

Still a Dream:

Land Restitution on Colombia's Caribbean Coast

In June 2012, staff from Lutheran World Relief, the Latin America Working Group Education Fund, and Agenda Caribe toured the Caribbean Coast of Colombia, the provinces of Sucre, Córdoba and Bolívar, to investigate whether displaced communities are starting to be able to return to their land and whether the Colombian government's landmark initiative, the Victims' and Land Restitution Law, has gotten off the ground. This was a return trip for us. We had visited many of the same communities in April 2011 to evaluate the obstacles for land restitution in an area that had been infamous for massacres and displacement and paramilitary control of local politics and economic life. Our report in April 2011 was entitled, *No Relief in Sight*.¹ Relief from human rights violations is still hard to find.

Despite the shining promises of the Victims' Law, we found in our June 2012 trip that land restitution has not begun on the Caribbean coast, except for cases in which brave and organized displaced communities decided to return on their own. Worse still, there is a ferocious reverse land reform that is occurring right now, today: mining, cement, lumber, teak and palm companies, large-scale farmers and ranchers, hotels, and other land purchasers are continuing to buy up or take over land, using means both legal and illegal, including the use of illegal armed groups to threaten, abuse and kill community leaders. This report will provide recommendations about how to improve the still very weak implementation of the Victims' Law. However, it is equally urgent for the Colombian government to increase its efforts to provide secure titles and protection

to campesinos and members of indigenous and Afro-Colombian communities who are not currently displaced and who have lived on land for decades or centuries without title, and to provide protection for communities with title that are still under assault, to prevent the "reverse land reform" that is ripping like a tropical storm through the Caribbean coast.

The Victims' Law: In Theory, a Law for Good

The Santos Administration and champions in the Colombian Congress, including Senator Juan Fernando Cristo, dedicated enormous efforts to achieve passage in June 2011 of the Victims' and Land Restitution Law (*Ley de Víctimas y Restitución de Tierras*), Law 1448. The law promises to provide reparations to victims of the conflict since January 1, 1985. Land restitution or compensation would be provided for those who lost land due to violence after January 1, 1991.

Victims have to register in the Unified Victims' Registry (*Registro Único de Víctimas*) within four years after the law entered into effect. A "Special Unit for Attention and Reparation" administers the Victims' Law nationally. At a local level, Transitional Justice Committees (*Comités Territoriales de Justicia Transicional*) are charged with drawing up action plans to achieve reparations and assistance to victims. Circuit judges specialized in land restitution will resolve the cases. One very positive aspect of the law is that the burden of proof is on the current occupier of the land, rather than the victim.

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Executive Summary

Lutheran World Relief, the Latin America Working Group Education Fund, and Agenda Caribe toured the Caribbean coast of Colombia, the provinces of Sucre, Bolívar and Córdoba, in June 2012 to investigate whether displaced communities are starting to be able to return to their land and whether the Colombian government's landmark initiative, the Victims' and Land Restitution Law, has gotten off the ground. This law aims to provide reparations to victims of the conflict and land restitution or compensation for some of the more than 5 million people who were displaced by violence. It has generated enthusiasm in the international community and raised hopes among survivors of violence in Colombia's brutal, decades-old conflict.

Despite the shining promises of the Victims' Law, we found that land restitution has not begun on the Caribbean coast, except for cases in which brave and organized displaced communities decided to return on their own. As of June 2012, a year after the law's passage, no land has yet been restituted via the Victims' Law, according to USAID. Although the Colombian government estimates 360,000 families were forced off their lands, a figure much lower than nongovernmental estimates, only 15,208 land claims nationwide have been filed so far under the Victims' Law, and none have yet been ruled upon by a judge. The first rulings are expected in September 2012. It is important to recognize that the Colombian government has made some progress in the last year in titling land for campesinos and Afro-Colombian and indigenous communities that are not currently displaced. As we learned in our investigation, this is a critical step to help prevent further displacement. But the harder task of removing illegal occupiers and supporting returning communities is yet to come.

In interviews with local government officials, human rights groups, displaced communities and campesino associations, we found that land restitution faces enormous obstacles. It was encouraging to see that some local officials view the Victims' Law as a tool for addressing injustices and are grappling with how best to use it for that purpose. However, we found that:

- local governments are receiving little orientation from the national government regarding how to implement the Victims' Law;
- local governments are so far receiving few additional resources for implementing the law;
- the Victims' Law and its implementing institutions are perceived as replacing the existing institutions serving the displaced. This means that a system barely beginning to function is being scrapped and replaced with yet another; and that underresourced programs for internally displaced persons now have to be broadened to serve additional kinds of victims without necessarily having greater resources;
- interpretation of "who is a victim" is crucial; there is a risk that some local authorities can stack Transitional Justice Committees and Victims Roundtables to avoid authentic victims' representation and thus fail to address the needs of the full range of victims;
- there is a temptation for the government and international community to emphasize symbolic acts of reparation in ways that are neither meaningful to victims nor do much to address the broad community of victims; and
- There is a concerning lack of legal assistance to victims to help them defend their rights and access restitution and reparations.

The most serious obstacle, however, is that victims are not being provided with the protection necessary to be able to reclaim lands. More than 25 land rights leaders have been killed since the Santos Administration took office in August 2010. Without real protection, even the very

institutions intended to return land to victims can become generators of new dangers and new displacements. For example, we heard concerns that victims who presented information or requests to Transitional Justice Committees then received new threats.

We also found that displacement is hardly a problem of the past. On the Caribbean Coast, there is still a ferocious reverse land reform that is occurring right now, today: mining, cement, lumber, teak and palm companies, large-scale farmers and ranchers, hotels, and other land purchasers are continuing to buy up or take over land, using means both legal and illegal, including the use of illegal armed groups to threaten, abuse and kill community leaders. This report provides recommendations about how to improve the still very weak implementation of the Victims' Law. However, it is equally urgent for the Colombian government to increase its efforts to provide secure titles and protection to campesinos and indigenous and Afro-Colombian communities who are not currently displaced and have lived on land for decades or centuries without title, and to provide protection for communities with title that are still under assault, to prevent the "reverse land reform" that is ripping like a tropical storm through the Caribbean coast—and many other areas of Colombia.

The U.S. government is funding and promoting the Victims' Law. This is a positive choice. However, it is essential to fund this initiative with open eyes, close monitoring and, especially, careful consultations with victims' associations, humanitarian agencies and human rights groups. Otherwise, U.S. funding can end up financing symbolic actions that are more publicity stunts than real reparations, line the pockets of corrupt officials, or create islands of land restitution while displacement continues to grow.

Recommendations:

To the Colombian government:

- Provide substantial orientations to municipal governments regarding the implementation of the Victims' Law, including how to ensure broad participation of victims' organizations.
- Provide adequate resources to municipal governments and victims' attention centers to apply the Victims' Law, above and beyond the resources already available to attend to internally displaced persons.
- Ramp up provision of legal advice to victims for land restitution and reparations via the Ombudsman's Office and local personeros.
- Pay particular attention to the needs of women in obtaining land restitution, titling, and reparations.
- Greatly expand the titling of land occupied by campesino families and Afro-Colombian and indigenous communities, which have been on land for decades, but do not have title.
- Monitor land restitution units, judges, notaries and Transitional Justice Committees to ensure that they are not being coopted by those who benefitted from stolen land, and sanction corrupt officials. Enforce sanctions on landowners and companies that are using coercive or other illegal means to expand landholdings.
- Provide protection to communities at risk of displacement, designing local protection plans in close consultation with communities.

Executive Summary (continued)

- Promptly investigate and prosecute assassinations of land rights leaders and other human rights defenders, as well threats and attacks against them.

To the U.S. government:

- Condition assistance for the Victims' Law on greatly improved actions to protect returned and returning communities and land rights leaders, with protection plans created with full participation of the affected communities.
- Provide assistance for protection programs for communities and land titling as part of support for the Victims' Law. Provide increased legal accompaniment for victims via the Ombudsman's Office and *personeros*. Carefully monitor these programs with input from victims' associations and human rights groups to ensure they benefit the intended population. Fund and work with existing campesino and victims' organizations rather than creating new ones, and ensure funding unites, not divides, social movements.
- Withhold certification on human rights conditions if the Colombian government moves to approve legislation that would result in human rights violations by military members being investigated by the military justice system.
- Actively monitor the implementation of the Labor Action Plan, pressing for full implementation, particularly elimination of all forms of illegal subcontracting, protection of the right to organize, protection of union leaders, and prosecution of threats and attacks against union members.
- Urge the Colombian government to take a much more vigorous approach to capturing and dismantling paramilitary successor groups. Urge careful monitoring of the situation on the Caribbean coast as paramilitary leadership is released from jail, including increased protection for victims and human rights defenders.

The law has generated enthusiasm in the international community. Internally, although ultra-conservative sectors attack it as a waste of money, even civil society sectors generally critical of the government acknowledge its good intentions. The expectations surrounding this law are vast. If it fails to accomplish its objectives, Colombia's millions of victims of violence will feel once again betrayed.

There are real fears that the law cannot be safely implemented, as the government has not provided for the safety of those communities that have already returned. At least 25 land rights leaders have been killed since President Santos came to office in August 2010.² A number of those killed were from Córdoba, Sucre and Montes de María. In June 2012, Jairo Martínez, a leader of displaced

communities in Montes de María, was gunned down outside of Montería.

Another concern regards the specific treatment of Afro-Colombian and indigenous communities. The law granted the executive branch authority to separately negotiate with indigenous and Afro-Colombian communities regarding reparations and land restitution, as more extensive consultation was required. Progress on implementing these accords needs to be carefully monitored.

Another particularly controversial aspect of the law is that it provides for landowners that have invested in development projects, like African palm, on land stolen by violence, if they "acted in good faith," to be able to continue benefiting from those investments.

The Victims' Law: In Practice, No Restitution So Far

As of June 2012, a year after the law's passage, no land has yet been restituted via the Victims' Law, according to USAID.³ Although the Colombian government estimates 360,000 families were forced off their lands, a figure much lower than nongovernmental estimates, only 15,208 land claims have been filed so far under the Victims' Law, and none have yet been ruled upon by a judge.⁴ The first rulings are expected in September 2012.

What has been progressing is titling of land for campesinos who are not displaced. Between August 2012 and April 2012, according to the Colombian government, 38,917 families have received title to 903,599 hectares of land.⁵ Colombia's Agriculture Ministry has sensibly recognized that titling land for campesinos who are not currently displaced is also important, and has developed with USAID's support a High-Impact Plan (*Plan de Choque*) to title state-owned lands, indigenous and Afro-Colombian territories, and other lands without clear title. The land that is portrayed in the press as land returned under the Victims' Law is in fact land that is simply being titled, rather than land restituted to returning communities. The harder task of removing illegal occupiers and supporting returning communities is yet to come.

Rather than attempting restitution immediately throughout the countryside, the government has identified 17 areas where restitution will be prioritized, and land restitution offices have been opened in those areas. Yet under the law victims in all areas have the right to file claims; what happens if these filed claims are ignored in nonprioritized areas has not been adequately thought out.

Colombia's Inspector General issued a report in August 2012 that sharply criticized other aspects of the law's implementation.⁶ It noted that no victims had yet received administrative reparations from the Victims' Law; that fewer victims than expected had registered and that there appeared to be roadblocks in including in the official registry those who had applied; and that the national government had failed to

include victims' representatives in monitoring the law's application. Finally, the report asserted that "the security of victims' leaders and land rights leaders has been the most difficult issue in all of this process."⁷ The Inspector General urged all relevant state agencies to redouble their efforts to ensure that the law is fully implemented and the rights of victims protected.

The U.S. government is funding and promoting the Victims' Law. Indeed, the Deputy Secretary of State, William Burns, announced an additional \$50 million from the United States for application of the Victims' Law when he visited Colombia for the U.S.-Colombia High Level Partnership Dialogue in July 2012.

Otherwise, U.S. funding can end up financing symbolic actions that are more publicity stunts than real reparations, line the pockets of corrupt officials . . . or create islands of land restitution while displacement continues to grow.

This is a positive choice for U.S. funding. However, it is essential to provide this support with open eyes, close monitoring and careful consultations with victims' associations and human rights groups. Otherwise, U.S. funding can end up financing symbolic actions that are more publicity stunts than real reparations, line the pockets of corrupt officials, fund programs that do not benefit the intended beneficiaries—or create islands of land restitution while displacement continues to grow.

Decades of Violence

Córdoba, Sucre and Bolívar were the epicenter of the paramilitary movement (United Self-Defense Forces of Colombia, AUC). They were the site of many of the most horrific paramilitary crimes, such as the 2001 Chengue massacre. Prior to the expansion of paramilitary control in 1997, guerrilla groups exercised control over many areas, and still are present in some zones.

The Victims Law to Me Is Mampuján: Anatomy of an Empty Show

We asked Mennonite pastor Ricardo Esquivia, who has devoted his life to promoting peace, especially in his beloved Caribbean coast, what he thought of the Victims' Law. Ricardo is by constitution an optimist, so what we heard him say was sobering.

"The Victims Law to me is Mampuján," he said. An entire town was displaced by paramilitaries on March 10, 2000. The paramilitaries then carried out massacres in neighboring villages. According to the paramilitary leaders' testimony in the Justice and Peace hearings, they coordinated their movements with military officials. As it was the first and one of only four judgments successfully issued under the Justice and Peace law, the Santos Administration promised to make Mampuján an example of reparations, with a special symbolic event for the victims, back in the ghost town of old Mampuján.

The community wanted to hold the event on the weekend, but the government said if it was held on a Monday, President Santos would show up, so they agreed. The day (in March 2012) neared, but there was no funding for the event.

According to a volunteer with Mennonite Central Committee based in the community, "On Sunday, a week before the event, the government in Bogotá finally responded to say that they would provide the funding, along with contributions from the United Nations Development Program. However, they refused to provide us with any sort of cash. Instead, they sent two operators from Bogotá... It was a disaster... The food arrived, but most of the meat was missing and there only enough for one day of everything else. The sound equipment didn't arrive. Half the people waiting for lunch on the first day didn't get fed... The president decided that he really couldn't show up after all... The event turned out not to be about the community at all. Instead, it appeared to be a place where all of the so-called important people from Bogotá and Cartagena, including officials from both the Canadian and U.S. embassies, could arrive in their helicopters, listen to speeches, receive flowers from the kids, and go home feeling like peace in Colombia is moving along nicely... It's frustrating that nobody saw the disappointed and angry community members behind the scenes who were not being remembered in any dignified way."⁸

The NGOs ended up paying for much of the transportation for the victims, as the government had not thought to cover that.

"And the worst thing was," said Ricardo Esquivia, "the government didn't bring the reparations." The government announced that reparations would come later, and instead of providing the amount decided by the Justice and Peace Law, it would follow the Victims' Law, which provides a much lower amount of reparations. "And if they do this with Mampujan? What will the rest be like?"

In April 2010, Colombia's Deputy Attorney General Fernando Pareja said proudly about Mampuján, "I dare to say that this experience of collective reparations like those we are about to begin in Colombia are among the very few in the world."⁹ As of the date of this report, victims are finally beginning to receive reparations in Mampuján. But it has been a long and difficult road.

These areas were also home to a dynamic campesino movement, which was brutally targeted by the paramilitary armies—but some remnants of that dynamic peasant movement remain today.

These provinces are areas of growing land concentration, where large landowners are constantly trying to expand their land holdings and peasant farmers are attempting to keep control of their small plots, which lack of clear titling and violence makes precarious. They are also corridors for arms and drug trafficking. Although drug trafficking fuels the violence, community leaders maintain that “The conflict is not really about drugs. It’s about control, control of land, large-scale economic projects, mining, hydroelectric dams, political control.”

The Caribbean coast includes one of the “Consolidation zones,” in Montes de María, where the U.S. government is massively funding joint military-civilian operations that attempt to extend government control over conflict areas.¹⁰

The Victims' Law Is Barely off the Ground

Three officials from mayors' offices in Sucre and the Sucre governor's office were interviewed to assess how the implementation of the Victims' Law was proceeding. These mayors were chosen because of their expressed interest in applying the Victims' Law—so they may be “best case” examples.

“We’ve received almost no orientation from the national government about how to apply the Victims' Law,” these three municipal leaders concur. “They have given us a form to fill out to report our activities, but that’s about it.” They explain that there are no separate resources from the national government to implement the law; they have to draw from their existing limited municipal resources. “The financing from the national government specifically for the Victims' Law is zero.” Because these areas have suffered such high displacement, they have lost some of the financing their municipality received for general operations

from the national government, because it is based on population size.

One of the mayors' officials was visibly shaken. “This morning, this morning they [a paramilitary successor group] killed a 16-year-old boy. They have established a curfew, no one is allowed out between 6 PM and 6AM. He was going to a doctor's appointment, had left his house at 5:45 AM.” She explains that the municipal government workers have decided to leave their jobs at 4 every day so they can be sure to comply with the illegal groups' curfew. “We had started to implement the Victims' Law. But if security is like this, what is going to happen with what we are trying to do? The fear that I am talking about... there's no way the work can continue at the same pace, with the fear.”

An official from the Sucre governor's office appeared either disinterested or unaware of the

Candelario Álvarez de la Barrera, a member of ASOPROCIG's leadership team. The organization promotes diverse food crops, small-scale fishing initiatives, and community engagement.

PHOTO COURTESY OF ANNALISE ROMOSER, LUTHERAN WORLD RELIEF



Victims' Law. He brought in a representative for ethnic affairs to give us some details about restitution. "Well, here in Sucre, there have been some displaced people who have tried to return without following proper protocol. That's why there have been a few problems related to land returns," she complained, trying to explain away the murders of land rights leaders and the lack of government accompaniment and support for returning displaced communities. Another governor's office employee, a well-known victims' advocate, tried to bring the conversation back on track. "We have to feel this like the victims."

"Well, here in Sucre, there have been some displaced people who have tried to return without following proper protocol. That's why there have been a few problems related to land returns."

The first step to implement the Victims' Law and start land restitution is to create a Transitional Justice Committee (CJT). These committees are supposed to include two victims' representatives as well as a representative each of indigenous and Afro-Colombian communities, along with officials from relevant government agencies. We're told by the municipal officials and campesinos that some of those committees are barely formed, and in many cases the indigenous and Afro-Colombian representatives are not named and the victims are not representative of the larger community of victims. We hear some concern that the USAID-funded program Colombia Responde is helping to create new victims' associations or is prioritizing "its own" preferred victims' organizations.

One of the mayor's representatives explains that "the mayor who was in office before our mayor created his own victims' organizations, and the victims they chose for the CJT, one was the victim of a common crime, and one was a cattle rancher who had been kidnapped." Victims of paramilitary or state violence were not included. This mayor is trying to be more inclusive. "We are now going door-to-door

to try to register victims." And, he says, they are incorporating the Victims' Law into their municipal development plan. If implementation of the Victims' Law is not fully incorporated into municipality's development plans, we learned, it is not going to take place.

The CJTs are supposed to help implement land restitution. But campesino leaders said that the first step that some of these CJTs are taking is to lift the "protection measures" on the sale of land. These protection measures froze land sales in areas where displacement and illegal land sales were occurring, ensuring that any land sales had to be approved at a departmental rather than local level. This positive measure was intended to prevent land buyers from taking advantage of displacement to take over land. So one of the first steps that some CJTs, intended to promote restitution, are taking will make it easier for more illegal sales to take place. "You run the risk of actually legitimizing more displacement through the CJTs," community leaders cautioned.

Campesino leaders noted that some CJT meetings are public, that land buyers are attending the meetings, and that information from local land restitution offices is being leaked. "When you provide information in the morning, by the afternoon it is leaked and the threats begin." Victims' representatives or others who are trying to obtain restitution or block the lifting of protection measures over land are receiving death threats. In some areas, there are few people making land claims. "That's because people are afraid, they don't feel that the government is there to support them."

Outreach is also a problem; in many areas, the government has done little so far to encourage victims to register and request land restitution. Victims' Roundtables (*Mesas de Víctimas*) are supposed to be installed and to create work plans, but these haven't started in many areas. A coalition of nongovernmental groups interviewed officials and victims' organizations in six municipalities at the end of March 2012, when the roundtables were supposed to be formed. They found that while there was great interest on the part of victims' organizations

to participate, that local officials did not understand their responsibilities for registering the victims' organizations, had confusion over what constituted a victims' organization, had almost no accompaniment from the Ombudsman's Office (*Defensoría del Pueblo*), and in these very poor municipalities, lacked the resources to carry it out.¹¹

The Victims' Law is creating institutions that substitute for the existing programs serving the displaced. According to a lawyer for Barranquilla community organization Fundación Infancia Feliz, "The national government is leaving local authorities helpless in implementing this law. There is some political will in some localities, but they have complete lack of knowledge about how to do this. The Constitutional Court rulings on displacement obliged the government to attend to the displaced, and led to the creation of 13 programs to attend to their needs. But the government never completed this. And now the Victims' Law is a whole new adventure to create yet another structure to attend to victims. Now local areas think that what was there before doesn't work and they are still waiting to apply the new law...so right now, nothing applies."

Elkin Rocha, a government worker in a Victims' Attention Center in Cartagena, thoughtfully explained the difficulties in implementing the law. "Bogotá designed this [the Victims' Law] without even understanding the services we offered before. We're coming from a system that didn't work and now we have more responsibilities with the same resources," he said, explaining that now the victims' centers had to attend other kinds of victims as well as the displaced. "Programs need to be adapted to each region." Yet, he does note, "It is good at least that the government is talking about victims."

The Victims' Attention Center in Cartagena offers psychosocial attention, refers people to shelters, and makes some attempt at connecting people to jobs or other income-generating activities. "But we don't provide legal advice to victims. The Ombudsman's Office and the local ombudsmen, *personeros*, are supposed to do this, but there's an enormous bottleneck. The most important

thing in this whole process is to organize the victims, to encourage them to understand that they are not coming here to ask us for a favor, but to reclaim their rights. The Ombudsman's Office is completely overloaded. There are 1200 land claims in Cartagena—who is providing this legal advice?" He concludes, "This whole process is just starting. If there is not an advance in restituting land, people will feel betrayed."

In July, the National Assembly of *personeros* called for increased resources for *personeros* to implement the Victims' Law. "They recognize that we are the entry way and the start for registering victims, but we find ourselves without the minimal conditions and technical support," said Andrés Santamaría, the *personero* of Cali.¹²

"We're coming from a system that didn't work and now we have more responsibilities with the same resources. . . . Yet, it is good at least that the government is talking about victims."

One young woman campesino leader laughs, bitterly. "If there aren't any resources, why do they have a law like this? Why are they putting us [the victims] in the middle of this? Let them really comply with the law, so it's not some useless law."

As the Victims' Law Is off to a Slow Start, Reverse Land Reform Marches Ahead

"We feel they are closing in on us," "We feel surrounded." When we first heard the campesinos from some dozen communities in Montes de María and Córdoba explain this to us, we did not completely understand. It soon became vividly clear.

The next day we took a rickety wooden ferry over the river to get to the small community of El Playón, in Lorica, Córdoba. Since the Urrá



PHOTO COURTESY OF ANNALISE ROMOSER, LUTHERAN WORLD RELIEF

An ASOPROCIG leader stands next to the “Berlin Wall.” A landowner walled off the bridge so campesinos could not cross.

dam was built in the mid-1990s, the river rises and falls dramatically, increasing erosion on one side of El Playón. Several houses look like they will be washed away soon. Campesino and indigenous leaders had mounted a concerted but failed opposition to the Urrá dam. The dam is destroying their fishing livelihoods in the marshlands which once provided plentiful fish and seasonal farming. Salt water now penetrates deeper inland, affecting farming, and the native bocachica fish was destroyed by the dam. The building of the dam, according to a campesino leader, “changed our lives, harmed our collective work, broke our connection to nature. We used to say each day, How did the river wake today? Life was linked to the river.”

On another side of the settlement, community members once had access to extensive marshland that they both fished and farmed. Now they only have a narrow strip where they let their pigs run as well as some fields they

received as compensation for the damage caused by the Urrá dam. The fields to the left of the strip two years ago were taken over by a mysterious owner who planted acres and acres of genetically engineered corn.

Along with the community leaders in their rubber boots, we walk out on the narrow strip of land. The corn is surrounded by electrified barbed wire. “If our pigs cross it, they kill them. The wire is very high voltage, dangerous.” We can see a pump that is spewing water, taking excess water from the corn fields and dumping it, with all its chemicals, onto the community’s narrow strip of land.

No individuals should own the protected, state-owned marshlands for large-scale farming. Yet throughout this area, large landowners are taking over marshland and filling it in, pumping out water, often spilling it on to public roads and areas where campesinos have farmed and fished for decades. The campesino leaders appealed to the Constitutional Court about the drying out of the marshlands, and the Constitutional Court issued an injunction (*tutela*) that forbids construction of dikes. Yet the Constitutional Court order is not enforced.

Then we drove to visit the community of San Pablo, in Cotorra, Córdoba, where we met with seasoned campesino activists, many of whom had spent time in jail due to their organizing for land and against the Urrá dam. Along the way we were told, “You are going to see the Berlin Wall.” Down a beautiful country lane, we come to a bridge across a river. The bridge is completely sealed off with a 10-foot-high cement wall across it. A large landowner who had planted a thousand hectares of genetically-modified corn sealed off the bridge in order to prevent community members from crossing to go to market. Other campesino leaders describe how communities where lumber companies have cut off traditional right-of-ways, leaving the campesinos completely unable to bring their produce to market, or where companies have taken over municipal sources of water and refuse to allow communities access. We are struck by the contrast in that these campesinos spent months in jail for organizing to obtain

several hectares of land, yet a large landowner can illegally take over 1,000 hectares with impunity.

As we drove we saw fields of African palm. There were small islands of land where there were a variety of trees. “Those are farmers who are resisting the African palm plantations.”

The Paramilitary Successor Groups: It Is Happening Again

“The paramilitaries said in their Justice and Peace testimony that they came to this zone originally not on their own but invited by palm and banana companies,” said a lawyer with many human rights cases throughout the Caribbean coast. “This is happening again. In all the zones where we are working, the paramilitaries are reactivated. Including in the consolidation zones. The huge mining companies come, and at the same time the ‘Anti-Restitution Army’ (*Ejercito Anti-Restitucion*) arrives.”

We talk with campesinos from all over Montes de María, a “consolidation” zone which the Colombian and U.S. governments proudly point to as an area where security has been successfully restored. The campesinos tell us about all of the companies that are taking over land that has been farmed by small farmers for decades: lumber companies, a cement company, palm, teak, mining. With the arrival of these companies since 2008, more displacement takes place. The companies and large landowners use a variety of tactics, legal and illegal, to take over land: pressuring campesinos to sell, taking over lands that were not titled, using illegal groups to threaten and abuse communities, particularly their leaders, and cutting off campesinos’ access to markets and water.

A number of the companies employ demobilized paramilitaries as security guards. Some companies appear to be using paramilitary successor groups as enforcers. Those who complain about some companies’ activities receive death threats. For example, one campesino leader explains, “I had a run in with

a manager of a lumber company. The company is cutting off access of people to the road they need to take their products to market. The threats I am receiving stem from that.” “More threats are coming from the lumber company directly than from the illegal groups, though the two are linked.”

Between April 2011 and January 2012 in one municipality, María La Baja, there were six home invasions in which armed men held families captive, raped 11 women, and carried out robberies. The men forced the women to wash their clothing, serve them, and then raped them. The families were campesinos living in areas of extensive African palm cultivation where large landowners were expanding their holdings, areas that also are drug trafficking corridors. Following the invasions and rapes, the families fled. The government identified the perpetrators variously as Águilas Negras, guerrillas or Rastrojos, and



PHOTO COURTESY OF ANNALISE ROMOSER, LUTHERAN WORLD RELIEF

The expansion of large tracts of land for corn and other crops stands in stark contrast to small-scale farmers’ difficult efforts to secure title to their own small plots of land.

then arrested members of a group identified as “Ley de Monte.” According to a nongovernmental report, authorities prioritized the robberies and did not properly investigate the sexual violence; portrayed the abuses as common crimes, when according to the nongovernmental groups, they are in the context of the continued armed conflict; and failed to inform the victims of the state of their cases or provide legal assistance to the victims.

The Ombudsman’s Office’s risk report for several communities in this area notes that the illegal armed groups that emerged after the paramilitary demobilization “continue to maintain functions of preserving authoritarian social structures, using methods of violence learned in the old paramilitary structure and

A death threat circulated to many human rights defenders proclaimed, “You will celebrate Human Rights Day in the grave.”

broadening the scope of people and objectives against which they exert their violence.... The post-demobilization armed groups can end up favoring the interest of powerful sectors. In particular, this action can be oriented to inhibit or obstruct the processes aimed at denouncing land takeovers or demanding restitution or defending campesino farming.... The illegal groups known as the Paisas and Rastrojos are also competing in María La Baja to control the local market in illegal drugs which connects this municipality to Sucre province and the city of Cartagena. The use of organized violence as a way of regulating this competition has created a source of threat for two groups in particular: young people and socially stigmatized people in urban zones. The SAT [early warning system] monitoring has identified continued risks in terms of selective assassinations, threats, recruitment...forced displacement, forced disappearance, restrictions on freedom of movement, and the use of methods and means to generate terror.”¹³ A June 2012 Ombudsman’s Office risk report for Ovejas, Sucre explains: “These illegal groups are

formed to support the interests of third parties in conserving the lands that are the product of displacement or the massive buying of land in the municipality.”

As well as the paramilitary successor groups, guerrilla groups still maintain a limited presence in these zones. The Revolutionary Armed Forces (FARC), the brutal left-wing guerrilla group, continues to commit crimes against civilians such as extortion, laying of anti-personnel mines, forced recruitment, assassinations, and confinement and displacement of communities. As in many areas of Colombia, the FARC continues to take a heavy toll on indigenous communities that resist the presence of all armed groups in their territory.

The illegal groups have an extensive presence in the cities as well. In Barranquilla, competing paramilitary successor groups and gangs often linked to those groups control different neighborhoods and run drugs and prostitution rings. They host street parties which they use to recruit young people. “They use girls and boys to run drugs. They killed a pregnant girl, shot her in the stomach,” we heard. Local human rights groups say the police are in denial about the existence of the paramilitary successor groups.

Human rights defenders on the Caribbean coast, including many in Barranquilla, are receiving death threats that appear to come from paramilitary successor groups, as well as from police and military. In December 2011 a death threat circulated to many defenders proclaimed, “You will celebrate Human Rights Day in the grave.” There appears to be some improvement in protection measures for some LWR partners over the past year. But local governments like Barranquilla “which are supposed to be our first recourse, won’t even meet with defenders.” And there is little progress on investigating and prosecuting the threats and attacks against defenders. “The Attorney General’s office actually tells us we are filing too many complaints,” explained a local human rights lawyer. “They say they are collapsing under the weight of cases, and that we have to give up some of the earlier complaints so that they can focus on more recent ones.”

Many of the paramilitary leadership who were jailed following the demobilization are in prisons in Barranquilla. As they are serving a maximum of eight years in jail according to the Justice and Peace Law, they are going to start coming out of jail in 2013. This is a terrifying prospect for victims as well as human rights defenders on the Caribbean coast. They see no efforts by the national or regional governments to prepare for this and provide protection. "These leaders still direct criminal operations from their jail cells. Can you imagine what will happen once they are out of jail?"

Impact of the Free Trade Agreement on the Caribbean Coast: Trouble Ahead

It is too early to evaluate the *impact* of the implementation of the Free Trade Agreement with the United States. However, it does appear that the *prospect* of the FTA has accelerated investment here on the Caribbean coast, where access to well-developed ports makes agriculture, cattle ranching and mining particularly profitable. This acceleration of investment in an area where the rule of law does not apply, where companies and landowners use force or other illegal means to take over property, contributes to the continuing human rights crisis. "The companies have guarantees. We don't," said one campesino leader.

We asked a group of some 25 campesino leaders if they were receiving help from any kind of government fund to protect campesino agriculture from the impact of the FTA. "What? No, we haven't heard of that." "How can we compete with the United States? How can we survive with imports that are subsidized in other countries? Chicken wings and chicken breasts are going to rain down on us," one farmer said, fatalistically.

We visited the Port Workers Union in Barranquilla, sitting on plastic chairs in front of their tiny office in a poor barrio right across from the huge, well-developed Port Society complex. Port workers are one of the priority sectors of the Labor Action Plan signed by the U.S. and Colombian governments as a concession to

the concerns of the labor and human rights organizations that opposed the FTA. A major problem for port workers is the high degree of indirect employment through so-called "cooperatives" or other arrangements which allows the Port Society and other companies to evade application of labor law, as they can say that they do not actually employ the workers. A second, related problem is the difficulty of freely organizing unions in the ports.

"The companies have guarantees. We don't," said one campesino leader.

President Obama declared the Labor Action Plan fulfilled and gave the green light for FTA implementation while he was in the nearby port city of Cartagena for the April 2012 Summit of the Americas. The Labor Action Plan required that Colombia ban the indirect employment mechanisms known as "cooperatives." However, three months later, when we asked the port workers in Barranquilla how many people were employed directly, just one man out of some 20 gathered there raised his hand. The subcontractors no longer called themselves "cooperatives," but the same subcontractors, managed by the same people and using the same practices, now called themselves by another name.

"Subcontracting is the worst problem," said the head of the National Port Workers' union, Javier Marrugo. "The government has not yet taken steps to sanction port companies in Barranquilla, although it has begun to do so in other areas of the country in some other sectors like palm."

"I have been working in this business some 27 years," said one man, a crane operator, "but I do not have a pension, social security, as I work some days here and there, with no job security, for subcontractors."

"And the Port Society says to the subcontractor, I can't pay you right now. So the subcontractor says to us, you can work for us but we can't

Despite Obama's Visit, Afro-Colombian Communities Surrounding Cartagena Lack Titles

In old city Cartagena, Colombia, elegant colonial buildings with verandas and wooden shutters contain trendy restaurants, a Benetton store and expensive shoe shops.¹⁴ But the Afro-Colombians selling strands of pearls on the sidewalks, who add life to this tropical tourist haven, may have come from Urabá, Carmen de Bolívar, María la Baja or other areas where threats and clashes between all the armed actors, paramilitaries, guerrillas and the armed forces forced them to flee the violence.

"El Salado. Chengue. Montes de María," said the victims' attention center official in a basement office in downtown Cartagena, rattling off the chilling names of places known for massacres, explaining why there are so many displaced persons in Cartagena. "Thirty-two percent of displacement happened in the Caribbean region. And it is still happening."

And the pressures that force people off their land are *right here* in gleaming Cartagena.

We drive five minutes past Boquilla, an Afro-Colombian community which received titles in a post-Summit of the Americas ceremony presided by President Barack Obama, Colombian President Juan Manuel Santos and the rock star Shakira. There we visit the village of Punto Canoa, and take a walk with its residents along its dirty beach.

"This was my land, my grandfather's land, my uncles' land," said a rather fierce woman who speaks a mile a minute. "Everyone respected each other's land. But the hotel just took it from us. And then they built a canal to cut off access from our village to our land."

The community had been living on this land over a hundred years. We see the sprinkler system watering the golf course that is now sprawled on what had been her land.

A young boy playing in the surf where a waste treatment pipe is being built. Communities nearby are concerned that this will dump into the sea.



PHOTO COURTESY OF ANNALISE ROMOSER, LUTHERAN WORLD RELIEF

Stacked on the beach by this poor community are huge pipes. They are for a project to pump the sewage from Cartagena into the ocean right by Punta Canoa.

"They are not even going to treat the water. And we live from fishing. This is a way of trying to take the land away from us..."

Earlier that day, we had piled into a wooden boat called "Thanks Be to God," and visited the island of Tierra Bomba, right across from the stretch of beach with

one soaring hotel after another, as well as the port society and a naval base.

Four Afro-Colombian communities live on Tierra Bomba. These communities were resettled here from where they had lived by the Cartagena harbor when the oil company wanted to use the land eighty years ago. "They told us we could have these islands, no one wanted them, they were full of mosquitoes." Yet their communities found "it is a privilege to live here... we want to continue to live here, deliciously."



PHOTO COURTESY OF ANNALISE ROMOSER, LUTHERAN WORLD RELIEF

Members of Afro-Colombian community councils, and community members, gather near the waterfront of Tierra Bomba.

Eighty years later, the islands are prime real estate for the rapidly expanding tourist trade of Cartagena. And the Navy plans to expand, put a new naval base on Tierra Bomba island.

"What's going to happen to us? No one will tell us. They say, don't worry, the naval base will be a good neighbor. The vice president came and told us, there will be a 'previous consultation' with you before the base is developed..." But the communities haven't heard about any such consultation yet. They have their doubts.

"There are 49 large-scale development projects coming our way, it's a tsunamai. The companies all come with their studies, saying, don't worry, nothing will happen to you." "They come buying up land at the price of a skinny chicken."

"We don't object to tourism, development. It will bring some jobs. We know we can't stop it.... Count on us to support development that does not displace us."

Most of the Afro-Colombian communities like those on Tierra Bomba and nearby islands, and Punto Canoa in the north of Cartagena, don't have proper titles to their land, despite the decades and even centuries of living in one place, and despite the right they have to their collective titles as Afro-Colombian communities through the 1993 legislation known as Law 70.

When Presidents Obama and Santos and rockstar Shakira handed out the titles for Boquilla and Palenque, it was a joyous day for those two communities. But they gave title to only to a tiny fraction of the Afro-Colombian lands that should immediately be titled right in and around Cartagena, not to mention the rest of the country.

"Write this down in your notebook," one island community leader said to me. "Unless we get title, we have nothing. We have nothing."

pay you now. If you want to get paid, I have to take out a loan, so I'll pay you now but I'll take interest on the loan out of your pay."

In these high-risk jobs, there are many accidents. "There's no ambulance, no help if there's an accident. One day a man in Buenaventura port fell and they just left him there, didn't call the ambulance, because he didn't have a Port Society uniform. They just left him there on the ground. He died."

And as to freedom to organize in the ports? "We are a union, but we are afraid that the subcontractors won't hire union members. So we treat this gently."

Yet despite all obstacles, ASOPROCIG members retain their vision of communal solidarity and small-scale farming and fishing in harmony with nature.

Campesino Visions: A Path to Follow

The visionary peasant coalition ASOPROCIG and the many small fishermen and campesino associations that make it up offer a path to follow in the midst of the harrowing risks that small farmers face on the Caribbean coast. At El Playón, the Association of Fishermen of El Playón members take us to the ten-hectare plot they received as compensation for the damage done to their livelihoods by the Urrá dam. "You're always bothering us, what exactly do you want?" the government told them, and asked them for a list of projects, and this was one of the few that the government actually delivered. As we step over the fence into the collective land, we enter paradise. Four large ponds contain fish; canoes for fishing are tethered to the banks. Narrow strips of land are intensively planted with a tangle of bananas, cassava, papaya, mangoes, guanabana, limes, medicinal herbs. A thatched roof community meeting place is blessed by a carabanga tree, with white trumpet flowers, believed to confer protection.

"We focus on agroecology," they explain. "To live at peace with nature, that's what we want." They conserve seeds, have an organic produce cooperative store, and through ASOPROCIG teach each other traditional artisanal farming and fishing practices. The farm plots are individual, but the fishing is collective, and the fish is used first to feed the community and then what is left is sold at market, with ten percent of profits plowed back into the association. They also intensively farm their small gardens where they live in the village of El Playón, but those flood, so that these plots offer food security when flooding happens. "With all of this, we have survived. We still have to do other jobs. It isn't enough to pay for electricity, schooling. We are still just living at subsistence."

ASOPROCIG has succeeded in obtaining a Constitutional Court order and a resolution from the Ombudsman's Office for the government to fulfill its promises for land and productive projects. These remain only partially fulfilled. "One problem is that we can't rely on local lawyers, and our lawyers [from national human rights groups] have been threatened and can't always travel here." Yet despite all obstacles, ASOPROCIG members retain their vision of communal solidarity and small-scale farming and fishing in harmony with nature.

"We want '*reservas campesinas*,' a geographic area where lands that are protected for use for peasant farming, "to be able to plan our own economy," a campesino leader from the coalition of Organizations of Displaced Persons from Montes de María explains. This area had a great economy that provided food for much of the country without even access to credit—just with our sweat." Even without state inputs—credit, agricultural extension services—campesinos in this area reached a level of efficiency. "If it weren't for the war we would be much better off and our children would be professionals," says one campesino.

At Finca La Alemania in San Onofre, life is still very hard, but this brave Afro-Colombian community is an example of tremendous persistence to obtain their dream: to create a successful cattle ranch on the lands from which

PHOTO COURTESY OF ANNALISE ROMOSER, LUTHERAN WORLD RELIEF



Members of ASOPROCIG gather with LWR, LAWGEF, and Agenda Caribe to discuss their fishing and farming projects, and their visions for protecting the marshland in which they live.

they were once brutally displaced. A year after the Colombian government provided land to an organized group of landless campesinos, who took out a loan for 30 percent of the property's cost and for cattle, paramilitary warlord Rodrigo Cadena arrived, and set up a base with a hundred troops in the middle of the farm. The paramilitaries killed five cooperative members and disappeared one, killed four of their children, and forced some of the families to work for them. In 2000–01, the community displaced. The farm is the site of several mass graves, as the paramilitaries killed and buried some of their victims right on the farm. Local politicians came to celebrate parties with the paramilitaries on the farm. After the demobilization, some community members decided to return. But then their leader Rogelio Martínez was slain in May 2010, in a high-profile crime that exposed the lack of protection for returning land leaders countrywide.¹⁵

Community members are still liable for the loans they took out for the land and cattle, before they were displaced and lost everything.

Life is a little better this year for Finca La Alemania than when we visited the year before. The army continues to post some soldiers near the farm for protection from the paramilitary successor groups who allegedly killed Rogelio Martínez, though they still don't patrol around the perimeter of the farm as the community would like. We are happy to hear that Finca La Alemania won a court case that forced the banks to eliminate the interest on the loan that had accumulated while families were displaced—though they still owe the principal for this loan, which they had used to acquire the land and 600 head of cattle. And most important, they now have cattle again, although it's just 38 head of cattle. The men and women of Finca La Alemania get this

We Want Justice, We Want the Bodies of Our Children

Martha Diaz wears a T-shirt that says, "I'M NOT THINKING OF (keeping quiet)." She's the leader of Families United Under a Single Sorrow (AFUSODO). This group of family members of victims of 58 extrajudicial executions and 40 forced disappearances in the Caribbean coast region is determined to find justice.

Many of their young sons were lured with promises of brick-laying jobs by "recruiters" who handed them over to soldiers who killed them in fake battles in order to jack up their body counts. The ASOFUDO cases sound just like the notorious Soacha cases that broke open the "false positive" scandal, but they are much less widely known. According to the United Nations High Commissioner for Human Rights, there are more than 3000 victims of extrajudicial executions by government security forces in Colombia, most of the crimes committed between 2004 and 2008. Some, though far fewer, extrajudicial executions take place today. But there has been little justice for these crimes, and the Santos Administration and the Colombian Congress have been debating constitutional reforms and legislative changes that will result in more of these cases remaining in military courts, where they are almost never successfully prosecuted.

"Of 58 extrajudicial execution cases, only one has a sentence, and one other is close. Eleven cases are still in the military courts," explains Martha. Human rights lawyers covering these cases say that many extrajudicial execution cases on the Caribbean coast are still mired in the military justice system, against Colombian constitutional law. Just in Valledupar, for example, there are 90 alleged extrajudicial execution cases still in the military courts.

"We want justice, we want the cases to be tried in the civilian justice system. We mothers also want to have the bodies of our children. The Attorney General's office says that they have so many cadavers to deliver, there isn't money for exhumations. What has anyone done for us? There is much talk and little action."

dreamy expression on their faces when they talk about the cattle, which we're amused to hear they call "Luteranos," as Lutheran World Relief helped them with the purchase as part of a larger investment to advance the community's farming and small business plans.

Given how much they have lost, we are struck by how little these determined campesino groups are actually asking from the state: not much in the way of credit and assistance, but mainly for the state to enforce its own laws, so that companies don't illegally take over their land or plant palm or start mining on their land, and so that paramilitary successor groups don't return to threaten or displace them once again. What they ask for is so minimalist: Give us secure title to the land, eliminate debt

accumulated while we were forcibly displaced, and enforce actions against groups who try once again to take the land away from us.

Recommendations

For the Colombian government:

To implement the Victims' Law and to ensure that reverse land reform does not accelerate:

- Provide substantial orientations to municipal governments regarding the implementation of the Victims' Law. This orientation should emphasize, among other things, the importance of outreach to victims; of ensuring broad participation of victims' organizations

that are representative of victims found in the area, as well as of Afro-Colombian and indigenous communities, in the Transitional Justice Committees, the Victims' Roundtables and in the full application of the Victims' Law. The orientation should also encourage municipalities to include implementation of the Victims' Law in regional and municipal development plans.

- Provide adequate resources to municipal governments and victims' attention centers in order to apply the Victims' Law, above and beyond the resources already available to attend to internally displaced persons.
- Ramp up provision of legal advice to victims for land restitution and reparations via the Ombudsman's Office and local *personeros*.
- Pay particular attention to the needs of women in obtaining land restitution, titling, and reparations.¹⁶
- Greatly expand the titling of land which is currently occupied by Afro-Colombian and indigenous communities, including collective titles as appropriate, as well as of *campesinos* who have been on land for decades but do not have title. Conduct due diligence to ensure that those who have obtained land through violence are not benefitted.
- Monitor land restitution units, land restitution judges, notaries and Transitional Justice Committees to ensure that they are not being coopted by those who benefitted from stolen land. Investigate, discipline, prosecute and dismiss corrupt land judges, notaries and local officials. Enforce sanctions on landowners and companies that are using coercive or other illegal means to expand landholdings.
- Implement Constitutional Court orders and Ombudsman's Office resolutions regarding protecting the land rights of small farmers, indigenous and Afro-Colombian communities in Córdoba, Sucre and Montes de María.

To increase the protection of returning and returned communities:

- Provide protection to communities at risk of displacement, designing local protection plans in close consultation with communities.

Protection plans may identify a mix of needs and solutions, including investigations into threats and attacks, army patrolling around the perimeters of the community in a manner which does not place the community at risk, investing in community-based rural development projects, a fixed bridge or road to provide easier access, electrification, greater presence of a local ombudsman, removing a corrupt local official, and properly legalizing land titles.

- As part of these protection plans, the Ministry of Interior should establish and local authorities should implement an emergency reaction protocol in order to engage civilian government authorities, police and military authorities and hold them accountable for their obligations to provide 24-hour, urgent protection to returned and returning communities and land rights leaders.
- Strengthen the existing Early Warning System by allowing the Ombudsman's office or Ministry of the Interior to issue an early warning directly, rather than waiting for approval from the Ministry of Defense; by ensuring that the system's risk reports are made public and that disciplinary sanctions are issued when warnings are disregarded by local authorities or military officials. Greatly expand the presence of *personeros* and the support for their work.
- Promptly investigate and prosecute assassinations of land rights leaders and other human rights defenders, as well threats and attacks against them. Only prompt investigations and punishment can dissuade new attacks.

Regarding the implementation of the Free Trade Agreement:

- Fully enforce the Labor Action Plan, including improving investigation and prosecution of threats and attacks against trade unionists; improving protection of trade unionists; and eliminating all forms of illegal subcontracting.
- Create an adequately-financed fund to provide credit and technical assistance to small farmers whose livelihoods are likely to be harmed by the Free Trade Agreement.

To the U.S. government:

- Condition assistance for the Victims' Law on greatly improved actions to protect returned and returning communities and land rights leaders. Protection plans must be created and implemented with full participation of the affected communities.
- Provide assistance for protection programs for communities and land titling as part of support for the Victims' Law. Provide increased legal accompaniment for victims via the Ombudsman's Office and *personeros*. Carefully monitor these programs with input from victims' associations and human rights groups to ensure they effectively benefit the intended population. Fund and work with existing campesino and victims' organizations rather than creating new ones, and ensure funding unites, not divides, social movements.
- Withhold certification on human rights conditions on the law if the Colombian government approves legislation that results in major human rights violations by military members being investigated by the military justice system.
- Actively monitor the implementation of the Labor Action Plan, pressing for full implementation, particularly elimination of all forms of illegal subcontracting, protection of the right to organize, protection of union leaders, and investigation and prosecution of threats and attacks against union members.
- Urge the Colombian government to take a much more vigorous approach to capturing and dismantling paramilitary successor groups. Urge careful monitoring of situation on Caribbean coast as paramilitary leadership is released from jail, including increased protection for victims and human rights defenders.

Endnotes

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