



# **A LAND TITLE IS NOT ENOUGH**

**ENSURING SUSTAINABLE LAND  
RESTITUTION IN COLOMBIA**

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**AMNESTY  
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*Cover photo:* A plot of land in El Carpintero, Cabuyaro Municipality, Meta Department. Most of the peasant farmers from El Carpintero were forced to flee their homes following a spate of killings and forced disappearances of community members carried out by paramilitary groups in the late 1990s. Many of them have tirelessly sought for years to return to their lands in safety. The Victims and Land Restitution Law (Law 1448), which came into force in 2012, has given them renewed hope that their dream could finally become a reality.

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# GLOSSARY

Bacrim	Criminal gangs (bandas criminales)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERREM	Committees on Risk Evaluation and Recommendation of Measures (Comités de Evaluación de Riesgos y Recomendación de Medidas)
CI2RT	Integrated Intelligence Centre for Land Restitution (Centro Integrado de Inteligencia para la Restitución de Tierras)
CNRR	National Commission of Reparation and Reconciliation (Comisión Nacional de Reparación y Reconciliación)
COLR	Local Land Restitution Operative Committees (Comités Locales de Restitución de Tierras)
ELN	National Liberation Army (Ejército de Liberación Nacional)
ENS	National Trade Union School (Escuela Nacional Sindical)
FARC	Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGAC	Agustín Codazzi Geographical Institute (Instituto Geográfico Agustín Codazzi)
IHL	International humanitarian law
ILO	International Labour Organization
INCODER	Colombian Institute of Rural Development (Instituto Colombiano de Desarrollo Rural)
INCORA	Colombian Institute of Agrarian Reform (Instituto Colombiano de la Reforma Agraria)
NGO	Non-governmental organization
ONIC	National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia)
PCN	Process of Black Communities (Proceso de Comunidades Negras)
RTDAF	Register of Forcibly Dispossessed and Abandoned Lands (Registro de Tierras Despojadas y Abandonadas Forzosamente)
RUPTA	Single Register of Abandoned Rural Properties and Territories (Registro Único de Predios y Territorios Abandonados)
SNARIV	National System for the Attention and Full Reparation of Victims (Sistema Nacional de Atención y Reparación Integral a las Víctimas)
UAF	Family Agricultural Unit (Unidad Agrícola Familiar)
UARIV	Unit for Attention and Reparation of Victims (Unidad para la Atención y Reparación Integral a las Víctimas)
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNP	National Protection Unit (Unidad Nacional de Protección)
URT	Land Restitution Unit (Unidad de Restitución de Tierras)

# METHODOLOGY

This report is the culmination of research conducted in Colombia in 2013 and 2014. For the purposes of this study, Amnesty International delegates visited several regions of the country, including the departments of Cauca, Valle del Cauca, Sucre, Cesar, Magdalena, Atlántico and Meta, as well as the capital Bogotá. The delegates met with a cross-section of Colombian society in both the capital Bogotá and in the regions, including land claimants and their representatives; victims of human rights abuses and violations; representatives of non-governmental organizations (NGOs) working on human rights, including land issues; social and community activists; church organizations; academics; lawyers; Afro-descendant, Indigenous, peasant farmer and women's organizations; and the Office in Colombia of the UN High Commissioner for Human Rights.

Amnesty International delegates also held meetings in Colombia with national and regional state institutions, including the Land Restitution Unit and the Unit for Attention and Reparation of Victims, both in Bogotá and the regions; the Interior Ministry's National Protection Unit; the national and regional offices of the Human Rights Ombudsman; the Colombian Institute of Rural Development; the Office of the Procurator General; the Office of the Comptroller General; the National Centre of Historic Memory; the Office of the Attorney General; the Agustín Codazzi Geographical Institute; the Superior Council of the Judiciary; and the Superintendence of Notaries and Registry Offices. Amnesty International delegates also met with several land restitution judges working in the regions covered by this report.

Amnesty International would like to thank all those who gave their time to talk to the organization's delegates. In particular, Amnesty International thanks the land claimants and victims of forced displacement, and the human rights NGOs accompanying them, who shared their experiences courageously, despite the risks involved. Some of their stories appear in this report.

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# 1. INTRODUCTION

The violent struggle to control territory for economic, military and political reasons, coupled with high levels of rural poverty and the high concentration of land ownership among relatively few owners, has been one of the root causes of Colombia's 50-year-old internal armed conflict. There has been an insatiable appetite amongst numerous actors in Colombia to gain and maintain control over land deemed critical to their varying interests.<sup>1</sup> These actors include the security forces and paramilitaries (either acting alone or in collusion with each other), guerrilla groups, some political and business elites in the regions, drug traffickers and other criminal enterprises.

This has had a devastating impact on the millions of Colombians who traditionally rely on land for their survival, especially Indigenous, Afro-descendant and peasant farmer communities.<sup>2</sup> It has led to the forced displacement of almost 6 million people<sup>3</sup> – nearly 13% of Colombia's population and one of the highest displacement levels in the world – and the illegal acquisition of around 8 million hectares of land,<sup>4</sup> some 14% of Colombia's territory.

Most of those forcibly displaced in the course of the conflict had an association with the land from which they were forced to flee, in that they owned it or had customary rights over it, worked on it individually or communally, or had tenure or possession over it.<sup>5</sup>

Large-scale infrastructure developments and the agro-industrial, agro-fuel and extractive industries, both domestic and international, have frequently benefited from forced displacement and land grabs, through the removal of communities from strategic areas earmarked for exploitation. This displacement has been primarily carried out by paramilitaries often operating in collusion with state security forces. Guerrilla forces have also threatened and killed civilians in the context of exploiting particular economic resources, often driving people from their lands as a consequence.<sup>6</sup>

Displaced communities face a multitude of challenges, not least the loss of their homes and the land on which they lived and worked. Forced displacement and the illegal acquisition of land have involved a plethora of human rights abuses and violations of international humanitarian law, which have often been designed to sow terror to encourage individuals and even whole communities to flee.<sup>7</sup> Such abuses include killings, rape and other forms of torture, enforced disappearances, death threats and abductions.

The need to control territory, and the imposition of economic interests, has at times required the compliance of local populations. This is why those who have tried to make visible these abuses or who seek justice for such crimes, such as trade unionists, human rights defenders, land activists and community leaders, have been targeted for attack.<sup>8</sup>

The failure to bring to justice those suspected of criminal responsibility for forced displacement and the illegal acquisition of land, as well as for related human rights abuses and violations, has contributed to prolonging the conflict, since past and future perpetrators

can remain confident that they will not be held to account for their actions. Impunity for human rights abuses and violations committed in the context of the Colombian armed conflict, regardless of the perpetrator, remains exceedingly high.<sup>9</sup>

Over the years, some Colombian governments have, with varying degrees of commitment, sought to address, at least partly, the vexed issue of land ownership and rural inequality. Yet their attempts to create and promote land reform programmes, including efforts to formalize land ownership, have all failed. Past attempts to promote limited land reform were frequently implemented in the wake of social protest. However, increased social mobilization was in turn met with waves of repression involving the killings of social activists, mostly by paramilitaries, the security forces, and powerful landowning sectors.<sup>10</sup> This violence partly explains why such land reform efforts failed and why levels of land concentration have remained so high.

While a full analysis of the reasons for the failure of land reform in Colombia is beyond the scope of this study, it is clear that the armed conflict has played a direct role in forcibly displacing and dispossessing millions of Colombians, thereby exacerbating the problems associated with land ownership and rural inequality. The issue of land ownership has been particularly complex and difficult to resolve because of the informality of land tenure in Colombia. Fewer than half of peasant farmers have legal titles to their lands, and most land is sold and bought informally.<sup>11</sup> This has been exacerbated by a lack of complete or accurate land registers.

Women in particular have historically lacked ownership of land, despite actively participating in the rural economy together with men, and they continue to face numerous challenges in their efforts to enjoy equal access to land. This report also argues for a gender perspective in land restitution to ensure that women and female-headed households have equal enjoyment of land and access to the land restitution process.

The Victims and Land Restitution Law (Law 1448), an initiative promoted by President Juan Manuel Santos, and which came into force in January 2012, is the latest effort to settle issues around the formalization of land ownership, land restitution and, more generally, of reparation for the victims of the conflict.

The success of the land restitution process will, however, largely depend on whether the Colombian authorities, through Law 1448, are able to guarantee the right of victims of the armed conflict to an effective remedy, a right which lies at the core of international human rights law, and which includes adequate, effective and prompt reparation, including land restitution, for harm suffered.<sup>12</sup>

Land claimants will only be able to enjoy their right to an effective remedy if the authorities can stem the threats against and killings of land claimants and those human rights defenders and land activists accompanying them; ensure that those who return to their lands can sustain themselves economically, with security guarantees and the right to political participation; and effectively address impunity for those suspected of criminal responsibility in forced displacement and associated human rights violations and abuses.

This report is published at a critical time in Colombia's history – when the government and the country's main guerrilla group, the Revolutionary Armed Forces of Colombia (Fuerzas



Armadas Revolucionarias de Colombia, FARC) are engaged in talks designed to put a definitive end to the country's 50-year-old armed conflict. There is a general consensus that these latest negotiations, which have been ongoing since 2012, offer the best chance in over a decade to end the hostilities. The issue of land is one of the central components of the negotiations, and the success or failure of the talks could ultimately rest on the ability of the Colombian state to effectively return land to those victims of the conflict who were forced to abandon or were dispossessed of their lands and homes.

This report therefore examines what progress the authorities have made in implementing the land restitution elements of Law 1448 to ensure that the right of land claimants to an effective remedy is guaranteed. It seeks to place the current land restitution process in the context of previous attempts by Colombian governments to resolve the problems associated with the unequal distribution of land and rural poverty. The report also provides a summary of the national and international legal human rights framework that should be underpinning the efforts of the Colombian state to return illegally acquired land to its rightful occupants and examines in detail the many obstacles that land claimants are still facing in their struggle to return home in a sustainable manner.

The report ends with a comprehensive series of recommendations calling on the Colombian authorities to put in place effective measures to ensure that land claimants and others involved in the land restitution process are effectively protected; that victims can return home in a way that is economically sustainable; that the rights of women claimants and of Indigenous and Afro-descendant communities are upheld; and that the right of victims of the conflict to guarantees of non-repetition are secured by ensuring that those suspected of criminal responsibility for human rights abuses and violations, including forced displacement, are held to account.

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## 2. THE INTERNAL ARMED CONFLICT

**We have never lived in peace... We have always lived with... violence, and we always live with this anxiety, and we have always lived with the armed conflict.**

Land claimant from Meta Department, December 2013

Colombia's ongoing internal armed conflict has pitted the security forces and paramilitaries against guerrilla groups for around 50 years. It has been marked by extraordinary levels of human rights abuses and violations of international humanitarian law (IHL), carried out by all the parties, with civilians by far the main victims. Those most affected by the violence have been Indigenous People and Afro-descendant and peasant farmer communities, as well as human rights defenders, community leaders and trade unionists.<sup>13</sup>

According to the 2013 report *¡Basta Ya! Memorias de Guerra y Dignidad* published by the government's National Centre of Historic Memory (Centro Nacional de Memoria Histórica), between 1985 and 2012 there were almost 220,000 conflict-related killings – 80% of which were of civilians – and at least 25,000 enforced disappearances, mostly carried out by the security forces and paramilitary groups, either acting alone or in collusion with each other. According to the report, some 27,000 people were kidnapped between 1970 and 2010, mostly by guerrilla groups, and more than 5 million people were forcibly displaced between 1985 and 2012. The conflict has also been marked by the use of child soldiers, both by paramilitaries and guerrilla groups, and by widespread sexual violence, mostly against women and girls.<sup>14</sup> The government has officially recognized some 6.4 million victims of the conflict, almost half of whom are women. Forcibly displaced persons account for more than 85% of the total number of conflict-related victims.<sup>15</sup>

Human rights defenders, including community leaders, also continue to face grave dangers. According to the human rights non-governmental organization (NGO) Somos Defensores, more than 70 human rights defenders were killed and over 200 threatened in 2013 alone,<sup>16</sup> while at least 30 human rights defenders were killed and over 100 threatened in the first six months of 2014.<sup>17</sup> Indigenous and Afro-descendant activists, land activists and community leaders were among the victims. According to the Colombian NGO National Trade Union School (Escuela Nacional Sindical, ENS), at least 27 members of trade unions were also killed and 188 threatened in 2013.<sup>18</sup>

These attacks, as well as the theft of sensitive information, ongoing death threats and the misuse of the legal system to bring bogus charges against human rights defenders, undermine the work of human rights organizations and contribute towards creating a climate of fear.<sup>19</sup> The government's various physical protection programmes for human rights defenders and other groups at risk of attack have saved lives. However, the best form of protection remains elusive; namely a demonstrated commitment by the Colombian state that it will not tolerate human rights abuses and violations, and that it has the political will to bring to trial those suspected of criminal responsibility in such crimes.

The ongoing peace process taking place in Havana, Cuba, between the government and the FARC offers the best chance in over a decade to put an end to the hostilities. It holds out the hope that most, if not all, of the human rights abuses and violations that have characterized the conflict will be consigned to the past. However, human rights must be a central component of the peace negotiations. An effective and long-lasting peace will not be possible without a verifiable commitment from both sides in the conflict to fully respect human rights and IHL, and to guarantee the right of victims of the armed conflict to truth, justice and reparation.

## THE PARTIES TO THE ARMED CONFLICT

### The armed forces

There have been numerous reports, including from Amnesty International, documenting the direct responsibility of members of the security forces in human rights violations and their collusion with paramilitary groups.<sup>20</sup> These abuses, including extrajudicial executions, continue today, albeit to a lesser degree than in previous years. The Office of the Attorney General has registered more than 4,000 extrajudicial executions carried out by the security forces going back several decades.<sup>21</sup>

### Paramilitary groups

Paramilitaries have their origin in civilian "self-defence" groups created by the army in the 1970s and 1980s to act as auxiliaries during counter-insurgency operations.<sup>22</sup> Although they were outlawed in 1989 because of concerns about serious human rights violations, these groups continued to grow in the 1990s and early 2000s and to operate in close co-ordination with the security forces. The main role of paramilitaries was to carry out the "dirty war" tactics of the armed forces' counter-insurgency strategy, characterized by systematic and widespread violations of human rights. Growing international scrutiny of human rights violations committed by the security forces prompted the Colombian armed forces to delegate such tactics to auxiliaries, namely the paramilitaries. Despite the fact that paramilitaries supposedly demobilized in a government-sponsored programme that began in 2005, such groups continue to operate, sometimes in collusion with or with the consent of some sectors of the security forces. The government refers to such groups as criminal gangs (*bandas criminales*, or *Bacrim*) and does not acknowledge them as parties to the conflict.

### Guerrilla groups

The first of the guerrilla groups emerged in the 1950s. Armed groups linked to the Communist and Liberal parties were driven into remote parts of the country and were the nucleus of the largest guerrilla group, the FARC. Over the decades, the guerrillas created extensive strongholds, principally in rural areas, but in recent years they have been driven back. Guerrilla groups, notably the FARC and the smaller National Liberation Army (Ejército de Liberación Nacional, ELN) are responsible for widespread human rights abuses and violations of IHL.<sup>23</sup>

## FORCED DISPLACEMENT AND THE ILLEGAL ACQUISITION OF LAND

Each year, hundreds of thousands of women, men and children join the millions of people forcibly displaced in Colombia. The incidence of displacement in Colombia is one of the highest in the world. The phenomenon has been widespread and systematic and, as such, a crime against humanity. Almost 6 million people have been forced to flee their homes – nearly 220,000 in 2013 alone<sup>24</sup> – and seek refuge elsewhere in the country; hundreds of thousands more have fled to neighbouring countries.

According to official figures, it is estimated that around 45% of forcibly displaced households are headed by a woman (compared with 30% of households in the country as a whole). Some 93% of forcibly displaced persons are from rural or semi-rural areas, which amounts to more than 20% of the total rural population, while over 10% are from Afro-descendant or Indigenous communities.<sup>25</sup>

The reasons people are forced to flee vary. However, the one overwhelming factor is the continuing armed conflict. Historically, the security forces' counter-insurgency strategy has been largely based on the premise that those living in conflict areas are their enemies, simply because of where they live. Guerrilla and paramilitary groups have also viewed communities in conflict areas as either their allies or their enemies. They too have failed to respect the right of civilians not to be dragged into the conflict. However, forced displacement in Colombia is not simply driven by military confrontation between armed actors; economic and political interests are a major factor.

For Indigenous Peoples, Afro-descendant communities and peasant farmers, whose identities and livelihoods are intimately linked with the land on which they live and work, the trauma of displacement has been particularly acute.

Some of those who flee are accidental victims of the conflict who found themselves in the wrong place at the wrong time. Others have been targeted as part of a deliberate policy to remove people from areas believed to be of strategic importance or under "enemy" control. Still others have been forced to leave their lands because of the rich resources they hold; forcibly removing the inhabitants and expropriating their lands opens up the possibility of large profits for those willing to commit human rights abuses. It is precisely for this reason that Indigenous, Afro-descendant and peasant farmer communities, many of whom live in areas which have been earmarked for large economic projects, such as mineral and oil exploration, agro-industrial developments or hydro-electric installations, have been so badly affected.

Although women are generally not directly involved in the hostilities, they are the most affected by the trauma of displacement. Some of them are recently widowed, and have been forced to flee their rural homes with their children, abandon their livestock and possessions, and take precarious refuge in shanty towns surrounding towns and cities. More than half of all internally displaced persons are women. Many displaced women have themselves subsequently become leaders and spokespersons for their families and communities. This has often increased their level of risk and led to threats and attacks against them. Some have even been rejected by their families and communities for adopting leadership roles not deemed appropriate for women.

Forcibly displaced women are also at far greater risk of being sexually abused, raped or forced into prostitution because of their particular social, psychological and economic condition. The particular risks of rape and other forms of sexual violence that displaced women face, especially women from Indigenous, Afro-descendant and peasant farmer communities, was acknowledged by Colombia's Constitutional Court in its Judicial Decision 092 (Auto 092) of 2008. While on the move and once they have settled elsewhere, displaced women face serious barriers that prevent them from accessing goods and services in a climate where they are often stigmatized and their access to resources and protection may be determined by whether or not they provide sexual services.

Colombia is also home to dozens of distinct Indigenous Peoples, many of whom live in areas where the conflict is most intense and which are rich in biodiversity, minerals and oil, such as in the departments of Nariño, Chocó, Cauca and Valle del Cauca, La Guajira, Córdoba, Vichada, Putumayo, Risaralda, Caldas, Arauca, Boyacá, Casanare, Meta and Guaviare. They are thus at particular risk from the conflict and displacement that threaten their way of life and, in some cases, their very survival. In 2009, the Constitutional Court issued a ruling on the rights of Indigenous Peoples displaced by the conflict – Judicial Decision 004 (Auto 004) of 2009. The Court linked forced displacement with the extinction of Indigenous Peoples and urged the government to prevent such displacements and to pay particular attention to displaced Indigenous communities.

Afro-descendant communities have also faced discrimination and social exclusion, with many communities forced to flee from their collectively owned territories. In 2009 the Constitutional Court issued Judicial Decision 005 (Auto 005) of 2009, which examined the situation faced by Afro-descendant communities in relation to their forced displacement who, like Indigenous People, are “subjects with special constitutional protection” in Colombia.<sup>26</sup> In Auto 005 the Court concluded that the rights of Afro-descendant communities forcibly displaced by the conflict were being “massively and continuously ignored” and called on the authorities to take concrete measures to address this failure.<sup>27</sup>

The sheer scale of forced displacement – in which whole towns were abandoned – facilitated the whole-scale theft of land and other assets since there was literally no one left to defend their property. After families and even whole communities were forced to flee, armed actors and others simply occupied their land.

Land has been illegally acquired through various means, including violently, through threats and killings; through the irregular assignment of state-owned lands (*baldíos*) by corrupt notaries and other public officials; through economic pressure, such as the destruction of crops and the blocking of basic services such as water; socially, by repopulating lands with outsiders, the co-option of community leaders and the setting up of competing and hostile community organizations; and by simply threatening landholders to sell their land at a low price, often to paramilitary frontmen, known as “straw men” (*testaferros*), or directly to paramilitaries.<sup>28</sup> On some occasions, purchasing the land was not necessary since the victim did not possess a land title. Victims of forced displacement have also sold their lands to others at a low price as a means to survive in circumstances where they no longer had the means to sustain themselves on their property. In this scenario the purchaser may have had no involvement in the forced displacement, nor set out to derive benefit from the forced displacement, although the low price often paid for the land may be considered a benefit. In

many other cases, forcibly displaced people have occupied lands abandoned by the original owners, who themselves were forced to leave because of the armed conflict.

Forced displacement often pushes down the price of land allowing firms and individuals to buy it cheaply, at least in those cases where the original occupants were in possession of land titles. In other cases, lands may have simply been acquired following forced displacement and sold on to third-party business interests.

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## 3. LAND REFORM AND RESTITUTION: THE LEGAL FRAMEWORK

### In Colombia, it is very easy to dispossess peasant farmers from [their] lands

Woman land claimant and land activist, Magdalena Department, December 2013

Land is the most important resource for rural communities in terms of fulfilling their economic, social and cultural rights, including their rights to food, water, work and housing. There is no specific “right to land” in international law, except for Indigenous People. However, the right to property, and the right not to be deprived of it, is enshrined in the Universal Declaration of Human Rights (UDHR)<sup>29</sup> and in the American Convention on Human Rights,<sup>30</sup> although this does not mean that individuals have a human right to land in and of itself. There are, however, a number of related human rights, such as the right to an adequate standard of living and the right to adequate housing, work, health and food, which are enshrined in international human rights treaties.

Many of these human rights cannot be enjoyed by rural communities without them having access to land. Access to land is, therefore, closely linked to the ability of subsistence farmers to satisfy these fundamental rights and is essential for the day-to-day survival and wellbeing of such communities.

Colombia has ratified and is therefore bound by a number of international human rights instruments that affirm the rights noted above, including the American Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Indigenous and Tribal Peoples Convention of the International Labour Organization (ILO Convention 169).

In this respect, General Comment No.4 of the ICESCR Committee states that “increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement”.<sup>31</sup>

Moreover, the potential explicit right to land is an issue that in the last few years has been explored by some inter-governmental bodies. For example in 2012, the UN Human Rights Council Advisory Committee published a final study on the advancement of the rights of peasants and other people working in rural areas, including a draft Declaration, which is currently under discussion. Article 4 of the draft Declaration, on the right to land and territory, proposes that “[p]easants have the right to own land, individually or collectively, for their housing and farming”.<sup>32</sup>

Under international law, women have equal rights to men including in terms of access to land. CEDAW, for example, states that women should have “equal treatment in land and agrarian reform as well as in land resettlement schemes”.<sup>33</sup> CEDAW also states that men and women have the same rights “in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property”.<sup>34</sup>

Colombia’s 1991 Constitution acknowledges the importance of land ownership for peasant farmers, noting that the state has a duty to “promote the progressive access to land ownership by agrarian workers, individually or through an association, and to education, health, housing, social security, recreation, credit, communications, marketing of products, technical and business assistance services in order to improve income and the quality of life of peasant farmers”.<sup>35</sup>

Although there are fundamentally binding rights to property, there are no legally binding international instruments that guarantee land restitution for forcibly displaced communities. However, all victims of human rights violations have a right to an effective remedy. This right has been recognized by a number of international and regional human rights treaties, including the UDHR, ICCPR, ICESCR, CEDAW and the American Convention on Human Rights, as well as by customary international law. The right to an effective remedy includes the right of victims to adequate, effective and prompt reparation for harm suffered.

Reparation, as defined by the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Principles on the Right to a Remedy), consists of measures designed to repair the harm caused to victims of human rights abuses and violations and should, essentially, remove the consequences of the violation and, as far as possible, restore those who have been affected to the situation they would have been in had the abuse or violation not taken place. There are five categories of reparation – restitution, including the return to one’s place of residence and the return of property; compensation; rehabilitation; satisfaction; and guarantees of non-repetition, including measures to guarantee that those responsible for human rights abuses and violations are prosecuted.<sup>36</sup>

But, as stated above, there are also a number of fundamental human rights that cannot be enjoyed unless rural communities, including those who have been displaced, have access to land. Over the last few decades, many of these rights have been restated in UN principles that offer states a blueprint for effectively addressing land, property and housing restitution for victims of forced displacement.

The 1998 Guiding Principles on Internal Displacement, known as the Deng Principles, state that the “[c]ompetent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country”.<sup>37</sup>

The Deng Principles also state that the “[c]ompetent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions they left behind or were dispossessed upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation”.<sup>38</sup>

As noted above, the UN Principles on the Right to a Remedy note that “victims of gross violations of international human rights law or serious violations of international humanitarian law<sup>39</sup> should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation... which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”.<sup>40</sup> Restitution includes, among other things, the right to “return to one’s place of residence, restoration of employment and return of property”.<sup>41</sup>

The 2005 Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the Pinheiro Principles, state that “all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal”.<sup>42</sup>

The Pinheiro Principles also outline a series of additional rights to be enjoyed by refugees and displaced persons, such as “the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution”, including “to legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property”.<sup>43</sup> The Pinheiro Principles affirm the right to adequate housing;<sup>44</sup> to voluntary return in safety and dignity;<sup>45</sup> and the right to adequate consultation and participation in decision-making.<sup>46</sup> They additionally make reference to the rights of tenants and other non-owners<sup>47</sup> and of secondary occupants,<sup>48</sup> important rights in the context of Colombia’s high levels of land informality and the fact that many landholdings have multiple claimants, many of whom are victims of human rights abuses.

The right to adequate housing is enshrined in the ICESCR, which notes that state parties must “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.<sup>49</sup> Thus, General Comment No.4 of the ICESCR Committee states that “[t]he human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights”.<sup>50</sup>

The importance of land reform as a means to guarantee the sustainability of land tenure has some backing in guidelines issued by inter-governmental organizations. For instance, the

Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, issued by the UN Food and Agriculture Organization in 2012,<sup>51</sup> state that “[i]n the national context and in accordance with national law and legislation, redistributive reforms may be considered for social, economic and environmental reasons, among others, where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land, fisheries and forests”.<sup>52</sup>

The Voluntary Guidelines also state that “[w]here States choose to implement redistributive reforms, they should develop policies and laws, through participatory processes, to make them sustainable. States should ensure that policies and laws assist beneficiaries, whether communities, families or individuals, to earn an adequate standard of living from the land, fisheries and forests they acquire and ensure equal treatment of men and women in redistributive reforms”.<sup>53</sup>

## LAND REFORM

Concentration of land ownership in Colombia is one of the highest in the world – just over 1% of landholders own over half of the country’s agricultural lands, while smallholders, mostly poor peasant farmers who make up more than three-quarters of all landholders, occupy a relatively small portion of all agricultural land; just over 10%.<sup>54</sup> In a 2011 report on Colombia, the United Nations Development Programme (UNDP) noted that “Colombia registers one of the highest levels of inequality in rural property in Latin America and the world. This is the consequence of a historical process, of public policies, of the operation of market forces, of drug trafficking and of the activities of illegal armed groups”.<sup>55</sup>

This inequality, and the rural poverty it has engendered, has been one of the major causes of the ongoing armed conflict. Much of the forced displacement of almost 6 million people was designed to facilitate land grabs by large landowners and powerful businesspeople (many with links to armed groups, principally paramilitaries), as well as by drug traffickers and paramilitary groups. Guerrilla groups are also responsible for land grabs, but to a lesser degree.

Over the last 50 years there have been several attempts to address the problem of land inequality, including Law 135 of 1961, which had three main objectives: to allocate land and titles to peasant farmers via the purchase of plots of land; to adapt these lands so that they became productive; and to provide basic social services to those working the land.<sup>56</sup>

Several institutions were created under Law 135, including the Colombian Institute of Agrarian Reform (Instituto Colombiano de la Reforma Agraria, INCORA). Its role was, in part, to allocate state-owned lands – often unused lands or wastelands – known as *baldíos* to landless peasant farmers and to provide the means for them to work the land. INCORA was replaced by the Colombian Institute of Rural Development (Instituto Colombiano de Desarrollo Rural, INCODER) in 2003 via Decree 1300. Law 135 also defined the Family Agricultural Unit (Unidad Agrícola Familiar, UAF), a unit of measurement equal to the amount of land needed by a family to ensure their livelihood.

In 1994, Law 160 was enacted to promote the development of the peasant farming economy by empowering INCORA, through the state Agrarian Bank, to provide subsidies – set at 70% of the value of the land with loans for the remaining 30% – to enable landless peasant

farmers to buy land. The purchase of *baldíos* was limited to 1 UAF per family to prevent the further concentration of land ownership. Credit was provided to enable the purchase of materials and livestock needed to work the land. According to INCODER, 500,000 *baldíos* covering 19 million hectares of land were transferred to peasant farmers between 1960 and 2012.<sup>57</sup> Law 160 also enabled some women to obtain land; specifically women who were heads of households, victims of the conflict, widows, and those who had been abandoned by their partners.

However, no effective protection strategies were put in place, and many of the families who benefited from Law 160 were forced to abandon their lands soon after because of threats and killings, mainly by paramilitaries, either acting alone or in collusion with the security forces. Many of the economic support measures envisioned in Law 160 were also not implemented, such as credits for making the land productive, while many beneficiaries were unable to service the debts they had incurred as part of Law 160. So while many peasant farmer families had access to land, they lacked the resources to make their tenure sustainable. This was exacerbated by the poor quality of much of the land that was distributed by INCORA.

The combination of violence and the lack of means to survive on the land or service their debts forced many families to leave. Many of the lands that were abandoned or dispossessed<sup>58</sup> from these communities were subsequently illegally acquired by local and regional businesspeople, as well as by paramilitaries and drug traffickers, often with the assistance of corrupt public officials, including INCORA employees and notaries.<sup>59</sup>

## LAND RESTITUTION

Colombia's Constitutional Court has repeatedly asserted the rights of forcibly displaced women and men – including peasant farmers and people of Indigenous and Afro-descendant communities – to land, housing and property restitution.<sup>60</sup>

There have been several legislative efforts to facilitate access to land for those forcibly displaced as a result of the conflict. In 1995, for example, INCORA issued Agreement 018, which modified Law 160 by permitting the allocation of land to those displaced by violence,<sup>61</sup> while Law 387 of 1997 broadened the subsidy programme for the purchase of land, as stipulated by Law 160 of 1994, to include displaced communities.

Law 387 also ordered INCORA to design and implement a register of lands abandoned as a consequence of the armed conflict – the Single Register of Abandoned Rural Properties and Territories (Registro Único de Predios y Territorios Abandonados, RUPTA) – and to inform the relevant authorities so that they could embargo such lands to prevent their transfer or sale without the express wish of the rightful occupant.<sup>62</sup> Law 387 additionally called on the government to design and implement a national action plan for the displaced population, including measures to provide legal assistance to displaced people to guarantee the restitution of their rights.<sup>63</sup>

In 2002, Laws 785 and 793 enabled INCORA, and subsequently INCODER, to hand over rural lands confiscated from drug traffickers and money launderers by the National Narcotics Department (Departamento Nacional de Estupefacientes, DNE) to peasant farmers. By 2012 only around 36,000 hectares of confiscated rural lands had been handed over to around

2,800 families under this mechanism, and this included around 4,000 hectares which were handed over to 460 members of illegal armed groups and their families.<sup>64</sup>

Law 975 of 2005 – the Justice and Peace Law – which allowed thousands of paramilitaries to demobilize in return for reduced prison sentences, also stipulated that paramilitaries return to their rightful occupants land and property they had misappropriated in the course of the conflict. This land restitution mechanism was administered by the now defunct National Commission of Reparation and Reconciliation (Comisión Nacional de Reparación y Reconciliación, CNRR) created under Law 975. However, much of the land acquired illegally by paramilitaries was not handed over to the rightful occupants. Moreover, many paramilitaries failed to demobilize, while at the time of writing only 63 have been sentenced for human rights violations almost a decade after the law came into effect.

In fact, much of the land illegally acquired by paramilitaries was never declared by them, despite this being a legal requirement under the terms of Law 975. Furthermore, the falsification of land registry documents by public officials collaborating with paramilitaries or acting under duress has meant that much of the land illegally acquired by paramilitaries has never been identified.

The failure of the state to prevent forced displacement led the Constitutional Court to issue several rulings, including Sentence T-025 in 2004, which concluded that state policy on displacement amounted to an “unconstitutional state of affairs”. In 2005, the government developed a national action plan to address some of the concerns raised by the Constitutional Court,<sup>65</sup> including measures to promote access to land and land restitution, as well as the formalization of land ownership.<sup>66</sup> However, since its T-025 ruling the Constitutional Court has repeatedly criticized the Colombian authorities for failing to implement its orders with respect to the displaced population,<sup>67</sup> including on issues relating to access to land, and for failing to provide the necessary information to the Court to enable it to better evaluate the level of compliance with T-025.<sup>68</sup>

In 2007, the government of Álvaro Uribe enacted the Statute of Rural Development, which sought to reverse the direction of previous land reforms, notably Law 160, by promoting the market as the principal mechanism for distributing land.<sup>69</sup> However, in 2009 the Constitutional Court ruled that the Statute was unconstitutional because the right of Indigenous communities to prior consultation had not been respected.<sup>70</sup>

Under President Juan Manuel Santos, agricultural policy has been closely associated with recent efforts to end the armed conflict and to promote the related issues of victims’ rights and land restitution and to provide legal security to those investing in agro-industrial and other economic projects on rural lands. The Victims and Land Restitution Law (Law 1448) can only be understood in this context. But it must be stressed, however, that Law 1448 is not per se a land reform, but simply a mechanism to return some illegally acquired lands to their rightful occupants and to give these occupants legal ownership over these lands, as well as to provide other forms of reparation to some victims of the conflict.

Regardless, Law 1448 was clearly viewed by the authorities as a necessary first step to convince the FARC to enter into peace negotiations, although the arguably more thorny issue of land reform itself has been left to the negotiating table. In May 2013, the two sides

reached a partial agreement on land reform, including on access to and formalization of land, rural development, and poverty eradication. The details of the partial agreement were made public in September 2014.<sup>71</sup> What is clear is that the long-term viability of a peace agreement will partly depend on the ability of the two sides to agree to measures that will effectively address the “land question”.

All efforts thus far to address land inequality have failed, mainly because little has been done to change the structure of land ownership in Colombia, with large tracts of land remaining mostly in the hands of the few, and to address the endemic corruption that has plagued efforts to redistribute land. These efforts served only to enrich those responsible for managing such schemes, for example INCORA/INCODER personnel and notaries responsible for issuing land titles. Corrupt officials often handed over state-owned land meant for peasant farmers to landowners, companies, illegal armed groups and corrupt politicians and businesspeople. Many notaries were responsible for “legalizing” lands bought from peasant farmers for below-market rates and through often violent pressure, or legalizing the transfer of ownership of land which had, because of the conflict, been abandoned or its occupants forcibly displaced. In some cases, landowners evicted the peasant farmers working on their land to prevent them claiming ownership over it.<sup>72</sup>

Above all, the conflict has served to further concentrate land ownership. Much of this illegally acquired land, which was often obtained violently or sold under duress, has been used by these actors for large-scale mining, agro-industry, ranching and farming. This, coupled with the difficulties in making a sustainable living from farming, has had a devastating impact on rural dwellers and partly explains why those living in the countryside cannot sustain themselves. According to official statistics, 57.5% of the rural population remain poor and 23% continue to live in extreme poverty, compared with 34.4% and 9.4% respectively of the urban population.<sup>73</sup>

## TERRITORIAL RIGHTS FOR INDIGENOUS AND AFRO-DESCENDANT COMMUNITIES

Indigenous and Afro-descendant communities have an attachment to their land that transcends its productive value. As such, there has been an acknowledgement, in both international and national law, that these communities have special rights over the lands they inhabit.<sup>74</sup> Colombia’s 1991 Constitution recognizes the country’s ethnic and cultural diversity,<sup>75</sup> and asserts that the communal lands of “ethnic groups”, that is Indigenous Peoples and Afro-descendant communities, are “inalienable, inextinguishable and immune from seizure”.<sup>76</sup>

The right of Indigenous People in Colombia to their ancestral lands, and the *Cabildo* (Indigenous Council) as the maximum political authority within their territories, dates back to the Colonial era, and legislation recognizing their right to land was first enacted in the 19th Century.<sup>77</sup> However, the right of Afro-descendant communities to collective ownership over their ancestral lands, and recognition of the Community Councils (*Consejos Comunitarios*) as their maximum authority, was not legislated on until the enactment of Law 70 in 1993.<sup>78</sup>

According to official figures, there are nearly 1.4 million Indigenous People in Colombia, around 3.4% of Colombia’s total population.<sup>79</sup> The authorities recognize 85 distinct Indigenous groups, although the National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, ONIC) puts the number at 102. More than 70% of

Indigenous People live in rural areas, many in the more than 700 reservations (*resguardos*) that have been allocated by the state, covering more than 30 million hectares of land, which is around 27% of the national territory.<sup>80</sup> However, almost half a million Indigenous People do not live in reservations and do not have official recognition of their collective land rights. There are also over 4 million Afro-descendants, around 10% of the total population,<sup>81</sup> mostly living in coastal areas. The state has granted some 170 collective land titles to Afro-descendant communities covering more than 5 million hectares of land.<sup>82</sup>

Because of Indigenous Peoples' spiritual and cultural attachment to their ancestral lands or territories, international treaties and instruments recognize that such communities have special rights over their ancestral lands and the development of these lands.

The 2007 UN Declaration on the Rights of Indigenous Peoples, which is not legally binding but does carry significant legal weight, states: "1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned".<sup>83</sup> The Declaration was finally endorsed by Colombia in April 2009; Colombia had originally abstained when the Declaration was adopted by the UN General Assembly in 2007.

ILO Convention 169 on Indigenous and Tribal Peoples, which is a legally binding treaty, also asserts, among other things, the right of Indigenous Peoples to the lands they traditionally occupy<sup>84</sup> and calls on governments "to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession."<sup>85</sup> ILO Convention 169 was ratified by the Colombian state in 1991.<sup>86</sup> In 2003, Colombia's Constitutional Court ruled that ILO Convention 169 was also applicable to Afro-descendant communities.<sup>87</sup>

ILO Convention 169 also obliges states to consult Indigenous and tribal people on issues which affect their rights, with the aim of seeking their consent or agreement.<sup>88</sup> The right of Indigenous Peoples and Afro-descendant communities in Colombia to prior consultation, including over how their territories and natural resources are developed, has been enshrined in Colombian law through several Constitutional Court rulings and government decrees.<sup>89</sup>



## 4. LAW 1448 OF 2011: THE VICTIMS AND LAND RESTITUTION LAW

**We have been fighting all the time for the land and we will continue to fight.**

Land claimant from Magdalena Department, November 2013

President Juan Manuel Santos signed off on the Victims and Land Restitution Law (Law 1448) on 10 June 2011, and its provisions came into force on 1 January 2012. The government issued several other related decrees, including on reparation for Indigenous and Afro-descendant communities, which are not covered by Law 1448. The government has presented Law 1448 as a mechanism to facilitate the gradual reparation of victims of the conflict, including the return to the rightful occupants of millions of hectares of land that was illegally acquired, mostly from peasant farmers and Indigenous and Afro-descendant communities.<sup>90</sup> As stated earlier, this report will only examine those aspects of the law relating to land restitution.

It should be noted that regardless of the many weaknesses that this report will identify, Law 1448 is still, undeniably, a significant step forward in efforts to ensure respect for victims' right to reparation. Crucially, it acknowledges the existence of an internal armed conflict, which the government of President Álvaro Uribe (2002-2010) failed to do. In so doing, the government was, by extension, acknowledging that in Colombia there were victims of the conflict and that such victims possessed human rights, including the right to full reparation, which had to be respected. Law 1448 also encompasses other advances, such as the inclusion of differential measures, including on physical security provisions, designed specifically for groups and communities at particular risk of human rights abuses and violations, such as women, survivors of sexual violence, land claimants and human rights defenders.

### THE INSTITUTIONAL FRAMEWORK OF LAW 1448

Law 1448, which the government claims is unique in that it applies transitional justice mechanisms during an ongoing armed conflict, created a complex institutional framework, combining administrative and transitional justice mechanisms, for delivering reparation, including land restitution, to victims. These mechanisms include the Unit for Attention and Reparation of Victims (Unidad para la Atención y Reparación Integral a las Víctimas, UARIV), which is responsible for co-ordinating the implementation of full reparation to victims of the

conflict; the Special Administrative Unit for Managing the Restitution of Dispossessed Lands (Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, UAEGRTD), also known as the Land Restitution Unit (Unidad de Restitución de Tierras, URT), which is responsible for implementing the administrative phase of the land restitution process; the restitution judges and magistrates, who are responsible for the judicial phase of the land restitution process; and the National Centre of Historic Memory (Centro Nacional de Memoria Histórica), the successor to the CNRR and which is responsible for collating information on conflict-related violence as part of the state's obligation to provide full reparation for victims.

These institutions, as well as other national, regional and local state and governmental bodies that have a role to play in the implementation of the reparation process, make up the National System for the Attention and Full Reparation of Victims (Sistema Nacional de Atención y Reparación Integral a las Víctimas, SNARIV), also created under Law 1448, and which is co-ordinated by UARIV.

Law 1448 states that the land restitution process must be implemented “gradually and progressively... taking into account the security situation, the historic density of [land] dispossession and the existence of conditions to return”.<sup>91</sup> Land restitution, as well as reparation generally, will therefore be implemented over a 10-year period, through a process that will prioritize for land restitution specific geographical areas. Certain areas are excluded from the land restitution process under Law 1448, such as Indigenous and Afro-descendant collective territories, and forestry reserves. The decision on which areas of the country to prioritize (a process known as macro-focalization) is taken by the state's National Security Council, based on information provided by the Defence Ministry and on the three criteria noted above.<sup>92</sup> As of 30 June 2014, there were 14 macro-focalized areas covering 16 departments.<sup>93</sup> Land restitution can only be considered in those areas that have been macro-focalized.

The URT is responsible for identifying which municipalities or hamlets or even individual farms within the macro-focalized areas will actually be subject to restitution (in a process known as micro-focalization). However, the decision on whether to micro-focalize a particular area has to be approved by so-called Local Land Restitution Operative Committees (Comités Locales de Restitución de Tierras, COLR), made up of representatives from the URT, the Office of the Procurator General and the Defence Ministry. The COLR makes a decision on whether to micro-focalize an area on the basis of security information provided by the Defence Ministry's Integrated Intelligence Centre for Land Restitution (Centro Integrado de Inteligencia para la Restitución de Tierras, CI2RT). The CI2RT includes, among others, representatives from the armed forces, the police and the security services. The URT is not authorized to initiate land restitution processes in a particular area unless it is authorized by the COLR.

The land restitution process envisioned in Law 1448 involves a three-stage process, which combines administrative, judicial and post-sentence phases.

#### ADMINISTRATIVE PHASE

This is implemented by the URT through its 21 regional offices. The URT is responsible for deciding on the admissibility of a land restitution claim and for processing it once it has been

accepted. According to Law 1448, claims can only be registered and processed if they meet several strict criteria, notably that the claim relates to land in areas of the country that have been prioritized for restitution (areas that has been micro-focalized), that the claim is related to the conflict, that the forced displacement and abandonment or dispossession of the land took place after 1991, and that the claimant was either an owner (*propietario*), landholder (*poseedor*) or occupant (*ocupante*) of the land he or she is claiming.<sup>94</sup>

The administrative phase begins once an individual victim or a community makes a claim to the URT. The URT then has 10 days to decide whether the claim meets the criteria outlined above. If the claim meets the criteria, the URT opens a file on the claim, which includes basic information about the claimants, any evidence and documentation they can provide on the land they are claiming and information on the abandonment or dispossession of the land. The URT then has 60 days, which can be extended by a further 30 days, to investigate the case and carry out the necessary information and evidence gathering. After this, a decision is made whether or not to include the case in the Register of Forcibly Dispossessed and Abandoned Lands (Registro de Tierras Despojadas y Abandonadas Forzosamente, RTDAF), which is managed by the URT. The administrative phase ends once a restitution claim has been included in the RTDAF by the URT.<sup>95</sup>

#### JUDICIAL PHASE

The URT, or lawyers sub-contracted by the URT, prepare a judicial action for restitution that is presented to the restitution judge for judicial adjudication. There are 39 restitution judges around the country. If there is no opposition to the claim, that is, there is no third party claiming ownership over the same piece of land, then the restitution judge will issue a ruling granting the claimant legal ownership over that land and ordering a variety of additional measures to ensure that the claimant's right to full reparation is respected. Such measures can include orders to improve basic services and infrastructure in the area, such as roads, water and energy, as well as debt and tax relief, and subsidies and credit for agricultural projects and housing.

There are cases when a third party, who may be living on or working on the land being claimed, or who may simply claim ownership over it, may challenge the claim. Such challengers are referred to under Law 1448 as opponents (*opositor*). Opponents can be individuals (such as victims of forced displacement who settled on land originally occupied by other victims) or peasant farmers who moved into the area. Opponents can also be individuals who were responsible for the forced displacement of the claimant, straw men brought in by paramilitaries, or businesses with economic projects on the land.

The law stipulates two types of opponents – good faith and bad faith opponents. Good faith opponents must prove that they bought or occupy the land “in good faith” without culpability, that is, they did not or could not have known that the land had been acquired illegally, that it was the object of forced abandonment or dispossession, and that if they bought the land that they paid a fair price for it. If an opponent can prove that they acted in good faith, he or she will be compensated for the loss of the land. If an opponent cannot prove that they acted in good faith, then they are defined as bad faith opponents and have no right to compensation. Those land restitution cases in which opponents challenge a claim are passed on by the restitution judge to the restitution magistrates, of which there are 15

around the country, for adjudication. Judges and magistrates have a deadline of four months to rule on individual cases.

The judicial phase applies a transitional justice model that, unlike in ordinary justice systems, reverses the burden of proof. In theory, this has meant that the burden of proof to demonstrate ownership in good faith falls instead on the third party, that is, the opponent, regardless of whether or not they are also victims, straw men or a business.

In considering their decision, the judges must adopt a presumption of credibility and treat as reliable the evidence collected and provided by the URT. In cases where there is no opponent the judge must make a judgment based only on the evidence provided by the URT, but in cases where there is opposition a judge has the right to request additional information. The parties in a judicial process must also be assisted by a lawyer who defends their interests. In the case of claimants, but not opponents, legal representation is provided by the URT, either by the URT's own lawyers or by sub-contracted lawyers, generally from human rights NGOs. Opponents may hire private counsel, but since most opponents are peasant farmers, they have lacked the financial resources to do so. The Office of the Human Rights Ombudsman has initiated a legal aid programme for opponents who cannot pay for a lawyer, but the programme is still at a very early stage.<sup>96</sup>

#### POST-SENTENCE PHASE

Several state institutions including the URT, UARIV and restitution judges and magistrates are responsible for ensuring the rulings are implemented. This follow-up role is co-ordinated by SNARIV, as mentioned above. According to Law 1448, the judicial rulings should include not only the material restitution of land, but can also include complementary measures, such as those noted above, to ensure that successful land claimants' right to full reparation and sustainable land restitution is respected.

In the post-restitution phase, INCODER is responsible for *issuing* land titles to any claims relating to state-owned lands (*baldíos*), while the Register of Public Instruments (Oficina de Registro de Instrumentos Públicos) is responsible for *registering* all land titles. The URT is responsible for compensating those third parties who were on claimants' lands in good faith, as well those who cannot return to the land that has been the object of restitution. The URT also has an obligation to implement any orders on tax and debt relief issued by the restitution judges and magistrates, while the UARIV is charged with organizing the return home of successful land claimants. Finally, the local and regional authorities, principally the mayors' and governors' offices, have responsibility for implementing and financing many of the additional complementary measures ordered by the judges, such as basic infrastructure improvements and humanitarian assistance.

#### TERRITORIAL RESTITUTION FOR INDIGENOUS AND AFRO-DESCENDANT COMMUNITIES

The land restitution process for Indigenous and Afro-descendant communities, who have collective rights over their territories, is different to the process for peasant farmers, and is set out in two decrees issued in 2011: Decree Law 4633 for Indigenous People and Decree Law 4635 for Afro-descendant communities. These include measures to guarantee the right of these communities to prior consultation and allow for restitution in territories that are legally recognized – reservations (*resguardos*) in the case of Indigenous communities, and

Community Councils (*Consejos Comunitarios*) in the case of Afro-descendant communities – as well as in ancestral territories, which are not legally recognized.

## CONSULTATION AND CONSENT: WHAT RIGHTS DO COMMUNITIES HAVE?

The right to be consulted about projects and policies that may impact on communities is reinforced by international human rights instruments, including the ICCPR, ICESCR, the Convention on the Elimination of All Forms of Racial Discrimination, and ILO Convention 169.

In the case of Indigenous Peoples, the 2007 UN Declaration on the Rights of Indigenous Peoples (2007 Declaration) requires states to obtain the free, prior and informed consent of Indigenous Peoples in a number of situations in which their rights may be significantly affected. In certain cases – usually relating to land rights – initiatives should not go ahead unless the consent of the community has been obtained. This is because the ability of Indigenous People to maintain their culture and livelihood depends on their relationship to ancestral lands.

However, the Inter-American Court of Human Rights has found that free, prior and informed consent was required in the case of a non-Indigenous community in Suriname because its relationship to its land was essentially the same as that of an Indigenous People.<sup>97</sup> In Colombia, national legislation also lays down requirements for consultation with Afro-descendant communities.<sup>98</sup>

Consultation is a process of substantive dialogue between communities and governments on any measures that may affect them. Governments should address the concerns that such communities have and take proactive steps to ensure that their human rights are fully respected and protected. Timely disclosure of all relevant information about any change that may affect a community and its possible human rights impact is key to a genuine consultation, which has to respect the following principles:

**free:** all dialogue and decision-making structures must be fair and without coercion, manipulation, threat, fear of reprisal, corruption or unequal bargaining power;

**prior:** all dialogue and agreements must take place before any potentially detrimental measures are taken and the communities must be given sufficient time to give their consent, in full respect of their decision-making processes and in accordance with their values and traditions;

**informed:** communities must be provided with full and objective information about all relevant aspects of the measure proposed, in a clear manner that is disclosed in a culturally appropriate way; they also must have the possibility of obtaining independent advice.

The consent of the people is required through their chosen representative structures and decision-making processes. Therefore, decisions need to include everyone in the community, including women and other community members who may be additionally marginalized.

This will ensure that the concerns of communities with regard to measures that could lead to a significant impact upon them can be addressed to the extent possible, and that all possible avenues for mitigating impacts on the rights of communities are explored. Potential impact should be determined, first and foremost,

by the communities themselves and taking into account their vulnerable situation and the history of discrimination against them.

The right of Indigenous Peoples to a process of free, prior and informed consent has been applied by the UN Committee on the Elimination of Racial Discrimination and the UN Human Rights Committee, as well as the Inter-American Court of Human Rights.

The URT's Directorate for Ethnic Affairs (Dirección de Asuntos Étnicos) is responsible for the restitution of the territorial rights of Indigenous and Afro-descendant communities. To be eligible for restitution, territories must meet some of the admissibility criteria in Law 1448 – that the abandonment or dispossession occurred after 1991, that it was caused by the armed conflict, and that the restitution process has to be gradual, that is, that only certain territories will be prioritized (or focalized) for restitution at any one time.

Those communities living in territories that have not been prioritized can request that the URT implements measures (known as precautionary measures) to safeguard the integrity of their territories until such time as they are earmarked for restitution. Such measures are designed to protect these communities from, for example, further incursions by armed groups or exploitation by mining or agro-industrial companies, and thereby prevent further forced displacements and the illegal acquisition of territories.

On the basis of preliminary studies, the URT, in the case of Afro-descendant territories, then decides which cases to prioritize for restitution (through so-called characterization studies) and over which territories to implement precautionary measures. In the case of Indigenous territories, the Permanent Coalition of Indigenous Peoples and organizations (Mesa Permanente de Concertación), which includes Indigenous and state representatives, decides which Indigenous territories to characterize.<sup>99</sup> The characterization process – which must be completed within 60 days – examines the events and context leading up to a community's forced displacement, and the social, cultural, economic and environmental damages to the communities concerned.

In the case of Indigenous territories that have been characterized, the URT activates the "ethnic route" (*ruta étnica*) to ensure that the territories are protected (for example from illegal sales) until such time as the restitution is confirmed by a judge. The ethnic route sets out the process by which state bodies such as the Agustín Codazzi Geographical Institute (Instituto Geográfico Agustín Codazzi, IGAC), the Superintendence of Notaries and Registry Offices, and INCODER will delineate, legalize and register the territories characterized by the URT. In the case of Afro-descendant communities, this process is carried out by the Interior Ministry. Unlike precautionary measures, the ethnic route process is administrative rather than judicial. Once the characterization process has been completed, and a decision taken to proceed with the restitution case, the URT identifies those measures that will need to be implemented to ensure the community's right to full reparation, and incorporates the territory in the RTDAF. The URT then presents the judicial action for restitution to the judge for judicial adjudication.



# LAND CLAIMANTS SPEAK OUT

LAND RESTITUTION  
IN COLOMBIA

## “To achieve peace, there must be truth”

### TRANQUILANDIA

Tranquilandia farm lies in Aracataca Municipality, Magdalena Department. This part of northern Colombia is the birthplace of the Nobel Prize winner Gabriel García Márquez, and the lives of the peasant farmers of Tranquilandia would not be out of place in one of his novels. Yet, in spite of its name – Tranquil Land – for many decades the farm has witnessed killings, forced disappearances and the displacement of those who once lived peacefully on the land, due to the presence of guerrilla forces, paramilitaries and the security forces in the area. Despite these terrible events and the many obstacles they face, some of the peasant farmers now dare to hope that they may one day return: **“You start dreaming about returning to what you once left behind... I never wanted to leave but I ended up having to do so.”**

One of the leaders of the families of Tranquilandia recalls how they came to the land. In 1991 the opportunity to buy Tranquilandia arose from the owner, **“because he was tired of... having to pay taxes to the guerrillas. That is when we began to get ourselves organized... some 340 names were put together to go into a lottery, because only 66 families could go there... The owner of the farm came to an agreement with us so that we could begin to work the land, cultivate it ...as tenant peasant farmers, sow maize, cassava, plantain... The agreement was that he would give it to us as a gift, if we showed him we could work... In '92, an official from INCORA came to us and said we were set to be granted access to those plots of land.”**

In 1996, 66 peasant farmer families created the Association of Agricultural Producers of Tranquilandia

(Asociación de Productores Agropecuarios de Tranquilandia, APAT), and were awarded a collective land title by INCORA for 1,829 hectares. This was later revoked and set to be replaced with individual land titles so that individual families could apply for credit to buy seeds, livestock and equipment. Yet, due to the complexity and expenses involved in registering for a land title, and the fact that some families were forcibly displaced before they could formalize their individual titles, only 12 of the 66 families received an individual land title.

When INCORA originally granted a collective land title to APAT in December 1996, the peasant farmers received a subsidy from INCORA for 70% of the cost of the land and APAT had to pay the remaining 30%, as stipulated in Law 160 of 1994. APAT believes it still owes this debt as the peasant farmers were forcibly displaced and not able to pay it back. One of the peasant farmers recalls that they **“had a loan... what we had to pay was by instalments, so that was up to date, but [then] there was the displacement and we all had to go. And so... the debt to the bank was still owing”**. The lawyers representing the land claimants have made an official request to the restitution judge to cancel the mortgage debt incurred under Law 160.

Several peasant farmers described to Amnesty International how the displacements began. Although the guerrilla and the armed forces had been passing through and occasionally fighting on Tranquilandia land for decades, the impact of the armed conflict became more intense when the paramilitary incursions started in the late 1990s: **“The paramilitary groups started coming in... they forced their way in and took some cattle we had on the farm... At the time they identified themselves as being the La Popa Battalion [Batallón La Popa] [a Colombian army battalion that had been renowned for human rights**





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violations]... they were supposedly looking for my mother and my husband... The confrontations started in Tranquilandia... We were already finding unexploded grenades on our plot.”

The paramilitaries began controlling the area, putting restrictions on the movement of food and the freedom of movement of some peasant farmers: “One year, two years went by, and we were living with the same story of not being able to get out. The one who went was me. I went out but I couldn’t bring back much food because they had already put a limit on us”.

Another peasant farmer remembers: “Then in 2003 [the paramilitaries] took one of my brothers... they took him in front of my mother... we never saw my brother again... At that point we left... I moved to Aracataca, and my father went to Fundación... Everything we had there was lost”.

Among those targeted and killed was the nurse of Tranquilandia farm. Her daughter remembered: “In October 2001... they went into the health post, and... poisoned the water, the rice, everything she had. They destroyed

#### A path running through Tranquilandia

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everything she had in the health post... They destroyed the mattresses, clothes, everything she had there... On 4 January... they came to the entrance again but this time they did not go in. But my mother was afraid and said ‘I’m going to go to Barranquilla for a few days’... She came ... to the bus stop... which is diagonally opposite the police station. As she was waiting for the bus... two guys came up and... shot her six times. They murdered her on 4 January at 7:30 at night.”

Others described incidents of sexual violence: “One friend from one of the farms further up, they raped his wife, [and] a daughter she had who was a young woman... They took the girl, who was about 13 or 14, and they raped her and left her lying there. And they raped his wife. And him... nobody there reported anything [to the authorities].”

The teacher of Tranquilandia recalls: “The few years we spent there were very beautiful times, happy times when the



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**Gate to Tranquilandia farm. The gate is pockmarked with bullet holes due to fighting in the area.**

children went to school, I was their teacher... everyone lived in harmony, until the displacement came and the military groups arrived... I had to sleep for two nights in the woods... because there was a confrontation on my plot of land... you could see the bullets... They threatened us... you were afraid to come into the village... Many friends were murdered like that... I left on 21 October 2001... We started leaving little by little. Until we had all left”.

Many people were killed and forcibly disappeared in the area. One peasant farmer recalled: “Calixto, who is deceased and was a neighbour of ours, was murdered there. He was never found, they threw him into the river. Jorge, the president of the place, is deceased... Jorge’s pregnant wife too... Manuelito, the worker, a man from another farm which was nearer here, they killed him too... the deceased Líder also.”

The forced displacements took place over time: “In that region there were very many confrontations... they happened almost daily... We didn’t make an agreement to leave but gradually we left one by one, some first, others later. Of the 66 plots we had in the lower part, just one person remained. And with such bad luck the army killed him and made out he was a guerrilla who had died in combat... that man was killed in about 2003 or 2004... He was the last, there was no one left there any more, he had stayed on his own. They killed the last one. A vast number of people were killed there.”

Following the forced displacements, new peasant farmer families arrived at Tranquilandia with the support of the paramilitary umbrella organization, the United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia, AUC). Those new families sought legal ownership over the lands in Tranquilandia and convinced INCODER that the previous occupants had left the area voluntarily. As such, from 2005, INCODER began assigning the plots of land to these new families. One peasant farmer displaced from Tranquilandia explains: “The people who are there sent a written report to INCODER saying that nothing had happened in Tranquilandia, that we had left because we wanted to... In my case, a father with four children, with a wife, ten years of work striving all the time, with a well-built house... They even put a bomb in [my house], they burned it down. My sister-in-law... they told her ‘get out, widow, because we are going to kill you’ – it was the turn of the poor widow. Within the year she too had to leave, displaced... To achieve what we want, which is peace, there must be truth.”

Some of those who had been forcibly displaced continued to be threatened and had to flee again: “We were in Valledupar... we hadn’t even been there a month, when... an armed man once again chased me, forcing me to get into a taxi... I had already had to run three times... An uncle of my husband said ‘come to Arauca’... We arrived in Arauca on 23 January 2003... [That’s when] I started receiving treatment there from a psychologist”.

In spite of the continued threats, some peasant farmers tried to return to their land: “People started returning again, and so we started the process of trying to go back to the land again... My father-in-law started going as our representative to the meetings they [the forcibly displaced peasant farmers from Tranquilandia] were holding about Tranquilandia. At one of the meetings he went to in March



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2005, he was arrested as if he had been an important guerrilla leader... He was detained, the army took him to a farm that is on the way out, going towards Tranquilandia, called Casa de Piedra. And they kept him tied up for 36 hours... at that time we were displaced, but the intention was to return, to return that year, we had already been away two or three years... When they released him, they let him go saying 'Get out, but don't imagine that you will ever come back here, to this plot – you will never come back here'... While he was going through all that, we were being pressurized into selling the farm, El Oasis farm which was part of Tranquilandia... for 4 million [pesos] [about USD 2,000]. The farm was worth much more, that was what a hectare was worth at that time, and it was a farm with 23 hectares... we were under pressure because they had tied [my father-in-law] up for 36 hours... they pressurized us into selling the plot of land."

Another peasant farmer had a similar experience: "In 2006 I went back to claim my plot of land... from the person who was installed there... I told him, 'no, I am not going to sell my plot of land' [but] they gave me 3 million pesos [about USD 1,500] and made me go to the notary to sign... it was not a sale, because they gave me what they felt like giving."

**A worker on an African palm plantation where some of the peasant farmers forcibly displaced from Tranquilandia have found employment.**

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Very few have been successful in returning to their former farms: "Some returned later, yes. And are still there, yes. There are about 12 people." Many were too intimidated to try to return: "They had killed some of our friends, so the truth is that we were then afraid to go there."

Several government and state institutions persuaded the peasant farmers not to file complaints for the human rights abuses they suffered, as their families may be put at risk: "I went to file a complaint [at] the Human Rights Ombudsman's Office and a worker said to me, 'Don't open your mouth... Your life could be at risk'. I did not file a complaint."

Since the Victims and Land Restitution Law (Law 1448) came into force in January 2012, peasant farmers who had lived in Tranquilandia started making requests for land restitution in different parts of the country. One





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**The school in Tranquilandia, which is now abandoned.**

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peasant farmer who spoke with Amnesty International in December 2013 said: **“So far, the Land [Restitution] Unit [URT] has not summoned me, either about the plot of land or the adjoining farm... It is all declared... I did it as soon as the land law had been adopted... Two years on and they still have not summoned me... They say things are moving quickly, but we say that they are moving at the speed of a turtle, going backwards”.**

In October and November 2013, almost two years after the first request for land restitution had been filed by a peasant farmer from Tranquilandia, some families received resolutions which included them in the RTDAF. Others are still waiting for the restitution process to start. On 19 December 2013, the human rights organizations Permanent Committee for the Defence of Human Rights (Comité Permanente por la Defensa de los Derechos Humanos) and Corporación Jurídica Yira Castro, who are representing peasant

farmers, presented the judicial action for restitution in the case of 40 families whose claims had been included in the RTDAF. The case was still with the restitution judge at the time of writing. Some of the families who settled in Tranquilandia after the original occupants were forcibly displaced are now opponents in this case.

The land restitution process means that some families have recently visited their land for the first time since being displaced. The sight of their once cultivated plots falling to ruin has been heartbreaking: **“There’s nothing there, no house or anything... Someone else has it but it has been left to go to ruin, because no house or anything has been put up there. Only the school, which is nearby. That is all that is there, the school”.**

Claiming land restitution has been a costly endeavour for the peasant farmers, who have to pay travel costs and other expenses to meet with the URT. **“I can’t come here constantly because the Unit has endless meetings... and they don’t give us a ticket, not even a bus ticket, they refused to give me a ticket... And how many times have we had**

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**“When is the state going to have the, what should I say, courtesy to go with us to the land and say ‘we ask for your forgiveness for what happened’?... ”**

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meetings at the Unit? Nine meetings! ... I have had nine but altogether we have had 21 meetings already... Everything is at our expense, even lunch... The Unit hasn't contributed anything.”

But it is not only the expense of travelling that prevents some peasant farmers attending URT meetings; some still fear for their lives: “Our concern... is how are we going to return to the land when the men who are there say that they are going to get even with us. And that is already clear. In Chibolo what happened? What happened in Montería? What happened in Sincelejo? In Medellín? Nearly every week we hear news of the murder of a land restitution leader or of a peasant farmer who was asking for his land back. And we have been coming to the Unit since the beginning of the year informing them about this, I started informing them that we had been receiving threats and that because of that there are friends of ours, such as [name withheld] who is in Arauca... who does not come here to Aracataca because he fears for his life. [name withheld] also said the same... Because he has been threatened too.”

One peasant farmer described the impact of the situation on his family, and how the land restitution process has put him in opposition with his former neighbour: “We are suffering hardship but if we had our land, our fields, our plot of land, my family would live better, and my children would complete their schooling, but they have been unable to carry on studying... The man whose son has the land... was a neighbour of mine... he had his plot of land next to mine and he sold his plot and put his son on mine... I have had no contact with him... When we were at the Land Restitution office recently, I met one of his sons. We just said hello.”

Many fear what they will face if they return: “We are afraid that we are going to end up fighting with the same

people... We are not going there with the police or with the army, we are going with international accompaniment, [with] various international human rights people, we are going to return to the land. Otherwise we will be easy prey. They will carry on murdering us.”

The peasant farmers are calling on the state to own up to their responsibility for the human rights violations they have suffered: “When is the state going to have the, what should I say, courtesy to go with us to the land and say ‘we ask for your forgiveness for what happened’?... How is it possible for the paramilitary to go around where the police are and where the army is like they own the place and to kill and so on?... The paramilitary commanders said that they went around with the consent of the security forces, that they were not alone.”

There are also concerns that even if they return, they will not have the means to work the land: “I have read [Law] 1448 which has 208 articles... I have read it, I have gone through it five times, to see whether I missed something I haven't been able to find. I have not found any article that says that there will be recognition of, that the state will recognize, the property I lost, my machinery... my animals, my crops. It says that the land will be recognized, only the land. Because I am not claiming for the land, I am claiming for what was on the land... which is more than [just] the land itself.”

Others fear they will not live long enough to see justice restored: “I think I will die without achieving what I want, which is to return to the land.”

Ultimately, the families want to return to the peace and tranquillity they briefly enjoyed: “We want to be present there once again, but if so, we want to be left alone. And if the state starts fighting with the guerrillas, let them and those devils kill each other... and not involve us in that.”

## “We are asking for dignified relocation”

### EL TAMARINDO

On the outskirts of the city of Barranquilla, Atlántico Department, in northern Colombia, lies the green and fertile El Tamarindo farm. Peasant farmer families forcibly displaced by the armed conflict from other parts of the country have established themselves here. But they face losing their homes and livelihoods once more, and joining the many El Tamarindo peasant farmers who have already been forcibly evicted. Where forced evictions have been carried out by the security forces and armed men, the vegetation has been razed to the ground. Areas cultivated by the peasant farmers that were once lush and green have been left barren by bulldozers.

In the late 1990s, a few families started cutting down trees to produce charcoal on the land known today as El Tamarindo. By 2001 they had cleared some of the area for farming, and over the years some 135 families arrived, most of them having been forcibly displaced from their homes in Antioquia, Atlántico, Bolívar, Cesar, Chocó, Córdoba, Magdalena, Santander and Sucre departments.

A woman peasant farmer recalls how she arrived in El Tamarindo: **“I come from the Urabá antioqueño, in the banana-growing area, also dispossessed by the paramilitaries... [In 1995] my husband, the father of my children, [and] my brother-in-law, who owned a banana small-holding, were taken and tied up... They told them: ‘If you get out today, nothing will happen to you. But if you are here tomorrow, we will not be answerable for your lives.’ That’s how I ended up leaving with nothing... Then I came here to**

**Barranquilla... with five kids... I was working in the market, they paid very little, and with that I fed my kids and I paid the rent, I don’t know how I did it... A friend who made charcoal here... was the one who told me that there was some uncultivated land here, and that we as peasant farmers could live on it because later we would be able to obtain the [land] title... That’s how I found out about El Tamarindo.”**

Another peasant farmer who made his home in El Tamarindo remembers: **“I was displaced from Magdalena... In ’97 two brothers of mine were murdered in Magdalena. And that was when I came here to Barranquilla... everything was peaceful. I got on a bicycle and came. I found my way here... I set up my farm... And from then on I gradually tore down scrubland, sowed seeds, brought animals: dogs, cats, chickens, pigs. You plant your first little shrub, you carry on cultivating and then you have food for the first animals. And that is how your life is.”**

The 135 families occupied 120 hectares in four areas of the El Tamarindo farm. In 2008 some of the peasant farmers working together in El Tamarindo formalized their relationship creating the Association of Land Workers (Asociación de Trabajadores del Campo, ASOTRACAMPO).

The peasant farmers are very proud of their small plots of land: **“After arriving here in El Tamarindo, [I] put body and soul into the work... I got my plot of land looking really nice, in order to sow it, because that makes you proud. I started buying chickens and raising them. By the following year I already had a large brood of chickens... the plot of land was small, one hectare of land... We sowed it with bananas... we sowed cassava, we sowed maize, we sowed pumpkin, we sowed watermelon, we sowed everything. Then we started to plant trees: guava, mango, loquat, tamarind, prickly custard apple, guama (ice cream bean), pear, we planted everything.**

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**“the one who is taking all this land away from us... says that he will get us out of here by fair means or foul, in other words alive or dead.”**

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**There was everything sown there on my little plot. You could pick anything, guineo, popocho, all kinds of bananas, how proud I was!”**

In 2007, the state authorities announced that a Free Trade Zone would be established in an area including the El Tamarindo farm and, as such, removed its status as agricultural land in its Plan for Territorial Organization. In 2008 a local business with links to the authorities responsible for the Plan for Territorial Organization began legal proceedings claiming ownership of the land.

One peasant woman farmer recalls the first attempts to force them off the land: **“Overnight it turned out [that there was an] owner... then the eviction orders started coming. An eviction order came one day... We sow and they uproot... That was very hard... I am very tired. I have been tired for seven years. Planting things, making a home and everything being demolished... There has been... too much sorrow, too much anguish.”**

Since 2009, there have been repeated attempts to forcibly evict those living in El Tamarindo, some of them successful. The safeguards required by international law have not been put in place prior to any of the evictions. For instance, those evicted have not received adequate notice, and the areas affected by the eviction are not properly identified, leading to forced evictions of areas which were not in the eviction order.

According to Colombian human rights organizations, the eviction orders have been obtained by powerful economic interests claiming ownership of the land. The forced evictions in El Tamarindo have been executed by the Barranquilla District administrative

state authorities and accompanied by the district ombudsman’s office, the army, police – including the military police and the anti-riot police (ESMAD) – and armed men. During the evictions, the peasant farmers have been threatened by armed men.

One peasant farmer remembers: **“I was evicted on 11 January [2013]... they flattened part of [the plot] they tore up all my crops, cassava, maize, bananas, fruit trees... They came and used the machine on it, they went around pulling everything up, people with machetes, they pulled everything up and put up a fence. That was on the first part of the land where I was... There were police, there was ESMAD, there were public officials... after carrying out the eviction... they put the army there. They stayed there. In the part that had been cleared... armed civilians stayed there on the land itself together with the army, the ones on the outside were us, the peasant farmers, the farmhands.”**

A few months later, the same farmer faced another forced eviction: **“The second part was on 19 April [2013]. Altogether, in the area where I was they evicted around 11 families... In the morning there was the army and armed bailiffs, armed civilians, paramilitaries as they are known... Armed civilians arrived at 5 o’clock in the morning backed up by the army, and using a machine they went about demolishing what were the sheds for the birds, the chickens, the hens. They demolished the house. They ended up destroying the rest of the crops I had, they stole a few chickens, tools, work tools, they stole them from me. They covered over a well, a fish pond, where I had fish. They went and stripped away the scrubland where the banana trees were and the shed they threw into the well... It was one hectare and a bit... it was all planted up... I had guava, there were 60 guava trees, 45 mango trees, and so on. There was also guama, about five guama trees, about 10 lemon trees, there were 20 cocoa trees. They destroyed all of them.”**





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**A peasant farmer's home in El Tamarindo prior to a forced eviction.**

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The forced evictions not only caused the loss of the livelihood of the peasant farmer families, but also caused fear and anxiety, particularly due to the presence of armed men and state officials, echoing some of their earlier experiences of forced displacement: **"On 7 November [2013], in order to evict the 28 families, including mine... they brought those people, about 700 people to evict us, all the leyes [law enforcement officials] from Barranquilla sent to El Tamarindo, which was frightening, it was like in a film. What for? To take away from us what we had achieved by working hard... There we had**

**planted our banana trees, papaya trees, there we had planted cassava trees, we had planted everything... Because we are not wealthy people. They come only because they have power in the world. To destroy and kill everything we have."**

Another explained: **"I came here, to El Tamarindo and I was once again practically displaced. Because they destroyed all my crops. I used to take my produce out there on the roadside. I took bananas, cassava, melons, beans, kidney beans – I used to sell them right there."**

On 7 November 2013, 28 families were forcibly evicted from their land in the Beitjala area of the El Tamarindo farm by police, including anti-riot police. Three people were injured and taken to hospital following the forced eviction. The peasant farmer families lost their





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livelihoods when they lost their crops and some of their animals. The forced eviction came a few days after death threats by the paramilitary group Rastrojos-Comandos Urbanos Barranquilla, which named some of the leaders of ASOTRACAMPO and declared them a military target.<sup>1</sup>

Parallel to the forced evictions, a group of armed men, suspected of being paramilitaries linked to business interests in the area, have repeatedly threatened to kill peasant farmers living in El Tamarindo. One of the El Tamarindo community leaders explained: **“We are in a very, very bad situation here in El Tamarindo... we are under threat... The other day a bag of dead toads appeared in my house. I don’t know how many toads there were in it... They threw that bag there. Later a motorbike came after me with**

**Remains of a peasant farmer home in El Tamarindo after a forced eviction.**

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**two people on it and they were police in plain clothes, although they did not identify themselves, they were civilian police. And that has been my experience here in El Tamarindo, trying to look after my dignity and the dignity of my friends... We have filed a complaint [but] nothing has happened, or will happen, because it was a poor person who complained. If a poor person complains, who is going to take any notice of him? That’s how things are here in Colombia... we don’t have rights... even to life. Because if we had the right to life, they wouldn’t treat us like they do.”**

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**“You don’t feel as though you have a life, you feel as though you are being destroyed, because that is what they are doing to us here. Destroying us every day.”**

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Another inhabitant of El Tamarindo told Amnesty International: “We are living here with the enemy inside... at all hours a high-capacity motorbike goes by, cars come and go, we don’t know. The other day a car drew up here, the windows were lowered... three people were picked up and it turned around and left... the man came here at 8 o’clock at night, we were already in bed and he turns up, sits down and says nothing, and we are here, total intimidation... The threats are constant, the intimidation is constant. We are very anxious living here... we sleep just a few metres away from the enemy... We go out to do our errands, we go anxiously, we cannot come back on to the land after 5 o’clock in the afternoon, we cannot travel around anywhere because we are anxious, because we are under threat and we are afraid because those people are narco-paramilitaries [drug trafficking paramilitaries]... and we are vulnerable because of all this and the power that they have is criminal... We have filed complaints with all the government bodies, the Attorney-General’s Office, the Procurator’s Office, the Presidency but so far we have not received any replies.”

On 12 April 2013, Narciso Enrique Tehrán Mejía, the son of the vice-president of ASOTRACAMPO, was shot dead as he slept in his home in El Tamarindo.<sup>2</sup> Criminal investigations into his killing have not advanced. His father remembers: “Threats were made against me, they called me on the telephone at 10 o’clock at night, that was in March, they told me that... he had paid 500,000 pesos [about USD 255] for my head... the one who is taking all this land away from us... who says that he will get us out of here by fair means or foul, in other words alive or dead. Well, the threats continued, they called me, not just me, all of the leadership... The day they killed my son he was drinking... I was told that they plied him with drinks and got him drunk. That was on 12 April. He came here to the farm, I wasn’t here, I was working outside... I got here at 12 noon, and he was dead. With a bullet in the right cheek which went out through

the back of the head. When they came to remove the body, they were wearing uniforms consisting of white overalls that said SIJIN [judicial and investigative police]. They removed the body and a member of SIJIN came and said ‘at last they killed that nasty piece of work’... Afterwards a friend said to me ‘come and look’. The bullet that had passed through his cheek and out through the back of his head was lying on the mattress. And so we picked it up. The DIJIN [judicial police] came from Bogotá, they took the bullet away, but it has not yet been identified. Since then we have felt unsafe around here, because the threats are still continuing. Two areas where the other peasant farmers were have already been taken away from us.”

Between 9 November 2013 and 10 March 2014, members of the II Brigade of the military police set up a post on the El Tamarindo farm. During a visit by an Amnesty International delegation in December 2013, the military police and other armed men were seen together undertaking joint patrols.

The constant threat of imminent forced eviction has taken its toll on the families: “I was going to kill myself with a gas cylinder... Because what is the point of living if you no longer have a life? They don’t let you, you can’t eat in peace... [Every few days] an eviction order comes – you don’t have a life. What kind of life can a human being have when things are like that? You don’t feel as though you have a life, you feel as though you are being destroyed, because that is what they are doing to us here. Destroying us every day.”

The peasant farmers have protested and tried to negotiate a solution with local authorities: “We held a march on 17 October [2013], a peasant farmer protest. Peasants from several regions of the coast went with us on the protest, there were about 1,000 people on it. We went to the governor’s office. We then spent two days with the



**governor, a formal note, an agreement was drawn up there in which a permanent working group was going to be set up for El Tamarindo, to find a solution to the problems there.”**

In the negotiations the governor promised that there would be no further efforts to forcibly evict the families and instead committed to a process of ensuring that the families would be provided with alternative land and a process of resettlement.

On 7 February 2014 a meeting took place between the local office of the Human Rights Ombudsman, the UARIV, the alleged owner of the Campo Natasha area of El Tamarindo, and 18 families who have been recognized as victims of the conflict by the UARIV. They agreed that the families would either receive 1 hectare of suitable cultivable land elsewhere or 3 million pesos [about USD 1,530]. The meeting took place without the community leaders or the Colombian NGOs who have been accompanying the peasant farmers. A couple of days later, the families of El Tamarindo rejected the proposal as they believed the land was worth more than the 3 million pesos offered. But they suggested that the money could be

**Joint post of the military police and armed men on El Tamarindo land from which peasant farmers have been forcibly evicted.**

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recognized as a payment for improving the value of the land through the work they carried out (*mejoras*)<sup>3</sup>. They also clarified that it was not an agreement of resettlement.

Despite these talks, on 21 March 2014, 43 families were forcibly evicted from the Campo Natasha area.<sup>4</sup> The families and the human rights defenders working with them were threatened.<sup>5</sup> The forced eviction was ordered by the Barranquilla mayor and was carried out in the presence of police, ESMAD and unidentified armed men thought to be paramilitaries. None of the safeguards against forced eviction, as required by international law, were put in place prior to the eviction. Civilians, ordered by armed men, destroyed crops and family homes in the presence of the police and local authorities.

On 13 April 2014 the peasant farmers of El Tamarindo declared El Mirador, the only part of the farm from which they have not yet been forcibly evicted, a “Humanitarian Refuge of Peace and Hope” as part of a strategy of protection and to prevent further forced evictions.

Following the forced evictions, some of the peasant farmer families have moved to the city and are facing new hardships: **“There are my three children, my wife and I, and two grandchildren whom I am responsible for. Right now we are living in a single room – all of us. A single room, in the city [Barranquilla]... We have been left up in the air. We are just drifting about, with what you can get for a day’s work. On the days when you can’t get work, you are in a bad way, it is bad because you don’t have enough money for food... And also you are not used to the city.”**

As former peasant farmers, they are facing the unfamiliar challenges of living in the city: **“What does a person who knows nothing of the city do to survive? What does he do? At this age... what can I live from? The only solution is my stock-rearing, my animals. My plants, my crops. That is what I can do and it is what I am used to doing.”**

Although the issue of forced evictions is not directly linked to the land restitution process under the Victims and Land Restitution Law (Law 1448), the peasant farmers of El Tamarindo have sought to use some of the mechanisms created by Law 1448, such as sending a representative from El Tamarindo to the local land sub-committee to address their situation. Local and regional authorities have the power and responsibility to resolve their situation.

Some of the families of El Tamarindo may be eligible to claim land restitution under Law 1448. However, that

could mean returning to the land where they previously suffered the trauma of forced displacement, instead of asserting their right to the land where they have rebuilt their lives. The land restitution process should give the families of El Tamarindo the certainty that they will not have to leave their land again, and that they can live in dignity with all their basic human rights respected.

As one former peasant farmer put it: **“So we are in negotiations with the Mayor’s Office, the Governor’s Office and the Victims’ Committee... The only solution would be to relocate us. Which is what we are asking for, dignified relocation. To be on a plot of land and not have to run away because it is going to be destroyed... For the government to say, look, there are some hectares of land, work there, live there, die there on that land. From [this land] we should have the means with which to carry on feeding ourselves... Dignified relocation means the right to study, the right to health, the right to work. Roads, electricity, services and decent housing. That is dignified relocation... the right to work means land.”**

**“I believe those plots of land belong to us, because... we have always worked them and we are always going to be there”**

## EL PORVENIR

For about half a century the vast savannah of El Porvenir, in Puerto Gaitán Municipality, Meta Department, has been used by local families so that their cattle could be fed with the pasture. As one inhabitant from the area recounts: **“For about 45 to 50 years we have been working these lands with cattle... we have always had over 800 or 1,000 head of cattle here.”**

In the 1960s, a man named Víctor Machado claimed ownership of the land. The families continued to use the land collectively with his acquiescence: **“Mr Víctor Machado was the one who left us part of the land where the village is... he marked off a piece... it was on condition that the people could... live there too.”**

Víctor Machado died in 1979, reportedly leaving some of the land to the people of El Porvenir. However in 1986 his widow sold the ‘improvements’ (*mejoras*) to the land of part of El Porvenir to Víctor Carranza, one of the country’s most powerful emerald entrepreneurs – the so-called ‘emerald tsar’ – and a well-known paramilitary leader, and to an associate’s son. One of the peasant farmers remembers: **“When [Víctor Machado] died, that was when Víctor Carranza bought it and from then on the people started having problems... murders and killings... They did it to put pressure on people to leave the place... From the time he bought it, people began to work... with fear”.**

Another peasant farmer recalls: **“There were 200-300 armed men there... They were men who worked for Carranza... Paramilitaries... The problem started because they put individuals as messengers [to watch] what people**

**were doing, what work they were doing, how they ate, what they ate, what they ate from.”**

The presence of paramilitaries caused a forced displacement: **“We had to abandon the village. They kept on killing. That time they killed 10 people [in] September 1987... What happened was that they... gathered the people together, from among them they killed those 10, they killed them about 50 metres away from where the people were gathered... And so, of course, people were extremely frightened and that was when they left.”**

Some time later, the son of one of the victims of the massacre was also killed: **“they killed a boy... I think it was in 2010... I think he was about 19 or 20 years old... Born and brought up there in El Porvenir [his name was] Darío Cortes. And his father was also... killed in that massacre [in] ’87.”**

The peasant farmers also experienced forced disappearances: **“There had already been... several forced disappearances because there were people who went missing, no one could explain it, even including a minor who lived there, he disappeared too.”**

Over the years there were numerous attempts to force the families off the land: **“Those paramilitary groups... arrived there and practically controlled the area... They also fought the guerrillas because a few kilometres away from there, there were guerrillas too... But we were also subjected to abuses and humiliation... they used to say ‘you have to leave because we don’t want to see you round here.’... The people had to leave... they had to get out... In 2010... some paramilitary groups... also threatened me.”**

Most of the peasant farmers did not return following the forced displacement in 1987: **“Some people abandoned the place. Really, they were displaced, they left**



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**“We had to abandon the village.  
They kept on killing.”**

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everything lying there and went... The village itself, was made up by those who... returned after one or two months... But, anyway, the village was terrified... The paramilitaries that were there in the village, it all belonged to them.” Before the displacement about 400 families lived in El Porvenir. Only about 100 families returned, most of them a few months after they had been forcibly displaced.

Presidents of the local Community Action Councils (Junta de Acción Comunal, JAC) have been targeted and killed.<sup>6</sup> One former JAC president recalled the killing of Luís León, president of the JAC of the neighbouring hamlet of Matarratón, on 28 September 2013: **“I stood down [from being president of the JAC] and others took over... because perhaps it might happen to you, that’s what happened with the guy they killed in Matarratón recently. He had been threatened and they killed him.”** Luís León was not the first JAC president to be killed: **“[There was a killing] in 2005 and another in about 2007. That was also in El Porvenir. One was killed in Casanare. And the other, yes, it was in 2007... very near our village. About 6km away... His body turned up there. With three bullet holes.”**

Even though El Porvenir lies in a resource-rich area, the presence of extractive industries has not benefitted the people of El Porvenir: **“Road access... is very precarious, very difficult... The municipal authorities don’t work with us very much, even necessities such as public services, for example, the water supply is poor, we barely get about four hours’ electricity... And it is a very poor community... the only thing we have to support us is the cattle... and they want to cut us off from that.”** Due to the difficult situation, including the constant threats and the lack of services, out of the 100 families who returned, around 30 have since gone elsewhere.

At one stage the peasant farmers of El Porvenir tried to obtain land titles via INCORA: **“At one point... a group**

was set up, it was called a co-operative, a group of people to be able to acquire the land titles. And the one who was at the head of those things was a man called Gustavo Grajales. When that person had gathered together all the data, all the issues, papers and everything, he disappeared... He was allegedly [forcibly] disappeared. Because they knew that he was working on the... INCORA stuff... [At] one point I was president of the JAC in El Porvenir and I made some inquiries to find out what had happened with the papers, in order to go and sort out the land title... a man from [INCORA] told me, ‘Look, here on the desk is all the documentation to go to El Porvenir to measure the land, but I am not going there... because they will kill me.’ And that’s how things have been left up to now.”

In 1992, INCORA assigned 25 plots of land to new families, and in 1996 a further two plots. The families who already lived in El Porvenir did not know the families who received the land titles: **“[There are] 27... [who allegedly] are from those specific plots... Other people... We don’t even know them... it is said that they falsified documents. There is nothing reliable, because we went and did a site inspection. Nobody appeared, nobody told us ‘this is our property’.”**

As part of the process to assign the land in 1992 there was a site inspection of the plots by INCORA. It was found that even though the land was currently being used, none of those being considered for the assignment of the 27 plots were present on the land. It is alleged that many of the people who were beneficiaries of the assignment of the plots had links to Víctor Carranza. One of the peasant farmers recalled: **“They went to [INCORA], [and] as they have money, they covered up [the truth] with money... ‘We are going to give you so many millions and we are going to divide it all up into farms’... Since what the paramilitaries were doing was so violent, they themselves, from that same family, practically...**

got it all allocated. The system they have is that they have a lot of state land and... virtually no legal titles. And so Mr Víctor [Carranza]... used strawmen... to each one he gave a piece of land so that they got the title. And once it was all legalized, then he... obtained [the plots] as if through sale and so then [they became] legalized plots of land and they could do what they wanted with them.”

In December 2007, the 27 plots were illegally joined to form five sections of land: El Rincón, Las Corocoras, Mi Llanura, El Pedregal and Campo Hermoso. Days later, the land was sold to five new owners. The legality of the sale has been questioned, including on the basis that some of the people who allegedly sold the land were dead.

In 2008, INCODER initiated a process to clarify the ownership of part of the land in El Porvenir, including La Portuguesa, La Caviona, Las Corocoras and El Rincón. The process concluded in 2010 when INCODER found that although some of the land was private property and belonged to Ganadería La Cristalina, a company owned by the family of Víctor Carranza and others, they could not confirm that the cattle-grazing areas La Portuguesa and La Caviona were private properties. In the course of the clarification process, the peasant farmers of El Porvenir requested information from INCODER and other government and state entities about the process: “we asked... INCODER for clarification. INCODER... answered by saying that... there was nothing further to be done... I sent... documentation to INCODER... to the Human Rights Ombudsman’s Office, in Bogotá. I even sent some official letters to the Ministry of Defence, informing them of what was happening in the community, because they have always hounded us... Then they replied to me saying that no, there was nothing to be done because now it was all practically private property... and that’s how it was left.”



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#### Cattle grazing in El Porvenir

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The peasant farmers continue to receive repeated threats from those who claim ownership of the land to force them to take their cattle off the land: “For example, this past week, on Tuesday or Wednesday, they came here telling us that we had to remove the cattle and that it is now a final order.” They fear that these are efforts by those claiming ownership to strip them of their livelihood, which will force them to leave their land: “Right now we are under pressure... to get the cattle removed, and so we would have no other option but to leave because... it is the only source [of income] we have. And if this goes ahead, then we would have to move away. Because how would we make a living?” If the peasant farmers stop grazing their cattle on the land, they may also lose their right to use it in the future.

Starting in 2005, people of El Porvenir began receiving visits, and later letters, from representatives of



Abandoned police station in El Porvenir

Ganadería La Cristalina, warning them that the grazing area was private property and therefore they had to remove their cattle. One peasant farmer recalled: **“there was one person, and just now another has arrived, a man... [who said he is from] Ganadería La Cristalina... It's a company... They say it belongs to Víctor Carranza.”**

Such efforts to force the people of El Porvenir to take their cattle off their land, including from the cattle-grazing area of La Caviona, have often been focused on the JAC presidents: **“I was president of the JAC in 2008, 2009, 2010... the administrator... from Caviona... came from Matarratón with a committee from INCODER. Because Matarratón is a village adjoining ours, before it was the same land, but then there was a meeting and the land was split up... they are also under the same kind of pressure because they want to take their plots of land away and they are fighting it... And so they arrived, having drunk several beers, they summoned me as the president, they gave me a note asking me to tell the people that they had two weeks to remove their cattle. I responded by saying, ‘Sir, I am happy to pass on the message because that is my duty, but I cannot promise you that the people will remove the cattle because they have undergone proceedings and have possession [over the land].’ I read out the message [to the peasant farmers] and said ‘Don’t remove the cattle,**

**because what they want is for you to remove the cattle so that you lose possession. And there have been cattle here for a long time, for 45 years. We would lose what we have done’.”**

In June 2012 the people of El Porvenir, the Congressman Iván Cepeda and the human rights organization Corporación Jurídica Yira Castro filed a request with INCODER to revoke the land titles for the 27 new plot owners, as well as the ruling on the clarification of the land title from 2010.

In September 2013 a commission from INCODER came to investigate the land where the titles had been questioned. Several months after the visit of the INCODER commission, the peasant farmers recalled: **“They [the INCODER] told us that... there are five properties on which we [the peasant farmers] are working and that... land is practically ours because we are the ones who are working it... During that site inspection... we walked across all of the land... I don’t know what they have decided. But we are there, I believe [that] those plots of land belong to us, because they are ours. We have always worked them and we are always going to be there.”**

The people of El Porvenir were hopeful that this time INCODER would find in their favour: **“they have told us that there is a right now... And perhaps, after working those plots of land for so many years, there is [a right of] possession.”**

Indeed more than two years after the request was filed, on 30 July 2014, INCODER issued a resolution revoking the 27 land titles. The role of the state institutions in the false adjudication is not questioned in the resolution. The peasant farmers of El Porvenir are seeking to obtain a title for El Porvenir under Law 160 of 1994 rather than Law 1448, since they hope this will lead to a speedier resolution of their land claim since the process under Law 160 is already well advanced.





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Following the resolution from INCODER there are fears for the safety of the families of El Porvenir as they have to prove that they are living on the land and using it to gain legal rights on the land through Law 160. If efforts to remove their cattle are successful their claims of ownership over the lands of El Porvenir could be seriously undermined.

One of the leaders of El Porvenir received a number of telephone death threats in May 2014. One of these calls, on 15 May, ordered him to present himself to the “organization” because the “organization” had received some unspecified complaints against him. In another call, on 16 May, the unidentified caller gave him 48 hours to leave the area.

Víctor Carranza died in April 2013. Parts of his estate of allegedly 1 million – some say 2 million – hectares of land are under investigation due to the illegal procedures involved in obtaining the land. His heirs are in dispute with each other over his properties. This has not had much impact on the people of El Porvenir, as

#### Peasant farmer homes in El Porvenir

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they continue to face powerful opponents who are claiming their land.

Today in El Porvenir, many of the houses left empty after the forced displacement are still abandoned: **“There are still many houses left alone there, rooms falling down, because the owners did not return. There has hardly been any development since that man [Victor Carranza] turned up round there. There is therefore absolute poverty... Because no one wants to go back there, because... you are asking to be killed... there is that terror... no one wants to go and live there.”**

The peasant farmers of El Porvenir live in the hope that they will one day be recognized as the rightful inhabitants of their land, and be left in peace to rebuild their homes and graze their cattle, free from the threats, forced displacement, killings and enforced disappearances that have overshadowed their existence in recent decades.

## “I shirk bullets, but not work”

### EL CARPINTERO

In December 1997, 85 families from different parts of Colombia arrived in El Carpintero, Cabuyaro Municipality, Meta Department. As one new arrival put it: **“We didn’t know each other but, thank God, we got along well.”**

Some of the families were victims of forced displacement. One peasant farmer, who had been forcibly displaced from Cesar Department, told how he arrived in El Carpintero: **“I ended up being displaced in June ’97. They killed a friend of mine ... And that day they were going to kill me too. It was the paramilitaries in complicity with the police... I went to Bogotá... Then I went to the Human Rights Ombudsman’s Office [and] I reported everything. I couldn’t say that it was the paramilitaries who displaced me, because they were linked with the police and every day there was a policeman going up and down outside, and so I said I didn’t know which group it was... And from there they sent me with this packet [of documents] to the Interior Ministry... I asked for help for the farm in Sierra Nevada, to go there. I was told that the only thing I could do was go to INCORA... The man [from INCORA] told me: ‘Look, the only way I can help you is... there is some land that has been divided into plots at El Carpintero and I can help you get a plot there.’”**

Others were relocated to El Carpintero because they had left their land due to natural disasters: **“I come from Huila Department. But I have been living here [in Meta Department] for about 30 years... I was a victim [of a natural disaster]... there were some landslides... A professional came to the town... and suggested to us [that] we ask INCORA to relocate us... The community appointed me as its representative to INCORA at that time in order to sort out the**

**formalities required to get relocated. [The relocation was for] one group, not all of us. Because there wasn’t enough land for everyone. But people were selected... there was a problem... because we were in a political campaigning period... there were irregularities. That was how there was an infiltration of people... who signed deeds but were never on the land.”**

**“At that time, it was INCORA who gave us that plot of land [in El Carpintero] over there in Cabuyaro... they relocated us there. And so we went over there. [There] were 45 who were displaced, the other 40 were victims [of natural disasters]. Altogether there were 85 of us... First some arrived, and then others came. And so on. There were some who never arrived.”**

Among those who never arrived were four families from Cesar Department in Northern Colombia, who did not have the means to travel to Meta Department in Central Colombia.

They had been given a collective land title for El Carpintero by the INCORA, under Law 160 of 1994, receiving a subsidy for 70% of the land and a credit to pay the remaining 30%, as well as an agricultural project.

It is not clear how many families took possession of the land. Due to the fact that several families included in the collective land title did not turn up, those who arrived were not given funding for an agricultural project. However, they made the best of the situation, as one peasant farmer explains: **“They were going to give us [an agricultural] project but they never even gave it to us. We couldn’t work how we wanted because some people hadn’t arrived and if they didn’t come, then they couldn’t give us the project. [But] we really worked ourselves to the bone, because in the end we said, well, we are each going to work a plot, a hectare of subsistence crops. One planted watermelon. The one who planted watermelon, also planted bananas, prickly custard apple, pumpkin, and so on... and**



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that's what everyone did. Of the group that was with us, each one applied themselves in their little plot, they went and worked there. When we arrived, everything was good... They gave us the title but as a collective."

When the peasant farmers first arrived, there were already rumours of armed actors in the area. The area of El Carpintero was in the influence zone of paramilitaries linked to Víctor Carranza. Between February and March 1998, a large group of paramilitaries arrived in the area and established their base near El Carpintero. "When this paramilitary group arrived... they began calling for... meetings... It was a way of pressuring [us], and as the representative... they called me, they looked for me and they summoned me to meetings."

The paramilitary group not only controlled the territory but also carried out social control by threatening those who had come to El Carpintero after they had been

Members of the armed forces accompanying INCODER officials during a visit to El Carpintero.

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forcibly displaced and accusing them of having links with guerrilla forces. They also carried out forced recruitments: "In the case of my sister-in-law, she left because... they were looking for a lot of people... She told me 'I'm leaving because one of my sons wants to join a paramilitary group. They have often tried to get him to do so. I don't want to see him doing that, it's better if I leave [the land] to go to waste, or I sell it, or give it away, or whatever'."

Another peasant farmer recalls: "They told us we are the self-defence forces [paramilitaries]. And once they came and... they gathered us together. They... had us there on average about half an hour, not long. One time they went around searching and searching. We didn't know what they

were looking for... After a little while they started returning once again... I wasn't there. I was working out there on my hectare of land. I was putting up a fence and clearing around... That day I was caught out by time and when I left, it was dark. When I arrived, I heard some cars leaving. When I saw my brother crying... I asked him 'brother, why are you crying?' He told me. 'No, brother. They arrived and they were coming for you. They came for you, they didn't say your name or anything, but they pointed to the house where you live. Asking where is that person?... Things had got serious, I wasn't going to stay there waiting for them to kill me, I was leaving.'

Some of the peasant farmers went to Bogotá to file a complaint with the Human Rights Ombudsman's Office denouncing the recent paramilitary incursion. According to a member of the community, a couple of days later the paramilitaries arrived in El Carpintero with a list of names and a copy of the complaint looking for those who had denounced them to the authorities.

In September 1998 the peasant farmer Omer Vargas Retamoza was forcibly disappeared: **"They killed Omer Vargas... They summoned him and gave him beer... and got him drunk and ordered him to go to sleep. Later on, at about 1 or 2 o'clock in the morning, they dragged him out and 'disappeared' him... Many of the neighbours here... They saw him, when they beat him, when they tied his hands and threw him into a truck... To this day no one knows where he is."** The enforced disappearance was reported to the authorities in Villavicencio, the capital of Meta Department; however, the case was closed without resolution. Omer Vargas Retamoza is reported to have been buried in a mass grave.

Following the enforced disappearance of Omar Vargas Retamoza, many of those previously forcibly displaced



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**Edwin Alcides Duran Peña was shot in the head and killed on 10 July 2012. His grandfather is campaigning for land restitution in El Carpintero.**

fled yet again: **"People gradually started to leave [El Carpintero] as they started feeling [the paramilitaries'] presence, people went away... There was no project there, there was nothing. People left because they were hungry, they were in need, because of all the problems and all the pressure from those people, which on top of everything else was worse. People were afraid"**. In October 1998, 13 of those who had to flee from El Carpintero wrote informing the Human Rights Director of the Interior Ministry about the forced displacement.

On 7 September 1999, paramilitaries announced that they were looking for community leaders Fabio Lugo Capera, Antonio Moncada, Oswaldo Guerrero and Oliva Gamboa. They succeeded in locating Fabio Lugo Capera, whom they abducted and later killed.<sup>7</sup>

One of those who fled was told by a relative: **"We thought they had killed you... The day you left, they arrived at 5 o'clock in the afternoon and then they turned everything upside down."** He explained: **"[It was] the paramilitaries. They turned everything upside down on the farm and told**





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them that if they were lying, that if we were there, they would kill everyone. The children, they had no compassion for anyone... the women started running away, they fell over... others were urinating from fear, it was a disaster. And they took the place over. What could we do there?"

Some of those forcibly displaced from El Carpintero tried to file a complaint: "We left. We went to Villavicencio. We stayed the night there because there was nowhere else to go... The next day we went to talk to ... [INCORA]... They told us nothing there. Nothing. Then we went... to file a complaint... The man who had received it said 'Brother, do you have family there?' 'Yes, sir.' He said, 'I can receive the complaint. But if I do so, by the time I have taken your complaint, your family will have already been killed there. Where are you going to go next?' I told him, 'We are going to Bogotá'. He said, 'File the complaint in Bogotá. But do it when they have left there, because if not, they will kill them all'."

**Crossing of the river Meta, one of two ways to reach El Carpintero; the other route is via an unpaved road.**

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Given these experiences, those who have fled El Carpintero are too fearful to return: "How could we go there? And how can we go there now? If they give us protection, then, yes, we will go there."

Yet, in spite of the threats, some of the peasant farmers remain on the land. "Not everyone left. There were still some people there... I don't know now whether they have had to leave. But I think there are still some people, some [victims of forced] displacement, others who had been victims [of natural disasters], there on that land."

One of those who still remains explained: "I arrived on 27 December '97. I received the land... as well as the deed..."



**Bus service to Cabuyaro Municipality. Paramilitaries frequently stopped the bus and removed passengers who were subsequently forcibly disappeared or killed.**

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and I stayed... I was alright because... the paramilitaries... did not pick on me. They simply asked me to... give them information, about who was coming and who wasn't [and] what they were like".

Those who were forced to flee suffered additional hardship: "We stayed here in the city of Bogotá where we endured great need. Sometimes we had to go... to ask for food to be able to eat. Then after a while the Red Cross gave us a little help and we lived like that." Many were not used to life in the city and some cannot read or write: "Here in the city I don't know how to work. For example if I am given an address, I have to find someone else to take me there or keep asking until I get there. When I was here in Bogotá, I lost jobs because I didn't know the addresses."

INCORA did not recognize the forced displacement of those who had fled: "We started to lodge complaints with [INCORA] that we had not left because we were shirkers... I told them 'I shirk bullets, but not work because I believe that I am very hard-working'." Instead, INCORA sent new people to El Carpintero: "People say that they sent around 35 families there to replace those who had left... I don't know whether they were given titles but the ones who had the signed deeds of those farms were us. [We were] the first ones who went to live there."

Some of the peasant farmers believe that the new families were sent by INCORA in an effort to cover up what was happening in El Carpintero: "It was as if they were trying to... cover up the fact that there was a very strong atmosphere there, given the pressure... one statement that INCORA put out said we are already solving the first El Carpintero, we are now sending 30 families there and we are going to set up projects for them."

Most of the second wave of families who arrived were also forced to flee: "Of those... they sent, one woman

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**“Things had got serious, I wasn’t going to stay there waiting for them to kill me, I was leaving.”**

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remained... The rest left. They also left because of the pressure from the paramilitaries there... and they also left because there was nothing there, not a single project... there was nothing to do.”

A few families of the initial group requested relocation: **“Relocate us somewhere else because we cannot be there, or if not give us protection so that we can be there.”** But there was a price to pay for relocation; the peasant farmers were urged to resign their rights to El Carpintero to be eligible for relocation.

There was also an outstanding debt linked to the credit for 30% of the value of the land from the initial resettlement: **“Later on, they started with the debt question. That we had to pay and we said [to ourselves] ‘we can’t afford to pay’. We have no money, we are just peasant farmers and at least, in my case, I am a peasant farmer, I can’t read, here in the city I get lost. I need to be there in the countryside working. [They] said we owed 80 million pesos [about USD 40,000] per family. That... if we didn’t pay it, then we would go to prison. We said, but we can’t afford to pay... each family was left with a debt of 80 million pesos because we hadn’t paid for I don’t know what. And so we said no. How are we going to be able to pay that?”**

In spite of the efforts of the peasant farmers, they continue to be forcibly displaced without land to work on: **“The last thing [the authorities] told us was ‘we know nothing [about El Carpintero]’ and so here we all are, hidden away here, saying nothing... [We] left there because we were displaced. We are displaced.”**

When the Victims and Land Restitution Law (Law 1448) came into force in January 2012, displaced families from El Carpintero started filing requests for land restitution at different local offices of the URT. In

September 2012, the URT issued resolutions that some of the families’ land claims were admissible for restitution under Law 1448. On 29 November 2012, 42 of the families were included in the RTDAF, although 25 other families from El Carpintero were excluded after the URT argued that, among other things, that they had never lived in El Carpintero or had not been forcibly displaced. Some of these families have been left with no option but to become opponents in the case.

In November 2013, some of the lawyers representing the claimants included in the RTDAF presented the judicial actions for land restitution to a restitution judge in Villavicencio. Some judicial actions by opponents were presented in March 2014. However, there have yet to be any rulings in this case. Since there are opponents in the case, the restitution judge will need to transfer it to a restitution magistrate in Bogotá for adjudication.

As a result of their campaign for land restitution under Law 1448 some families involved in this process, who had been forcibly displaced from El Carpintero by the paramilitaries, have subsequently been threatened. On 10 July 2012, Edwin Alcides Duran Peña, the grandson of a community leader, was killed in El Carpintero.

One community leader began receiving threats in 2013 after he went to the URT on behalf of other peasant farmers claiming land restitution. He himself had been living in El Carpintero until then but was forced out after the threats: **“The first call I got... was after I filed the complaint with the Land Restitution Unit... Exactly four days later they called me... They said... ‘We don’t want to see you on El Carpintero land, you are a snitch, you brought the Land**

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**“He said, ‘I can receive the complaint. But if I do so, by the time I have taken your complaint, your family will have already been killed there’.”**

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Restitution Unit here. We don't want to know, and so you will see what happens. There is a pistol pointed at your head.'... I called the police... I have had seven different telephone calls from them.” He left El Carpintero and now only goes there for one or two days at a time to work the land: “I live here in Villavicencio... since I started getting problems... about two years ago I came here... from the farm. And so I go to the farm, I work for two or three days and I come back. But the workers there accompany me... and when I am leaving, sometimes the police are there watching for me at the exit.” He subsequently faced further attacks and threats.<sup>8</sup>

The land restitution process with the URT provided an opportunity for some to revisit their land: **“Since we started taking the necessary steps [with the URT]... we have been to the farm, we have paid visits... We have also spent time there. We stayed a week or two weeks... about a year ago now, I think. We were there, we showed them where we had worked. We showed them where we used to live and everything. But so far they haven't said to us, ‘OK, everything is in order for you to go there,’ or ‘we are going to exchange that farm,’ or ‘we are going to give you another in exchange’.”**

The forced displacement of peasant farmers from El Carpintero may have been motivated by efforts to secure lands in an area of potential economic importance. Meta Department has been earmarked for the development of African palm oil production since the early 2000s. In addition, two companies were given oil concession explorations in areas adjacent or potentially overlapping El Carpintero lands in the late 2000s. When the land restitution process of El Carpintero was advertised in the newspapers, oil palm businesses turned up as opponents to the peasant farmers' claim. Some of the peasant farmers have started planting palm and selling it to the palm oil

companies: **“I set up my project in 2006... I said ‘I am going to plant palms’ because there was nothing else to do, and they supported me and I was OK.”**

Amongst the opponents in the land restitution process are also those linked to a family that started buying the land from the other families, often at very low prices. This led to an illegal accumulation of land, as it exceeded the minimum amount of land – the so-called UAF, a unit of measurement equal to the amount of land needed by a family to ensure their livelihood. One opponent in the land restitution claim is in possession of several plots, and according to official documents is exploiting over 250 hectares of land. The low price for which this land was bought seems to indicate that at least some of the land was sold under pressure. Part of the land bought by these individuals was subsequently sold at a large profit. It is of concern that lawyers representing these opponents are alleging that there was no forced displacement, in an attempt to argue that they hold the land in good faith.

The restitution of land titles alone will not solve the problems of the peasant farmers of El Carpintero: **“If... we manage to return there, then the state or INCODER should give us a project... to help us move forward, because if they take us there again and we are left there with nothing, without a machete, with nothing to work with, then what is the point?... Because all they do is make us suffer, we will end up going hungry. And so they should give us a project, and we will set to work... I would like to grow... cassava, bananas, pumpkin and watermelons for our own benefit... And... livestock, have some cows there, or some calves... I would like that.”**



## “[the] violence has left indelible scars”

### LOS PLAYONES DE PIVIJAY

In 1996, 75 women were given a land title by the state for 1,322 hectares of land on the Playones (riverside) de Pivijay in Pivijay Municipality, Magdalena Department. The women had formed a collective called the Women's Association of Rural Producers (Asociación de Mujeres Productoras del Campo, ASOMUPROCA) when they were forced to leave their original homes in Pueblo Viejo and Ciénaga in Magdalena after the fish on which they relied on to make a living began to die: **“At the end of '94-'95, there was a catastrophe affecting the lagoon in the municipality of Pueblo Viejo and the neighbouring municipalities causing the fish to die. We... the fishing village... we set up a women's committee... to get the national government to pay attention to us... there were 75 of us.”**

They received the land as part of a pilot project by the Ministry of Agriculture to boost the income of female heads of households under Law 160 of 1994. The state paid 70% of the cost of the land and gave the women a loan for the remaining 30%.

The women also received a loan to buy cattle and seeds, but it was not fully paid to them: **“They gave us an agricultural project consisting of cattle, plus bananas... and corn. But when... the former Caja Agraria [Agrarian Bank] realized that the land was not productive, they automatically suspended the disbursement of seeds, and all they gave us were a few head of cattle of very poor quality who ended up dying all alone and produced no milk, and so we had to come to our communities to work in order to take food back to the people who were still there.”**

Not only was the land and livestock not productive, it also lacked water, electricity and road access. One woman recalled how difficult it was to access the plots of land: **“When they told us we had the land, we set off to go there but we didn't know how far... we would have to walk. From where the car dropped us off... we had to walk for about eight hours... to reach the land.”** The land was not suitable for living on, so the women had to live in nearby villages.

An additional difficulty was that the land was not in a single area, but scattered: **“They bought some here and later some over there and then more over there, and in the middle there were other people's farms next to the land, and as there were no access roads, we had to pass through our neighbours' farms. And there was one man... who would not let us through. Sometimes we hid and crawled under the barbed wire fences in order to get there. When we arrived, we found mud puddles that came up to our waists.”**

The women of ASOMUPROCA started a campaign to obtain land elsewhere. **“One of the leaders, Mrs Luisa Borrero Celedon... realized that we were being badly cheated, including by the state, and we began to take legal proceedings... we saw how they were cheating us, violating our rights; instead of improving our quality of life, what they were doing was making it worse.”**

The assigned plot was also in an area under the territorial control of guerrilla forces, who controlled the women's movements and forced them to work for them. **“When we arrived, we didn't know that there were illegal [armed] groups around. In this case, the ELN and FARC. So when we got there, they applied their law. They made us do difficult jobs, men's work, such as building bridges, to channel water pipes, and we were constantly threatened that if we went into town, we could not say that they were there. They never let us get to know all the land. They were always prohibiting us... telling us where we could walk and how far we could go.”**

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**“Now the debt is 6 thousand million pesos [about USD 3 million]... We can't pay it.”**

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From 1999 there was also paramilitary presence in the area: **“There were paramilitaries there by then, we were no longer able to take food there... because they took away the food we were carrying... they said we were taking food to the guerrillas... In other words, the guerrillas were inside, the paramilitaries were outside and we were in the middle.”**

Living in the midst of an armed conflict had fatal consequences: **“In the year '99, on 12 January they killed Luisa on the land. We were already afraid because of the targeted killings going on around the land.”**

The killing of Luisa Borrero Celedon sent shockwaves within the community, leading some of the women to flee the area. But they returned to the Playones de Pivijay soon after because INCORA had warned them that they would lose their land if they did not return: **“Once they killed Luisa... some of our families returned again to the areas they had left, and some of us persisted in wanting to farm the land.”**

The presence of armed actors resulted in killings, enforced disappearances, forced recruitments, threats and the burning of some houses. One woman remembers how she and her sister fled to avoid forced recruitment: **“After the death of Luisa... they started distributing leaflets and all that... The guerrillas wanted to take my sister. They were going to take her away... At that time my sister was 14 years old. And they were going to take her. Some of our neighbours told my father that we should get out because they were going to take my sister. My father took us away early in the morning.”**

Over 50 families fled the area in late 1999 following a paramilitary incursion into Pivijay Municipality in October of that year, in which at least three people were killed, including a woman whose breasts were mutilated. **“The day we left, which was 14 October [1999],**

**they murdered some nearby families and we couldn't stay there anymore... we all had to leave, with just the clothes we had on, because they were already very close. Thanks be to God, there was a very heavy downpour and it stopped them coming in, because there was no access route. We went out another way where the water came above our waists in order to get out of there. They burned down our farms, they stole all our cattle and the animals we had for food... everything we had there. They took it all, they left the land completely without animals, without anything.”**

Following the forced displacement, the women of ASOMUPROCA scattered: **“Some went to Barranquilla, others went to Venezuela... we all left”**. In spite of this, they still faced killings and threats. In August 2000, the legal representative of ASOMUPROCA was killed in Ciénaga Municipality, Magdalena Department: **“Her name was Dora Camacho... there were rumours that they were going to put an end to the whole Association and we didn't know whether the land was already occupied or not.”** A few days later, Graciela Ibáñez, also a member of ASOMUPROCA, and her husband Antonio de la Cruz, both elderly, were killed in the municipality of El Retén, Magdalena.

The authorities were informed of the forced displacement: **“In 2001, we started to declare ourselves to be displaced people. We had not done so immediately because we didn't know how to go about it and because we were afraid. Some of us did it in 2000, others in 2001.”** This important step should have led to their right to the land being protected.

However this was not the case, as one of the women of ASOMUPROCA recalls: **“In 2005, INCODER issued a resolution saying that they were stripping us of the land on grounds of desertion... [The mayor] took us to INCODER and there was indeed an edict saying that we had five or seven days left before they would take away our land because they said**

that we had abandoned it. We submitted evidence, showing that we had not abandoned it but that there had been a massive displacement and that... people had been murdered.” In October 2005 the women received individual notifications from INCODER informing them that as they had abandoned their plot, their land would be taken away.

When some of the women tried to register their forced displacement with the authorities, they were turned away. It took a decade and the legal support of a human rights organization, Asociación Colectivo Mujeres al Derecho (ASOCOLEMAD, referred to as ‘the Colectivo’ in the testimonies), for their displacement to be registered. The women of ASOMUPROCA recall how crucial the support of ASOCOLEMAD is: **“We gave [the Colectivo] all the documentation, everything we had done. They started the legal proceedings... By about 2006-2007 the plots of land had been auctioned off... With the Colectivo we managed... to halt [a further] sale... we have proceedings going on in the court here in Santa Marta”**

**“The first time I went with my mother to get a resolution [to recognize the forced displacement], they said no. They did not want to attend to us. It was only later that they did so, after we had got to know the Colectivo.”**

With the support of ASOCOLEMAD, the women of ASOMUPROCA brought their case to the Constitutional Court, which ruled that their rights as displaced people must be recognized. As a result, INCODER revoked its 2005 resolution, and in 2011 issued resolutions for most of the women affirming their right to the land. However, the resolutions for some of the women have not yet been issued.

Meanwhile, the women are still concerned about the debt they incurred from the state to buy the land and



**A map of the Playones de Pivijay drawn by women from ASOMUPROCA as part of a social cartography exercise**

which had increased over the years: **“Now the debt is 6 thousand million pesos [about USD 3 million]... We can't pay it.”** They have also faced threats since their debt was sold on to third parties: **“[The man who] bought the debt... he turned up at my house. He found me... He came with some other men, trying to force me to get the women to sign for him because he had bought the debt, and to get us to come to an agreement because he was the owner of the land... One time, without being invited, he came to my house at 9:30 at night, in a car, with some armed men, forcing me and telling me that if I did not convince the women to sign, something would happen to me.”**

Some of the women from ASOMUPROCA sold their land when they were forcibly displaced: **“There were also women who, because they were threatened, sold their land for an insignificant amount. Women who sold their unit of land for 200,000 pesos [about USD 100]. Women who for each household unit had to sell for 400,000 pesos [about USD 200]. And because they were threatened, they had to leave: ‘here, take this and don't come back again’.”**

In the course of the forced displacement ASOMUPROCA became divided, as 10 women chose to stay on the land: **“the women who are on the land are 10 women from the organization who have always been there... who are in**

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**“In other words, the guerrillas were inside, the paramilitaries were outside and we were in the middle.”**

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disagreement with us because... they did not leave. They stayed there. They... totally changed the rules and they let men in, when the organization is entirely women... The 10 women [who] are there are the ones who never wanted to leave the land, despite all the violence”.

In April 2013, 62 women of ASOMUPROCA were due to present their claim for land restitution in an event organized by the URT. However the event was cut short when the bodyguard of the Regional Director of the URT started taking pictures of the land claimants: **“we were gathered there with all the women... When a man turned up at the door taking photographs... Many of the women were very upset because of [the] violence... it has left... indelible scars... sometimes [you can be] very frightened to say things... When we asked... why he was taking photographs, who was that person, it turned out he was the bodyguard of the Regional Director of the URT... In the end we... put a halt to everything, it made us very scared.”**

The women finally filed formally for land restitution in June 2013. In order to ensure their personal safety they came in small groups from different locations: **“Not even the URT knew which days we were going to be there.”** But even with these precautions they were still threatened: **“The daughter of Luisa... who was murdered... she received a call telling her that if she demanded the land back, what had happened to her mother would happen to her too.”**

As the process of land restitution continues, the women of ASOMUPROCA are still concerned about their security, given the connections of the people who are currently occupying their land: **“most of the men who are living on the land are brothers of the former mayor of the municipality of Retén. He is currently being investigated for having links with the paramilitaries.”** There are also concerns that the men may have links with the civil

servants from the state entities in charge of processing their land restitution claim: **“When the group of surveyors and officers (*notificadores*) arrived, it looked as though they all knew each other from before.”**

The women of ASOMUPROCA are also aware of economic interests on their land: **“there is a man who is the one buying the wood... a landowner from here in Magdalena, the owner of a palm oil company, which is supposedly planting palms on the upper part of the land.”** There also seem to be extractive interests on their land: **“over the past year we have found out that [extractives company] PRODECO arrived... marking out some points in order to carry out excavations actually on San Marco... one of the plots at Los Playones. In one of the municipalities, called Piñón, they have done some mining and found minerals.”**

On 26 and 27 June 2014, eight years after they started their campaign to return to their land and one year after they started the process under Law 1448, 66 women were notified of their inclusion in the RTDAF, which means their claim can now be adjudicated by a restitution judge. However, there have been delays in presenting the judicial action for restitution. A further five women are also awaiting inclusion in the register at the time of writing. By law, the decision on whether to include a claim in the RTDAF should have taken a maximum of 90 days.

Since the inclusion in the RTDAF there has been an increase in the threats against them, including intimidating phone calls, surveillance of their phones and death threats.<sup>9</sup> As the ASOCOLEMAD told Amnesty International in October 2014: **“[T]he unjustified delay in the administrative process ... represents an element of legal uncertainty for the women. In breach of the law, the [URT] did not process all together the many restitution requests**

concerning the land submitted by the people who are invading it. This ... means that it is not known whether or not those people will be recognized as having rights over Los Playones de Pivijay and so be able to participate in the legal proceedings as victims or opponents, and whether or not, as a consequence, the principle of reversal of the burden of proof would work in the women's favour... Meanwhile, the women's land is still being occupied and economically exploited and subject to irregular transactions, thus demonstrating that to date, 15 months after they filed the claim for restitution of their land, ASOMUPROCA has not received any support from the authorities to protect... their right to the land."

There are concerns that these delays could make it more difficult for the women to return to the land in a sustainable manner. Following the death of Vicenta Segobia Gomez, a member of ASOMUPROCA, on 21 September 2014, due to ill health, ASOMUPROCA and 19 other organizations issued a statement, highlighting their situation "[...] [W]ith the procedure before the URT being unjustifiably at a standstill at the present time [...] and while changes in the use of the women's land and the destruction of its fauna, flora and natural resources are continuing, as well as transactions relating to ownership of the land by those who are currently occupying and using it, [...] the failure to deliver and the despair, discouragement and despondency caused by the lack of efficiency and timeliness in the programmes run by the Victims' Unit, the Land Restitution Unit and the National Protection Unit are obvious and we demand respect and dignity for the women of ASOMUPROCA and all the country's victims."

## ENDNOTES

- 1 Amnesty International, Urgent Action FU UA 103/13, Colombia: Further Information: Human rights defenders receive death threat, (Index: AMR 23/051/2013), available at [www.amnesty.org/es/library/info/AMR23/051/2013/en](http://www.amnesty.org/es/library/info/AMR23/051/2013/en)
- 2 Amnesty International, Urgent Action UA 103/13, Colombia: Peasant farmer killed after threats, (Index: AMR 23/017/2013), available at [www.amnesty.org/es/library/info/AMR23/017/2013/en](http://www.amnesty.org/es/library/info/AMR23/017/2013/en)
- 3 Given the informality of land ownership in Colombia and the consequent lack of land titles, often only the "mejoras", that is the "improvements" made to a plot of land to increase its value, and not the land itself, can be bought and sold.
- 4 Amnesty International, Urgent Action FU UA 103/13, Colombia: Further Information: Peasant farmers threatened, forcibly evicted, (Index: AMR 23/013/2014), available at [www.amnesty.org/es/library/info/AMR23/013/2014/en](http://www.amnesty.org/es/library/info/AMR23/013/2014/en)
- 5 Amnesty International, Urgent Action FU UA 103/13, Colombia: Further Information: Defenders supporting peasant farmers threatened, (Index: AMR 23/021/2014), available at [www.amnesty.org/es/library/info/AMR23/021/2014/en](http://www.amnesty.org/es/library/info/AMR23/021/2014/en)
- 6 Members of JACs are elected to their positions by local community members. They act as spokespeople and leaders for the community, manage limited state funds for local projects and are often the first point of contact for victims of human rights abuses. Their leadership role makes them vulnerable to accusations of collaboration with one or the other side in the conflict.
- 7 Amnesty International, Urgent Action UA 249/99, Colombia: Fear for Safety/Extrajudicial Execution, (Index: AMR 23/067/1999), available at [www.amnesty.org/es/library/info/AMR23/067/1999/en](http://www.amnesty.org/es/library/info/AMR23/067/1999/en)
- 8 Amnesty International, Urgent Action UA 13/14, Colombia: Peasant farmer shot at, community at risk: (Index: AMR 23/022/2014), available at [www.amnesty.org/es/library/info/AMR23/022/2014/en](http://www.amnesty.org/es/library/info/AMR23/022/2014/en)
- 9 Amnesty International, Urgent Action UA 209/14, Colombia: Death threats to women land claimants, (Index: AMR 23/028/2014), available at [www.amnesty.org/es/library/info/AMR23/028/2014/en](http://www.amnesty.org/es/library/info/AMR23/028/2014/en)





**“WE ARE NOT WEALTHY PEOPLE.  
THEY COME ONLY BECAUSE THEY HAVE  
POWER IN THE WORLD. TO DESTROY AND  
KILL EVERYTHING WE HAVE”**

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*Front cover photo:* Peasant farmers from El Porvenir drive their motorbikes on the vast savannah.

© Corporación Jurídica Yira Castro

*Back cover photo:* Peasant farmers from El Tamarindo walking between the lush green land (on the left) that they are cultivating, and the land (on the right) that was cleared following a forced eviction. © Amnesty International

## 5. THE OBSTACLES TO SUSTAINABLE LAND RESTITUTION FOR ALL VICTIMS

One has hope of recovering what one has lost...  
but on the other hand you wonder how you will get  
it back? It all seems so perfect, but where are the  
guarantees? That is what we want: guarantees.

Woman land claimant from Magdalena Department, November 2013

The land restitution process has advanced very slowly. An official report evaluating implementation of Law 1448 by the Offices of the Comptroller General, the Procurator General and the Human Rights Ombudsman, published in August 2013, concluded that there had been “very modest progress... and reparation is still very far from being a reality for the majority of victims of the armed conflict”.<sup>100</sup> Unless the significant weaknesses in the implementation of Law 1448, highlighted below, are not effectively addressed, the government will fail to guarantee the right to reparation of most of the victims of the conflict claiming land restitution within the 10-year life span of the process.

At the end of June 2014 only 213 mostly rural areas in 117 of the country's 1,102 municipalities, some as small as individual farmsteads and hamlets, had been micro-focalized around the country, and were thus eligible for restitution. Almost 6 million people have been displaced by the conflict so far. Yet by 30 June 2014, there had only been 64,815 requests for land restitution – covering 52,701 farmsteads (*predios*) and 43,922 individuals. Of these requests, only 22,469 were in micro-focalized areas and so were eligible for processing.<sup>101</sup> Of this total, only 6,820 requests had been included in the RTDAF by the end of June 2014, and thus transferred to the judicial phase.<sup>102</sup> By 30 June 2014, the URT had also refused to include 3,548 restitution cases in the RTDAF after it concluded that the cases did not fulfil the criteria for inclusion, despite the URT agreeing to proceed with these cases in the first place.<sup>103</sup> According to official figures, women account for some 38% of all land claimants.<sup>104</sup>

By 1 August 2014, restitution judges and magistrates had issued 650 judicial rulings, covering 1,211 farmsteads benefiting 2,687 individuals. The total amount of land that has thus far been the subject of land restitution for peasant farmers is just 29,695 hectares.<sup>105</sup> This is a fraction of the 8 million hectares that are thought to have been illegally acquired in

the course of the conflict,<sup>106</sup> and more than a quarter of the total amount of land that has been subject to restitution – 8,400 hectares – was restored to a single family in Puerto Gaitán, Meta Department, in March 2013.<sup>107</sup> It is of concern that the restitution process is advancing so slowly despite the fact that almost 80% of cases do not have an opponent and so should, in theory at least, be relatively straightforward to resolve.<sup>108</sup>

Some 96% of all cases heard so far have been decided by the restitution judges and magistrates in favour of the land claimant.<sup>109</sup> Most of the land restitution cases that have thus far been settled involve families who had already returned to their land prior to the restitution process and are simply seeking formalization of their ownership over the land, rather than restitution per se. Therefore, one key indicator for assessing the degree of success of the land restitution process is the number of families who have actually been able to return to their lands following the judicial sentence. Of course, some individuals and families have chosen not to return for a variety of reasons; for example they may now be too old to return to work their land. But many others are desperate to return home, in some cases decades after they were displaced from their lands.

The URT does not appear to have figures for the number of families who were still displaced at the time of the judicial sentence, and subsequently managed to return to their lands. Instead, the URT utilizes the concept of the “effective enjoyment of the property” (*goce efectivo del predio*), which records only those who have returned either to live on the land, or to work on it, or have rented it to a third party. Using this methodology, the URT has calculated that by 1 August 2014, 303 families who were not on the land at the time the judicial sentence was issued in their favour now have “effective enjoyment of the property”.<sup>110</sup> But this does not necessarily mean that they have returned.

As of July 2014, UARIV had information on the whereabouts of 791 families whose land claim had been resolved. Of these, fewer than half, 329, were now living or working on the land they had claimed. However, UARIV could only confirm that as few as 33 families had returned to their farmstead following the issuing of the restitution sentence.<sup>111</sup> The main reasons why land claimants have not been able to return include fear about security in the area where their lands are located; delays by INCODER to issue the claimants with their land titles; and the failure of the URT to implement the agricultural project that land claimants need in order to sustain themselves economically on their land.<sup>112</sup>

One restitution judge told Amnesty International that in five of the six rulings he had issued by the end of 2013, the claimants had not returned. The sixth claimant was already on the property when he made the claim and the families in the other five cases did not want to or could not return, some because of security fears and others because the authorities had yet to provide them with the financial assistance they needed to return.<sup>113</sup>

As such, the law has so far operated more as a mechanism for land formalization – that is for the legalization of land ownership – rather than as a tool for land restitution per se that benefits those forcibly displaced from their lands and who have been unable to return. Some of the cases that have been resolved were also already relatively advanced under other land restitution or reform mechanisms, such as Law 160 of 1994. In effect, Law 1448 simply rubber-stamped many restitution processes that were almost nearing completion but were, nevertheless, presented as successes of Law 1448.



Very few cases have challenged land occupation by large national or international companies, paramilitaries or others who may have been responsible for the forced displacement and dispossession of the claimant.<sup>114</sup> The opponents thus far have tended to be peasant farmers and/or victims of displacement from elsewhere. The real test for Law 1448 will come when the URT and the restitution judges and magistrates begin to challenge powerful agro-industrial and mining interests, which have the resources to robustly challenge efforts to force them to relinquish land, as well as paramilitary groups.

Law 1448 will clearly benefit many land claimants; however, because of the legislation's inherent weaknesses and failures in its implementation, which are outlined below, others might not be able to benefit from the law's provisions by the time it expires in 2021. Some may not even be eligible to benefit from it unless important aspects of the legislation, such as those that restrict qualification, are amended. Many of those who are successful in having their land returned to them might not be able to return and, if they do, may be unable to remain on their land for long due to security concerns or lack of resources. There is also a risk that, owing to some of Law 1448's provisions and the state's failure to combat impunity, including for forced displacement, many illegally seized lands may never be identified, let alone returned to their rightful owners.

Of particular concern is the fact that, almost three years after the start of the implementation of Law 1448, the vast majority – some 85% – of potential claimants have not presented their case to the URT. This is for various reasons, including security concerns; a lack of confidence in the state authorities, especially since state actors are responsible for the majority of human rights violations and most have never been brought to justice; a lack of knowledge about their rights; the discrepancy between the level of legal support provided to victims and that enjoyed by powerful opponents who might challenge victims' land claims; and the arduous administrative processes established by the URT.<sup>115</sup>

## EXCLUDING CERTAIN CATEGORIES OF VICTIMS

Law 1448 is a transitional justice mechanism, which implies that Colombia is in a post-conflict situation. However, despite ongoing peace negotiations, it is difficult to assert that the armed conflict and its human rights consequences have been overcome. Since Law 1448 only covers victims of conflict-related crimes, and excludes victims of common crimes,<sup>116</sup> victims of paramilitary groups (which the government refers to as criminal gangs, or *Bacrim*) could in theory be excluded. The authorities do not acknowledge paramilitaries as parties to the conflict, and so their victims fall outside the scope of the law.

In 2012 the Constitutional Court affirmed that abuses by *Bacrim* could be considered to be conflict-related.<sup>117</sup> This implied that such victims could benefit from Law 1448. However, this interpretation has not been consistently applied by those responsible for the law's implementation. The URT has not issued formal guidelines to local URT offices on the need to comply with the Court's ruling. Consequently, it has been left to local URT officials to decide whether or not to accept land restitution claims by victims of paramilitaries.<sup>118</sup>

Partly in order to limit the costs of reparation, including of land restitution, Law 1448 has created a hierarchy of victims of the conflict in which eligibility for reparation depends on the date on which human rights abuses and violations were carried out, thus effectively denying many victims the right to an effective remedy.<sup>119</sup>

- Victims of human rights abuses and violations occurring before 1985 may only receive symbolic reparation, not land restitution or financial compensation.
- Victims of human rights abuses committed between 1985 and 1991 will be eligible for financial compensation, but not land restitution.
- Only those victims whose lands were misappropriated after 1991 and before the end of the law's applicability in 2021 will be eligible for land restitution.

Some of the land restitution cases that predate 1991 are being processed by alternative restitution mechanisms, such as Law 160 of 1994, which is an administrative rather than judicial process administered by INCODER. However, decisions on land restitution made under Law 160 can be challenged in the courts through the Council of State (Consejo de Estado). Such appeals can take up to 10 years, resulting in a lack of timely restitution of land claims for many victims.

Law 1448 originally contained provisions that could have excluded land claimants who had taken part in peaceful protest if they were considered to have invaded, occupied or used the land they were claiming (conduct known as *vías de hecho*) before a restitution judge or magistrate had issued a ruling on the property in question.<sup>120</sup> This raised several concerns, not least that the right to full reparation is a human right and cannot be denied, even if a claimant commits a crime. In addition, the law could in effect have criminalized actions undertaken by land claimants that would not normally be considered illegal.

In 2012 the Constitutional Court declared unconstitutional the wording in Law 1448 that denied land restitution to victims deemed to have taken such “illegal” action to campaign for the return of illegally acquired lands. The Court argued that such action amounted to a denial of victims’ right to reparation.<sup>121</sup> It is surprising, therefore, that according to a recent URT evaluation report on implementation of Law 1448, published in January 2014, claimants who participated in *vías de hecho* can still be excluded.<sup>122</sup>

As stated earlier, requests for restitution from claimants whose lands have not yet been earmarked for restitution (that is, they are not in areas that have been macro- and micro-focalized), which is the case with most claimants, are not processed by the URT. A monitoring report published by the Offices of the Comptroller General, the Human Rights Ombudsman and the Procurator General in August 2014 stated that the failure to register and investigate cases from areas not yet micro-focalized could imply a restriction of access to justice for many victims.<sup>123</sup>

## LACK OF SECURITY GUARANTEES AND THE NEED FOR COMPREHENSIVE PROTECTION

Given the ongoing armed conflict in Colombia, one of the most serious challenges facing the land restitution process is to ensure that those returning to their lands can do so in safety and be able to remain on their property without fear of being displaced again because of threats, killings and other human rights abuses and violations. Many land claimants have been threatened or killed. Those leading land restitution efforts and representing displaced communities, human rights defenders accompanying them, and state officials have also been the target of attacks because of their work.

All parties to the conflict have been responsible for committing human rights abuses against the civilian population. However, the principal security risk, including for land claimants, has come from the various paramilitary groups that continue to operate despite their supposed demobilization. A recent official report on the implementation of Law 1448, published in August 2014, states that: “the post demobilization groups such as the Black Eagles, the Gaitanista Self-Defence Forces of Colombia, the Rastrojos, and the Meta and the Liberators of Vichada Blocs have been identified in 73% of all risk warnings”.<sup>124</sup>

## THE RIGHT TO DEFEND HUMAN RIGHTS

The right to defend human rights is recognized and protected in international human rights law. The UN Declaration on Human Rights Defenders, adopted in 1998, acknowledges this right and develops provisions enshrined in legally binding instruments such as the ICCPR. The Declaration sets out the minimum standards that states must adopt to enable those who wish to defend human rights to carry out their work, including to protect, promote and implement human rights; take all the necessary measures to protect human rights defenders against any violence, threats, retaliation, discrimination, pressure or any other arbitrary action in response to their legitimate exercise of the right to defend human rights; create all the conditions necessary in the social, economic, political, legal and any other fields to ensure that every person can carry out work and actions in defence of human rights; and provide an effective remedy when human rights defenders have been victims of human rights abuses.<sup>125</sup>

According to the Declaration, states have an obligation not to interfere, obstruct or violate the right to defend human rights and to protect that right from interference, obstruction and abuse by others, including non-state actors. This must involve timely and effective protection measures for human rights defenders at risk of attack and the bringing to justice of anyone suspected of criminal responsibility for attacks against human rights defenders.<sup>126</sup>

On 12 April 2013, the UN Human Rights Council adopted a resolution on protecting human rights defenders.<sup>127</sup> The resolution calls on states to ensure that procedural safeguards are in place to guarantee that the justice system is not misused to target human rights defenders. On 18 December 2013, the UN General Assembly adopted a resolution on the protection of women human rights defenders.<sup>128</sup> The resolution expresses concern “about systemic and structural discrimination and violence faced by women HRDs [human rights defenders]” and calls on states to elaborate and implement, together with women human rights defenders, gender-specific policies to ensure their protection.

In her report published on 23 December 2013, the UN Special Rapporteur on the situation of human rights defenders also outlined a series of measures, including political and legal mechanisms, that states must adopt to ensure that human rights defenders are afforded comprehensive protection and a safe and enabling environment so that they can, in practice, carry out their human rights work without fear of reprisals.<sup>129</sup>

The Pinheiro Principles and Deng Principles make reference to the right of displaced persons to return to their homes in safety and dignity. As such, the Deng Principles state that the “[c]ompetent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country”.<sup>130</sup> Similarly, the Pinheiro Principles state that “[a]ll refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity.”<sup>131</sup>

However, the security situation faced by those claiming restitution of land and those accompanying them, including human rights defenders, community leaders, URT officials and members of the judiciary, has deteriorated in recent years, as opponents of the land restitution process step up efforts to derail it. According to the NGO Somos Defensores, at least five land activists were killed in 2013,<sup>132</sup> and at least two were killed in the first half of 2014.<sup>133</sup> According to data from the Office of the Attorney General, by the end of August 2014, at least 35 individuals, including six that had made land restitution claims to the URT, had been killed because of their suspected association with the land restitution process.<sup>134</sup>

On 8 July 2014, Robinson Álvarez Quemba, a topographer working with the URT, was shot by an unknown assailant while working on a land restitution case in the municipality of San Roque, Antioquia Department. He died of his injuries three days later.

URT officials are generally provided with security, including by the security forces, when working in the field. However, representatives from the geographical institute IGAC, who often travel to the field in support of the land restitution process, told Amnesty International that IGAC has not implemented any security protocols for its staff, and that IGAC officials, such as topographers, have no security accompaniment when travelling on official business.<sup>135</sup>

The restitution judges also have only limited measures for their protection. Many are accompanied by the police when they are in the town or city where their offices are located, but, critically, not when they need to travel to rural areas. Most judges have use of an armoured vehicle but this often has to be shared between the two judges responsible for land restitution in a particular area.<sup>136</sup> In March 2013, 54 restitution judges and magistrates wrote to President Santos asking him for effective security measures for them and their families because “[we are] equally or more exposed given that we are precisely those who order the juridical and material restitution of dispossessed properties”.<sup>137</sup>

Amnesty International received information of threats against at least two restitution judges. In March 2014, a judge from Buga, Valle del Cauca Department, received a written death threat from an unknown source, and again in July 2014, this time reportedly from the FARC, who declared the judge a military target. In June 2014, a female restitution judge from Yopal, Casanare Department, also received a written death threat from an unknown source. Both judges were transferred to other parts of the country for their safety.

Attacks against land restitution activists can have a significant impact on the communities they represent. Many of these individuals began their activism decades ago, as peasant farmer leaders, and continued their struggle after their communities were displaced. As such, many current leaders of restitution processes have a long history of activism. Therefore, threats against and killings of such leaders tend to have disastrous impacts not only on restitution processes but on a community’s general ability to organize. States have an obligation – as set out, for example, in the UN Declaration on Human Rights Defenders – to address situations that are dangerous to or incompatible with the defence of human rights.<sup>138</sup>

One major source of concern, voiced by some human rights organizations who spoke to Amnesty International, is the possible impact on their security and that of land claimants and

other victims, of the planned release from prison of more than 160 paramilitaries during 2014, with more due to be released in subsequent years. Some of those released are high-ranking leaders, who had been in prison on remand, but who had served the maximum eight years stipulated in the Justice and Peace Law (Law 975 of 2005). Many of these paramilitaries are expected to return to their original areas of operation, where many of their victims still live.<sup>139</sup> The state's National Protection Unit (Unidad Nacional de Protección, UNP) told Amnesty International that it had not evaluated the impact of the releases nor put in place any additional measures to mitigate any risk.<sup>140</sup>

The security problem has been exacerbated by the fact that in many land claims those responsible for the forced displacement, or their straw men, are often still present on the property. In some cases, those occupying the properties have used threats and even killings to intimidate victims into not making land claims or to derail ongoing restitution processes. In some cases, they have challenged the restitution claims of victims, or have even been included in the process by the URT as so-called "victim opponents", and as such have the right to compensation and legal representation if they can provide evidence of good faith without culpability. The inclusion of such individuals as "victim opponents" by the URT, thus placing them on a par with the land claimant, has generated divisions and tensions within the affected communities.<sup>141</sup>

A related development that has increased risk for land claimants has involved legal occupants entering into business partnerships, often centred on agro-industrial projects, with the occupants who have acquired the land illegally. One example documented by Amnesty International involves the Afro-descendant collective land titles of the Jiguamiandó River Basin and the Curvaradó River Basin, Chocó Department.<sup>142</sup> Here, powerful economic interests, operating with paramilitaries, have illegally acquired parts of the collective land titles and sought to involve members of the local population together with forcibly displaced people from other areas in agro-industrial projects.<sup>143</sup> This has sought to both legitimize the project and to undermine the community's organizational structures.

Women who play a leadership role within forcibly displaced communities or in land restitution processes also continue to be at serious risk of attack. Many women leaders have faced a litany of human rights abuses and violations, including killings, death threats, sexual violence and forced displacement. In Judicial Decision 098 (Auto 098) of 2013, the Constitutional Court asserted that the "Colombian state lacks a comprehensive policy of promoting the right to defend human rights that has principally affected the fundamental rights of displaced women leaders and women's organizations who work in favour of the displaced population". The Constitutional Court called on the authorities to develop and implement a comprehensive public policy on the promotion of human rights in the context of the armed conflict with a gender perspective. The Colombian government and Colombian women's organizations were, at the time of writing, engaged in discussions about how best to implement such a policy.<sup>144</sup>

Paramilitaries, often working with others with a political and/or economic interest in the lands being claimed, as well as drug trafficking gangs, have been primarily responsible for threats against and killings of land claimants and land activists. Since the start of the land restitution process, some threats and killings have been attributed to so-called "anti-restitution armies". Such groups, according to some NGO sources, were set up in 2011-

2012 as private armies by cattle-ranchers and other large-scale land-owning interests (many of whom have a long history of backing paramilitary structures) to protect their interests by seeking to undermine the restitution process.<sup>145</sup>

Law 1448 acknowledges that victims, witnesses and public officials involved in the land restitution process face security risks and that effective measures must be put in place to protect them.<sup>146</sup> The security mechanisms set up for those involved in the land restitution process are based on Decree 4912 of 2011, which set up the UNP in the Interior Ministry. Under Decree 4912, the various protection mechanisms for individuals, communities and groups at risk that had previously existed were brought together under the UNP.

The UNP began working with the URT in June 2012, and a special programme for land claimants, as stipulated in Law 1448, was set up soon after. The UNP also has other protection mechanisms for land cases that fall outside Law 1448, such as those being processed under Law 160 of 1994. The protection protocols for land claimants stipulate that the URT is obliged to pass to the UNP for a risk evaluation any report of risk or threat presented to it by a land claimant.

Specific security measures for individuals at risk are identified and implemented by Committees on Risk Evaluation and Recommendation of Measures (Comités de Evaluación de Riesgos y Recomendación de Medidas, CERREM). CERREM exist for different types of individuals and groups at risk, including land claimants. Separate CERREM also exist for women and for human rights defenders. The CERREM established for land claimants consists of representatives from the Interior Ministry, UARIV, the UNP, representatives from human rights NGOs, the presidential human rights programme and the police. Yet, crucially, there are no representatives from the URT.

Under Colombian law, women victims of human rights abuses and violations, including those involved in the land restitution process, also have the right to specific and individualized protection measures, such as women bodyguards or security assessments carried out by female assessors from the UNP. This right and its differential approach is reflected in, for example, Law 1257 of 2008, Constitutional Court Sentence T-496 of 2008, Interior Ministry Decree 4912 of 2011, and UNP Resolution 0805 of 2012.

In June 2014, President Santos signed off a new law to specifically address conflict-related sexual violence, an issue that particularly affects displaced women. The new law defines such violence as a war crime and a crime against humanity. The law addresses a number of specific practices, which continue to be carried out in the context of the armed conflict, including sexual slavery and sexual exploitation, as well as enforced practices of sterilization, prostitution, abortion, pregnancy and nudity. The law provides for the non-applicability of statutes of limitations with regard to genocide, crimes against humanity and war crimes, and sets out criteria for investigating sexual crimes, and on protecting survivors and guaranteeing their anonymity and their right not to be discriminated against by the authorities, including on the grounds of their real or perceived sexual activity or orientation.<sup>147</sup>

Although the UNP protection programme has saved lives, and many land claimants and land activists benefit from its provisions, serious weaknesses remain. The protection mechanisms offered to land claimants and human rights defenders by the UNP are reactive and

individual, that is, they are generally activated once a threat has arisen, rather than preventative and collective, that is, designed to protect a whole community at risk. As such, they do not take into account the factors and causes that generate risk. They are designed simply to mitigate a physical risk. This results in the provision of limited, individual physical protection measures, such as armoured cars and bodyguards, for only a relatively few individuals deemed to be at particularly high risk of attack.

These measures have often been deemed as inappropriate by human rights NGOs and the victims themselves. For instance, peasant farmers are sometimes provided with armoured vehicles and bodyguards in areas where only paramilitaries, public officials, members of the security forces and drug traffickers use such vehicles. This could expose the victim to additional risk and lead to stigmatization by other members of the community in the area where the victim lives. Consequently, some communities have sought to develop alternative collective and preventative protection mechanisms, such as international accompaniment and security training for community leaders and members.

Human rights NGOs and many communities at risk repeatedly told Amnesty International that the most effective form of protection is political support and recognition for their work from the state authorities. They also highlighted the need for effective investigations by the Office of the Attorney General to identify and bring to trial those suspected of having criminal responsibility for human rights abuses and violations.<sup>148</sup>

Those classified as "ordinary" (low) risk are not eligible for protection measures, while those deemed to be at extraordinary or extreme risk can receive a range of measures depending on the level of risk. These range from mobile phones and so-called "godfather plans" (*planes padrinos*), which consist of police visits to victims' homes, to the provision of armoured vehicles and armed bodyguards. However, some victims told Amnesty International that on occasions the phones provided by UNP do not work because of a lack of coverage, because the victim cannot afford to use them or because they have broken. Some victims also reported to Amnesty International that the godfather plans are sometimes not implemented because the police do not have the money for petrol, so any contact with police is often only by phone. Budget limitations mean that recipients of physical protection measures often report reductions in their security provision. For example, some victims who have been provided with vehicles by the UNP told Amnesty International that they lack the financial resources to purchase fuel for the vehicles.<sup>149</sup>

The UNP stated that between January 2012 and March 2014 it received 1,124 requests for protection by land claimants and land activists (344 from women and 780 from men), but of these, fewer than half (144 women and 338 men, a total of 482) were deemed to be at risk and were therefore eligible for protection measures.<sup>150</sup> According to the Human Rights Ombudsman, many cases are defined as "ordinary risk" because the UNP has focused only on the regional context and ignored local risk factors, such as violence committed by local armed groups that do not have a presence at the regional level.<sup>151</sup> As such the UNP classifies as "ordinary risk" many individuals who have been evaluated by the Office of the Human Rights Ombudsman as living with an extraordinary level of risk.<sup>152</sup>

In some cases, the implementation of protection measures has been subject to unacceptable delays. According to the Human Rights Ombudsman, some land claimants have waited up to

six months for the UNP to make a decision on their case.<sup>153</sup> The UNP acknowledged that it should resolve cases within 30 days, but claims that cases take longer to resolve because it does not receive the necessary information in time.<sup>154</sup>

The UNP is also supposed to provide emergency measures while it evaluates a case. But according to information from human rights NGOs provided to Amnesty International, such emergency measures have not been consistently implemented, and are more likely to be provided in cases supported by national human rights NGOs. In those cases where emergency measures are implemented, these are quickly removed if the risk is deemed to be “ordinary”, which could expose the claimant to continued risk of violence.

The UNP informed Amnesty International in December 2013 that it was working on a framework for collective protection measures to be applied to land claimants, among others, which would seek to adopt a preventative, community approach to protection.<sup>155</sup> According to the UNP, this new framework will seek to neutralize any possible threats, rather than respond reactively after the fact. Such plans will also seek to protect a whole community rather than simply its leaders, as is the case at present, and seek the community’s involvement in the design of specific measures. For instance, rather than providing an armoured car and bodyguards for an individual leader, the aim would be to ensure security for the whole community by, for example, protecting access roads to the area, providing bus services late at night in urban areas, possibly with police accompaniment, or by ensuring that community meetings are called by the Office of the Human Rights Ombudsman rather than by an individual human rights defender, thus reducing any risk to that individual. However, by the time Amnesty International again spoke to the UNP in July 2014 the framework had still not been finalized.<sup>156</sup> Moreover, the UNP has acknowledged that such measures will prove difficult to implement while armed actors are still present in many areas, and while there are no guaranteed funds for what will inevitably be an expensive programme.

Regardless of the protection measures adopted by the authorities, human rights organizations and lawyers working with land claimants told Amnesty International that many victims have still not registered their claim with the URT because of continued fears for their security. This is especially true in cases where those who displaced the claimant in the first place (or their straw men) are still on their land. Many areas currently earmarked for restitution are territories from which communities are still being forcibly displaced. This has exacerbated concerns about security among those hoping to return.

Of those few victims who have been able to return to their lands, some have once again been forced to flee because of threats.<sup>157</sup> Aside from the lack of security guarantees, many human rights organizations accompanying land claimants told Amnesty International that one of the reasons for the low rate of return appears to be the failure of the authorities to implement the complementary measures ordered by judges and magistrates, most of which do not set a time limit for implementation.<sup>158</sup> These measures are designed to make any return viable and sustainable in the long term. This failure has led to uncertainty among potential returnees and makes it difficult to evaluate how successfully these measures are being implemented.

## FAILURE TO ENSURE SUSTAINABLE LAND RESTITUTION

The granting of a legal land title to those forced off their lands is, of course, a fundamental aspect of land restitution. But it should mark the beginning and not the end of the land



restitution process. Effective land restitution also means enabling those who wish to return to their lands to do so in a sustainable manner.

Many of the areas earmarked for land restitution have been ravaged by the armed conflict. This has led to a loss of basic infrastructure and services, such as health care, education, transport, electricity and water. The continuing lack of these services in many cases makes it difficult for land claimants to return. Some of the lands in question are in poor condition following years of neglect, or have suffered environmental damage and pollution because of the presence of industries such as coal mining and palm oil plantations, which have degraded the soil.<sup>159</sup> The danger, therefore, is that the restitution process will fail in practice to provide victims with lands from which they can make a sustainable livelihood.

Law 1448 placed financial limits on reparation, including land restitution. The law refers to the principle of “fiscal sustainability” in making decisions on reparation amounts in order to ensure affordability. This potentially restricts the resources available to ensure that victims receive sufficient reparation for the damages they have suffered, especially as the law may oblige state institutions to provide reparations without sufficient state resources being made available.<sup>160</sup>

Constitutional Court ruling T-025 on forced displacement makes an important reference to the concept of “effective enjoyment of rights” as a principle in ensuring that claimants can realize their rights in a meaningful way. However, in line with the priorities outlined above, Law 1448 reduced the state’s obligation with regards to reparation to the principle of “basic needs” with fiscal responsibility, meaning that in practice, reparation is dependent on what the state can afford. But as the Constitutional Court stated in a ruling issued in 2013, “the obligations of the state in reparation matters cannot be confused with those relative to humanitarian aid or to assistance”.<sup>161</sup>

The Office of the Comptroller General told Amnesty International that the state’s budget for implementing Law 1448 over its 10-year life span seriously underestimates the real costs of reparation, including land restitution, and that unless resources are significantly increased the authorities will be unable to satisfy the rights of victims to full reparation.<sup>162</sup>

The law as such does not provide a full compensation package to victims receiving land restitution. Instead, it allows restitution judges and magistrates to order relief on some financial debt, property taxes, and on charges for public utilities, such as water and electricity, which the victim may have incurred after they were forcibly displaced.<sup>163</sup> As such, the URT created a programme for tax and debt relief (Programa de Alivio de Pasivos) to ensure that land and property would not be handed over with any kind of debt attached that might make its exploitation difficult. However, this programme does not cover debts incurred before the displacement and, critically, there is a lack of clarity about whether it includes the cancelling of mortgage debt. While the URT told Amnesty International that mortgage debt is covered in most, but not all circumstances,<sup>164</sup> the Office of the Comptroller General said that only mortgage *interest* was eligible for relief.<sup>165</sup> Many land claimants still owe significant amounts of money, debt that they incurred from the state’s Agrarian Bank as part of the land reform process under Law 160 of 1994. Unless restitution judges order the cancellation of mortgage debt, claimants are likely to be forced to forego their properties. This situation has been exacerbated by the fact that according to some lawyers representing land claimants,

some of these debts have been sold off to private financial firms, and in many cases the victims do not know who holds their debts.

By the end of June 2014, judges had made 1,017 orders for property tax relief, of which 506 have been implemented. They had also issued 639 orders for the relief of public utilities debt, of which eight orders had been implemented, and 566 orders for financial debt relief, none of which appear to have been implemented.<sup>166</sup> It must be noted, however, that in many cases the orders have not been implemented because it has subsequently been discovered that an order was made to cancel a debt that did not exist.

Provisions in Law 1448 prevent the land from being sold for a two-year period following restitution, thus offering a certain level of protection for those returning. However, financial institutions can secure ownership of the land as payment for debts within the first two years. This means that land restitution could be rendered meaningless if claimants are unable to repay debts and meet their tax obligations in full.<sup>167</sup> Given that many areas of land being claimed are subject to requests for mining or oil extraction rights, there are concerns that after the two-year embargo on land sales, peasant farmers could be pressured to sell their lands to those promoting such economic projects.

Moreover, in recent decades, successive Colombian governments have promoted a rural development model based on large-scale agro-industrial exports rather than on subsistence and small-scale farming, through the promotion of mega-projects and subsidies for the large-scale exploitation of land. This model could have a significant impact on those land claimants wishing to return to small-scale and subsistence farming.

While the URT is responsible under Law 1448 for implementing agricultural projects through the provision of subsidies for land claimants, there is a lack of clarity over whether peasant farmers will have the liberty to engage in subsistence farming if they so wish. INCODER, which also has responsibility for funding agricultural projects for forcibly displaced persons, told Amnesty International that the projects they fund seek to encourage peasant farmers to participate in agro-industrial projects, if similar projects are already being developed in the area by the private sector.<sup>168</sup> The government's National Centre of Historic Memory told Amnesty International that the type of agricultural project that is likely to be supported depends on the existing agricultural structure in a particular area, rather than on what the claimant really wants or needs.<sup>169</sup>

According to the URT, 440 families qualified for agricultural projects in 2013,<sup>170</sup> and a further 82 in the first half of 2014.<sup>171</sup> However, the Office of the Procurator General has said that few agricultural projects have been implemented, resulting in many claimants not being able to return to their lands.<sup>172</sup>

Although Law 1448 provides that victims can have their *ownership* of land recognized, their right to *use* the land is limited.<sup>173</sup> This means that if the person currently in possession of the land has developed it, for example for agro-industrial production, then the project will take precedence over the right of the land claimant to return to the land. If the economic project is on land occupied in "good faith" then a land claimant would have to sign a so-called "contract of use" (*contrato de uso*) to either receive rent in lieu of the land, or become a producer for, or an employee of, the current occupier. If the occupant is deemed to be of bad

faith, then the project becomes the property of the URT, and the land claimant can either take over the administration of the project or allow the URT to seek an alternative administrator who would pay rent to the claimant. In none of these circumstances is the claimant free, in practice, to choose how the land is used.

In 2012, the Constitutional Court ruled that such contracts would have to be voluntary and that claimants would have the right to claim the property if they so wished.<sup>174</sup> However, the Office of the Comptroller General has expressed concerns that the ruling did not make clear how a claimant would, in practice, exercise that right given the asymmetry of power between the claimant and the occupant, who despite giving up the agro-industrial project might still control lands in the surrounding area as well as vital resources, such as water and roads.<sup>175</sup> This means, for example, that the claimant might not gain adequate road access to their land or the water resources necessary to make it productive.

As of the end of June 2014, restitution judges and magistrates had ordered the URT to take possession of nine economic projects belonging to bad faith occupants, although three of these were subsequently found not to exist. In none of these cases, however, does it appear that the claimant has exercised his or her right to return to the land to administer the project themselves.<sup>176</sup>

There is a potential conflict of interest between the needs of those peasant farmers wishing to focus on small-scale and subsistence farming and those of agro-industry. Therefore, the “contract of use” could, despite the Constitutional Court ruling, prove to be a significant problem in effectively limiting what peasant farmers can produce. While INCODER has stated that it has implemented programmes to assist peasant farmers to develop agricultural projects collectively, via subsidies, it has acknowledged that these will be limited in scope, since these projects have had to conform to the government’s national development policy, which, as stated above, seeks to promote large-scale agro-industry.<sup>177</sup>

In effect, the law could encourage the continuation of some agro-industrial projects that were either the reason for the forced displacement in the first place, or were initiated in the wake of land theft resulting from human rights abuses. There is therefore a danger that the law could help legitimize a process that has often involved the use of human rights abuses and violations to force through changes in Colombia’s rural economy.<sup>178</sup>

Moreover, there is no provision to compensate victims for any material losses they incurred during and after their forced displacement, such as the loss of livestock and agricultural tools. This will make it more difficult for those returning to their lands to resume any farming activity, despite the limited subsidies, including for machinery, provided by the URT for agricultural projects.

Under Law 1448, if a plot of land cannot be returned to its rightful occupant for any reason, then the URT is responsible for providing the claimant with compensation, either financial compensation or an alternative plot of land. However, by the end of June 2014, the URT had implemented only 19 of the 68 orders it had received from restitution judges to offer alternative plots of land or financial compensation to land claimants.<sup>179</sup> This appears to be due to a lack of funds and suitable alternative plots of land.

Housing restitution is not included in Law 1448, contrary to the Pinheiro Principles, which state that “all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal”.<sup>180</sup>

Instead, the law provides for housing subsidies for land claimants.<sup>181</sup> To this effect, the URT signed an agreement with the Agrarian Bank to provide housing subsidies for claimants. However, these are subject to strict criteria, including the requirement that there be no opposition in the case. This has excluded some claimants from qualifying for the subsidy. Official data suggests that in 2012 and 2013, the Agrarian Bank assigned 1,505 housing subsidies to land claimants. However, only 97 homes were actually built in 2012, while none were constructed in 2013. The slow pace of implementation is the result of several factors, including the failure of the relevant local and national state authorities to effectively monitor implementation of the housing subsidies, and poor tendering practices which result in ineffective construction companies being rehired multiple times.<sup>182</sup>

As most victims of forced displacement live in poverty, it is doubtful whether subsidies are the most effective mechanism to guarantee housing and other rights for such victims, most of whom will not be in position to cover the remaining cost. In response, a few restitution judges have ordered the state to provide free housing, but only in a very limited number of cases.<sup>183</sup>

The concept of good faith without culpability has also served to deny some victims their right to land restitution. While the concept was designed to prevent straw men and those responsible for forced displacement from legalizing their occupation of illegally acquired lands, most opponents to date have either been victims or peasant farmers who had no role in the forced displacement of the claimant. According to the Office of the Procurator General, in almost all land restitution cases in which there has been an opponent, the opponent has been a victim or a peasant farmer who innocently occupied the land being claimed. Opponents have not tended to be paramilitaries, members of guerrilla forces, drug traffickers or individuals with powerful political and economic interests: those who are responsible for the vast majority of forced displacements and illegal land acquisition.<sup>184</sup>

Yet despite this, it is almost impossible for genuine good faith claimants to prove that they did not know that the land was illegally seized. As a result, many victims, mainly peasant farmers, are considered as being of bad faith and are denied compensation when they are removed from land to make way for the original inhabitants to return. Consequently, some judges are choosing to lower the burden of proof by interpreting good faith as “simple good faith” rather than as “good faith without culpability”, which has allowed them to offer compensation to opponents they believe to be victims of the conflict.

On the other hand, the falsification of land registry documents by paramilitaries and others has enabled individuals who *illegally* occupied land to make a legal case that they acted in good faith. Amnesty International has seen numerous official documents in Cesar Department and other regions that show that land was bought at very low prices and subsequently sold on at great profit.

Many peasant farmers occupied land on forestry reserves, or were assigned to land by INCORA and INCODER in areas that were subsequently declared forestry reserves. Under Law 1448, these claimants do not have the right to land restitution.<sup>185</sup> As victims of the conflict they should be compensated, either financially or with land elsewhere. However, since they are currently ineligible for land restitution, their claims are not being admitted by the URT and they have been unable to qualify for compensation.<sup>186</sup>

In some cases, INCORA/INCODER assigned land to families who subsequently fled due to the conflict. INCORA/INCODER frequently refused to recognize these families as victims of forced displacement and instead claimed that they voluntarily abandoned their land. INCORA/INCODER subsequently assigned the abandoned land to new families, who were often themselves forcibly displaced from other areas. These multiple claims for the same land have created tensions within communities.

The slow pace of land restitution could make it easier for those who illegally acquired land to legalize their ownership of the land. Law 791, approved in December 2002, cut by half the amount of time required to legalize possession over lands that an individual had occupied to a period of five years in cases where the land was deemed to be held in good faith, and 10 years where the occupier was deemed to be holding the land in bad faith. The law was approved during an intense period of forced displacement: 412,553 people were forced to flee their homes in 2002 alone.<sup>187</sup> While these provisions could be beneficial to peasant farmers who have occupied unused lands, there are concerns that Law 791 could provide a means for those who benefited from forced displacement of legitimate occupants to legalize their tenure.

January 2008 saw the approval of Law 1182, which reduced the time period required to secure legal tenure over lands occupied with bad faith to five years. It also specified that the law could specifically apply to land of under 10 hectares.

The time period for bad faith occupants was reversed in July 2012 by Law 1561. Lands registered in the RTDAF are excluded from Law 1561. However, and as this report has noted, Law 1448 stipulates that land claims cannot be included in the RTDAF until the land being claimed is micro-focalized. And the slow pace of micro-focalization means that unless the weaknesses in the implementation of the process as outlined in this report are addressed, most land claimants are unlikely to benefit from land restitution, or even be included in the RTDAF, by the time the law expires in 2021. There is, therefore, concern that the slow pace of restitution could force some land claimants, who may be facing financial hardship as a result of their forced displacement, to relinquish their claims, in turn giving more time to those who acquired lands illegally to secure firmer land titles under Laws 791 or 1561.<sup>188</sup>

## LACK OF INSTITUTIONAL CO-ORDINATION AND CAPACITY

Article 26 of Law 1448 and Decree 4829 of 2011 stipulate that the institutions responsible for implementing the land restitution process, such as the URT, UARIV, INCODER, the UNP and local and regional government authorities, must collaborate “harmoniously” to ensure the effective implementation of Law 1448, and that victims are treated with dignity. UARIV is responsible for leading this co-ordination effort.

However, the state institutions responsible for land restitution suffer from a number of structural weaknesses. Many have significant budget constraints, and have proved unable to effectively co-ordinate, and even communicate, with each other. Some state institutions, such as INCORA/INCODER and the Superintendence of Notaries and Registry Offices, have a history of numerous corruption scandals relating to the legalization of illegally acquired lands.

One of the main challenges is the identification of lands for restitution, given the poor state of the land registers (*catastros*) and the lack of land titles. In many parts of the country, land is not officially registered. Where it is, records have often been mislaid or deliberately destroyed, or are incomplete, out of date, incorrect or even false. Over the years, Amnesty International has documented several cases of falsification of land registry documents. The lack of accurate land registers, especially on state-owned lands, has proved to be a major bottleneck in the land restitution process.

Many of the IT systems and information databases used by the various state bodies responsible for land restitution, including those for mapping, are incompatible with each other, and there have been delays in updating maps of areas earmarked for restitution,<sup>189</sup> which is the responsibility of IGAC.<sup>190</sup> This has made it difficult for the URT and restitution judges and magistrates to obtain speedy and accurate information in order to progress land cases and to ensure effective implementation of their rulings. These delays have been exacerbated by a lack of topographers in the URT and IGAC. The scarcity of topographers has been partly blamed on the low wages in this sector, and has led to some restitution processes grinding to a complete halt.<sup>191</sup> Topographers play a pivotal role in the land restitution process since they are responsible for identifying and demarcating the boundaries of the farmsteads being claimed in the land restitution process.

The URT has also criticized the failure of INCODER to meet the 10-day deadline established in Law 1448 for handing over land titles to claimants.<sup>192</sup> The URT has insisted that it provides INCODER with all the information needed to issue land titles but that, because of a lack of capacity, INCODER takes up to nine months to issue the titles. INCODER has acknowledged that there have been delays, but argues that the 10-day deadline is difficult to meet because the information provided by the URT is often incomplete, or because INCODER is ordered to issue titles for land which cannot be the object of restitution, such as forestry reserves.<sup>193</sup>

For example, in March 2013 a ruling on one of the farms to be returned under Law 1448 in Chibolo, in Magdalena Department, ordered INCODER to issue the land title within the 10-day timeframe. However, the land title was not issued until September of that year, and only after the land claimants' lawyers had issued several writs of protection of fundamental rights (*peticiones de tutela*) to force INCODER to issue the land titles to the claimants. Without land titles, the claimants were unable to access the other complementary measures ordered by the judge in order to live sustainably on their land, such as the implementation of agricultural projects. The lawyers representing the claimants believe that the delay was caused by a variety of factors, including the need to obtain authorization from a number of different institutions, the lack of officials to implement the order, the lack of inter-institutional co-ordination, and the lack of up-to-date information held by the relevant institutions.<sup>194</sup>

Some delays are caused by significant duplication of evidence gathering. The restitution judges often ask for tests to be carried out or for evidence to be gathered even though the work has already been undertaken by the URT, even though this is not required by law, especially in cases where a claim is not being challenged. For example, judges will order topographical surveys or the collection of testimonies from victims and witnesses, even though this has often already been undertaken by the URT. According to an official state evaluation of the land restitution process carried out in 2013, restitution judges asked for additional evidence and/or tests, on issues such as identification of the farm, on the context of violence and on evidence to prove whether the claimant was a victim, in 55% of the restitution cases that were being processed by the judges, arguing that the evidence provided by URT was insufficient.<sup>195</sup>

Article 84 of Law 1448 specifies what documents and information should be included in land claims, but does not require judges to reject cases if all the correct paperwork has not been submitted. However, on some occasions judges have rejected claims precisely for this reason, although URT officials have claimed that judges often ask for information beyond that which is required by law, and that this is slowing down the restitution process.

Some judges have argued that they have no option but to request tests carried out by URT be repeated because of serious and fundamental errors, such as the wrong identification of the land, the inclusion of ineligible land claimants or the failure to include opponents in the judicial action.<sup>196</sup> This has at times led to confusion between judges and other state entities. For example, one judge asked IGAC to identify the land in a case presented to him by the URT. IGAC reportedly told the judge they were unable to do so until the judge issued a ruling on the case, while the judge said he was unable to issue a sentence until IGAC updated the information on the identification of the land.<sup>197</sup> In some cases, judges have had no option but to return the judicial action for restitution, on repeated occasions, to the URT for correction. This has led to significant delays in many restitution cases.

On the whole, judges and magistrates have increasingly adopted a progressive interpretation of Law 1448 and have ordered the implementation of a range of complementary measures in their rulings to ensure that peasant farmers can return to their lands in a sustainable manner. These measures often go beyond what is strictly stipulated in Law 1448, and have included debt and tax forgiveness for longer periods than envisioned in Law 1448, housing restitution, and granting compensation to opponents that have not proved their good faith without culpability. In all, 85% of rulings include measures on housing, 74% on agricultural projects, 56% on health programmes, 52% on education and employment programmes and 25% on infrastructure improvements.<sup>198</sup> This interpretative autonomy is largely due to the fact that Law 1448 has implemented a transitional justice model that has given the restitution judges and magistrates more room for manoeuvre than ordinary judges in Colombia. While this has been positive, as is shown by the many progressive rulings issued, it has also resulted in a lack of consistency in many rulings.

However, the progressive stance of many judges and magistrates is being undermined by the fact that in many cases their rulings are not being effectively implemented. This is partly because many local and regional government and state institutions, which are responsible for implementing many of the complementary measures, simply lack the political will or the financial resources to effectively implement the judicial orders. Some regional institutions are



also plagued by corruption. Links between local and regional government and state institutions and corrupt regional political and economic elites, paramilitaries, and to a lesser degree guerrilla groups, have been well documented.<sup>199</sup> The land restitution process, which is being driven by the national government, is viewed by many regional and local elites as an attempt by central government to undermine local and regional political and economic interests. These elites could thus undermine land restitution, through the control they exercise over some local and regional institutions.

The latest official evaluation report on implementation of Law 1448, published in August 2014, also highlighted the fact that judges and magistrates are generally failing to direct the orders to the relevant state entities and to set specific timeframes for implementing the orders. This is causing significant delays in implementation since there is confusion about which state institution is responsible for implementing specific measures.<sup>200</sup> This has been exacerbated by the failure of SNARIV, which is responsible for co-ordinating the implementation of Law 1448, to effectively follow-up on the implementation of the orders.

According to one NGO working on land restitution, the lack of co-ordination between state institutions and the lack of political will to implement judges' orders was highlighted during a ceremony on 19 September 2013 to mark the inauguration of the Casa del Balcón, a community building in La Pola farm. The farm, which is part of the restitution process in Chibolo Municipality, was destroyed by paramilitaries when they ransacked the area and forced the community from their lands. The ceremony was the official act marking the restitution of the community's lands. During the ceremony, state representatives made a number of commitments to rebuild the community, including the provision of a school and a health post, as part of reparation efforts to support the community. But a year later, very few of the commitments to rebuild the community, such as the school, have materialized.<sup>201</sup>

One restitution judge who spoke to Amnesty International at the end of 2013 complained that despite repeated commitments, the authorities have failed to implement his rulings. In particular, he highlighted delays in implementing his orders to INCODER to issue land titles and disburse subsidies for agricultural projects and housing. He also stated that he had transferred 15 cases to restitution magistrates because these cases were being challenged by "opponents". So far, magistrates had issued rulings in favour of the claimant in six of these cases; however, in none of these cases had the authorities succeeded in removing the opponent from the land.<sup>202</sup> Another restitution judge complained that despite ordering improvements to road infrastructure in some of his rulings, disagreements about which authority was responsible for financing this had meant that the orders had not been implemented.<sup>203</sup>

Many of the NGOs and state institutions that spoke to Amnesty International identified the micro-focalization process as the main bottleneck for land restitution. They complained that the micro-focalization process, which is the responsibility of COLR, was being used to limit the number of areas open to restitution, rather than as a safeguard mechanism to ensure that an area was safe before it became eligible for land restitution. Although in theory the Defence Ministry does not have a veto over decisions made by COLR, in practice, objections from the Ministry have on several occasions blocked particular areas from being micro-focalized.<sup>204</sup>

Inconsistency and a lack of co-ordination in the Defence Ministry's implementation of the micro-focalization process has also been criticized.<sup>205</sup> CI2RT is the Defence Ministry department responsible for providing information about the security situation in a particular

area, as a prerequisite for selecting the area for micro-focalization. The security information provided by CI2RT has at times been contradictory and too general to be of any practical use. For example, on occasions CI2RT has claimed that an area is unpopulated when local NGOs say this is not the case, or there is no information provided about the presence of illegal armed groups in a particular area, or the information is too broad, covering only the municipal or departmental level rather than the local level. It also appears that in some areas, the police and the armed forces are implementing different concepts of security, with the police, who are responsible for accompanying some communities during the restitution process, refusing to enter certain areas because of security concerns.<sup>206</sup>

In March 2014, the government presented legislation to reform Law 1448 by seeking to introduce an administrative mechanism for land restitution in those cases where there is no opposition to a claim. According to the reform, the URT would become responsible for the adjudication of land without having to go through a judicial procedure. The reform is based on the premise that the judicial phase is the principal bottleneck in the restitution process. Although the bill was withdrawn in May 2014 it is likely to be reintroduced.

However, as this report has shown, other significant obstructions exist, which would not be resolved through such a reform. For example, bottlenecks occur during the process of macro- and micro-focalization, which has given the Defence Ministry de facto authority to severely limit the number of areas where land restitution can be implemented. Delays are also caused by the national institutions responsible for implementing Law 1448, such as the URT, INCODER and IGAC, which do not have the capacity to process claims in a timely and effective manner, while other national and local institutions have failed to implement many of the measures ordered by restitution judges and magistrates.

Law 1448 is also extremely complex and difficult to navigate for many victims. For example, despite the principle which reverses the burden of proof, victims are still required to present significant amounts of paperwork, much of which may have been lost when they fled their homes, and fill in several forms to file a claim. Land claimants, some of whom are illiterate, require the help of lawyers from human rights NGOs or the URT to navigate the process and make a claim. But both the URT and the local human rights NGOs have limited funds to support victims.

Many claimants are required to travel long distances to make a claim. Most lack the economic resources to make the journey, and the URT does not provide victims with economic support for transport or related expenses. This acts as a disincentive for victims considering making a land restitution claim. All of these factors combine to prevent dispossessed peasant farmers from making a claim, and slow the process for those who do make a claim.

## ONGOING GENDER DISCRIMINATION

In April 2008, the Constitutional Court issued a ruling – Judicial Decision 092 of 2008 (Auto 092) – on the rights of women forcibly displaced by the conflict. It affirmed that forced displacement had a “disproportionate impact, in quantitative and qualitative terms” on women, and that pressures on women to leave their lands were more pronounced due to their historic lack of land rights, especially over rural properties.

The ruling also made specific references to the obstacles faced by women with regards to land ownership: “women heads of household, particularly widows, are more vulnerable with regards to the uncertainty of tenancy and the capacity to service debts incurred with little possibility of mobilizing the strength of family work, lack of technical training on productive processes and debt management”. And quoting a 2005 INCODER report, the ruling stated: “In terms of the effective right to land, the mere assignation or adjudication of land, without training and accompaniment, does not meet the objectives of equity”.

Law 1448 has therefore adopted a gender perspective, and includes measures designed to assist women in their land claims and to realize equality in their access to land generally. Such measures include preferential access in the administrative and judicial phases of the land restitution process, additional security measures to ensure that women claimants can return to their land, and preferential access to credit. Also, most importantly, Law 1448 stipulates that the restitution judges must grant ownership of land to both the woman and her partner even if the original land title was held only by her male partner.<sup>207</sup>

However, women continue to face numerous challenges in their efforts to realize such rights. Despite actively participating in agriculture and related land-based activity together with men, women rarely feature as owners, landholders or occupants in legal and other documentation, if such documentation even exists. For example, when land was adjudicated by INCORA under Law 160 of 1994, it was the husband or male partner's name that often featured on the legal documentation, and not the woman's name.

According to information from the RTDAF register from the end of February 2014, in more than three-quarters of all land cases included in the register in which the claim was being made on behalf of a couple, the claim was made by the man rather than the woman.<sup>208</sup>

Law 1448, in recognition of the informality of ownership, has put limits on the amount of paperwork and information that has to be provided by claimants to demonstrate that they have a right to a particular plot of land. However, the law still requires claimants to at least provide basic information, such as who has lived on the land, who owns it or claims rights over it, and its precise size and geographical location. Requesting this information may seem reasonable but, critically, it is often the type of information that is administered by the man in a relationship. Therefore women claimants can find it difficult to produce such information, especially if they are no longer with their partner or if their partner has died.

The land restitution process also places undue weight on determining the relationship of the woman to the male land claimant. It is often the sole factor in deciding a woman's claim, rather than looking at whether a woman has an autonomous right to that land, for instance because she worked on the land, irrespective of her status with the male claimant. Women's work tends not to be acknowledged as a factor in determining a woman's right to access to land.

In those cases where a woman cannot demonstrate her direct and autonomous right to a plot of land as, for example, the owner, landholder or occupant, but she *can* demonstrate that she was in a relationship with the male land claimant at the time they were forcibly displaced, some Colombian women's organizations have suggested that restitution judges should automatically grant them joint ownership, rather than only including the male partner on the

land title as has so often been the case in the past.<sup>209</sup> It appears that most, but not all, judges and magistrates do now issue joint ownership in such cases. The restitution judges therefore have a critical role in ensuring that women's access to land is respected, beyond their mere formal rights of ownership.

According to one Colombian women's organization that has worked closely with women land claimants and has followed a number of restitution cases both in the administrative and judicial phases, the URT has accepted that women have an autonomous right in terms land ownership. However, in the organization's view, some judges still interpret such rights in terms of the woman's relationship to her male partner, and in many restitution cases, judges still tend to call only on the male partner to give evidence.<sup>210</sup>

## THE RESTITUTION OF INDIGENOUS AND AFRO-DESCENDANT TERRITORIES

The state agencies responsible for evaluating implementation of Law 1448 have acknowledged that there have been severe delays in the restitution process for Indigenous and Afro-descendant communities, many of which continue to be negatively affected by mining and other large economic projects.

By the end of June 2014, the URT had identified 95 Indigenous and 32 Afro-descendant territories as possible land restitution cases, and initiated the actual characterization phase in 25 of these cases (16 Indigenous and nine Afro-descendant territories).<sup>211</sup> By 1 August 2014, the characterization phase of only four Indigenous and two Afro-descendant territories had been concluded and transferred to the judicial phase for adjudication.<sup>212</sup> By September 2014, only one of these six cases – the 50,000 hectare Embera Katío Indigenous reservation of Alto Andágueda in Bagadó Municipality, Chocó Department – had been adjudicated.

Indigenous and Afro-descendant organizations have expressed concern over the lack of consultation in the land restitution process. One of the main Afro-descendant organizations, the Process of Black Communities (Proceso de Comunidades Negras, PCN), told Amnesty International that the Colombian authorities failed to consult with them during the elaboration of the Decree Law on land restitution, despite the government unilaterally accepting many of PCN's proposals for the Decree Law. PCN also told Amnesty International that it does not have official high-level contacts with the institutions responsible for land restitution, including the URT, and so have been unable to carry out joint monitoring of the implementation of land restitution with the authorities.<sup>213</sup>

Colombia's main Indigenous organization, the National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, ONIC) told Amnesty International that while the Indigenous Decree Law had been consulted with them, many of their proposals had not been taken on board. This included their proposal to include restitution cases prior to 1991, since many Indigenous communities were forcibly displaced from their territories prior to that date. ONIC noted the failure of the URT to keep communities and ONIC informed about progress in the territorial restitution cases.<sup>214</sup>

ONIC also expressed concern about possible tensions and conflict between Indigenous communities and peasant farmers seeking land restitution in reservations or ancestral lands belonging to Indigenous Peoples. Although the law prohibits the titling of land to peasant

farmers in Indigenous reserves, no such restrictions appear to be in place for land in ancestral territories, which are not legally recognized.

The state agencies evaluating Law 1448 also noted that the URT has neither the quality nor number of staff needed to implement the Indigenous and Afro-descent restitution process effectively, and criticized the lack of co-ordination between the Interior Ministry, UARIV and the URT in this respect.<sup>215</sup> Furthermore, they noted a lack of dissemination of information to these communities on the process for claiming restitution, as required by Law 1448. These failings were compounded by failures to work around the communities' particular cultural traditions, by the fact that many do not speak Spanish and live in isolated regions, and the lack of training for officials implementing the relevant decrees.

The URT's work on Indigenous and Afro-descendant territories has also been negatively affected by the lack of security in many of the territories under analysis. This has contributed to delays in initiating the restitution process and in implementing the precautionary measures, designed to protect these communities from further land theft while the restitution process advances. Of the few restitution rulings on precautionary measures to date, most have highlighted the threat that mining and agro-industrial projects pose for the rights of Indigenous and Afro-descendant communities.

By 1 August 2014, only five precautionary measures – three for Afro-descendant communities and two for Indigenous communities – had been presented by the URT and authorized by restitution judges.<sup>216</sup> According to the Office of the Human Rights Ombudsman, four of these date back to 2012 and none were issued in 2013, despite a commitment by the URT to present 16 precautionary measures that year. Only one has been issued so far in 2014. According to the Office of the Human Rights Ombudsman, precautionary measures were being vetoed by the Defence Ministry because the Ministry claimed it did not have the resources to implement them.<sup>217</sup>

The URT told Amnesty International that the single precautionary measure presented by the URT and authorized by a judge in 2014 had not required any action to be taken by the security forces and so did not necessitate "authorization" by the Defence Ministry. The URT also acknowledged that a request it made in 2014 for precautionary measures for the Afro-descendant community of Pedeguita Mansilla, in Riosucio Municipality, Chocó Department, was blocked by the Defence Ministry.<sup>218</sup> In August 2014, a restitution judge did authorize a precautionary measure for an Indigenous community in Cesar Department, but the request had been made by ONIC and not the URT.<sup>219</sup>

The URT has also claimed that delays in the restitution process as a whole have been caused by the prevalence of the armed conflict in Indigenous and Afro-descendant territories, as well as by the authorities' lack of information about these territories, and a lack of knowledge and understanding about the restitution process on the part of these communities. The URT has stated that it made considerable efforts in 2013 to initiate a dialogue with these communities, to disseminate information about land restitution, and to train officials and community leaders on issues relating to process.<sup>220</sup> But Indigenous leaders have said that the URT failed to consult with them effectively during the preliminary studies to identify potential cases, and during the characterization process.<sup>221</sup>

Moreover, Law 1448 does not provide these communities with full protection from mining interests that, in some cases, may be linked to the economic interests that backed the efforts to illegally acquire these communities' lands in the first place. Article 13 of Law 685 of 2001 (the Mining Code), declares mining to be of "public interest" (*utilidad pública*). It gives the state strong powers to expropriate lands to enable the development of mining projects. The administration of President Santos made clear in its 2010-2014 National Development Plan (NDP) that mining was to be one of the driving forces of the economy.<sup>222</sup> To promote mining, the government included provision for the creation of strategic mining areas in Law 1450 of 16 June 2011, the law that approved the NDP.<sup>223</sup>

In 2012, the state National Mining Agency (Agencia Nacional de Minería) issued Resolution 18-0241 and Resolution No.45. The two resolutions declared millions of hectares of land, including in areas with Indigenous reservations and Afro-descendant collective territories, to be strategic mining areas, including in the departments of Amazonas, Antioquia, Bolívar, Cauca, Cesar, Chocó, Guainía, Nariño, Norte de Santander, Putumayo, Quindío, Risaralda, Tolima, Valle del Cauca, Vaupés and Vichada.

However, the Constitutional Court, in Sentence C-418 of 2002, had already stated that mining areas in Indigenous territories could only be created through a process of prior consultation with the communities affected. It ruled that the creation of what were then to be called Indigenous mining areas, under the terms of the 2001 Mining Code, was unconstitutional, pointing to Article 15 of ILO Convention 169, which underlines the right of Indigenous Peoples to participate and determine the use of natural resources linked to their lands and the right to consultation before allowing exploration or exploitation, and to Article 330 of the Colombian Constitution, which provides Indigenous communities a certain degree of control over the management of their territories.

It is not clear whether the Constitutional Court ruling also applies to Afro-descendant territories. It is of concern, therefore, that both resolutions by the National Mining Agency quoted a statement issued by the Prior Consultation Directorate (Dirección de Consulta Previa) of the Interior Ministry of 20 February 2012, stating that since the creation of Indigenous mining areas merely *expressed the expectation* that a mining project might develop, the creation of such areas therefore does not have to be subject to consultation with Indigenous and Afro-descendant communities. The consultation process would, instead, have to be carried out by the mining interest securing the concession.<sup>224</sup> By having earmarked Indigenous territories for mining without first consulting the communities affected, in contravention of Constitutional Court Sentence C-418 of 2002, the government risks undermining the effectiveness of any future consultation process.

### **FAILING TO GUARANTEE THE RIGHT TO NON-REPETITION, INCLUDING IMPUNITY**

The right to non-repetition, including measures to ensure that those suspected of criminal responsibility for human rights abuses and violations are investigated and, if there is sufficient admissible evidence, prosecuted, is one of the central tenets of victims' right to an effective remedy.<sup>225</sup> Law 1448 recognizes that victims of the conflict have a right to full reparation.<sup>226</sup> However, as stated earlier in this report, the armed conflict has and continues to be marked by very high levels of impunity for human rights abuses and violations. Meanwhile, the state's acknowledgement of the right to remedy is weakened by the government's support for legislation that will undermine the fight against impunity.

In June 2012, Congress approved an amendment to the Constitution – the Legal Framework for Peace – which could enable alleged human rights abusers to evade justice. This amendment gives Congress the power to limit criminal trials to those “most responsible” for human rights abuses and violations, and to suspend the prison sentences handed down to all paramilitary, guerrilla and security force combatants convicted of such crimes. In August 2013, the Constitutional Court upheld the constitutionality of the law but ruled that the sentences of those “most responsible” could not be completely suspended if they were responsible for crimes against humanity, genocide or war crimes. However, there is no clear definition of, or criteria to determine, “most responsible”.<sup>227</sup>

Moreover, in a context in which the legal framework established to oversee the supposed demobilization of paramilitaries – Law 975 of 2005 – has not guaranteed full and impartial investigations into human rights violations committed by paramilitaries and all those in politics and business who continue to back them, and with the existence of a legal framework that still ensures that the military justice system can maintain jurisdiction over many cases of human rights violations, there can be little guarantee that all those “most responsible” for abuses will be identified.

In December 2012, Congress approved a further reform of the Constitution that would have given military courts greater control over criminal investigations into cases in which members of the security forces are implicated in human rights violations. Although the Constitutional Court threw out the reform on procedural grounds in October 2013, in September of that year the government presented a bill to Congress that, if approved, would go even further in granting the military justice system the authority to investigate and prosecute members of the security forces implicated in human rights violations, including some cases of extrajudicial executions and sexual crimes.<sup>228</sup>

As Amnesty International has previously explained in detail “[t]he jurisdiction of military courts over criminal cases should be limited to trials of military personnel for breaches of military discipline”.<sup>229</sup> The organization calls for trials of human rights violations and crimes under international law to take place before civilian – not military – courts, given concerns about impunity and the lack of independence and impartiality of military courts.

It is important to underline that Colombia’s current Military Criminal Code of Justice already contains provisions that guarantee the jurisdiction of military justice over human rights violation cases. Language in the new bill, which is still being debated at the time of writing, could strengthen the jurisdiction of the military justice system over human rights violations, including those committed by paramilitaries operating in collusion with the security forces.

These reforms could not only limit the possibility of victims of human rights abuses and violations being officially recognized as such, thus undermining their right to reparation, but also encourage further forced displacements and land grabs since the perpetrators will feel confident that they can act without fear of any consequences.

In their rulings, some restitution judges and magistrates have sought to examine the causes and consequences of forced displacement and land grabs, including by identifying those suspected of criminal responsibility in such crimes, and have called on the Office of the Attorney General to open criminal investigations into such cases. However, according to the



August 2014 official report into the implementation of Law 1448, only a few judges and magistrates have issued such specific orders to the Office of the Attorney General.<sup>230</sup> Article 91 of Law 1448 gives judges and magistrates the authority to issue such orders.



## 6. CONCLUSIONS AND RECOMMENDATIONS

Law 1448 will result in some victims of the conflict gaining formal ownership over their lands. But the land restitution process has not yet resolved the problems faced either by those not yet able to return to the landholdings from which they were dispossessed or were forced to abandon, often through violence, or by landless victims of forced displacement who, regardless, do not qualify for land restitution under Law 1448. Law 1448 also contains certain provisions, and has some inherent flaws that, coupled with other legislative measures, may make it easier for occupants of illegally acquired lands to secure legal ownership over them.

The real measure of success of Law 1448 will therefore be whether it creates the conditions to enable those forcibly displaced, and whose lands were illegally acquired, to return in safety and under sustainable conditions. Only then will the victims' fundamental right to effective remedy be guaranteed.

The informality of land ownership in Colombia has traditionally made it easier to remove people from their lands since many occupants have lacked enforceable land titles. This informality, together with the armed conflict, has meant that land has been difficult to value in monetary terms, and thus difficult to market. This situation of legal instability has acted as a drag on investment or as a restraint for business interests to derive full profit from land that may have been illegally acquired through human rights abuses, either through the sale or exploitation of such land. Law 1448 could therefore be viewed as an attempt to address this instability, by formalizing land ownership and in so doing making land easier to sell.

However, the government has claimed that Law 1448 is part of an effort to ensure respect for victims' right to full reparation and to secure their political, civil, economic, social and cultural rights. If this is indeed a key objective of Law 1448, and as this report has shown, the government will need to implement effective measures to enable those returning to remain on their land in the long-term in a sustainable manner. A failure to do so, coupled with ongoing concerns about security – not only for land claimants but also for community leaders, human rights defenders, and state officials involved in the land restitution process – could mean that those returning to their farmlands will face little choice but to sell their lands, most likely to large agro-industrial or mining companies. The persistence of conflict-related violence and a lack of state support will also make it difficult for Indigenous and Afro-descendant communities to remain on their collective territories.

Armed actors are therefore not the only participants in forced displacement and land grabs in Colombia. Sustainable land restitution will not be possible unless the authorities acknowledge and address the part played by large-scale economic interests, notably the extractive industries, logging, monocultures such as agro-fuels, as well as drug trafficking, in contributing to and benefiting from the illegal acquisition of land.

As this report has shown, the land restitution process, while marking an important step forward in efforts to respect victims' right to full reparation, including land restitution, is still beset by numerous difficulties. The lack of effective security guarantees is one of the principal concerns in efforts to return land to the rightful occupants, and is the issue that has, rightly, received the most attention. But it is clearly not the only, or even the most critical, obstacle to land restitution, if one defines restitution as the first phase in efforts to ensure that Indigenous, Afro-descendant and peasant farmer communities can sustain themselves economically, politically, socially and culturally on their lands and territories.

The restitution process is making some progress, albeit at a very slow pace, although as is highlighted in this report, many victims are unlikely to ever qualify for restitution, while many who do qualify could wait a decade to see their rights to full reparation realized. The obstacles to restitution, and the difficulties and challenges faced by those implementing the process, are numerous.

One factor that is most likely to determine whether Law 1448 is a success in the long-term is impunity. Very few of those with criminal responsibility for human rights abuses and violations, especially those suspected of involvement in or benefiting from forced displacement, have ever been effectively investigated by the judicial authorities and brought to justice for their crimes. Worryingly, new legislation and other initiatives in the pipeline could exacerbate the problem of impunity, emboldening still further those who seek to forcibly displace communities and grab their lands.

Little has been done to identify, investigate, prosecute and dismantle those regional economic and political power structures – including politicians, businesspeople, state officials and members of the security forces – that have executed, supported, commissioned and benefited from forced displacement and land grabs. These structures still exert territorial, political and economic control in many parts of the country, and some are responsible for the killings of and threats against land claimants and activists. In some cases, they are the same structures with responsibility for implementing key aspects of Law 1448 in the regions. If land restitution is to be a success, these particular regional and local political and economic structures will need to be tackled effectively.

## **AMNESTY INTERNATIONAL CALLS ON THE COLOMBIAN GOVERNMENT TO:**

### **Protect those involved in the land restitution process:**

- Take decisive action to guarantee the safety and comprehensive protection of land claimants, those campaigning for land restitution, as well as state officials involved in land restitution, and restitution judges and magistrates.
  
- Issue a directive to the UNP instructing it to implement a protection programme for land claimants and activists based on a collective and human rights-based model. This programme should be adequately resourced, adopt a gender perspective and a differentiated approach, give priority to preventative as well as reactive measures, be based on a legal presumption of risk, and be developed and implemented with the active participation of the affected communities.

- Ensure that procedural safeguards are in place to guarantee that the justice system is not misused to target human rights defenders (HRDs), including land activists, as set out by the 2013 UN Human Rights Council Resolution on protecting human rights defenders and by the 1998 UN Declaration on Human Rights Defenders.
- Publicly recognize the legitimacy of the defence of land rights, prohibit public officials from making statements and accusations against communities, organizations and HRDs campaigning on land rights, and hold accountable those state officials who do so.

**Guarantee the sustainability of land restitution:**

- Fulfil Colombia's binding obligation to provide effective remedy for victims of the armed conflict, including victims of forced displacement and the illegal acquisition of land, as stipulated in UN treaties, such as the ICCPR and the ICESCR, and in the American Convention on Human Rights.
- Ensure that the right of victims to full reparation is fully respected by implementing the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law and the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles).
- Extend the 10-year limit of the application of Law 1448 to ensure that the right of all land claimants to restitution is respected and to ensure this limitation does not become a means to grant de facto legal security to those illegally occupying lands.
- Ensure that the state bodies responsible for implementing the land restitution process are adequately resourced to enable them to effectively guarantee the right of all victims of the conflict to full reparation, including land restitution. The principle of "fiscal sustainability" should not become a factor that could limit the right of victims to full reparation, including land restitution.
- Amend Articles 3 and 75 of Law 1448, which restrict the eligibility for reparation depending on the date on which human rights abuses and violations were carried out, to ensure that all victims of the conflict can benefit from its provisions.
- Repeal Article 99 on "contracts of use" which, despite Constitutional Court Sentences C-715 and C-820 of 2012 making such contracts voluntary, could undermine the livelihood of those returning to their lands.
- Replace the macro- and micro-focalization mechanism for identifying lands for restitution, which is implemented from a largely security-based perspective and is severely limiting the number of areas eligible for land restitution, with an alternative process involving a broad cross-section of state institutions and community representatives and in which decisions are based on addressing a variety of risk factors that may undermine sustainable land restitution.

- Ensure that the standards on housing established in the Pinheiro Principles are fully implemented, since subsidies, as set out in Law 1448, are not an effective mechanism to guarantee the right to housing for victims of forced displacement.
- Fully comply with Constitutional Court Sentence T-025 of 2004 on protecting the rights of forcibly displaced people, and implement the UN Guiding Principles on Internal Displacement (Deng Principles).
- Ensure that the state bodies responsible for implementing the land restitution process co-operate effectively with each other and ensure the participation of civil society, including victims, in monitoring the implementation of Law 1448.

**Uphold the rights of women and girls:**

- Comply with Constitutional Court Judicial Decision 092 of 2008 (Auto 092) on women and displacement, and Judicial Decision 098 of 2013 (Auto 098) on the protection of women leaders of forcibly displaced communities.
- Ensure effective implementation of Law 1257 of 2008 and Law 1719 of 2014, both of which include measures to combat violence against women.

**Uphold the rights of Indigenous People and Afro-descendant communities:**

- Respect the right of Afro-descendant and Indigenous communities to free, prior and informed consent in the implementation of Decrees 4633 and 4635, which regulate the territorial restitution processes for these communities.
- Take effective measures, in line with the UN Guiding Principles on Internal Displacement (Deng Principles), to prevent the forced displacement of Indigenous Peoples and Afro-descendant communities, who have a special dependency on or relationship with their territories.
- Comply with the 2009 Constitutional Court Judicial Decisions on displacement and Indigenous People (Auto 009) and Afro-descendant communities (Auto 005).
- Implement preventative protection measures for Indigenous People and Afro-descendant communities, which should be agreed with the communities themselves, and be in line with international protection standards, including ILO Convention 169 and the UN Declaration on the Rights of Indigenous People.
- Repeal legislation that could facilitate mining or other economic projects on lands belonging to or claimed by Indigenous People and Afro-descendant communities without these communities' free, prior and informed consent.

**Ensure guarantees of non-repetition, and end impunity for forced displacement:**

- Carry out effective and impartial investigations into human rights abuses and violations, including those against land claimants and human rights defenders, and into forced displacement, and bring to justice in ordinary civilian courts those suspected of criminal responsibility for such crimes.

- Reject any legislative measure to broaden the scope of military jurisdiction, such as Senate bill No. 85 of 2013 and ensure that all cases of human rights violations, crimes under international law or even ordinary crimes are investigated and prosecuted by ordinary civilian courts and that any such cases already in the military justice system are transferred to civilian courts.
- Repeal any legislative measure, such as the Legal Framework for Peace, which will allow human rights abusers, including those responsible for forced displacement, to evade justice in ordinary civilian courts.
- Take decisive action to confront and dismantle paramilitary groups, and investigate and break their link with sectors of the security forces, in accordance with repeated UN recommendations. Also, investigate and prosecute those in business and politics who have colluded or continue to collude with paramilitary groups to commit human rights violations.
- Ensure that effective and impartial investigations and prosecutions are carried out into public officials suspected of criminal responsibility in forced displacement and the illegal acquisition of land, and into any links such officials might have to paramilitary groups.

**Instruct the Land Restitution Unit to:**

- Guarantee that victims of paramilitary structures (referred to as *Bacrim* by the authorities) are not excluded from the land restitution process, in line with Constitutional Court Sentence C-781 of 2012, and issue a directive to this effect to all its regional offices.
- Ensure that it complies with Constitutional Court Sentence C-715 of 2012, which declared unconstitutional wording in Law 1448 that excludes from qualifying for land restitution those deemed to have taken “illegal” action to campaign for the return of their illegally acquired lands.
- Ensure it registers those land claims that are currently excluded because they are not located in areas that have been macro- or micro-focalized.
- Ensure that it processes land claims within the time limits stipulated in law.
- Guarantee to fund the travel and other expenses of victims, most of whom live in situations of poverty, to enable them to travel to URT offices to make their claim, and to other locations as required by the land restitution process.
- Ensure that the restitution of Indigenous and Afro-descendant territories is effectively and efficiently implemented, and that the land rights of Indigenous and Afro-descendant communities who do not live in legally recognized collective territories, including in urban areas, are also fully respected.

**AMNESTY INTERNATIONAL RECOMMENDS THAT RESTITUTION JUDGES AND MAGISTRATES SHOULD CONSIDER:**

- Ensuring that land claimants receive a comprehensive compensation package to take into account lost opportunities, including in terms of employment, education and social



benefits, and material damages and loss of earnings, including loss of earning potential, in line with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation.

- Taking fully into account the often invisible role that women have played in the use of land to determine women's land rights, rather than relying predominantly on legal documentation, including legal proof of ownership.
- Incorporating an analysis of the experience of women in the conflict, including their situation at the time they were forcibly displaced, in order to identify the obstacles that have prevented women from enjoying their land and other rights.
- Ensuring that land titles are provided to successful land claimants within the time frame stipulated in law, and that deadlines are set for implementing the complementary orders included in rulings. Those public officials who fail to comply with these orders within the established deadlines should be sanctioned.
- Taking into account the vulnerability of an opponent (if they are a victim of the conflict) when defining "good faith without culpability" to ensure that such opponents enjoy the right to compensation as stipulated in Law 1448.
- Giving priority to the investigation of the causes and consequences of forced displacement and land grabs, including by identifying those suspected of criminal responsibility in such crimes, and reflecting this in their rulings, as well as by calling on the Office of the Attorney General to investigate such crimes.

#### **AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT AND THE GUERRILLA TO:**

- Ensure that the peace process fully respects the right of all victims to truth, justice and reparation, and that all those suspected of criminal responsibility for crimes under international law, without exception, will be brought to trial before ordinary civilian courts.
- Make a verifiable commitment to put an immediate end to human rights violations and abuses and violations of international humanitarian law.
- Immediately and fully implement the recommendations on Colombia of the UN High Commissioner for Human Rights and those of the Inter-American human rights system and other international human rights bodies and mechanisms.

#### **AMNESTY INTERNATIONAL CALLS ON THE INTERNATIONAL COMMUNITY TO:**

- Call on the Colombian government to take the actions outlined above and provide the government with any assistance it may require to do so.
- Guarantee that it is not providing funds to economic projects on lands illegally acquired through human rights abuses and which allow the perpetrators to benefit from such lands.
- Ensure that companies based abroad that are investing in Colombia do not benefit from lands illegally acquired through human rights abuses and violations.

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## ENDNOTES

<sup>1</sup> For an analysis of the use of forced displacement in the context of Colombia's armed conflict see Amnesty International, *Return to hope: Forcibly displaced communities of Urabá and Medio Atrato region*, (Index: AMR 23/023/2000) and *Everything Left Behind: Internal displacement in Colombia*, (Index: AMR 23/015/2009).

<sup>2</sup> The Final Study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas, 23 January 2012, UN Doc. A/HRC/AC/8/6, defines a peasant as: "a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food or other agricultural products. Peasants work the land themselves and rely above all on family labour and other small-scale forms of organizing labour. Peasants are traditionally embedded in their local communities and they take care of local landscapes and of agro-ecological systems. 2. The term peasant can apply to any person engaged in agriculture, cattle-raising, pastoralism, handicrafts-related to agriculture or a related occupation in a rural area. This includes indigenous people working on the land. 3. The term peasant also applies to landless [people]. According to the UN Food and Agriculture Organization definition, the following categories of people are considered to be landless and are likely to face difficulties in ensuring their livelihood: 1. Agricultural labour households with little or no land; 2. Non-agricultural households in rural areas, with little or no land, whose members are engaged in various activities such as fishing, making crafts for the local market, or providing services; 3. Other rural households of pastoralists, nomads, peasants practising shifting cultivation, hunters and gatherers, and people with similar livelihoods".

<sup>3</sup> CODHES, *El Desplazamiento Forzado y la Imperiosa Necesidad de la Paz, informe desplazamiento 2013*, 2014.

<sup>4</sup> National Centre of Historic Memory, *¡Basta Ya! Memorias de Guerra y Dignidad*, 2013.

<sup>5</sup> Internal displacement is defined in the UN Guiding Principles on Internal Displacement as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border". In Colombia, however, the term 'forced displacement' is more commonly used, including by relevant human rights institutions such as the Office in Colombia of the UN High Commissioner for Human Rights and, as such, this report will use the term to describe the act of conflict-related internal displacement.

<sup>6</sup> Several Amnesty International reports have drawn the link between human rights abuses, including forced displacements, and economic interests, including: *Return to hope: Forcibly displaced communities of Urabá and Medio Atrato region*, (Index: AMR 23/023/2000); *Killings, arbitrary detentions, and death threats – the reality of trade unionism in Colombia*, (Index: AMR 23/001/2007) and *Laboratory of war – Repression and violence in Arauca*, (Index: AMR 23/004/2004).

<sup>7</sup> For an analysis of human rights violations and abuses and violations of international humanitarian law committed in the context of the internal armed conflict see the Colombia chapter of Amnesty International's annual reports for the past several years. The most recent annual report (published in 2013) is available at: [www.amnesty.org/en/annual-report/2013](http://www.amnesty.org/en/annual-report/2013)

<sup>8</sup> For a general overview of the human rights consequences of Colombia's armed conflict see Amnesty International, '*Leave us in peace!': Targeting civilians in Colombia's internal armed conflict*, (Index: AMR 23/023/2008).

<sup>9</sup> For an examination of the issue of impunity in Colombia see Amnesty International, '*Leave us in peace!': Targeting civilians in Colombia's internal armed conflict*, (Index: AMR 23/023/2008).

<sup>10</sup> National Centre of Historic Memory, *Memorias del despojo y resistencias campesinas en la costa Caribe (1960- 2010)*, 2014.

<sup>11</sup> There are no official statistics on the number of peasant farmers in Colombia, but according to a UNDP report, *El Campesinado, Reconocimiento para construir país*, 2011, several academic studies have suggested figures ranging from 6-7 million.

<sup>12</sup> Principal 11, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147, 21 March 2006.

<sup>13</sup> For an overview of the human rights consequences of Colombia's armed conflict see Amnesty International, '*Leave us in peace!': Targeting civilians in Colombia's internal armed conflict*, (Index: AMR 23/023/2008).

<sup>14</sup> For an analysis on the use of rape and other forms of sexual violence in the conflict, see Amnesty International reports: *Colombia: Hidden from justice. Impunity for conflict-related sexual violence*, (Index: AMR 23/031/2012); '*This is what we demand, justice!': Impunity for sexual violence against women in Colombia's armed conflict*, (Index: AMR 23/018/2011); Colombia: '*Scarred bodies, hidden crimes*': *Sexual violence against women in the armed conflict*, (Index: AMR 23/040/2004).

<sup>15</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.

<sup>16</sup> Somos Defensores, *D de Defensa, Informe Anual 2013 Sistema de Información sobre Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia – SIADDHH*, 2014.

<sup>17</sup> Somos Defensores, *Imagine*, 2014.

<sup>18</sup> Email received from ENS on 20 January 2014.

<sup>19</sup> For examples of the use of the legal system to discredit human rights organizations see Amnesty International, *Efforts to discredit human rights lawyers' collective puts them at risk of attack*, (Index: AMR 23/034/2011), and *Concern over arrest of pregnant human rights defender in Colombia*, 18 November 2010.

<sup>20</sup> See, for example, Amnesty International, *Return to hope: Forcibly displaced communities of Urabá and Medio Atrato region*, (Index: AMR 23/023/2000) and '*Leave us in peace!': Targeting civilians in Colombia's internal armed conflict*, (Index: AMR 23/023/2008).

<sup>21</sup> Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia, 7 January 2013, A/HRC/22/17/Add.3.

<sup>22</sup> [www.javiergiraldo.org/spip.php?article77](http://www.javiergiraldo.org/spip.php?article77)

<sup>23</sup> For an analysis of human rights abuses and violations of IHL by guerrilla groups see the Colombia chapter of Amnesty International's annual reports (various years), as well as '*Leave us in peace!': Targeting civilians in Colombia's internal armed conflict*, (Index: AMR 23/023/2008), and the reports of

the UN High Commissioner for Human Rights on the human rights situation in Colombia, available at: [www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe2013EN.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe2013EN.pdf)

<sup>24</sup> CODHES, *El Desplazamiento Forzado y la Imperiosa Necesidad de la Paz, informe desplazamiento 2013*, 2014.

<sup>25</sup> Land Restitution Unit, *La Política Pública para la Protección y Restitución de los Derechos Territoriales de los Grupos Étnicos: Antecedentes, Acciones y Perspectivas en el Escenario de los Decretos con Fuerza de Ley para Grupos Étnicos (4633 y 4635 de 2011)*, March 2013.

<sup>26</sup> Constitutional Court Judicial Decision 005 of 2009.

<sup>27</sup> Constitutional Court Judicial Decision 005 of 2009.

<sup>28</sup> For a detailed analysis of the different mechanisms used to illegally acquire land see National Commission of Reparation and Reconciliation, *El Despojo de Tierras y Territorios, Aproximación Conceptual*, July 2009.

<sup>29</sup> Article 17.

<sup>30</sup> Article 21.

<sup>31</sup> Paragraph 8(e).

<sup>32</sup> UN Doc. A/HRC/19/75, 24 Feb 2012.

<sup>33</sup> Article 14(g).

<sup>34</sup> Article 16(h).

<sup>35</sup> Article 64.

<sup>36</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005).

<sup>37</sup> Principle 28, 1.

<sup>38</sup> Principle 30.

<sup>39</sup> It should be noted that reparations can be applied even in situations of non-gross violations.

<sup>40</sup> Paragraph 18.

<sup>41</sup> Paragraph 19.

<sup>42</sup> Principle 2, Paragraph 2.1.

<sup>43</sup> Principle 4.

<sup>44</sup> Principle 8.

<sup>45</sup> Principle 10.

<sup>46</sup> Principle 14

<sup>47</sup> Principle 16.

<sup>48</sup> Principle 17.

<sup>49</sup> Article 11(1).

<sup>50</sup> Paragraph 1.

<sup>51</sup> It should be noted that the guidelines were criticized by the UN Special Rapporteur on the rights of indigenous peoples for advising that land restitution for Indigenous People should be done where possible in accordance with national legislation, and for not recognizing the right to free, prior and informed consent, instead only requiring that “indigenous peoples and other communities with customary land tenure systems should not be forcibly evicted from their ancestral lands”. See <http://unsr.jamesanaya.org/annual-reports/report-to-the-general-assembly-a-67-301-13-august-2012>.

<sup>52</sup> Section 15.3.

<sup>53</sup> Section 15.6.

<sup>54</sup> UNDP, *Colombia rural, razones para la esperanza*, Informe Nacional de Desarrollo Humano, 2011.

<sup>55</sup> UNDP, *Colombia rural, razones para la esperanza*, Informe Nacional de Desarrollo Humano, 2011.

<sup>56</sup> *Desarrollo rural y política agraria en Colombia, 1960-2012*, INCODER, 2013.

<sup>57</sup> *Desarrollo rural y política agraria en Colombia, 1960-2012*, INCODER, 2013.

<sup>58</sup> The abandonment of land is defined as the material neglect of that land because of violence, while dispossession is defined as the act of arbitrarily depriving a person of their property or possessions.

<sup>59</sup> For a detailed analysis of the illegal acquisition of land see National Centre of Historic Memory, *La Política de Reforma Agraria y Tierras en Colombia*, 2009; *Justicia y Paz, Tierras y Territorios en las Versiones de los Paramilitares*, 2012; and the Office of the Comptroller General, *Espacios Vividos, Territorios Despojados*, 2014.

<sup>60</sup> See Constitutional Court rulings T-025 of 2004 on internally displaced people, 004 of 2009 on Indigenous Peoples, 005 of 2009 of Afro-descendant communities, and 092 of 2008 on women.

<sup>61</sup> Article 1.

<sup>62</sup> Article 19.

<sup>63</sup> Article 10.

<sup>64</sup> INCODER, *Desarrollo rural y política agraria en Colombia, 1960-2012*, 2013.

<sup>65</sup> Adopted via Decree 250 of 2005.

<sup>66</sup> Decree 250, 5.3.4.2.

<sup>67</sup> Judicial Decision (Auto) 008 of 2009 and Judicial Decision (Auto) 219 of 2011.

<sup>68</sup> Judicial Decision (Auto) of 11 March 2014.

<sup>69</sup> Law 1152.

<sup>70</sup> Sentence C-175/09.

<sup>71</sup> See: [http://wp.presidencia.gov.co/SitePages/DocumentsPDF/punto1\\_20140924.pdf](http://wp.presidencia.gov.co/SitePages/DocumentsPDF/punto1_20140924.pdf)

<sup>72</sup> See National Commission of Reparation and Reconciliation, *El Despojo de Tierras y Territorios, Aproximación Conceptual*, July 2009.

<sup>73</sup> National Administrative Department of Statistics (DANE), 2011, quoted in INCODER, *Desarrollo rural y política agrarian en Colombia, 1960-2012*, 2013.

<sup>74</sup> This view has been supported by the Inter-American Court of Human Rights. In its judgment on the case of the *Saramaka People v. Suriname*, on 28 November 2007, the Court stated that “this Tribunal declares that the members of the Saramaka people are to be considered a tribal community, and that the Court’s jurisprudence regarding indigenous peoples’ right to property is also applicable to tribal peoples because both share distinct social, cultural, and economic characteristics, including a special relationship with their ancestral territories, that require special measures under international human rights law in order to guarantee their physical and cultural survival.”

<sup>75</sup> Article 7.

<sup>76</sup> Article 63.

<sup>77</sup> Land Restitution Unit, *La Política Pública para la Protección y Restitución de los Derechos Territoriales de los Grupos Étnicos: Antecedentes, Acciones y Perspectivas en el Escenario de los Decretos con Fuerza de Ley para Grupos Étnicos (4633 y 4635 de 2011)*, March 2013.

<sup>78</sup> Law 70, 27 August 1993, <http://www.acnur.org/biblioteca/pdf/4404.pdf?view=1>

<sup>79</sup> National Administrative Department of Statistics (DANE), 2005.

<sup>80</sup> INCODER, *Desarrollo rural y política agraria en Colombia, 1960-2012*, 2013.

<sup>81</sup> National Administrative Department of Statistics (DANE), 2005.

<sup>82</sup> INCODER, *Desarrollo rural y política agraria en Colombia, 1960-2012*, 2013.

<sup>83</sup> Article 26.

<sup>84</sup> Article 14.

<sup>85</sup> Article 14.

<sup>86</sup> Law 21 of 1991.

<sup>87</sup> Constitutional Court Sentence T-955 of 2003.

<sup>88</sup> Article 6.

<sup>89</sup> For example, T-382 of 2006, C-030 of 2008 and Decree 3770 of 2008.

<sup>90</sup> Full reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

<sup>91</sup> Article 76.

<sup>92</sup> Decree 0599 of 2012.

<sup>93</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 de Junio de 2014*, July 2014.

<sup>94</sup> Owners are those who possess a land title; landholders have de facto possession of the land because they have exploited it over time or even rented it from others, but do not have land titles; and occupants are those who also have de facto possession, but of state-owned lands (*baldíos*), and do not have land titles.

<sup>95</sup> Decree 2829 of 2012.

<sup>96</sup> Interview with the Office of the Human Rights Ombudsman, 23 July 2014.

<sup>97</sup> Inter-American Court of Human Rights, *Saramaka People v. Suriname*, judgment of 28 November 2007.

<sup>98</sup> For example, Law 70 of 1993.

<sup>99</sup> Decree 1397 of 1996.

<sup>100</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Segundo Informe de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras 2012-2013*, August 2013.

<sup>101</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 de Junio de 2014*, July 2014.

<sup>102</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 de Junio de 2014*, July 2014.

<sup>103</sup> Response from the Land Restitution Unit dated 1 August 2014 in response to a request for information from Amnesty International.

<sup>104</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Encuesta Nacional de Víctimas 2013, Presentación Avance Corte Constitucional*, February 2014.

<sup>105</sup> Response from the Land Restitution Unit dated 1 August 2014 in response to a request for information from Amnesty International.

<sup>106</sup> Response from the Land Restitution Unit dated 1 August 2014 in response to a request for information from Amnesty International.

<sup>107</sup> Restitution Sentence 2012-00084, Juez Primero Civil del Circuito Especializado en Restitución de Tierras de Villavicencio, 5 March 2013. See: [www.igac.gov.co/wps/wcm/connect/7b90798043c14792837997189c2a4f53/500013121001-2012-00084-00+Puerto+Gaitán+5+de+marzo.pdf?MOD=AJPERES](http://www.igac.gov.co/wps/wcm/connect/7b90798043c14792837997189c2a4f53/500013121001-2012-00084-00+Puerto+Gaitán+5+de+marzo.pdf?MOD=AJPERES)

<sup>108</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.

<sup>109</sup> Interview with Néstor Raúl Correa Henao, Magistrate of the Superior Council of the Judiciary, 21 July 2014.

<sup>110</sup> Response from the Land Restitution Unit dated 1 August 2014 in response to a request for information from Amnesty International.

<sup>111</sup> Response from the Land Restitution Unit dated 19 August 2014 in response to a request for information from Amnesty International.

<sup>112</sup> Interview with the Land Restitution Unit, 22 July 2014.

<sup>113</sup> Interview with restitution judge on 8 December 2013.

<sup>114</sup> Various interviews with restitution judges in November and December 2013.

<sup>115</sup> Forjando Futuros, *Restitución de Tierras 'Gota a Gota', avances y dificultades*, March 2014.

<sup>116</sup> Article 3.

<sup>117</sup> Sentence C-781 of 2012.

<sup>118</sup> Interview with the Land Restitution Unit, 6 December 2013.

<sup>119</sup> Articles 3 and 75.



<sup>120</sup> Article 207.

<sup>121</sup> Sentence C-715 of 2012.

<sup>122</sup> Land Restitution Unit, *Informe anual de gestión, plan de acción 2013*, January 2014.

<sup>123</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.

<sup>124</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.

<sup>125</sup> Articles 2, 9 and 12.

<sup>126</sup> See Amnesty International, *Transforming pain into hope: Human rights defenders in the Americas*, (Index: AMR 01/006/2012).

<sup>127</sup> UN Doc. A/HRC/RES/22/6.

<sup>128</sup> UN Doc. A/RES/68/181.

<sup>129</sup> UN Doc. A/HRC/25/55, paras 54-126.

<sup>130</sup> Principle 28, 1.

<sup>131</sup> Principle 10.1.

<sup>132</sup> Somos Defensores, *D de Defensa, Informe Anual 2013 Sistema de Información sobre Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia – SIADDHH*, 2014.

<sup>133</sup> Somos Defensores, *Imagine*, 2014.

<sup>134</sup> Response from the Office of the Attorney General dated 25 August 2014 in response to a request for information from Amnesty International.

<sup>135</sup> Interview with IGAC, 24 July 2014.

<sup>136</sup> Interview with restitution judges in November-December 2013.

<sup>137</sup> *Semana*, 13 March 2013.

<sup>138</sup> Article 2.

<sup>139</sup> Interviews with human rights NGOs, July 2014.

<sup>140</sup> Interview with the UNP, 24 July 2014.

<sup>141</sup> Interviews with several human rights organizations and lawyers representing land claimants, November-December 2013 and July 2014.

<sup>142</sup> See Amnesty International, *The Curvaradó and Jiguamiandó humanitarian zones: Communities in resistance in Colombia*, (Index: AMR 23/001/2009).

<sup>143</sup> Interview with human rights organization working in the area, July 2014.

<sup>144</sup> Interview with a women's human rights organization, July 2014.

<sup>145</sup> Interview with human rights and peace NGOs, November-December 2013.

<sup>146</sup> Articles 31 and 32.

<sup>147</sup> Law 1719 of 18 June 2014.

<sup>148</sup> Interviews with land claimants and human rights NGOs, November-December 2013, and July 2014.

<sup>149</sup> Interviews with land claimants and other victims, November-December 2013.

<sup>150</sup> Interview with the National Protection Unit (UNP), 24 July 2014.

<sup>151</sup> Interview with the Human Rights Ombudsman, 5 December 2013.

<sup>152</sup> Interview with the Office of the Human Rights Ombudsman, 23 July 2014.

<sup>153</sup> Interview with the Human Rights Ombudsman, 5 December 2013.

<sup>154</sup> Interview with the National Protection Unit (UNP), 10 December 2013.

<sup>155</sup> Interview with the National Protection Unit (UNP), 10 December 2013.

<sup>156</sup> Interview with the National Protection Unit (UNP), 24 July 2014.

<sup>157</sup> Interview with the Office of the Comptroller General, 25 July 2014.

<sup>158</sup> Interview with NGOs working on land restitution, November-December 2013 and July 2014.

<sup>159</sup> Interviews with NGOs working on land restitution, November-December 2013 and July 2014.

<sup>160</sup> Articles 9, 19 and 197.

<sup>161</sup> Sentence C-254 of 2013.

<sup>162</sup> Interview with the Office of the Comptroller General, 25 July 2014.

<sup>163</sup> Articles 129 and 105.

<sup>164</sup> Interview with the Land Restitution Unit, 22 July 2014.

<sup>165</sup> Interview with the Office of the Comptroller General, 25 July 2014.

<sup>166</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 Junio de 2014*, July 2014.

<sup>167</sup> Article 101.

<sup>168</sup> Interview with INCODER, 24 July 2014.

<sup>169</sup> Interview with the National Centre of Historic Memory, 22 July 2014.

<sup>170</sup> Land Restitution Unit, *Informe anual de gestión, Plan de Acción 2013*, January 2014.

<sup>171</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 Junio de 2014*, July 2014.

<sup>172</sup> Interview with the Office of the Procurator General, 22 July 2014.

<sup>173</sup> Article 99.

<sup>174</sup> Sentences C-715 and C-820 of 2012.

<sup>175</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Segundo Informe de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras 2012-1013*, August 2013.

<sup>176</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 de Junio de 2014*, July 2014.

<sup>177</sup> Interview with INCODER, 10 December 2013.

<sup>178</sup> Article 206.

<sup>179</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 de Julio de 2014*, July 2014.

<sup>180</sup> Principle 2.1.

<sup>181</sup> Article 123.

<sup>182</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.

<sup>183</sup> Interview with the Office of the Comptroller General, 25 July 2014.

<sup>184</sup> Interview with the Office of the Procurator General, 22 July 2014.

<sup>185</sup> Despite Law 1448 prohibiting the adjudication of land in forestry reserves, several restitution rulings have granted land titles to claimants who received land from INCORA and which were subsequently declared as forestry reserves.

<sup>186</sup> Interview with Dejusticia, 23 July 2014.

<sup>187</sup> CODHES, *Informa. Boletín informativo de la Consultoría para los Derechos Humanos y el Desplazamiento*, No. 75, 22 April 2009.

<sup>188</sup> In this context, some victims may consider it preferable to enter into a transaction contract under the terms of Law 1448. Law 1448 (Article 132) rewards victims who withdraw claims for reparation being pursued through the courts by granting them a higher indemnity than they would if they continued with court proceedings. Encouraging victims to withdraw lawsuits, albeit from civil courts, could help cover up evidence of responsibility for human rights abuses and so potentially hamper criminal investigations and help conceal illegally acquired assets, including lands. If Law 1448 is not extended, land claimants may be unable to pursue their land restitution claims.

<sup>189</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Segundo Informe de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras 2012-2013*, August 2013.

<sup>190</sup> IGAC is the entity responsible for cartography in Colombia.

<sup>191</sup> Interviews with lawyers representing land claimants, November-December 2013.

<sup>192</sup> Interview with the Land Restitution Unit, 6 December 2013.

<sup>193</sup> Interview with INCODER, 10 December 2013.

<sup>194</sup> Interview with the lawyers involved in the case, 15 July 2014.

<sup>195</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer informe de seguimiento y monitoreo a la implementación de los decretos ley de víctimas indígenas, negras, afrocolombianos, palenqueros, raizales y rrom*, 2013.

<sup>196</sup> Interview with restitution judges, November-December 2013.

<sup>197</sup> Interview with Dejusticia, 23 July 2014.

<sup>198</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.

<sup>199</sup> See the section on the “para-politics scandal” in Amnesty International, *‘Leave us in peace!’: Targeting civilians in Colombia’s internal armed conflict*, (Index: AMR 23/023/2008).

<sup>200</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.

<sup>201</sup> Interview with the lawyers involved in the case, July 2014.

<sup>202</sup> Interview with restitution judges in November-December 2013.

<sup>203</sup> Interview with restitution judges in November-December 2013.

<sup>204</sup> Interview with the Land Restitution Unit, 22 July 2014.

<sup>205</sup> Interview with the Land Restitution Unit, 6 December 2013.

<sup>206</sup> Interview with a regional director of the URT on 9 December 2013.

<sup>207</sup> Articles 114-118.

<sup>208</sup> Sisma Mujer and Asociación Colectivo Mujeres al Derecho, *Compilación de los documentos presentados por Sisma Mujer y Colemad en el marco del Proyecto “promoción de la remoción de las barreras para el acceso efectivo de las mujeres a los procesos de restitución de tierras”*, 2014.

<sup>209</sup> Sisma Mujer, *Alternativas jurídicas para superar los obstáculos que enfrentan mujeres, niñas y adolescentes para acceder a la restitución de tierras*, 2013.

<sup>210</sup> Interview with a Colombian women’s organization, 21 July 2014.

<sup>211</sup> Land Restitution Unit, *Informe Trimestral de Gestión a 30 de Junio de 2014*, July 2014.

<sup>212</sup> Response from the Land Restitution Unit dated 1 August 2014 in response to a request for information from Amnesty International.

<sup>213</sup> Interview with PCN, 16 July 2014.

<sup>214</sup> Interview with ONIC, 16 July 2014.

<sup>215</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer informe de seguimiento y monitoreo a la implementación de los decretos ley de víctimas indígenas, negras, afrocolombianos, palenqueros, raizales y rrom*, 2013.

<sup>216</sup> Response from the Land Restitution Unit dated 1 August 2014 in response to a request for information from Amnesty International.

<sup>217</sup> Interview with the Office of the Human Rights Ombudsman, 23 July 2014.

<sup>218</sup> Interview with the Land Restitution Unit, 22 July 2014.

<sup>219</sup> See: <http://restituciondetierras.gov.co/?action=article&id=1391>

<sup>220</sup> Interview with the Land Restitution Unit, 6 December 2013.

<sup>221</sup> ONIC, *Balance de Implementación Decreto Ley 4633 de 2011*, 9 April 2014.

<sup>222</sup> National Planning Department (DNP), *Plan Nacional de Desarrollo 2010–2014. Más empleo, menos pobreza y más seguridad. Tomo I*, 2011.

<sup>223</sup> Law 1450 of 2011. “Article 108°. RESERVAS MINERAS ESTRATÉGICAS. La autoridad minera determinará los minerales de interés estratégico para el país, respecto de los cuales podrá delimitar áreas especiales en áreas que se encuentren libres, sobre las cuales no se recibirán nuevas propuestas ni se suscribirán contratos de concesión minera. Lo anterior con el fin de que estas áreas sean otorgadas en contrato de concesión especial a través de un proceso de selección objetiva, en el cual la autoridad minera establecerá en los términos de referencia, las contraprestaciones económicas mínimas distintas de las regalías, que los interesados deben ofrecer.”

<sup>224</sup> Resolution No.45 of 20 June 2012, Resolution 18- 0241 of 24 February 2012. Both Resolutions refer to the statement issued by the Prior Consultation Directorate of the Interior Ministry “la Dirección de Consulta Previa del Ministerio del Interior, mediante comunicación radicada con el número OF112-0622-DCP-2500 de fecha 20 de febrero de 2012, señaló: ‘La declaración y limitación (sic) de áreas de reserva minera estratégica – art. 108 de la Ley del Plan Nacional de Desarrollo-, no debe ser consultada, toda vez que se trata de una mera expectativa de que una mina en dicha zona pueda ser viable en su explotación, lo que implicaría que debe seguirse un proceso de selección y acatar los mandatos del Código de Minas.[...] Lo anterior, implica que el procedimiento a seguir en ese tipo de contratación, una vez surtido y agotado el proceso precontractual, debe ser consultado con las comunidades que según la ley tiene protección especial a la luz del Convención 169 de la OIT, lo que implica que dicha obligación estará a cargo del concesionario como aquellas otras derivadas de ese tipo de actividades en la fase contractual.’” See ABColombia, *Giving it Away: The Consequences of an Unsustainable Mining Policy in Colombia*, November 2012.

<sup>225</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

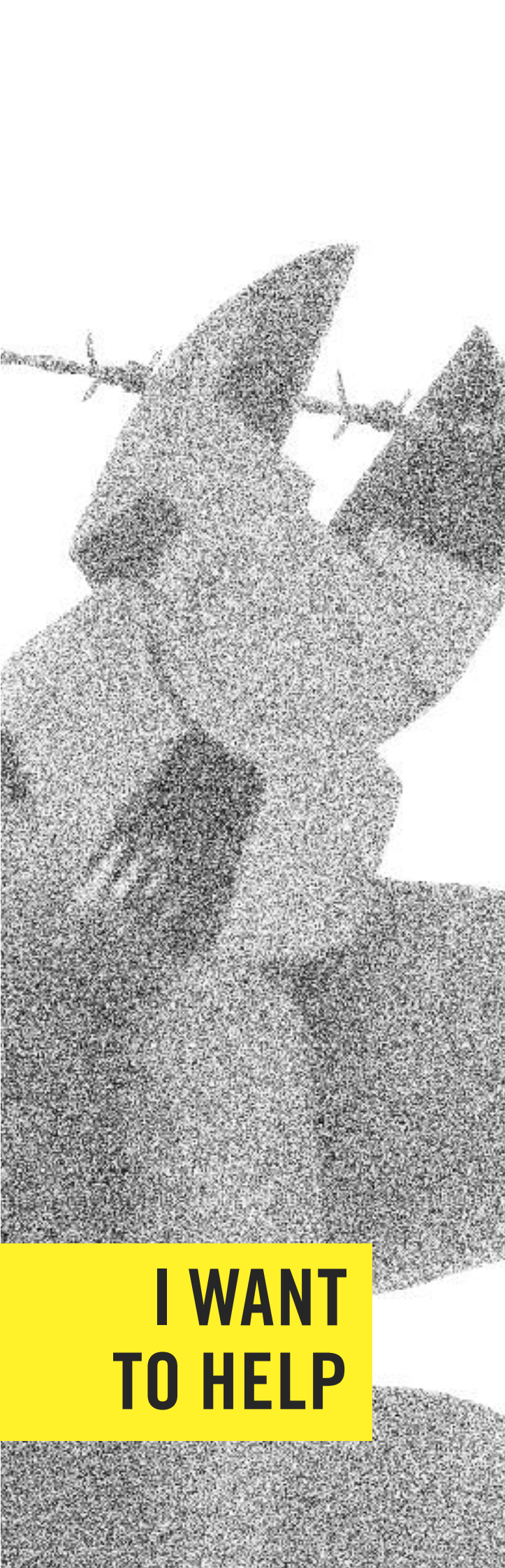
<sup>226</sup> Article 25.

<sup>227</sup> “Most responsible” is a term adopted from the International Criminal Court (ICC). The ICC is not designed to replace national justice systems but only steps in when these systems fail to investigate international crimes. As an international mechanism intended to complement the workings of national justice systems, as a matter of capacity and to encourage states to fully investigate international crimes including serious human rights violations and abuses, the ICC seeks only to investigate the “most responsible” people involved in a crime. However, international human rights standards still demand of states action to bring all those responsible for serious human rights violations and abuses to justice.

<sup>228</sup> Senate bill No. 85 of 2013.

<sup>229</sup> See Amnesty International, *Fair Trial Manual, Second Edition*, (Index: POL 30/002/2014), 2014, pp. 223-224.

<sup>230</sup> Office of the Comptroller General, Office of the Human Rights Ombudsman and Office of the Procurator General, *Primer Informe al Congreso de la República 2013-2014, Comisión de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras*, August 2014.



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## **A LAND TITLE IS NOT ENOUGH**

### **ENSURING SUSTAINABLE LAND RESTITUTION IN COLOMBIA**

The violent struggle to control territory is one of the root causes of Colombia's 50-year-old armed conflict, which has resulted in almost 6 million people being forcibly displaced. This has had a devastating impact on the millions of Colombians who rely on land for their survival, especially Indigenous, Afro-descendant and peasant farmer communities.

Over the years, repeated attempts to address the vexed issue of land have all failed. The Victims and Land Restitution Law (Law 1448), which came into force in January 2012, is the latest effort to settle issues around the formalization of land ownership, land restitution and, more generally, of reparation for some of the victims of the conflict.

The success of the land restitution process will, however, largely depend on whether the authorities, through Law 1448, are able to guarantee all land claimants the right to an effective remedy, a right which lies at the core of international human rights law.

This report examines whether the authorities can guarantee this right by addressing weaknesses in Law 1448; stemming the threats against and killings of land claimants and others involved in the process; ensuring that those who return to their lands can sustain themselves economically; and addressing impunity for those suspected of criminal responsibility in forced displacement and associated human rights violations and abuses.

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