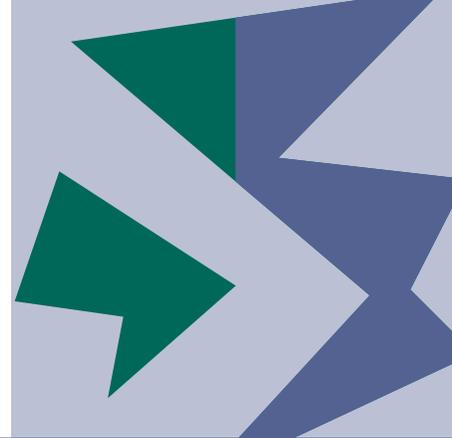


Far from the Promised Land:

Land Restitution on Colombia's Caribbean Coast



The 2011 passage of the Victims' Law raised hopes and dreams among Colombia's hundreds of thousands of victims of violence and forced displacement. The Victims' and Land Restitution Law, Law 1448 of 2011, sets out procedures for reparations and land return for victims of violence. According to the minister of justice and human rights, the landmark law meant that "the hour of the victims has arrived."¹ But two years later, many of its beautiful promises remain a distant dream.

Lutheran World Relief and the Latin America Working Group Education Fund conducted field research in the Caribbean coast of Colombia in June 2012 and again in June 2013 to monitor the implementation of the Victims' Law, particularly its impact on land restitution. The law provides for reparations for victims since 1985, and land restitution for victims displaced since January 1, 1991. It establishes a number of new governmental procedures and agencies to address the growing number of land claims (see Annex on page 24 for a full description of the law). We visited the provinces of Atlántico, Bolívar, La Guajira and Cesar, where we spoke with victims' associations, poor farmers' groups, indigenous and Afro-Colombian communities, human rights defenders, and local and regional government authorities. We also interviewed national government officials, U.S. Agency for International Development (USAID) officials and contractors, and national and international human rights and humanitarian agencies.

The Caribbean Coast is home to the largest number of land claims, along with neighboring Urabá. Hundreds of thousands of peasants, Afro-descendants and indigenous people were forced to flee their land over the past twenty years. Guerrilla groups developed a strong and abusive presence here; paramilitary groups linked to expanding drug trafficking routes emerged in the region during the 1980s. Paramilitary groups came to control much of the region, establishing close networks with business owners, wealthy farmers and ranchers, and politicians. Gaining control of extensive tracts of land was a central part of their strategy. Their successors continue to terrorize the local population, particularly targeting land rights activists.

In our 2012 visit, the Victims' Law was barely beginning to be implemented on the Caribbean Coast, as documented in a report, *Still a Dream*. Even well-intentioned local government officials interested in implementing the law had little direction or resources from the national government with which to do so. In our 2013 visit, we found that land restitution is just beginning to be implemented, but that both land restitution and victims' reparations promised under the law are, for most victims, still a distant dream. Moreover, whether farmers and communities had remained on their land during the conflict, had returned on their own initiative without government help, or had benefitted from rulings restoring their land under the Victims' Law, they continued to suffer threats, harassment and violence from illegal armed actors and companies seeking to obtain or use their land.

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Peace is not only constructed at a negotiating table, it is built from the ground up in conflict areas. If a just and lasting peace is to be created in Colombia, the government must figure out how to ensure that victims of violent displacement can safely return to their lands. That must begin by dismantling the forces that caused displacement in the first place.

Land Restitution Results to Date

From its passage in June 2011 to August 2013, rulings under the Victims' Law have ordered that 12,658 hectares of land should be restored to 371 victims.² Over 43,500 claims have been filed;³ less than 1 percent of claims filed have been resolved so far. Moreover, these 43,500 claims (representing a larger number of people, as most are probably families) are only a subset of the estimated 6 million people who were displaced. One comparison says it all: Just in 2012, over 256,000 people were newly displaced from their homes by violence. Yet only several hundred victims have received a ruling for restitution as of August 2013, and very few have actually returned home.

Afro-Colombian and indigenous persons, who have been disproportionately affected by displacement, appear to be undercounted in the land restitution registry. No collective territories have been included in the land claim registry, much less restituted, according to a report by Colombian governmental oversight agencies. Moreover, only 4.6 percent of the land claims have been submitted by claimants who identified themselves as indigenous (1.8 percent) or Afro-Colombian (2.8 percent). Colombian oversight agencies recently issued "a plea for the government to prioritize and articulate policies that would make possible and real land restitution, in particular of collective territories."⁴ Afro-Colombian organizations claim that Afro-Colombian and indigenous persons have been inadequately represented in the Victims' Roundtables and Transitional Justice Committees set up to advise and implement the law.

An analysis of the first 150 land restitution sentences indicates that judges are ruling decisively in favor of victims; 97 percent of these cases received rulings in favor of the victims.⁵ However, Land Unit staff note that the first cases moving forward are those with fewer counterclaims, so this percentage may slip.



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To put in context the slow pace of restitution, the Colombian government explains that it took over a year to set up the basic institutions to implement the Victims' Law. Implementation did not really begin until late 2012. Land restitution cases are now certainly moving forward, although not at a rate to come anywhere near matching new displacements.

Importantly, the Victims' Law has been accompanied by a land titling program that provides title to individual farm families and Afro-Colombian and indigenous communities that have farmed land without title. The Colombian government reports that nearly 63,000 families have benefitted from formalization of land titles on some 2 million hectares of land from August 2010 through September 2013.⁶ While different from restitution to displaced persons, this program greatly benefits poor farmers and helps prevent future displacement.

While the law must be measured against tangible results, it is also worth noting that the Victims' Law has contributed in a less tangible, but significant way. It has put victims at the center of the national debate. Along with the efforts by diverse actors such as the National Movement of Victims of State Crimes, media sources *Semana*, *Verdad Abierta*, and *Contravía*, and the Center for Historical Memory set up after the paramilitary demobilization, it has helped begin to change societal attitudes that denigrated or ignored victims of paramilitary and state violence. Finally, the Victims' Law likely was a factor that opened the door to peace negotiations with the FARC guerrillas.

But in terms of delivering safe land restitution to a broad set of victims of violence, the Victims' Law has barely begun to meet its goal.

The Dangers Facing Land Claimants

Land restitution efforts must take into account the high risks facing claimants. Before and since the passage of the Victims' Law, numerous land rights activists have been threatened and killed. Human Rights Watch has documented 17 cases of killings of land rights leaders, in which 21 people died, since 2008. The Attorney General's



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office is investigating 49 cases (since 2000) of killings of land claimants and leaders in which 56 people were killed, while the Ombudsman's office states that 71 land rights leaders were killed between 2006 and 2011. Government data reports that over 500 threats against land claimants and their leaders have been made just since January 2012.⁷

Violence and threats against land rights leaders are intended to accomplish one goal: stop land restitution. They have a powerful impact that goes far beyond the individual leaders and their families, undermining communal efforts to return home and claim promised rights.

What can the government do to end such threats and violence? Most importantly, it can effectively investigate and prosecute threats and attacks. According to Human Rights Watch, the Attorney General's office has taken a step forward by assigning these investigations to

Las Palmas: Still a Ghost Town

The rural township of Las Palmas is near the municipal seat of San Jacinto. Local leaders note that the town was created 150 years ago, when people from San Jacinto, Zambrano and San Juan de Nepomuceno arrived there. They remember that a handful of families constructed the first houses with palm roofs and walls made of sticks and clay. The town was called Las Palmas for the large quantity of *iraca*, Panama hat palm, in the area.

Las Palmas was a prosperous township, with enormous quantities of avocado, tobacco, corn, yucca, and yams grown, as well as cattle ranching. It provided food not only for San Jacinto but for Montes de María. Its inhabitants have always been hard-working and entrepreneurial, which allowed them to gradually replace the palm, sticks and clay houses with tin roofs and brick walls. Many of the sons and daughters of the town, thanks to this hard work, went to the cities and entered universities to become professionals. They say with pride that this might be the township with the greatest number of professionals in San Jacinto municipality. Las Palmas grew to have some 600 houses with 6,000 inhabitants. It had electricity and water, and basic health, education, sports and transportation infrastructure.

But one day, all this changed. The townspeople remember with sorrow September 28, 1999, the day when paramilitaries from the Héroes de los Montes de María bloc arrived and accused



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The abandoned town of Las Palmas.

them of being guerrilla sympathizers. They killed four people in front of everyone, and took away others, and the whole town was forced to flee. Everything was abandoned, their harvests lost, their animals stolen by the paramilitaries. In time, the houses deteriorated and fell apart. Everything ended in the blink of an eye. In total, 19 people were assassinated, and the 600 families were displaced to San Jacinto, Barranquilla, Cartagena, and Bogotá.

In 2003, three families decided to return to Las Palmas. In 2005 the Bolívar governor's office began to help the return with transport and security. But then FARC guerrillas arrived and killed a woman and her son. Once again, the community was terrified, and the families that had initiated the return were displaced once more.

Today Las Palmas has only 60 families in 40 houses, some 150 people left in this once-prosperous and peaceful community. There is just one teacher for 17 students, and while there is a health center, there is no doctor or nurse to serve the community. Along with the "*palmeros*," as the town's original inhabitants are known, there are five families displaced from other areas who decided to move there. The electrical lines destroyed by the paramilitaries in 1999 have never been repaired, there is no running water, and the road from San Jacinto is in a bad state, despite a large investment in 2011 that the government's Consolidation program, led by the Naval Infantry, supposedly made.

In Las Palmas there are three organizing processes: Asopalma, Asipalma and Nueva Esperanza. These are organizations of farmers displaced from Las Palmas, whose objective is to assert their rights as victims of the conflict and remind the government of its responsibility. These associations, tired of waiting for the government to fulfill its promises for a dignified return, organized a march on October 23, 2012 to Bolívar Plaza in Bogotá. They had endured 13 years of forced displacement. Paula Gaviria, director of the Victims' Unit, promised them that in 365 days, with the help of the Victims' Unit, they would return.

But a year after this promise was made, the *palmeros* asked, "How are we going to return? We haven't seen that they have laid a single brick to fix a single house. They have only organized workshops for us to remember the past, and we don't want that."

Las Palmas remains a ghost town today.

prosecutors in Bogotá and Medellín who are less subject to intimidation, and by beginning to use a "contextualized investigative strategy," grouping investigations so that the underlying context can provide leads. However, so far "the results have been modest: as of August 2013, prosecutors had obtained convictions in eight of the 49 cases of killings of land claimants and leaders" that the Attorney General's office was investigating.⁸ There are no successful investigations of threats against land rights leaders, with not a single person being charged in any case.⁹

The government should also increase its efforts to dismantle the paramilitary successor groups, guerrilla fronts and other forces behind the violence. The Santos Administration's peace negotiations with the FARC guerrillas could help to at least partially remove another armed actor from the conflict. And the government has escalated efforts in the last couple of years to capture paramilitary successor group leadership. But paramilitary successor groups remain strong, and linkages between these groups and local landowners, politicians, and members of the armed forces

Pitalito: A Community Returns without Government Help

In Cesar province, the people of Pitalito are determined, but that does not mean they are not tired and not afraid. They are, and with good reason.

Settling in Pitalito in the late 1990s, families farmed and built a small but strong community. They organized a *junta comunal* (community board), sent their children to a small local school, and enjoyed access to a basic health center.¹⁰

In 2000, their lives were brutally disrupted when paramilitary forces swept through the area, killing ten people and forcing the majority of the families to flee, abandoning their land. Pitalito was one of many communities across Cesar torn apart by paramilitary violence in the 1990s and early 2000s.

“Fear and panic never abandon us. I have been displaced three times. After leaving Pitalito for the first time, I went to a new town, Santa Lucia, and the paramilitary leader ‘Cecy’ arrived and killed five farmers, threatening the rest of us.”

The families of Pitalito lived as internally displaced people under precarious conditions on the edge of the small city of Curumaní. In 2003–2004, with few options, they got up the courage to return home and begin farming again. Like so many small-scale Colombian farmers, despite years of occupancy they never held legal title to their land. In the mid-2000s, they began the legalization process with Colombia’s rural land institute, INCODER. While documentation indicates that the land was legally titled to a family that eventually sold the land to INCODER, thus opening it for titling to the farmers of Pitalito, INCODER responded that the land was a forest reserve and as such could not be titled.

In January 2010, in the middle of sorting out these contradictions with INCODER, a man who owns extensive African palm fields arrived at the community claiming to be the legitimate owner of lands occupied by 20 families. According to community members, he first arrived with ten armed men, wearing military uniforms. The man allegedly went house to house pressuring families to sign bills of sale and was armed during these visits. Some families agreed to sell to the man at low prices, fearing that they were going to be forced off their land if they did not do so. Fourteen families refused to sell, staying on their land. In February, the same man returned, allegedly with members of the army, to raze the homes of the remaining families. Their homes were destroyed manually and by a tractor, with just the school and one or two homes left standing.

Community members turned to local officials, requesting protection and support for their titling process. Their requests went unmet, with officials often telling them the case belonged to another jurisdiction. In June 2010, community members report that the ESMAD (anti-riot) police arrived in Pitalito to evict the remaining families, destroying the makeshift shelters they

had constructed after their homes had been razed. The families that were pushed out included 30 children and 10 women.

Displaced again, and finding no support from local officials to help them resolve their titling case or return to their land, families decided they had no choice but to return on their own. In May 2013, 17 families returned to Pitalito, building makeshift homes and planting food crops. The return has been arduous, with little food, minimal shelter and with people falling ill from contaminated water, forcing children to be hospitalized.

The community is waiting for Pitalito to be categorized as a micro-focalized area and has submitted its case to the Land Restitution Unit. The families are now awaiting a response. However, until the status of the land as a forest reserve is resolved, the case will likely not advance. All the while, the man asserting ownership continues to be an ominous presence, as men who work for him are often present taking photos of community members, and noting the license plate numbers of lawyers and international companions that visit the community. Those leading the land restitution process in Pitalito report that they are often told they will be followed and killed if they attend meetings related to land restitution.

Recently, charges were brought against community members for illegal occupation. Eviction orders have been sent, but families refuse to leave.

Many Colombian families, like those of Pitalito, have chosen to return without state support. These communities returning on their own have determined that state-supported returns, and the titling process, may never actually take place or will take place long after families have the will and the means to return.

The Pitalito community is an important case in that community members are attempting the return at the same time they are seeking formal restitution or land titling. The community is supported by national and international accompaniment organizations following their case and providing physical accompaniment as a deterrent to violence against their members.

Most alarming are the continued threats community members face and the lack of protection measures available to them, despite the substantial accompaniment the community has attracted. “We could end up as false positives,”¹¹ said one community member. “We have to be realistic [about the threats]. We take turns sleeping.”

and police persist. Far too little has been done to investigate and prosecute the security force members, business leaders, government officials and politicians who have benefitted, and continue to benefit, from the violence.

Land Restitution in Context

The Victims' Law is being applied at a time of ongoing violence and intense pressure on rural communities. As noted, just in 2012, over

256,000 people were newly displaced from their homes by violence.¹² Land concentration is extremely unequal in Colombia, spurred by the so-called “reverse agrarian reform.” Drug traffickers and emerging paramilitary leaders began buying up land, as a means of money laundering and to buy their way into the respect of the elite. As many as 6 million hectares changed hands from 1985 and 1995.¹³ Since then, violence only accelerated the process. USAID reports that “less than 1 percent of the population owns more than half Colombia’s

best land.”¹⁴ Colombia’s GINI coefficient for land (which measures land distribution, with 0 representing total equality and 1 complete inequality) is .86, meaning Colombia has one of the world’s most unequal distributions of land.¹⁵ In an effort to halt the violence and address the pressing land issue, the Colombian government has included land titling efforts in a number of their programs, including the Consolidation programs that were the successor to Plan Colombia.¹⁶ These programs, like the current restitution initiative, have offered new regulations and institutions, but have still had a limited impact.

Despite increasing urbanization, more than 32 percent of Colombians still live in rural areas.¹⁷ Decades of agricultural policies focused on supporting massive agribusiness and export programs have also eroded small farmers’ abilities to sustain their rural ways of life. These issues exploded on the national scene in September 2013, when more than three weeks of massive agrarian strikes over rural policy, including the impact of free trade agreements,

closed roads throughout the country, left thousands of liters of milk rotting outside of Bogotá, emptied store shelves throughout the country, and resulted in at least 14 protesters and 1 policeman killed and hundreds of people injured. Any land program aimed at enabling victims of Colombia’s violence to return to their land must also address the larger issues within Colombia’s rural economy.

The Major Obstacle to Restitution

The single greatest obstacle to land restitution is that the structures that caused displacement have not been fully dismantled, particularly the paramilitary successor groups and their allies in business, farming, land registry offices, the armed forces, and politics.

Those who cleared land by violence often resold the land or turned it over to relatives or other third parties, “*testaferros*.” As the land restitution process moves forward, these individuals are emerging as “*opositores*,” making a counterclaim to land proposed for restitution. They are often well-paid lawyers fronting for land speculators, big businesses, or the very same criminal paramilitary groups who pushed people off the land in the first place. Both those who caused displacement and the *testaferros* and others who benefitted from it are major sources of the threats and violence against land claimants.¹⁸

The issue of apparently voluntary land sales has plagued the restitution process. Many people were forced at gunpoint to sign legal titles and in some cases receive minimal payment for their land. They were told, “You can sell me your land, or your widow can.” The Victims’ Law explicitly recognizes that those who experienced forced sales deserve restitution, but applying this can be difficult. The law offers compensation to “good faith” occupants, those who purchased the land in good faith from those who caused displacement.

In many cases of *opositores*, large-scale agriculture projects are involved, such as intensive ranching and oil palm plantations. In the lower part of Carmen de Bolívar, some



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companies are trying to use a provision of the Victims' Law, Article 99, so they do not have to give up their investments on land from which people were displaced. Article 99 establishes that when an agroindustrial project was developed on land to be returned, good faith occupants can continue to operate the project and create a contract to provide benefits to the people who were displaced. Where the occupants were involved in the violence, the Land Unit will determine who will administer the project and ensure victims are benefitted.

In our visit to the Caribbean Coast, we found that large landowners are using the institutions set up to implement the Victims' Law to ask for lifting of restrictions on land sales. In areas with massive displacement, the Colombian government placed a freeze on land sales in order to prevent forced sales of land. In Bolívar, Sucre and other regions, these freezes are being lifted although pressures and threats that generate displacement and forced sales still exist.

In all of the areas we visited, large-scale economic projects, such as African palm, teak, lumber companies, cement, mining, and tourism projects are new generators of threats and pressures against campesino farmers, and indigenous and Afro-Colombian communities. Companies use heavy-handed means, such as dividing communities by offering buyouts to certain members and putting pressure on communities by taking over water sources and cutting off market access by blocking roads. Another tactic involves setting up shell corporations to circumvent limits on the amount of designated lands in the hands of a single buyer.¹⁹ Violence or threats of violence continue to be linked to some of these projects; companies are hiring ex-paramilitaries as security guards, who make threats against community leaders; rearmed paramilitaries or new criminal groups make death threats, carry out assaults, and selective killings, which seem to benefit the moneyed interests acquiring land.

Land restitution and collective titling will not be meaningful if communities have no say over resource exploitation. The Colombian government is approving extensive mining concessions on collective territories and other

lands, including in areas slated for restitution. For example, in Arahuaco territory, in the Sierra Nevada de Santa Marta, there are dozens of mining concessions, some ten tourism projects under consideration, and a military base being planned, all without adequate consultation of the Arahuaco people, according to Arahuaco leaders we interviewed.

The Implementers Say: We Lack Institutional Capacity

During meetings with government officials in Cartagena directly involved in reparations and restitution, officials stressed that state representatives attempting to comply with the current programs faced unwilling partner agencies, complex legal processes with serious bottlenecks, and insufficient technical capacity.

Victims' Center. At eight o'clock in the morning, the Cartagena Victims' Center is full of people waiting in the heat. These cramped offices have practically no office equipment and little furniture. Marisela Rios, the coordinator for victims' services, explains that the Victims' Law has raised enormous expectations and broadened the universe of victims to whom their center needs to respond without the increased resources and infrastructure necessary to make these promises a reality.

Her office has not even begun to pay out economic reparations under the Victims' Law, as the government has not yet fulfilled its obligations to pay out reparations from previous laws.

The Victims' Law requires victims to fill out a ten-page form, unlike the previous two-pager, and this is traumatic for victims, Marisela explains. "We then send the applications to Bogotá, and they are supposed to evaluate them within 60 days, and they have a 24-hour team to evaluate the claims, but the deadlines are not being met."

"What we are giving is small compared to what people need." Marisela explains that the center is able to link people to health services and to primary and secondary education. But

Hacienda Bellacruz: Every Time There Is a Ruling, the Threats Increase

The case of the Hacienda Bellacruz is a sad example of the ongoing challenges of return. The case demonstrates the deep roots of land conflict, the inability and unwillingness of state agencies charged with land issues to enforce their own regulations, and the use of terror tactics to prevent farmers from maintaining their subsistence plots.²⁰

The Hacienda Bellacruz was created in the late 1940s, when Alberto Marulanda Grillo fenced in thousands of hectares in three municipalities in Cesar (La Gloria, Pelaya, and Tamalameque). Campesino leaders have asserted that the Marulanda family violently displaced small farmers at the time, some of whom maintained deeds to their land.²¹ Beginning in the 1970s, peasant leaders began organizing efforts to regain the land, discovering lands without titles not being used for agriculture within the hacienda. In 1986, 64 families began occupying these lands, believing that they would soon receive titles from the government's land agency, Incora. The following year, the Ministry of Agriculture (following a request from the Inversiones Marulanda Ramirez company) declared the land a forest reserve. In 1988, Carlos Alberto Marulanda was named minister of development.

In April 1994, Incora determined that this land was in fact unlawfully occupied by Inversiones Marulanda Ramirez and associated companies, and that these lands should be titled to the peasant families. Despite this ruling, Incora announced in 1995 that they would purchase approximately 2,000 hectares for distribution to the families occupying the plots. Notwithstanding the sale, the peasants never received the titles.

On February 14 and 15, 1996, paramilitary forces under the command of Juan Francisco Prada Márquez alias 'Juancho Prada'²² entered the plots and forcibly evicted 170 families, stealing their possessions and burning their houses. One group fled to Bogotá, occupying the Incora offices and demanding a government response. Human rights groups backed their efforts, despite ongoing accusations of supporting the guerrillas. Multiple agreements between peasant leaders, NGO representatives and government officials, including efforts to organize verification missions to the region, were unsuccessful. Incora officials reported attacks against their agents in the field, including the torture of a driver and threats against topographers attempting to carry out the required land survey. By December 1996, more than 30 peasants attempting to gain land titles had been killed or disappeared. According to local campesinos, farmers who had been tortured and killed, "were decapitated and their heads displayed on poles by the side of the road."²³ After a decade of attempting to gain title to their plots, the farmers abandoned the land, and the families scattered.

The paramilitary attack—one of hundreds perpetrated against peasant farmers in the region—gained notoriety in part because the hacienda's owner, Carlos Alberto Marulanda, by this point had been named Colombian ambassador to Belgium, Luxemburg and the European Union. Pressure from EU officials and Colombian NGOs resulted in an arrest warrant issued by the Colombian government, prompting Marulanda to go into hiding in Europe. After months on the run, Marulanda was jailed in Spain and finally extradited to Colombia.²⁴ His brother, Francisco Marulanda, was sentenced to 18 years in prison for the displacement in Bellacruz, although the family continues to dispute the ruling.

In 2010, President Santos declared the case to be “emblematic” of the state’s responsibility towards victims of abuses and the need for land restitution. The original 64 families have once again presented their claims to the land, now including also the families of the adult children of the assassinated peasant leaders, totaling more than 90 families.

In June, we spoke to leaders of the Bellacruz organizing efforts, and they told us of their commitment to the process and the difficulties they face:

It is very hard to maintain this effort, we are spread out in Barranquilla, Valledupar, Saravena, other cities. Each region has a representative because we can’t all get to Valledupar.

Every time there is a ruling in the case, the threats and attacks increase. On June 3, 2013 I had to leave from Aguachica, they threw a bomb at my house, 15 minutes after I had left with my family, they almost destroyed my house. There have been so many threats but they have not assassinated anyone yet. One compañero was attacked about a month ago but he managed to escape.

I have two bodyguards, I have to run from place to place with an armed guard. There is no privacy with such security. You want to live, so you can’t leave them behind. We eight leaders always travel together, we have two cars but the economic situation is hard. There has been a lot of pressure during the months of April and May, so we decided that it was better to travel together, that the enemy would kill one person alone.

Despite the multiple findings in favor of the peasant organizers, the current claimants face ongoing challenges. Hacienda Bellacruz has new owners, who claim to have invested millions of dollars in planning oil palm.²⁵

According to the peasant leaders documenting the process, Incofer announced in July that the land was planted with oil palms, presumably opening the process to a counterclaim based on Article 99. In December 2012, the Agustín Codazzi Geographic Institute reported that they were unable to locate the boundaries of the disputed plots, given “the transformation of the landscape, agricultural production and land cultivation.”

Restitution to these families who have struggled since 1986 to gain access to their lands seems further away than ever. One leader concluded: “We have made 14 declarations to the Attorney General, but it all ends up the same. We don’t have enemies, except for the people who are affected. They are the ones paying the armed groups. They are throwing bombs so that we run away. They are watching our families. I have my children hidden.... We are asking for security, because if they don’t attack us, they will attack our families.”

while long-term housing and income-generation projects are supposed to be available, in reality there is little or nothing. Local governments are supposed to complement national resources for jobs and housing, but often do not. Even emergency humanitarian aid is slow to arrive.

We go next door to talk to victims’ representatives, who have been given a small storefront by the Victims’ Center. The leaders

introduce us to a woman whose husband was killed in 2000 in the El Salado massacre. “I have twice registered my claim as a victim, and they say they have no record of it.” She is accompanying her grown daughter, who came to the center today to register, and shows us a small scrap of paper on which a date is written. Even to just file a claim, she has to return in three months’ time.

Land Unit. The national office and the Cartagena regional office of the Land Unit are bustling places, with a sense of energy and purpose. According to the regional director, Alvaro Tapia, the principal challenge facing the Land Unit is the disorganized state of the national land registry. INCODER, the Agustín Codazzi Geographic Institute and the land notary offices all have out-of-date and sometimes contradictory information about land property coordinates and ownership. Tapia draws a series of rectangles with overlapping boundaries as he tells us,

The legal process is traumatic. It sounds easy, it is listed as one thing, you go to the plot and find that none of the boundaries match up, everyone has their own version, the *campesino*, Incoder, Agustín Codazzi, us. So, what are we supposed to do? We have to do what the state should do, we have to do the topographical studies. The law says we have 20 days to do this. What the state hasn't done in 20 years, we have to do in 20 days.

The Land Unit has to prepare documentation for each case that includes accurate georeferenced information about the land to be restituted. "This is a serious bottleneck for our efforts to advance land restitution," notes Tapia.

To date, the 37 cases that have received rulings for restitution in this region of the country are ones without opposing claims. Land Unit staff express concern that the process will slow down once more complex cases are in front of the judges. Some 3,500 land claims have been

filed in Bolívar alone. The goal of this regional Land Unit is to develop 1500 cases; with thirty lawyers, this means a total of 50 cases each. Each case involves disputed claims and unclear titles with multiple actors, including displaced families and current occupiers.

It is difficult to sort out the truth in these conflicted claims, asserts Tapia. "Many people come in with their claim, I had to leave because [paramilitary drug lord] Jorge 40 came, lots of people were killed, and then I sold my land because I was dying from hunger." Such pressured sales continue today. "These are complex situations," he continues. "Buyers might not have been acting in bad faith. In some cases, the current owners bought from the people who violently displaced others. Who can say?"

According to regional Land Unit staff, in order to improve land restitution, it would be helpful to have more topographical experts; improved land registry information; funding and support for victims to travel to identify and help georeference their plots; and greater resources for judges' security.

National Land Unit staff also stressed that a significant obstacle to land restitution is the heavy use of land mines, largely by the FARC, in areas slated for restitution. Any land restitution efforts must be preceded by careful mapping and removal of land mines.

Land Restitution Magistrates. Two magistrates with whom we spoke are committed to the restitution process, but frank about the challenges they face. These magistrates, whose task is to decide the more complex and contentious land cases which the land judges pass on to them, reported a lack of training on law concerning land rights and rural topics in Colombia, and the absence of legal precedents to follow, given the confusion that exists in Colombia's system of agrarian law. Judges lack knowledge of the particular collective rights of indigenous and Afro-Colombian communities to land, as well as of ways to protect collective land rights. The limited number of magistrates—only three covering all cases in La Guajira, Magdalena, Cesar, Sucre, Bolívar (the entire Caribbean Coast with the exception of



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Córdoba)—has already led to significant delays in the legal processes which will accelerate as the number of cases increase.

The magistrates are very aware of the risks facing victims. Placing campesinos in the same room with the person who is opposing their land claim could put victims in new danger, they noted. Providing restitution to single, older women in ways that left them isolated could be dangerous, and therefore, returning whole communities was preferable.

Finally, the magistrates face their own security concerns. While they have some protection measures, the measures have yet to be fully implemented. The magistrates' security concerns are shared by many others involved in the land restitution process. In a March 2013 letter to President Santos, dozens of land restitution judges noted, "The attacks against victim claimants, their leaders, and members of the organizations that have supported them are well know. As justice officials, we are equally or even more exposed [to attacks], because we are the ones who order the legal and material restitution."²⁶

The Victims Say: What Do We Have that Is Real?

LWR and LAWGEF met with campesino organizations, indigenous communities, Afro-Colombian communities, human rights defenders and humanitarian agency representatives, and associations of displaced persons in the provinces of Atlántico, Bolívar, La Guajira and Cesar in June 2013. We found very little impact of the Victims' Law two years after passage. Some of the overall assessments we heard were harsh indeed:

- "After two years, we can't see any victim who has been served by it. No one is receiving reparations here."
– *victim of the El Salado massacre*
- "Last year we saw the Victims' Law as a hope. We got involved in the Victims' Roundtable. But then we started getting threats."
– *community leader from Carmen de Bolívar*
- "What is their game with this law? The institutional disorder is complete. The

Mampuján: Restitution and Reparations Advance, but Unequally

The small settlement of Mampuján, tucked into the lowland jungle along the coast, is showing signs of progress. As we talked to the community leaders, however, even this best-case scenario revealed the significant challenges ahead as these small farmers attempted to return to their land.

The entire community of more than 300 families—the vast majority Afro-Colombians—was forced to flee their land after a paramilitary incursion in early 2000 in which all were threatened and eleven killed. After more than a decade of waiting, this case was the first ruling of the controversial Justice and Peace process. Paramilitary leaders²⁷ of the Montes de María bloc of the United Self-Defense Forces of Colombia (AUC) were sentenced to pay 1500 minimum wages, and their civil rights were suspended for 20 years, but despite being found guilty of crimes against humanity, as per the law, they were only sentenced to 8 years in prison. The family members of those killed were awarded 40 million pesos each in damages, with the displaced awarded 17 million each.



WINIFRED TATE

A vision of a peaceful life in a quilt sewn by Mampuján women's association.

Mampuján community leaders sued the government, however, arguing that the punishments and the compensation were inadequate.

The Mampuján community also made news when they received the first land restitution ruling in the country in October 2012. Fourteen families received rights to 65 hectares of land in the first case decided by specialized land restitution judges. The case was one of the least controversial: after the displacement, no one occupied the land, and there was no “*opositor*” in the legal process.

Those who received the land are thrilled to have it back, although they are still traveling to their plots each day to farm while living in “new” Mampuján. During our visit, one elderly gentleman in glasses and short brimmed hat, with the thin wiry build of life-long work in the fields, smiled widely as he described his happiness. He is growing corn now, after so long unable to farm. His shirt expressed his gratitude: with Land Unit’s logo and a slogan, “Thank you, Mr. President.”

Yet even this case exposes the complications faced by such communities. Leaders describe growing inequality as a result of

the settlement, with some who received titles now the employers of others. “We have 1400 people in this community,” explains a community council member. “And the Victims’ Law only covers those who are linked to the land. Only 76 families were property owners [at the time of displacement], and so far 43 families have received restitution.” The community council is attempting to use other government programs and laws to benefit more community members.

The leaders complain the number of judges is insufficient given the high quantity of land restitution cases. As a result, long delays plague the process. Requests from last year for further restitution have not been resolved, despite the six-month deadline.

Complex ownership histories complicate efforts to establish restitution. As one community leader told us,

The law will violate some people’s rights. If a judge is confronted with a situation where I had to leave, and I sell my land, and if the new owner has the land for ten years and then has to leave and tries to sell that land, what will the judge do in that case? Who is going to get the right to return? And what will happen to the other owners? The judges are going to end up violating someone’s right—or everyone’s. The intention is good, but the law is not enough. What we need is a land reform program that will provide equitable land distribution.

Despite these challenges, community leaders stress that they are working to remain united. Their vision is expressed in one of the elaborate embroidered quilts made by the women’s organization as part of their memory project. While some of the quilts portray the events of the massacre and other tragic events, the largest contains multiple scenes of a small rural community. The women point out each moment captured in the quilt: children swimming in the river while their mother washes clothes, families working together in the fields, a couple heading to church while children play outside the school house in their uniforms, elders resting under shade trees. “We are trying to be patient, not to be jealous of what our neighbor has. We are recognizing the challenges that others face.”

municipalities, the local ombudsman’s offices don’t work together. The regional ombudsman’s office is a mess. Nowhere is the voice of the victim heard. There is not a real commitment of the state with the victims. Santos says these things, but there is not an institutional commitment.”

– *accompanier of communities in Bolívar/Sucre*

- “We have been victims for thirteen years, and since then we have heard blah blah blah, a series of lies and laws. About this latest law... What do we have that is real? So much deception.”

– *campesino leader, Montes de María*

- “Government aid is like the World Cup. It arrives just once every four years.”
- *indigenous leader from La Guajira, commenting on governmental emergency aid for the displaced*

- “There are thousands of victims’ claims, but the institutional response is ‘operation tortoise.’”

– *human rights defender, Barranquilla*

In many regions, victims found themselves having to explain the law to uninformed or uninterested local authorities. In María La Baja, according to a community member, the local ombudsman is refusing to take testimony. “I have tried to get him to take my testimony, but he refuses. We have tried to go to the ombudsman of Cartagena instead. We had only two meetings of the Victims’ Roundtable last year, and now they have gone for almost a year without meeting. We had better deliver the law to them [local officials], because they have no idea.” María La Baja was the scene of multiple home invasions and rapes in 2011. “Terrible things happen in

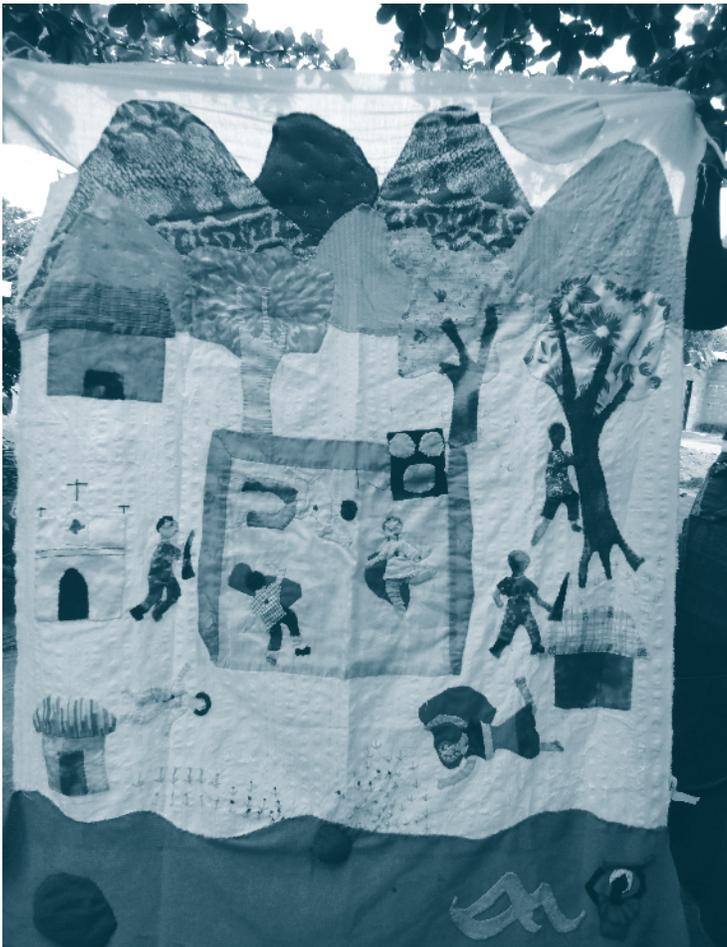
María La Baja, and victims are scared to talk.” In another community, victims are “taking our own census and then will try to get the Victims’ Unit to come here, if the ombudsman won’t do what he is supposed to do.” In a municipality in Cesar, “the *personero* [local ombudsman] doesn’t know how to fill out the forms for land restitution. Doesn’t do anything to describe how to use the Victims’ Law or restitution. No one says anything.”

Beyond the state’s technical problems and lack of institutional support, land claimants also report that state agencies—particularly on the local level—have been coopted and occupied by the paramilitary criminals who caused displacement. Indeed, in many areas, the very institutions set up to help catalyze and monitor the implementation of the law, forums in which victims are intended to be central or to have a voice, are not functioning, or worse, are not

safe spaces for victims. In areas such as Cesar, Bolívar and Sucre, some of the institutions and government officials involved in the Victims’ Roundtables and Territorial Transitional Justice Committees (CTJTs)—mayors, governors, prosecutors, INCODER agents, ombudsmen—are known to community members as connected to paramilitary groups and as having been involved in displacement and the legalizing of land titles obtained by violence.

There are slots for only a couple of victims’ representatives in the CTJTs, and victims then face an often intimidating array of civilian government and public security forces. A number of people reported having received threats after attending Victims’ Roundtables or CTJT meetings. One displaced person raised a land claim in the Victims’ Roundtable and the next day received a threatening phone call. A woman was threatened after attending a discussion of the victims’ “participation protocol” intended to increase victims’ participation in applying the Victims’ Law. In one area, the Victims’ Unit itself was believed to be filtering information about land claimants to large landowners. An INCODER official was reported to have made a statement interpreted as a threat against a land claimant’s children (“You are up against powerful interests here,” the INCODER agent said. “And you leave your children at home alone?”). In another case, a victim found that the other victims’ representative in the CTJC was involved in his displacement. “There aren’t guarantees in the Victims’ Roundtables,” said a campesino leader. “The victims are there with the perpetrators. We need international accompaniment because there are no guarantees for us in these spaces.”

The Colombian government’s position is that victims do not require lawyers or advocates to claim reparations and restitution, and the Victims’ Law explicitly caps lawyers’ fees with the stated intention of protecting victims from abuse. But those filing counterclaims often have pricey lawyers, and victims and human rights group repeatedly told us that they felt without support and in danger as they participated in Victims’ Law mechanisms and made their land claims. According to one human rights advocate, “I think that it is terrible, how they



WINIFRED TATE

The women’s cooperative quilt shows how armed paramilitary forces invaded Mampuján.

are leaving a victim to go face-to-face with a landowner or a mayor.”

A Province at Risk: Cesar. In Cesar, the situation of land claimants is dire. A number of communities hoping to receive restitution, or returning without benefit of government help, banded together in February 2013 as the Campesino Assembly of Cesar in Favor of Land Restitution and Good Life. “From one moment to the next,” said one claimant, “we can meet with death. Here in Cesar, the governor’s office, the social welfare institute, INCODER, the prosecutor’s office, all the institutions had links [to the paramilitaries]. We are asking for protection, for investigations, but they laugh at us here. They say we are behind our own threats.”

At the time of our visit, only one community in Cesar had received a ruling for their land to be restituted, some thirty families in Toco, San Diego municipality. The community’s leader is in grave danger and was the victim of an attempted attack in April. While he has a protection scheme, his protection is not adequate, and the threats against him are not effectively investigated.

According to a staff member of the Ombudsman’s office in Cesar, “The guarantees for those of us involved in defense of territory are minimal, we are converted into military targets. Constitutional Court orders are important, but little is carried out in reality. All the leaders in the Victims’ Roundtables are threatened. A grenade was thrown into my house in May.” Her husband is a human rights leader of the Wiwa indigenous people.

One community leader told us, “I know every day I am at risk. After I visit the prosecutor’s office, more threats. Everyone pulls away from me because of fear. You look at the authorities, and you remember, wasn’t this one a *para*?”

A displaced leader from Hacienda Bella Cruz (page 10) said, “We have received many threats from the Anti-Restitution Army and others, pamphlets, phone calls. Every time we work with INCODER, more threats. We have presented 14 complaints to the prosecutor’s office, and we are asking them to group them together.

They usually look at them separately and then close them one by one for lack of proof. I have protection measures, two bodyguards from the Interior Ministry. But in the end what we want is not security schemes, but for the government to remove the paramilitary presence.”

Mampuján: Some Light Ahead. Only in Mampuján, where we reported little progress last year, do we now see some vision, though still limited, of how things could begin to improve (page 14). Entering “new” Mampuján, we are met by an old man. Beaming, he says that yes, he is one of the people restituted. He now has several hectares, planted with corn and other crops. “After so many years of being displaced, so many years when I could grow nothing, now look at what I have.” And throughout new Mampuján, there are the signs of construction, new houses, community projects.

But it is complicated here too. Mampuján benefitted from one of the few settlements from the Justice and Peace law, and was singled out as a priority case by the national government, so it is not typical. Community members are astutely using all laws and mechanisms at their disposal, of which the Victims’ Law is only one, in order to recover land and generate small-scale development. They express concern that the variety of governmental programs to help victims end up dividing victims and communities. And perhaps most importantly, their process did not face opposition.

Challenges in Implementation

Challenge One: Providing Real Protection

Land return without safety is a cruel mockery. Creating real safety starts with three commitments: serious efforts to dismantle the paramilitary, BACRIM, and guerrilla groups that continue to generate violence, and to prosecute the members of state security forces, politicians, businesses and government officials who support, finance or tolerate them; investigating and prosecuting police and military members who commit abuses; and effectively investigating and prosecuting threats and attacks against communities and land rights leaders.

A Dream Delayed: Collective Titles for Afro-Colombian Communities in and around Cartagena

Presidents Santos and Obama handed out land titles to Afro-Colombian communities Palenque and La Boquilla after the April 2012 Summit of the Americas in Cartagena. The high-profile ceremony was accompanied by rockstar Shakira.

It was supposed to be the first of many such collective land titles granted to the Afro-Colombian communities surrounding Cartagena, as well as throughout Colombia. These Cartagena communities on the beaches and islands surrounding Cartagena have lived, fished, farmed, and maintained their culture and collective organizations on these lands for decades or centuries—without title.

Over a year and a half later, not a single of the 25 other Afro-Colombian communities in the Cartagena area has received title. This titling is not part of the Victims' Law—these communities are not displaced—but rather a long-delayed implementation of Law 70, which is intended to ensure collective titles to Colombia's Afro-Colombian communities. The Santos Administration has promised to speed up titling to indigenous and Afro-Colombian communities as well as individual land titling to campesinos.



Industrial and tourism projects affect Afro-Colombian communities in Cartagena.

USAID has had the goal of assisting some of the Afro-Colombian communities in and around Cartagena in applying for their collective titles. But after the rush job of readying La Boquilla and Palenque in time for the summit, the process remains unaccountably stalled.

In our conversations with Afro-Colombian community leaders, we found that tourism businesses, such as the huge hotels all over Cartagena's waterfront, as well as a naval base, seeking to expand their landholdings, present a significant obstacle. They have placed political pressure on INCODER and used their influence to divide communities. Afro-Colombian community leaders in favor of collective titling are trying to persuade their membership of its value, while outside interests coveting land valuable for tourism have sought to persuade individual Afro-Colombians that they will lose the right to sell (a right they do not in any case have now, as most have no title, whether individual or collective).

But the community division does not fully explain the lack of progress. There seems to be a tremendous lack of political will on the part of the national and municipal governments to accomplish this.

The problems do not stop at collective land titling. Communities need help investing in productive projects—fishing, farming where land permits, artisanry, and other projects. Dr. Benjamin Luna, president of the La Boquilla community council, asserts that communities, through their community councils, must be the ones to choose the kind of development projects they wish to pursue. He stresses that donors such as USAID or the Colombian government should not force their views on communities regarding what kind of development path they should follow.

Says Dr. Luna, “We have to find a balance between these tourism megaprojects and our existence. We can do it. There needs to be strengthening of community councils. Second, we need collective titles for all of the communities. Then, we need training so people can work in the tourism industry.”

“The Afro people in Cartagena will continue to call for recognition, not just on paper nor just in symbolic acts, of our fundamental human rights to our free territory, with autonomy, rights and authority, [so we can be] the leaders and implementers of our own ethno-development,” explains Gustavo Balanta Castilla, the director of Fundación Surcos and member of the Agenda Caribe network. Public shows of Colombian and U.S. governmental support for Afro-Colombians in Cartagena, according to Mr. Balanta, should not remain just “*pura boquilla*,” empty rhetoric.²⁸ Even with titles, it will be a challenge for Afro-Colombian communities to contend with the pressures of the hotel and tourism industries that are expanding into the beaches, islands and mangrove swamps in and near their lands. But without titles, they are far more vulnerable.

Beyond delivering on those overall commitments, the government must design local prevention and protection plans with the full participation of returning and returned communities. Protection plans may identify a mix of needs and solutions, including greater presence of a local ombudsman, removing a corrupt official, developing risk maps, providing cell phones if coverage is available, investing in community-based rural development projects, fixing a bridge or road to provide easier access, electrification, and of course properly legalizing land titles. Protection does not necessarily come from security force presence, although a protection plan may include security measures such as police or army patrolling around the perimeters of the community in a manner which does not prejudice the principle of distinction under international humanitarian law.²⁹ These plans must outline the responsibilities of specific government agencies. The Inspector General’s office should monitor compliance with these plans to ensure accountability.

Protection for rural communities and land rights leaders is different than protection for urban

human rights defenders. One bullet-proof car does not protect a community or protect a leader in an area where rivers are transport, and bullet-proof vests are unworkable in hot climates. Protection that is more collective and addresses root causes of violence is more of an answer in rural areas, and often in urban, as well.

Prevention and protection programs should ensure that civil society’s own collective protection programs that distance the civilian population from the conflict should be respected and protected. These include humanitarian zones of refuge, *planes de salvaguardia*, and *planes de vida*. The Ministry of Defense, Ministry of Interior, and National Protection Unit should instruct the army and police to respect, rather than undercut, these initiatives.

Challenge Two: Increasing Local Government’s Political Will

The Victims’ Law, or any similar law or program to benefit victims, simply will not work without the buy-in and political will of local government. Without political will among governors, mayors,

and city council members, as well as among the local representatives of national institutions, such as local and regional level prosecutors, ombudsmen and INCODER officials, not only will these mechanisms fail to deliver, they can be turned against victims. How to create this political will is no easy challenge.

President Santos has emphasized the importance of the Victims' Law through his speeches, media and public events. Each leader of the chief institutions involved in implementing it need to do the same, including the Minister of Agriculture, Minister of Defense and the Attorney General, and they must mobilize the resources of their institutions behind the law. The Ombudsman and [Inspector General lead institutions particularly critical to defending victims' rights, and they must use their offices far more effectively to become a real force for victims' rights at a local, regional and national level.

But positive incentives are not enough. At the core of the resistance to land restitution and reparations is the deadly link between local civilian and security officials and illegal armed groups and companies willing to use any means to acquire land and profits. Investigating and prosecuting corrupt and abusive politicians, INCODER officials and land notaries, businesses, and police and military members will pave the way not just to implement laws in favor of victims, but to establish the good governance Colombia deserves.

Challenge Three: National Institutions and Resources

The Victims' Law replaces a whole set of existing government institutions that provide assistance to victims. As one indigenous leader noted, the government's social programs are "chameleons," continually changing color, changing names. This constant change creates a maze of programs, more red tape, and many opportunities to actually help victims are lost. The government must maintain greater consistency with programs serving victims, ensure that national and local government agencies coordinate with these institutions, and put adequate resources behind their lofty missions.

Challenge Four: Victims' Participation

The Victims' Law will only function if all levels of government involved in implementation actually listen to victims. The law is designed with some thoughtful measures intended to give victims a voice, and when it became clear these were not being implemented, a "Protocol for Effective Participation of Victims of the Armed Conflict," Resolution 388 of May 2013, was developed with input from victims. This spells out the full range of victims who must be invited to participate in Victims' Roundtables at a local, regional and national level. It has some important accountability mechanisms, such as ensuring that the Roundtables can review and make recommendations for local, regional and national action plans for carrying out the Victims' Law, and that local, regional, and national authorities must present reports on their programs and explain whether these recommendations have been adopted.

However, making this work at a local, regional and national level is still an enormous challenge. The first obstacle, especially at the local level, is that these forums for participation are not even safe spaces for victims. The Colombian government must make an example of investigating and prosecuting effectively the threats that have arisen surrounding the Victims' Roundtables and CTJTs. The national government must exhort local and regional authorities to create safe and functional spaces for victims to be heard.

The participation protocol indicates the important role of the Ombudsman's and Inspector General's office in these spaces, as *personeros* are intended to play a role as conveners. While there are many remarkable and brave *personeros* throughout Colombia, there are others who are corrupt or timid. The Ombudsman's Office must play a stronger leadership role here.

Challenge Five: Economic Sustainability

Once land is slated for return, farmers receive a certain amount of funding in a bank account which can be released for the productive project of their choice. While this is a good incentive, it

is far from a comprehensive measure to ensure economic sustainability. The government needs to deliver on the services that it should provide to the countryside, with or without a Victims' Law: roads, affordable agricultural credit, extension services, technical assistance for marketing, as well as schools, health clinics, and courts. These rural development programs for returned communities should be coordinated by the Ministry of Agriculture and consulted with the communities they are intended to benefit.

Many displaced persons owed debts at the time of displacement. These debts mounted during the years that they were displaced. The Victims' Law permits the Land Unit to create programs to cancel taxes owed by displaced persons and renegotiate debts, but it simply allows this, it does not mandate it or provide the funding to carry it out. The government must ensure that returning families and communities start with a clean slate, free of debt.

Land restitution that is concentrated in communities, rather than returning a family here, a family there, makes sense in terms of economic sustainability as well as protection. The government can then direct services to a whole community.

Finally, the Colombian government should recognize that land restitution is taking place at a moment in which small-scale farmers are under particular risk from the implementation of free trade agreements, including the U.S.-Colombia free trade agreement. Measures to cushion small-scale farming from the impact of these trade agreements are necessary.

Challenge Six:
Protection of Campesino Agriculture and Indigenous and Afro-Colombian Communities from Large-Scale Economic Projects

To have real sustainability, there must be protection of *campesino* agriculture—small-scale farming—and Afro-Colombian and indigenous communities from the pressures, legal and illegal, exerted by mining companies, palm plantations, tourism projects, and many other large-scale economic projects. Establishing real

mechanisms for meaningful prior consultation on all such development projects in indigenous and Afro-Colombian communities is one step. The agreement by the Colombian government and the FARC to create “campesino reserve zones,” in essence, areas zoned for small-scale agriculture, could be another important mechanism. The Colombian government must place greater priority on small-scale agriculture if land return is to be sustainable.

Challenge Seven:
Options for the Many Who Want to Remain in Cities

The majority of displaced persons and refugees and their children will choose to remain in cities. Land restitution is not a viable option for them. Improved and expanded programs for income-generation, education, housing and community development so that displaced families can rebuild their lives in urban areas are essential.

Challenge Eight:
Moving towards Truth, Justice and Guarantees of Nonrepetition

The Victims' Law is focused primarily on reparations and land restitution, offering little new in the way of truth, justice and guarantees of nonrepetition. The hard task of making justice work and creating the kind of state that actually protects citizens from violence still lies ahead. Taking real steps to dismantle paramilitary, guerrilla and other illegal armed groups, including by prosecuting the politicians, security forces, businesses and government officials that support them, is of paramount importance. Ensuring grave abuses by the state's own security forces are prosecuted in civilian courts is another step. Strengthening the protective power of civilian government agencies in the countryside is essential. And the peace negotiations in Havana could deliver relief from violence if the FARC demobilizes, and a healing measure of truth if the parties agree to an independent truth commission.

The Victims' Law, even if implemented fully, is only the start of what the Colombian government, with assistance from the international community, owes the victims of violence in Colombia.

Recommendations

FOR THE COLOMBIAN GOVERNMENT:

To implement the Victims' Law and land titling:

- Implementing the Victims' Law will be an exercise in futility unless more progress is made in preventing future displacement. The government must take a more vigorous approach to dismantling illegal armed groups, particularly paramilitary successor groups, including by disciplining, investigating and prosecuting members of the army, police and local officials that aid, abet or tolerate them, and the landowners and companies that employ them to coercively expand landholdings. Achieving a peace agreement with strong measures for truth and justice with the FARC guerrillas, as well as a future agreement with the ELN, will also contribute to reducing displacement.
- Encourage local authorities to vigorously implement the Victims' Law. This should include requiring local governments to conduct broad outreach to victims' organizations representative of victims in the local area; to be responsive to the recommendations of victims' organizations in drawing up plans for implementation; and to include such plans and their budgets in municipal and regional development plans. The national government should provide adequate resources to municipal governments and victims' attention centers to apply the law, above and beyond the resources already available to displaced persons.
- Take decisive steps to ensure that the forums created for victims' participation such as the Victims' Roundtables and CTJCs are viable spaces in which victims feel they can safely speak up and in which their perspectives are respected and have an impact. The Ombudsman's Office should issue instructions and ensure that its representatives actively work to achieve this goal. Any threats or attacks against victims participating in these spaces must be investigated promptly and appropriate protection issued immediately.
- Ramp up provision of legal advice and accompaniment to victims for land restitution and reparations via the Ombudsman's office, local *personeros*, and nongovernmental organizations. Expanded partnerships with nongovernmental organizations with experience in accompanying victims and communities at risk would help to accomplish this goal.
- Provide immediate and effective protection for all land restitution judges and magistrates.
- Monitor land restitution units, judges, INCODER agents, notaries and Territorial Transitional Justice Committees to ensure that they are not being coopted by those who benefited from stolen land. The Attorney General's office and Inspector General's office should investigate, discipline, prosecute and dismiss corrupt officials.
- Continue and expand the collective titling of land which is currently occupied by Afro-Colombian and indigenous communities, as well as the individual titling of campesino land. In many areas, such as the Afro-Colombian communities in and near Cartagena, these processes appear stalled and renewed efforts must be made to accelerate titling.

To ensure that restitution and titling creates sustainable livelihoods:

- Prioritize rural development investments in restitution areas. To ensure sustainable development, investments must be made in return areas and be integrated into local and regional development plans where they exist. Supporting each returning family individually, monetarily or with technical support, has its place but will not result in strong rural regional economies in which families and communities play an active role. Scaling up investments by focusing on entire communities or groups of returning families and integrating investments into existing regional development

initiatives is the only path to sustainable development in restitution areas and the best approach for ensuring returning families are able to stay on their land and benefit from their farming investments.

- Investments should prioritize the strengthening of and creation of farming associations. Strong associations can facilitate farmers' access to credit, increase their access to new markets and decrease the cost of inputs. Investments in associations should prioritize organizational strengthening, the creation of business plans, training in new farming techniques, and support to access credit, connect to financial institutions, carry out market studies and increase farmers' control over the value chain of their products. Support for associations does not need to be tied to one product but rather focus on fostering strong organizations and enhancing members' capacity to manage and gain from the value chains of various products.
- Efforts must be made to support collective returns for female heads of households and widows. Collective returns should be accompanied by investments in women's associations, allowing "returning" women greater opportunity to benefit from their land through agricultural and business endeavors.
- Attention to resource management is necessary to make farming endeavors sustainable, particularly in the face of climate change. Investments in agriculture for returning families should emphasize climate-smart agriculture, creating conditions that allow families to produce food, engage in local and regional markets and protect natural resources. There are models of climate-smart agriculture investments being made in Colombia by international and local nongovernmental organizations which provide important examples.
- Securing collective land title for Afro-Colombian communities is essential, yet titling must be accompanied by investments in agriculture systems to enhance food security and increase earnings. Investments must be consulted with and agreed to by communities and must include technical support and the development of business plans designed by communities and aligned with communities' development priorities and training.

To ensure protection for returned and returning communities:

- The Attorney General's office should prioritize effective investigations and prosecutions of threats and attacks against land rights leaders and returned and returning communities. It should focus efforts on areas where land restitution efforts are taking place.
- Provide effective protection to returned and returning communities at risk, designing prevention and protection plans in close consultation with communities. Protection should be extended whether communities are returning via the Victims' Law or on their own initiative. Local protection plans may identify a mix of solutions, including investigations into threats and attacks, greater presence of a local ombudsman, creating risk maps, or removal of a corrupt official. They may include a fixed bridge or road, electrification, cellphones and transport. Plans may also include investing in community-based rural development projects and legalizing land titles. Communities may call for army or police patrolling around area perimeters in a way that does not put them at risk. Afro-Colombian and indigenous communities require a differential focus. There is no one-size fits all solution; the only workable solutions are those designed collectively by communities.
- As part of these prevention and 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 and hold them accountable for their obligations to provide 24-hour, urgent protection to returned and returning communities and land rights leaders. The Early Warning System's risk reports should be made public and disciplinary sanctions should be issued if its warnings are disregarded by local authorities or military officials.

- Civil society's own collective protection programs should be respected and protected, including humanitarian zones of refuge, *planes de salvaguardia*, and *planes de vida*. The Ministry of Defense and Ministry of Interior should instruct the army and police to respect, rather than undercut, these initiatives.

FOR THE U.S. GOVERNMENT:

- Condition assistance for the Victims' Law on greatly improved actions to protect returned and returning communities and land rights leaders. Plans must be designed and implemented with the full participation of affected communities.
- Urge the Colombian government, using the leverage of human rights certification, to take a much more vigorous approach to dismantling paramilitary successor groups and investigating and prosecuting the army and police members and local officials that aid, abet and tolerate them, as well as the landowners and companies that may employ them. Without such vigorous action by the State Department, USAID's support for implementing the Victims' Law cannot succeed.
- Provide assistance for prevention and protection programs for communities and land titling. Provide increased legal accompaniment for victims via the Ombudsman's Office, *personeros* and nongovernmental human rights organizations with experience in accompanying victims and communities at risk. 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, Afro-Colombian, indigenous and victims' organizations rather than creating new ones, and ensure funding unites, not divides, communities and social movements.
- Under these conditions, continue assistance to strengthen the Victims' Unit and Land Unit. Target assistance for Victims' Law implementation to bottlenecks and needs not provided by other donors, as for example topographers to help prepare cases for land restitution judges. Encourage and support assistance via governmental and nongovernmental channels for sustainable economic development for returning communities, designed in consultation with those communities.
- Urge much greater progress by INCODER in meeting goals for collective titling for Afro-Colombian and indigenous communities, in close consultation with these communities, and ensure USAID contractors are effectively contributing to meeting these goals.
- Support as needed land mine surveys and removal, land mine education programs, and assistance to land mine survivors.

ANNEX:

The Victims' and Land Restitution Law

What Does the Law Say?

The Victims' and Land Restitution Law (Ley de Víctimas y Restitución de Tierras), Law 1448 of 2011, sets out procedures for reparations and land return for victims of violence.

Reparations are to be provided to those who became victims after January 1, 1985, while land restitution is only provided for those who were displaced since January 1, 1991. Those

who became victims prior to 1985 still have the right to the truth, symbolic reparations and guarantees of non-repetition, or the assurance that such abuses will never occur again. Significantly, victims of Colombia's armed forces, as well as of guerrillas and paramilitary groups, are included.

Law 1448 is to be in effect for ten years. The law's application will be "gradual," "progressive," and financially "sustainable," thus giving the government leeway to apply it gradually.

An innovative element of the law is the “good faith principle,” under which the government presumes that the victim is telling the truth. The burden of proof is not on the victim, and the victim receives the benefit of the doubt. To guard against abuse, there are penalties for falsely claiming victimhood.

The law refers to the victims' rights to truth, justice, and nonrepetition. It creates a National Day of Remembrance and Solidarity with Victims, April 9th, and establishes a Center of Historical Memory. However, there is little in the way of substantive, new mechanisms or institutions for truth, justice and nonrepetition. The core of the law is reparations and land restitution.

Reparations and Services. The law requires emergency humanitarian aid and transitional assistance for internally displaced persons, essentially continuing and reinforcing the state's existing responsibility to provide programs for the displaced. Many services the law references are the normal services that the government would be obligated to supply in any case, such as basic health and primary education. Victims are to receive priority access to public higher education, housing programs, and a number of other government services. Victims also receive monetary compensation according to the crime suffered. For example, close family members of a murdered victim would receive up to 40 minimum monthly salaries while someone who was tortured would receive up to 30 minimum monthly salaries.

The law sets up a new Special Administrative Unit for Attention and Reparations for Victims which is responsible for registering victims, providing reparations, and ensuring overall attention to victims, including their rights to truth, justice and nonrepetition. The Victims' Unit coordinates the range of services to victims from a host of government agencies.

All victims should register in the Unified Victims' Registry within four years of the law's June 2011 start date, and those victimized since the law's start must register within two years of the abuse.³⁰

Land Restitution. The law's major impact is in land restitution. The law sets up a Land Unit, or Special Administrative Unit for Land Restitution, and creates a registry of stolen land. Once a victim files a claim for land return, the Land Unit has 60 days to decide whether to include it in the registry.

The Land Unit then works with the victims to carry out topographical analysis of the land and prepare documentation. This is provided to land restitution judges who are to rapidly decide the case, if there are no opposing claims. Anyone asserting that they legitimately own the land that the victim is claiming has 15 days to file a counterclaim.

Where there are people presenting counterclaims (*opositores*), the judges prepare the case and send on to land magistrates who conduct further investigation and rule on the claim's merits. Magistrates have four months to issue a decision.

Where victims' claims are ruled valid, the judges or magistrates then order INCODER, the land tenure agency, to issue a title where needed and to revoke titles where land sales were forced. But their scope of action does not stop there: judges or magistrates have the authority to order government agencies to provide services so that the displaced victims can safely return, and can continue to monitor their situation and issue orders after returns.³¹

When judges rule that someone acquired land in good faith, but it had previously been obtained by violence, the good faith occupant will be compensated.

The law spells out how victims should receive land restitution even where ordinary, nontransitional justice would indicate otherwise. First, the law does not require victims to have land titles in order to be restituted. Many displaced persons occupied and farmed land for years, decades, and in the case of indigenous and Afro-Colombian communities, even centuries, without land titles. Second, the law recognizes that many families were forced to sell their lands at low cost under threat. In the most blatant cases, farmers were told to “sell

or we will buy from your widow,” but a general situation of violence or targeted killings could also send a terrifying message to farmers that they had to sell to those who offered to buy land at steep discount. According to the Victims’ Law, a situation of generalized violence, the existence of multiple land sales under market cost, and rapid expansion of monocrops, cattle ranching or industrial mining in a given area should be used to identify whether those applying for restitution had been forced to sell.

Compensation rather than land restitution is only provided where restitution is not possible. However, displaced persons can choose to sell their land after two years.

The Defense Ministry and the Land Unit determine in which areas the law will be carried out according to where security permits and displacement was extensive. Currently, the areas are Catatumbo, Cauca, Valle de Cauca, Magdalena Medio, Magdalena, Cesar, Montes de María, Nariño, Putumayo, south Córdoba, Bajo Cauca Antioqueño, Antioquia, south Meta, Tolima and Urabá. Within these larger areas, certain micro-zones are established as priorities.

Once land is slated for return, farmers receive a certain amount of funding in a bank account which can be released for the productive project of their choice.

Women. The law protects women’s land rights by ensuring that women who were married to or living with men at the time of displacement will be receive land restitution, and that titles will be issued in the name of both individuals.

Indigenous and Afro-Colombian Victims’ Decrees. As the law was being debated, indigenous and Afro-Colombian organizations objected that they had the right to prior consultation under ILO convention 169. As a result, as the Victims’ Law was passed, the Colombian Congress granted the President the authority to subsequently negotiate two decrees with the status of law with indigenous and Afro-Colombian communities. These “decree laws” adapt the Victims’ Law to these two important groups.

The indigenous decree, Decree 4633 of 2011, has several noteworthy distinctions from the Victims’ Law. First, it prioritizes collective reparations, and provides for collective reparations funds to be determined and administered by indigenous authorities. Strengthening collective organization is seen as a vital aspect of reparations. Second, it spells out how the state is supposed to protect indigenous territory, including how the armed forces should respect indigenous communities’ land rights and human rights, and calls for military and civilian authorities to receive training on such rights. Third, it recognizes that the earth itself can be a victim, and has more attention to environmental issues, although in practice this emphasis may be more rhetorical than real. Fourth, land can never be compensated monetarily; if land cannot be returned, similar land must be provided.

The Afro-Colombian decree, Decree 4635 of 2011, also places a priority upon collective reparations, calling for a Comprehensive Plan for Collective Reparations to be prepared in consultation with communities. It emphasizes the importance of fully implementing Law 70, which recognized the right of Afro-Colombian communities to their territories. Victims of racial discrimination and environmental damage are recognized as victims, although mechanisms to make this operational are not spelled out. Finally, preservation of Afro-Colombian culture and tradition is a consistent refrain throughout the decree.

Although the decree does elevate some important issues, many Afro-Colombian leaders feel it was not adequately consulted, with workshops that explained the draft law rather than serious consultation and a draft law presented by a range of Afro-Colombian organizations being ignored. An important substantive critique is that the reparation measures mandated by the Victims’ Law are in some ways more limited and less specific than the measures mandated by Constitutional Court order 005 regarding the Colombian government’s responsibilities to Afro-Colombian victims of displacement.³²

Victims' Participation. At a local and regional level, Transitional Justice Committees are established, led by mayors and governors with local government and victims' participation, to guide implementation of the law at the local level. Victims' Roundtables are supposed to be set up to provide oversight and channel input.

Flaws in the Law

A major objection to the law is that it could exclude victims of the Bacrim, the rearmed, regrouped or never demobilized paramilitary groups, such as the Black Eagles and Rastrojos. The government calls these "criminal bands," insisting that they are no longer illegal armed groups, but rather ordinary criminals. As these groups are a driving source of violence, this could exclude significant numbers of victims. However, the Constitutional Court ruled that this exclusion was unconstitutional. While in theory the law is being adapted to address this gap, in practice many victims of Bacrim have been excluded from the registry of victims.

Another potential flaw concerns development projects implemented while a victim is displaced. Paramilitary groups, landowners, ranchers and extractive industries used violence to displace people in order to expand African palm plantations, cattle ranches, mining operations and other large-scale economic projects. Provision 99 of the Victims' Law establishes that when an agroindustrial project was developed on land to be returned, good faith occupants can continue to operate the project and create a contract to provide benefits to the people who were displaced. Where the occupants were involved in the violence, the Land Unit will determine who will administer the project and ensure victims are benefitted. There is much to be concerned about here: the vagueness of this clause, the prioritization of agroindustrial projects over land return, and the potential for placing displaced persons in still dangerous situations where agroindustrial interests have an incentive to continue pressuring them.

A third problem is the vagueness of many sections regarding government services, which may be provided, but are not mandated.

Finally, the Victims' Law is really about reparations and land restitution. It offers rhetoric, but little new in order to operationalize truth, justice and guarantees of nonrepetition. Even if it were perfectly implemented, it covers only one part of victims' just demands.

However, the Victims' Law makes a historic advance by putting Colombia's victims of violence at the center of national debate, and offering a route forward for reparations and land restitution. As such, the primary challenge is not this rather beautiful and innovative law itself, but its implementation.

Endnotes

- ¹ Ley de Víctimas y Restitución de Tierras y sus Decretos Reglamentarios," Introducción, p. 13.
- ² Forjando Futuros, "Primeros Sentencias de Restitución de Tierras," *Semana*, 3 de octubre 2013, <http://www.semana.com/especial-comercial-multimedia/multimedia/primeras-sentencias-de-restitucion-de-tierras/357882-3>.
- ³ Contraloría General de la República, Defensoría del Pueblo, Procuraduría General de la Nación, *Decretos ley de víctimas indígenas, negras, afrocolombianas, palenqueras, raizales y rrom*, 2013, Comisión de seguimiento de los organismos de control, <http://www.secretariasenado.gov.co/INFORMES%20DE%20SEGUIMIENTO%20Y%20MONITOREO%202013/INFORME%20EJECUTIVO%20SEGUIMIENTO%20Y%20MONITOREO%20A%20LA%20IMPLEMENTACION%20DE%20LOS%20DECRETOS%20LEY.pdf>, p. 29.
- ⁴ *Ibid*, p. 31.
- ⁵ Forjando Futuros, "Primeros Sentencias de Restitución de Tierras," *Semana*, 3 de octubre 2013, <http://www.semana.com/especial-comercial-multimedia/multimedia/primeras-sentencias-de-restitucion-de-tierras/357882-3>.
- ⁶ INCODER, table, "Hectares formalizadas y adjudicadas, desde agosto de 2013, Fecha reporte: 30 de septiembre de 2013.
- ⁷ All figures in this paragraph are from Human Rights Watch, *The Risk of Returning Home: Violence and Threats against Displaced Persons Reclaiming Land in Colombia*, September 2013, <http://www.hrw.org/reports/2013/09/17/risk-returning-home-0>.
- ⁸ *Ibid*, p. 14.
- ⁹ *Ibid*, p. 14.
- ¹⁰ Information from LWR/LAWGEF interviews as well as from Verdad Abierta, "Pitalito, Cesar, una vereda entre el despojo y el desalojo," 9 de julio de 2013, <http://www.verdadabierta.com/despojo-de-tierras/rearmados/component/content/article/48-despojo-de-tierras/4660-pitalito-cesar-una-vereda-entre-el-despojo-y-el-desalojo/>. Display quote from Verdad Abierta article.
- ¹¹ "False positives": victims of extrajudicial execution.
- ¹² 256,000 people were displaced in 2012, according to CODHES, the Consultancy for Displacement and Human Rights. The Victims' Unit stated that 127,714 people were displaced in 2012, as of June 2013 figures. The government registers displacement when people file for assistance, and the CODHES and government figures tend to grow closer considerably after the close of a year.

- ¹³ Alejandro Reyes Posadas with Liliana Duica Amaya. *Guerreros y campesinos: el despojo de la tierra en Colombia*. Buenos Aires: Grupo Editorial Norma, 2009.
- ¹⁴ USAID Country Profile, *Property Rights and Resource Governance: Colombia*, http://www.globalprotectioncluster.org/assets/files/aors/housing_land_property/Colombia%20HLP/Country_Profile_Land_Tenure_Colombia_2010_EN.pdf, p. 1.
- ¹⁵ Programa de las Naciones Unidas para el Desarrollo (PNUD), "Colombia Rural: Razones para la esperanza," 2011, <http://pnudcolombia.org/indh2011/>, p. 47.
- ¹⁶ Center for International Policy, Indepaz, MINGA and Washington Office on Latin America, *Waiting for Consolidation: Monitoring Colombia's U.S.-Aided Counterinsurgency and Development Program*, February 2012, <http://justf.org/blog/2012/02/01/new-report-waiting-consolidation>.
- ¹⁷ Programa de las Naciones Unidas para el Desarrollo (PNUD), "Colombia Rural: Razones para la esperanza," 2011, <http://pnudcolombia.org/indh2011/>, p. 7.
- ¹⁸ For a compelling analysis of the economic interests opposing restitution in Colombia, see ColombiaLand.org, *Elusive Justice: The Struggle for Land and Life in Curvaradó and Jiguamiandó*, June 2013, http://colombialand.org/wp-content/uploads/2013/06/Elusive_Justice.pdf.
- ¹⁹ A U.S. multinational company allegedly used Colombian subsidiaries to buy almost 130,000 hectares of such land in southern Colombia (Vichada). "In Colombia, an Alleged American Land Grab Sets off a Political Storm," John Otis, *Time Magazine*, July 10, 2013. "Colombian Ambassador to U.S. Resigns Amid Pressure Over Land Deals," by Sara Schaefer Muñoz, *Wall Street Journal*, July 23, 2013. <http://online.wsj.com/article/SB10001424127887323829104578624643197499014.html>.
- ²⁰ Verdad Abierta, "El Otro 'Round' por la Hacienda Bellacruz," 25 de septiembre 2013, <http://www.verdadabierta.com/component/content/article/48-despojo-de-tierras/4915-el-otro-round-por-la-hacienda-bellacruz/>; <http://www.verdadabierta.com/Especiales/bellacruz/>.
- ²¹ Amnesty International, "Hacienda Bellacruz: Land, Violence and Paramilitary Power," February 1, 1997, <https://www.amnesty.org/es/library/asset/AMR23/006/1997/es/b335f15c-eac0-11dd-b6f5-3be39665bc30/amr230061997en.html>.
- ²² "El régimen de terror sexual que impulso el 'para' Juancho Prada", *El Tiempo*, 28 de abril 2013, http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12767893.html; Verdad Abierta, Justicia y Paz, "Las otras masacres de Juancho Prada," 31 de octubre de 2011, <http://monitorias.com/justicia-y-paz/3625>.
- ²³ Amnesty International, "Hacienda Bellacruz: Land, Violence and Paramilitary Power," February 1, 1997, <https://www.amnesty.org/es/library/asset/AMR23/006/1997/es/b335f15c-eac0-11dd-b6f5-3be39665bc30/amr230061997en.html>.
- ²⁴ Víctor Manuel Vargas, "En firme, extradición de ex ministro Marulanda," *El Tiempo*, 21 de septiembre 2002, <http://www.eltiempo.com/archivo/documento/MAM-1338760>.
- ²⁵ Verdad Abierta, "La tierra no violó los derechos humanos," <http://www.verdadabierta.com/despojo-de-tierras/3529-la-tierra-no-violo-los-derechos-humanos>.
- ²⁶ Cited in Human Rights Watch, *The Risk of Returning Home: Violence and Threats against Displaced Persons Reclaiming Land in Colombia*, September 2013, <http://www.hrw.org/reports/2013/09/17/risk-returning-home-0>, p. 8.
- ²⁷ Edwar Cobos Téllez, aka 'Diego Vecino' and Über Bánquez Martínez, aka 'Juancho Dique.'
- ²⁸ Gustavo Emilio Balanta Castilla, "Pura Boquilla," *Vamos a Andar Cartagena*, 24 agosto 2013.
- ²⁹ See letter to Secretary of State Hillary Clinton from U.S. humanitarian, human rights, policy, grassroots and faith-based organizations, November 1, 2011, http://www.lawg.org/storage/documents/Annual%20Reports/Clinton_Land_Rights_Letter_Nov_2011_english.pdf.
- ³⁰ Victims already registered in the pre-existing Unified Registry of Displaced Persons [Registro Único de Población Desplazada] are supposed to be automatically included in the new registry.
- ³¹ Article 102. "After issuing a sentence, the judge or magistrate will maintain his/her jurisdiction of the case in order to issue all those measures that, according to the case, may be necessary to guarantee the use, enjoyment and disposition of the possessions on the part of those displaced persons who have been restituted or who have had their land formally titled, and [to guarantee] the security for their lives, their personal integrity and that of their families." [Artículo 102. Después de dictar sentencia, el Juez o Magistrado mantendrá su competencia sobre el proceso para dictar todas aquellas mediada que, según fuere el caso, garanticen el uso, goce y disposición de los bienes por parte de los despojados a quienes les hayan sido restituidos o formalizados predios, y la seguridad para sus vidas, su integridad personal, y la de sus familias.]
- ³² Mesa Nacional de Organizaciones Afrocolombianas, *Crisis Humanitaria Afrocolombiana: Sin Justicia, Reparación Integral, Verdad y Reparación Colectiva, Evaluación de la Ley de Víctimas y Restitución de Tierras 1448 de 2011, Decreta Ley 4635 de 2011 y de la Política de Respuesta del Gobierno Nacional a la Crisis Humanitaria Afrocolombiana*, abril de 2013. <http://www.choco.org/adjuntos/article/523/INFORME%20LEY%20DE%20VICTIMAS%20Y%20DECRETO%20LEY%20AFRO%202013.pdf>.

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