁶⁷ Curvaradó and Jiguamiandó: Challenges Continue for the Return of Stolen Land’ Peace Brigades International, 2011.

⁶⁸ Programa Somos Defensores, Annual Report 2011, www.somosdefensores.org only in Spanish.

⁶⁹ ‘Programa Somos Defensores, 3 months, 13 defenders killed, 3, May 2012 www.somosdefensores.org/index.php?option=com_content&view=article&id=109:3-meses-13-defensores-asesinados-en-colombia-&catid=8:novedades&Itemid

⁷⁰ Programa Somos Defensores, Annual Report 2011, www.somosdefensores.org

⁷¹ El Tiempo, En cinco años han asesinado a 71 líderes de tierras: Defensoría, 9 April 2012 www.eltiempo.com/justicia/en-cinco-anos-han-asesinado-a-71-lideres-de-tierras-defensoria_11524621-4

⁷² Cited in ODHACO, What else should happen in Colombia for the EU to publicly condemn this situation? www.odhaco.org/?art=1256&title=%BFQu%E9+m%E1+tiene+que+pasar+en+Colombia+para+que+la+UE+condene+la+situaci%F3n+de+DDHH%3F&lang=en, 10 May 2012, emphasis added by writer.

⁷³ United Nations Development Program 2011 Colombia report, September 2011. <http://pnudcolombia.org/inhd2011/>

Sustainable return



Illegal gold mine causing deforestation and water contamination

CASE STUDY: COCOMOPOCA

COCOMOPOCA is made up of 43 Afro-Colombian communities who after a 12 year struggle were finally presented with land title to 73,000 hectares on 17 September 2011. In 1999 COCOMOPOCA presented their formal application for the collective land title to their ancestral territory, an extension of 172,000 hectares under Law 70 (1993). Following their application, they suffered forced displacement, threats and killings. When they first applied for their collective title the COCOMOPOCA communities numbered 30,000 inhabitants, ten years later, there remained only 17,000 people.

On their return the communities of COCOMOPOCA found that there were illegal actors protecting dozens of illegal mining operations in their territories. This mining is not only killing the river on which they depend, but it is also bringing with it even more violence as the illegal mines pay armed groups protection money.

The communities have no support from the legitimate authorities in the area to deal with this problem. They have denounced the illegal mining, as have the Diocese of Quibdó and the Pastoral Social, to authorities at both a local and a national level, but to no avail. The clarity of this situation is revealed in San Marino: on a hill overlooking the river Andágueda and the community of San Marino is the local police station, meanwhile right next to the community, and also in full view of the police station, is an illegal mining operation that has no title concession and is washing toxic chemicals into the river. The police are well within their powers to stop this illegal operation. However, no action at a national or local level has been taken.

Before returning the land, the government should have dismantled these illegal networks. One way of spreading the message that there would not be impunity for illegal actions would have been to arrest the miners, confiscate their machinery and prosecute them.

There is also a link between mining and trade and the increased threats and attacks against land restitution leaders and returning communities. 80% of human rights violations that have taken place in the last 10 years in Colombia have occurred in mining and energy producing municipalities.⁶¹

The IACHR expressed in their 2011 report not only their concerns about the humanitarian and security situation of displaced persons but also for the sustainability of their return processes.⁶²

The sustainability of returns depends on a variety of factors: public security measures, the presence and effective working of civilian authorities, the functioning of the rule of law, the removal of people illegally occupying the land, development plans for small scale agriculture along with suitable subsidies and infrastructure, access to health and education provision at the local level, full land restoration of collective territories and land titles, and political, technical, and financial support. For example the communities in the Andágueda river in Chocó have a health centre in San Marino – but no medications and no medical staff. They have to travel a couple of hours by boat to Bagadó to reach medical assistance, however the medical centre there frequently lacks medications. Therefore people are forced to travel to Quibdó to get treatment – a journey that many are unlikely to be able to make in time.

Local authorities will play a major role in the implementation of Law 1448. They have to allocate funds from their budget, respond to the

property restitution elements of Law and ensure that returnees are consulted and taken into account in their regional development policies and plans. This is why concerns are being expressed regarding the level of influence that illegal actors and corrupt politicians have in some areas at the local level. In the October 2011 local elections many candidates were disqualified from parties due to presumed links with illegal groups, but were able to register as independents.⁶³ Corporación Nuevo Arco Iris reported that 9 out of 32 governors elected were supported by paramilitaries.⁶⁴ This is particularly disquieting given the responsibilities allocated at this level of governance by Law 1448, and the direct opposition to land restitution of many paramilitary groups.

A major problem the government has is to ensure that the rule of law functions in Colombia. The government has discussed the introduction of a unit called the Integrated Intelligence Centre for Returns and Restitution (*Centro Integrado de Inteligencia para el Retorno y la Restitución* – C12RT). This is a national body that created a high level group which includes the Executive and the commanders of the security forces. Whilst this is a step forward, military solutions have so far failed to bring a lasting solution to

the problems of security in rural areas. Communities returning are emphasising the need to ensure that there are re-enforced civilian authorities in the regions that function effectively and implement the rule of law. The situation of COCOMOPOCA clearly illustrates the importance of not only having civilian authorities but ensuring that they function to enforce the rule of law and protect the rights of communities.

Before returning land, the state needs to ensure it has been cleared of all illegal actors and economic interests that are operating illegally, such as the miners in the river Andágueda, or palm cultivators in Curvaradó. Where economic interests occupy land illegally, they bring with them a whole network of illegality. They frequently have private security, pay protection money to both paramilitary groups and guerrillas, and often pay bribes to legal authorities. These networks make communities extremely

vulnerable and when there is a lack of action by security forces in favour of the rule of law, they put these unarmed peaceful communities into a situation of having to try and negotiate their rights with people who operate outside of the law.

Communities cannot be returned to farming land that they been forcibly displaced from, often for years, without sufficient financial resources to re-establish their livelihoods, access to technical assistance and local and regional development plans that address support for small scale agriculture, infrastructure and access to markets.

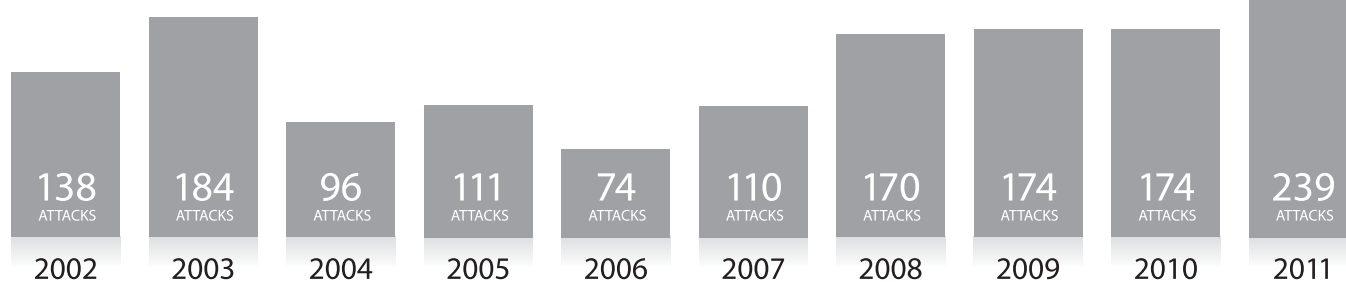
In order to return in a dignified way and be able to sustain that return, the government has to ensure their access to education and health.

DEFENDERS AT RISK

Community leaders, land rights activist and human rights defenders are exposed to threats intimidation and killings in their efforts to defend the rights of communities. The IACHR recognised that the situation in Colombia is ‘especially serious’ in respect to the attacks on the lives of human rights defenders.⁶⁵ Furthermore, the UN High Commissioner’s Office has documented frequent attacks on women leaders of displaced persons in Cauca, Sucre, and the Urabá regions and has expressed concern over the numerous threats against and assassinations of persons who lead or participate in land restitution processes.⁶⁶ For example in 2010, paramilitaries allegedly murdered Argenito Díaz, who was 42 years old and a member of the Board of Directors of the Curvaradó River High Council. “(H)e participated actively in preparing and presenting the writ of protection against the businesspeople in order to recover the collective private property in Llano Rico”.⁶⁷

In 2011 there were 239 attacks against human rights defenders, up from 174 in 2010 (see graph). 49 social leaders and human rights defenders were assassinated in 2011,⁶⁸ the majority of whom are indigenous peoples and land restitution leaders/defenders. In the first three months of 2012, thirteen human rights defenders were killed.⁶⁹

Attacks against human rights defenders in Colombia 2002-2011⁷⁰



Despite many communities involved in the land restitution process having special protection measures, ordered by the Inter American Commission on Human Rights (IACHR), murders of victims’ and community leaders continue. According to the ombudsman, from 2006 – 2011 at least 71 land restitution leaders from 14 departments have been killed.⁷¹

*“As we have already started to kill each of them without mercy we will not allow them to harm the policies of our president **by making demands on the victims and land law.**” a statement by the Rastrojos-Comandos Urbanos paramilitary group directed at human rights organisations and individual defenders including SISMA Mujer, an ABColombia partner.⁷²*

In conclusion

The passing of the Victims Law in June 2011 (also known as Law 1448) began a new phase in the process of recognising the rights of the victims of Colombia's armed conflict. It is a phase which brings with it the hopes and expectations of many victims to resolve one of the most serious consequences of the ongoing conflict: the violation and disregard for the human rights of a large part of the population. However the **Law has yet to be fully implemented**. It plans to return approximately one third of the land that people have been forcibly disposed from over a period of ten years. Whilst at the same time there is a plan to move forward at a rapid rate with the major development engines of mining and industrial agriculture. Although some head way has been made on land registration, without a complete and accurate national land register, and without the safe and dignified return of communities to their dispossessed land, there are no guarantees for international investments. Many companies could find themselves involved in court cases as victims seek to have their rights over their land recognised.

The initial restoration of land under the Victims Law will need to be supported over the long term if it is to be successful. This is a key moment for the international community to consider how it can support these returning communities and how they can allocate resources to small holders and in support of small-scale agricultural models of development to enable farmers to remain on their land and draw a livelihood from it, which is essential if indigenous, Afro-Colombians and peasant farmers receiving land under this Law are not to run a risk of being dispossessed of their territory once again. Ultimately the government will have to address the fundamental problem of the inequitable and unequal distribution of land, 1.5 per cent of land-owners hold 52.2 per cent of the land suitable for cultivation.⁷³

Furthermore, in order to be successful in addressing land restitution the Colombian government will have to devise a comprehensive security plan to ensure the safety of returning individuals and communities whilst the conflict continues. With the Colombian National Development Plan having five major development drivers, one of which is large scale extractive projects and another agro-industrial development, it is easy to see how the current Colombian context might worsen unless impunity is tackled and the local security context improved.

European Union Trade Agreement

While trade can reduce poverty and inequality and can be an engine for development, the EU-CAN Association Agreement with Colombia and Peru (EU-CAN Agreement) could rather be used as a means of legalising the theft of land from which people have been forcibly displaced. If approved by the EU parliament, it

would be implemented in the midst of this ongoing conflict and complex human rights crisis. From a humanitarian and human rights perspectives it is a mistake to ratify the EU-CAN agreement with Colombia in the current context. It is likely to worsen the human rights situation and exacerbate abject poverty thus further destabilising Colombia.⁷⁴

EU, British and Irish governments must promote ethical business

The EU, British and Irish governments need to consider how they can prevent companies from exacerbating this situation. It is essential that the EU, the UK and Ireland give advice and support to their companies and those listed on their Stock Exchanges, to foster understanding of the context in which they would be investing and to ensure that they do not end up benefitting from human rights abuses or legalising stolen lands. Currently there is a lack of authoritative guidance for companies to avoid such negative impacts. At the moment all businesses that choose to invest in Colombia that require large amounts of land (such as mining, timber, agriculture and oil and gas) risk having some kind of interaction with or impact on the conflict. They will need to ensure that in purchasing land they are not becoming accomplices in a land theft carried out by intimidation, forced displacement and murder.

There is a need not just for voluntary guidance and advice but also to ensure that Britain, Ireland and the EU have regulatory mechanisms to encourage and promote ethical businesses. For example a UK Commission on Business, Human Rights and the Environment could address this along with a Financial Conduct Authority (FCA) mandated to consider the ethical behaviour of companies.⁷⁵ These two bodies could clearly demonstrate the Government's recognition that business has a responsibility to respect human rights and sustainable development. A Commission⁷⁶ could provide redress for victims of human rights abuses involving companies operating abroad and promote appropriate environmental and human rights standards, whereas an FCA that considers ethical behavior of companies could result in encouraging companies to monitor their own, human rights, social and environmental impacts and could help prevent these. The London Stock Exchange lags behind many other countries in providing such mechanisms; this includes countries like China, Turkey, Brazil and South Africa.

⁷⁴ For further information see ABColombia Briefing, Colombia: do human rights policy changes hold up to scrutiny, October 2011. http://www.abcolombia.org.uk/downloads/ABColumbiaupdate_EU_CAN.pdf

⁷⁵ For further information see London Mining Network, UK-Listed Mining Companies & the Case for Stricter Oversight: Case Studies and Recommendations, February 2012 <http://londonminingnetwork.org/docs/Imn-the-case-for-stricter-oversight.pdf>; and http://www.huffingtonpost.co.uk/lisa-nandy/another-financial-crisis-_b_1445916.html

⁷⁶ For further information see CORE's UK Commission Proposal at <http://corporate-responsibility.org/campaigns/uk-commissions-proposal/>

Recommendations to the EU, UK and Ireland

- Fund and provide specific measures to support the peasant-farmer economy and projects promoting food security and livelihood opportunities for victims.
- Take measures to ensure that no aid, trade support or subsidies are given to projects located on land that has been forcibly expropriated.
- Support and fund programmes to facilitate displaced peoples' safe and sustainable returns to their lands.
- Fund and provide specific measures to support and build on the capacities of the State and ethnic groups to implement free prior and informed consent processes.
- Promote and support an effective and comprehensive protection programme for beneficiaries of the Land Restitution Bill. This should include measures taken in preparation for their return as well as during and after the return process.
- Promote and support measures to tackle impunity in Colombia, and specifically the processing of the 15 cases of the palm cultivators in Chocó.

Promote ethnical business and trade:

- Since the human rights conditions currently do not exist for the implementation of the EU-CAN Agreement with Colombia and Peru, we recommend that the UK and Irish parliaments and members of the European Parliament should refuse to ratify it.
- Insist that British, Irish and European companies comply with indigenous peoples' right to free, prior and informed consent within their territories in line with ILO Convention 169, recent Constitutional Court rulings and the UN Declaration on the Rights of Indigenous Peoples, endorsed by Colombia in 2009.
- Ensure that British, Irish and European businesses do not profit from displacement or other human rights abuses. The burden of proof must be on the companies to show that no displacement has taken place.
- Ensure the safety and protection of human rights defenders working on land issues by fully implementing the European Guidelines on human rights defenders.

Recommendations to the British Government:

- To continue to give technical assistance to the Colombian government on the land registry; makes the current report public; and monitors its implementation with regular public updates.
- Create a Financial Conduct Authority (FCA) and mandate it to consider the ethical behaviour of companies listed on the London Stock Exchange.
- Establish a UK Commission for Business, Human Rights and the Environment, that provides redress for overseas victims of human rights abuses involving UK companies; promotes environmental and human rights standards for UK companies overseas; works with other human rights commissions to build collective capacity to strengthen the effectiveness of redress in developing countries.
- Require companies to explicitly include their human rights impacts and their conduct of the Free Prior and Informed Consent Process under the Companies Act annual reporting on social and environmental impacts.

About us

ABColumbia is a group of leading UK and Irish organisations with programmes in Colombia. We work on questions of human rights, development and forced displacement. ABColumbia's members are CAFOD, Christian Aid (UK and Ireland), Oxfam GB, SCIAF, and Trócaire. Amnesty International and Peace Brigades International are observer members.

ABColumbia develops the collective advocacy work of members. Our members work with around 100 partner organisations in Colombia, most of them with little access to decision-making forums nationally or internationally.

If you would like to be kept informed of new ABColumbia publications and news, please register at www.abcolombia.org.uk

The Social Department of the Colombian bishops' conference / Caritas Colombia (Secretario Nacional de Pastoral Social, Caritas Colombiana – SNPS), as part of the Catholic Church, seeks to translate into practice the Church's work for peace and reconciliation, the defence of human rights and assistance to victims of the conflict. The department provides emergency food, shelter and advice for the displaced. Through its offices around Colombia, it also offers help to vulnerable communities in matters of protection and support.

For more information, in Spanish, on the work of SNPS see www.pastoralsocial.org

ABColumbia

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