

**EIGHTEENTH HALF-YEARLY REPORT OF THE SECRETARY GENERAL  
TO THE PERMANENT COUNCIL ON THE OAS MISSION TO SUPPORT  
THE PEACE PROCESS IN COLOMBIA  
(MAPP/OAS)**

This *Half-yearly Report* is presented in keeping with Resolution CP/RES. 859 (1397/04), in which the Organization of American States requests the Secretary General to report periodically to the Permanent Council on the work of the Mission to Support the Peace Process in Colombia (MAPP/OAS) and on its continued ability to contribute to the fulfillment of the values and principles set forth in the OAS Charter and the Inter-American Democratic Charter.

**I. GENERAL REMARKS**

The General Secretariat spotlights the efforts of the National Government in the implementation of Transitional Justice in Colombia and, particularly, Law 1448 of 2011 (the Victims and Land Restitution Law), as a far-reaching tool to aid in establishing a sound and lasting peace. The measures provided for therein constitute an unprecedented landmark in the restoration of the dignity of the victims and in the realization of their rights. These efforts can be held up as a model, which other countries of the world facing similar situations can follow.

It is for this reason that the General Secretariat submits this report to provide an account of the principal support, monitoring and verification efforts made by the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS) in 2013, in keeping with a broad vision of land and territorial restitution, as well as offering recommendations, which are the product of the more than nine years experience of the Mission in the country.

One of the major advances we have witnessed has been the across-the-board strengthening of the institutional framework. This stage was followed by an adjustment period and then the focus turned to putting mechanisms and procedures into place that are conducive to providing comprehensive reparation to the victims of the armed conflict, including restitution of lands and territories. Likewise, it has been noted that social and victims' organizations and other entities supporting the process have coordinated with the new institutions and entered into agreements under which their know-how and expertise can be tapped by these institutions. It has also become evident that, despite certain limitations and the context of violence surrounding these efforts, victims are able to bring claims to assert their rights and some have been successful at securing guarantees of these rights by means of judicial decisions.

Nonetheless, despite the significant efforts of institutions, challenges are still looming over the process with regard to inter-institutional coordination, rights promotion, information dissemination and outreach, the security of the participants in the process, active participation of all involved, especially the victims, modernization of information systems, guarantees for the sustainability of measures for victims' return to their places of origin, availability of resources to create decent living conditions for the victims, and putting an end to the impunity enjoyed by those responsible for the forced displacement and unlawful dispossession of land, as well as the perpetrators of the actual assaults on the lives, safety and freedom of the individuals benefiting from the land restitution process.

As the General Secretariat has asserted on several opportunities, the context in which the National Government decided to commit to comprehensive reparation for the victims is by no stretch of the imagination simple and acts of violence have continued to be perpetrated against leaders and land claimants, officials of the competent entities involved, journalists and broadcasters. In order to mitigate the risks to land and territorial restitution in the midst of armed conflict, protection programs must continue to be strengthened and the appropriate mechanisms to ensure the participation of the above-listed actors in the process must be put into place.<sup>1/</sup>

At the present time, in light of the talks in which the National Government and the Revolutionary Armed Forces of Colombia- People's Army (FARC-EP) are engaged, the country is experiencing an historical moment. Signing agreements and putting an end to the internal armed conflict would greatly contribute to progress in peace-building efforts in Colombia. Consequently, the General Secretariat reaffirms its commitment to shepherd and support each and every one of the initiatives that Colombia puts into place in order to continue to create opportunities and scenarios and carry out concrete actions aimed at achieving peace.

## **II. THE LAW OF JUSTICE AND PEACE AND THE PATH TOWARD RESTITUTION OF LANDS AND TERRITORIES IN COLOMBIA**

The phenomenon of forcible displacement and unlawful dispossession of land in Colombia is evident in the more than 4,790,317<sup>2/</sup> people who have suffered forced displacement. The main reason for this is the operations conducted by the outlawed organized armed groups, although other factors such as the informal nature of land rights, vested economic and political interests and institutional weakness, also play a significant role. As the phenomenon of forced displacement ran amuck, the country was compelled to provide legal and institutional responses for the prevention of the phenomenon and the protection and assistance of the affected population.<sup>3/</sup>

Since the MAPP/OEA began its work in Colombia in 2004, it has witnessed the National Government and the State making significant efforts together to address the issue of forcible

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1. In its Annual Report for 2011, the IACHR welcomed the approval of Law 1448 but noted that while human rights promotion and protection initiatives are being taken, violence persists and continues to hit the most vulnerable segments of the population hard. Additionally, it was noted that one of the crucial points of the Law was that it recognized the existence of armed conflict thus making it possible for reparation to be given to the victims and for the return of their lands, which had been unlawfully seized from them by the paramilitary groups and, in some instances, with the collusion of the security forces. IACHR. Annual Report of the Inter-American Commission on Human Rights 2011, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, pars. 20 and 74.
  2. As of April 30, 2013, there were 5,432,156 victims of the internal armed conflict, who were included in the Single Register of Victims. Of that total, 4,790,317 persons are reported to have been victims of forced displacement. Source: Unit for Comprehensive Assistance and Reparation to Victims (UARIV).
  3. These responses were provided in keeping with the 1991 Political Constitution, the United Nations Guiding Principles on Internal Displacement and national policies. A huge initial effort of the Colombian government was made in 1997, when Law 387 of 1997 was issued, creating the National Comprehensive Assistance System for the Displaced Population, which included the protection of rights to lands.

abandonment and unlawful seizure of lands.<sup>4/</sup> Said efforts have crystalized into the actions of the different agencies to mitigate the plight of the population displaced by violence and, specifically, to address the issue of forcibly abandoned and unlawfully dispossessed lands from the peasant population.

With enactment of Law 975 of 2005 (Justice and Peace Law), the right of the victims to restitution was incorporated. Moreover, said Law established relinquishment of their property as an eligibility requirement for the demobilized combatants applying for benefits under the judicial proceeding provided for in the law. Accordingly, the MAPP/OAS supported the Special Prosecutor's Office for Justice and Peace in the implementation of direct restitution to the victims in the Departments of Meta (San Martín), Magdalena (Santa Marta and Minca, Sierra Nevada), Cesar (San Martín), Córdoba (Costa de Oro and El Porro), with property handed over by former commanders of the Héroes del Llano, Resistencia Tayrona, Vencedores de Arauca and Salvatore Mancuso Blocks, respectively.

In this regard, as has been explained in previous reports, the properties handed over by the demobilized combatants must undergo a preliminary diagnostic study in order to determine the restitution value of each one and clarify doubts about whether they really belonged to the demobilized applicants, who have placed them at the disposal of the Reparation Fund; as well as to determine how urgent it is to take the necessary measures so that the properties handed over by the applicants under the Justice and Peace Law do not deteriorate and lose their value to the detriment of the victims.

Law 975 of 2005 also created the National Commission of Reparation and Reconciliation (CNRR) and the Regional Commissions of Restitution of Property (CRRB),<sup>5/</sup> which were regulated under Decree 176 of 2008. Through the MAPP/OAS, the General Secretariat was present as an observer when these entities were set up and when some of their actions were conducted in the field, such as the pilot projects of restitution in Mutatá and Turbo in Antioquia; Chengue in Sucre; and Mampuján in Bolívar.

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4. In 2004, the Constitutional Court handed down Judgment T-025, calling attention to the failures of public policy in the area of assistance for the displaced population and, consequently, it declared a "*unconstitutional state of affairs*", and issued orders for the protection of their property by enforcement of Decree 2007 de 2001, as well as the gathering of information on the abandoned properties in statements from the displaced population. This gave rise to the National Government formulating the National Plan for the Assistance of the Displaced Population (Decree 250 of 2005). The many follow-up orders to this Decision include Orders 185 of 2004; 176, 177 and 178 of 2005; 218 of 2006; 052, 092, 116, 237 and 251 of 2008; 004, 005, 006, 007, 011 of 2009, and in particular Order 008 of 2009. Under this last one, the instruction was given to reformulate land policy, emphasizing the need to put a special mechanism into place to make it possible to receive, process and settle the claims of the victims relating to restitution of lands, including the different legal relationships (owners, possessors, occupants and holders). It also raised the need to establish the truth as to the forcible abandonment and unlawful dispossession of lands and the State's obligation to implement the legal and institutional reforms required to respond effectively to the duty to redress property damages and restore rights to the land.
  5. Made up of the Office of the Ombudsman, the Regional Office of the Inspector General, the Ministry of the Interior and Justice and the National Commission of Reparation and Reconciliation, which chaired them. A representative of the religious communities also sat on the Commissions. Article 53 of Law 975 of 2005.

The Regional Commissions of Restitution of Property and their Pilot Projects were unsuccessful at making progress in the restitution of lands strictly speaking, because to a great extent, most of their functions were focused on providing advice and guidance to the victims,<sup>6/</sup> in addition to having to operate under formulaic regulations and mechanisms, which would not always adapt to the contexts of widespread conflict and violence. Additionally, it was anticipated that these Commission would only conduct operations in twelve municipalities<sup>7/</sup> and it was established statutorily that they only had the obligation to convene for regular meetings once a month, although special meetings could be convened at the request of any of their members.<sup>8/</sup> Nonetheless, the General Secretariat stresses the need to draw on these invaluable experiences and recognize the lessons learned from them in order to properly develop and implement the Law of Victims and Land Restitution and other instruments of transitional justice in Colombia.

Additionally, in 2007, the Ministry of Agriculture and Rural Development created the Land Recovery Program (PRORET) and, in the framework of this program, developed another program called CONRET (consultations on legal issues relating to land restitution). Some of the functions of this program included gathering information on each case, assessing the viability of recovery of the property and creating legal strategies, when possible. The MAPP/OAS was an observer to some of the public announcements on properties, and saw for itself how a great effort was put forth to collect documentation and systematize the information, and this stood in stark contrast with the little or no documentation about the property on record in the cadastral and land registry, at both the community and institutional level.

That same year, in the context of assistance and observation in the communities of Medellín (Antioquia), the Mission learned about the issues involved in and impacts of intra-urban forced displacement. For this reason, the General Secretariat appreciates efforts to raise the profile of and address the phenomenon of intra-urban forced displacement with regard to protection, restitution and recognition of victims in light of the particular relevance and currency of the phenomenon in cities such Medellín, Buenaventura (Valle del Cauca), Soacha (Cundinamarca) and Tumaco (Nariño).

In 2010, the strategy known as the ‘shock plan’ (Plan de Choque)<sup>9/</sup> was formulated and carried out by the National Government and monitored by the Mission at the express request of President Juan Manuel Santos. In the context of this monitoring, the Mission attached the highest priority to ten cases in seven Departments<sup>10/</sup> and in municipalities seriously affected by forced

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6. Article 2, Decree 176 of 2008, “Whereby Articles 51, number 52.7; 52 and 53 of Law 975 of 2005 are regulated.”

7. Bogotá, Medellín, Sincelejo, Barranquilla, Bucaramanga, Valledupar, Pasto, Cali, Mocoa, Neiva, Quibdó and Cartagena.

8. Article 3, Decree 176 of 2008.

9. The *Plan Choque* was a pilot project which sought “to conduct in the short term an experiment to make it possible to implement the guidelines of a new land policy of the current government, to offer possibilities to guide and energize institutional management of the entities in charge of their execution, establish conditions and critical factors for their development and move forward in the design and application of instruments for the productive and social regulation of the rural sector.” Source: INCODER. Plan Choque. “*Primeras Realizaciones de la Nueva Política de Tierras y Desarrollo Rural*. [‘Plan Choque. Roll out of the New Land and Rural Development Policy.’] *October 2010-July 2011*”. Bogotá D.C., August 2011, Pg. 3.

10. Department of Magdalena, Bolívar, Norte de Santander, Tolima, Cesar, Antioquia and Chocó.

displacement, abandonment and unlawful dispossession of property. Institutional practices, which fell outside the respective legal authority of the entities, were detected in several of these places, which were tantamount to infringements of already acquired rights or rights that were yet to be formalized. There was obvious interference by armed actors, who either directly or using what appeared to be legal means on the surface, appropriated the land granted in the agrarian reform programs, thus usurping rights legitimately acquired by peasants and causing them to lose the property and, in some instances, murdering the original land grantee. It was also possible to detect in the local context the allegedly forcible transfer of ownership rights, by taking advantage of the needy state of the victims, as well as cases in which it would seem that the beneficiaries acted on their own and sold their properties. Subsequently, cases handled under the *Plan Choque* were transferred to the Colombian Institute for Rural Development (INCODER) as the executing entity of the Plan, or other cases involving the restoration of rights or effective enjoyment of property were transferred to another institution.

The General Secretariat notes that implementing the ‘shock plan’ (*Plan de Choque*) as a pilot project, that is to say, an initial experiment, was fundamental to the design of administrative restitution processes, just as other institutions have been doing in different venues. Important lessons were learned from this exercise about the effectiveness and efficiency of agrarian laws and regulations in force and about other ones that need to be in force in order to confront the ploys used by the actors who unlawfully appropriate land from the rightful owners and force them to abandon their property, and the wide range of methods used by them were identified. Much was also learned about government capacity to provide security to those who assert their rights and find prompt, bold and transformational and lawful solutions to redress the damages caused to victims, as well as to support sustainable alternatives to make a living for those whose rights are restored.

Lastly, these lessons turned into challenges that had to be solved through the Victims and Land Restitution Law (Law 1448 of 2011), which reflects the National Government’s interest in making the victims whole through full restoration of the violated rights to which they were entitled.

### **III. LAW 1448 OF 2011: MAPP/OAS SUPPORT AND MONITORING OF LAND AND TERRITORIAL RESTITUTION**

The first challenges faced by the Colombian government in implementing the Law were to set up and put into operation the Special Administrative Unit for Restitution of Seized Lands (UAEGRTD); establish the special courts for land restitution; create the Office of the Deputy Superintendent for the protection, restitution and formalization of lands; and for the Office of the Inspector General of the Nation (*Procuraduría General de la Nación*) and the Office of the Attorney General of the Nation<sup>11/</sup> to form working groups to assist and intervene in the land restitution proceedings before the special courts.

The MAPP/OAS has established that the institutional infrastructure at the level of the central government and on the ground has been built and a few obstacles have been overcome by taking temporary measures such as hiring outside contractors. Thus far, 15 territorial offices of the Special

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11. Law 1448 of 2011, Article 119.

Administrative Unit for Restitution of Lands have been established, 39 special land courts,<sup>12/</sup> and 5 court panels (Bogotá, Cali, Cartagena, Cúcuta and Medellín), each consisting of three magistrates, have been created.

The General Secretariat recognizes the efforts of the Unit for Comprehensive Assistance and Reparation to Victims (UARIV) and of the UAEGRTD as to coordination and inter-agency cooperation in implementing Law 1448 of 2011, particularly with regard to the measures of comprehensive restitution and reparation to victims, as reflected in the signing of Inter-Administrative Framework Agreement N. 1524 of 2012. These measures include joint efforts in putting into effect the strategy known as the Territorially Focused Reparation Strategy (RFT), which is designed to realize the collective reparation and individual reparation measures, return to and restitution of lands, which the Mission has been following since 2012 in the case of the victims of Las Palmas, municipality of San Jacinto, in Bolívar.

Additionally, we recognize the coordination efforts made by other institutions participating in the land restitution process. We appreciate the Office of the Superintendent for Notaries Public and Registries, which has continually facilitated opportunities, as was mentioned in the previous report, as a contribution to inter-agency coordination and to overcoming many difficulties in making the process more expeditious.

Likewise, we recognize the commitment of the Office of the Comptroller General of the Republic to tailor its processes and procedures in monitoring land restitution through an approach that is empathetic to the victims, in addition to building a system of indicators to follow up on land restitution public policies, a task that has been supported by the Mission.

As for a differentiated gender-based approach and women's rights in Law 1448 of 2011, the necessary special protection for women victims of forcible abandonment and unlawful seizure of land provided by the State, both in administrative and judicial proceedings is noted. On this score, the Law recognizes the differentiated vulnerability of women and the particularities of their link to the land. Notwithstanding, the IACHR has received reports of the challenge posed by the situation of women and the precarious nature of land titling in rural areas, as a consequence of the actions of regional authorities, which were accomplices to *de facto* or legally registered forcible land dispossession.

The Mission has been following different women's organizations in their political advocacy to include a gender and women's rights-based approach in land restitution public policy. In this regard, one month after Law 1448 of 2011 was issued and in the context of the addenda to the Mandate of the Mission,<sup>13/</sup> some women's organizations, supported by the MAPP/OAS, submitted to the Ministry of Agriculture and the Land Restitution Unit the document "*El enfoque diferencial de los derechos de las mujeres en materia de restitución: Recomendaciones y observaciones a la reglamentación de la Ley 1448 de 2011*" ["A differentiated women's rights-based approach in the

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12. Twenty-four Special Civil Circuit Courts for Matters of Land Restitution were created in 2012 and 15, so far in 2013.

13. In July 2011, the addenda to the Mandate was signed by the Secretary General and President Juan Manuel Santos establishing that the MAPP/OAS shall conduct efforts to "Support and monitor the restitution of lands in the framework of the comprehensive land policy as a component of comprehensive reparation to victims of forced displacement and dispossession."

area of restitution: Recommendations and comments on the regulations of Law 1448 of 2011<sup>14/</sup>, in which comments and recommendations are made on the regulations governing registry and property protection. Some of these recommendations were welcomed by the National Government in crafting the regulations of the Law. On its latest country visit to Colombia, the IACHR received information on legislation and legal precedents protecting women's rights in the country.

We note the launching of the Program of Special Access for Women, Girls and Adolescents in the Administrative Stage of the Restitution Process by UAEGRTD. Thus, one of the mandates of Law 1448 of 2011 has been accomplished and one of the commitments of the institutions to develop adequate regulations taking into account the special status of women's link to the land, as well as the longstanding patterns of gender-based discrimination, further exacerbated by the conflict, which have kept women in a situation of marginalization and vulnerability, has also been fulfilled.<sup>15/</sup>

Furthermore, the Colombian government has not shied away from acknowledging the infringements of the rights of indigenous, ROM<sup>16/</sup> and Afro-Colombian, Raizal and Palenquera communities. Accordingly, the Victims and Land Restitution Law provided for the issuing of decrees with the force of a law to regulate the aforementioned rights and guarantees, making them a fundamental tool for the implementation of public policies with a differentiated approach to ethnic groups as collective bodies who are entitled to rights in the context of the conflict and who have been impacted in a disproportionate and differentiated way.<sup>17/ 18/</sup>

In keeping with the agreed upon timetable and consensus, the indigenous communities and the UAEGRTD crafted a draft set of selection criteria, approved by a Permanent Committee ['Table'] of Indigenous Consensus-Building (MPCI: Mesa Permanente de Concertación Indígena), under which 14 cases of indigenous communities were selected as the focus cases. Based on these cases, progress has been made in reaching a consensus definition of what constitutes territorial infringements. In this regard, the General Secretariat recognizes and makes special mention of the positive impacts of these decrees, which have made it possible to take precautionary measures for the community council of Bajo Mira and Frontera in the Department of Nariño.

For Afro-Colombian communities, the Decree-Law does not establish a consensus-building body to establish priority cases. However, the Land Restitution Unit and Afro-descendant organizations, based on minimum identification and consensus criteria, have given priority to 8 cases of forcible abandonment and dispossession of lands. Thus far, education workshops on the Decree and what constitutes elements of infringements of rights have been conducted with the community councils and Afro-descendant organizations.

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14. Document available on web page of MAPP/OAS, <http://www.mapp-oea.net/>

15. The IACHR has received reports on the difficulty in implementing the Victims and Land Restitution Law, particularly in light of an absence of an approach that takes into consideration the differentiated impact of the effects of internal armed conflict on boys, girls and adolescents.

16. Also known in other contexts as Gypsy or Romany communities.

17. Decrees with force of law Number 4633 (indigenous peoples and communities), 4634 (ROM or Gypsy people) and 4635 (black, Afro-Colombian, Raizal and Palenquera communities) of December 9, 2011.

18. Also, the IACHR has noted that during its country visit, it received reports of the indigenous and Afro-Descendant communities' disagreement over the lack of prior consultation on Law 1448, as well as over their involvement [or lack thereof] in the consultation process as it related to the specific decree-laws.

As for the participation of the victims of the armed conflict in the stages of Transitional Justice, the Mission has observed several different opportunities, such as hearings on motions for reparation and, later, hearings to identify infringements. It has also observed the creation of an ad hoc body for the participation of victims aimed at solidifying the formal bodies set forth in the Law through the Effective Participation Protocol. This document regulates formal and substantive aspects of the participation of the victims and their ability to have a bearing on the implementation, monitoring and evaluation of public policies of assistance and reparation, which are neglected at the municipal, departmental and national level. Notwithstanding the efforts made by the Victims Assistance Unit in approving the procedural protocol on May 10, 2013, the victims have expressed their displeasure over it, inasmuch as their full consensus was not given.

The IACHR has taken a similar position noting that civil society has complained about having very little effective participation in the process of regulating the Law. In this regard, the point was raised that there is no single definition as to what participation means, on top of the failure to recognize the effects that violence has had—and has—on the organizational process and on social and political movements, as well as the threat to the independence of the organizations and the stigmatization or smear campaigns being waged against them and disregard for the right to participate of the victims who belong to the organizations.

The General Secretariat of the Organization of American States recognizes the progress made by the Victims Assistance Unit in training and sensitizing the agents of the Public Ministry (who are in charge of enforcing constitutional rights and overseeing the performance of public officials in Colombia), especially the people's ombudsmen (*defensores públicos*) and municipal oversight officials (*personeros*), as well as implementation of Circular No. 004 of 2013, which enables the participation of the victims on an ad hoc basis, until such time as the protocol is approved.

Nevertheless, the strategy of information dissemination and outreach to victims is cause for concern as it focuses on the victims' associations and leaders, thus jeopardizing the active and effective involvement of all victims, inasmuch as information does not always manage to trickle down to all stakeholders. At the local level, it has been noted that the victims have called this strategy into question because they view it as stove-piping the information into certain sectors of the victim population and, consequently, it does not make it to the entire extensive rural area of the country. For victims, who are unable to gain access to the information and have difficulties in making direct contact with the institutions, this entails traveling to Department capitals at a significant cost to them in terms of time and money.

The General Secretariat appreciates the ongoing public debate in which victims organizations, civil society organizations, the media, members of Congress, international organizations, the Constitutional Court, oversight agencies and the Victims Assistance Unit, among others, are engaged in, recognizing the victims of the so-called bands of criminals (BACRIM). At the same time, the Unit for Comprehensive Assistance and Reparation to Victims, in keeping with the instructions of the President of the Republic, has been assisting the victims of criminal gangs by providing humanitarian relief in emergency situations. However, the Secretariat encourages the Unit to begin to include in the Single Register of Victims as soon as possible any victims who identify the perpetrators of the victimization as members of the BACRIM.

The General Secretariat also highlights the interest expressed by the Land Restitution Unit in the efforts of the MAPP/OAS with regard to monitoring risk in land and territorial restitution and,

consequently, its relationship with this entity has been strengthened. Additionally, the views of the local communities and institutions regarding the process have been canvassed. This monitoring was focused on the municipalities of Montería and Valencia (Córdoba), El Carmen de Bolívar (Bolívar), Mapiripán (Meta), Trujillo (Valle del Cauca), San Miguel and Valle del Guamuez (Putumayo), Tibú and Ocaña (Norte de Santander).

As a result of this monitoring, we have been able to corroborate that the communities welcome the current policy of land and territorial restitution to victims of forcible abandonment and dispossession. Nonetheless, there is still great concern about public order and security and access to minimum basic services so victims are able to lead a dignified life and realize their life ambitions in the locations from where they were forcibly displaced and dispossessed of their land. In this context, the communities reiterate the urgency to act on their security needs as well as the importance of optimal institutional coordination with regard to comprehensive assistance and reparation to victims. Lastly, the Nation-Territory relationship has not yet been sufficiently defined, inasmuch as the local entities view the process of land restitution as a policy for which the responsibility of implementation is incumbent upon the central government.

#### **IV. SECURITY CONDITIONS IN THE TERRITORIES**

The land and territorial restitution process in Colombia is unfolding in a context that is by no means simple and is being implemented in the midst of the conflict, thus affecting everyone involved and actively participating in the processes: the victims, human rights defenders, public servants, judicial officials or journalists. Vested economic, political and social interests are at stake in the process and thus stand in the way of its progress.

At the local level, actors have been identified who hinder the efforts of the Land Restitution Unit, erecting roadblocks to the entry of the work team in charge of conducting property surveys and identification; in addition to exerting societal pressure to prevent public awareness of the issue of forcible abandonment and dispossession of land and having a chilling effect on the filing of claims by victims.

One of the major challenges of implementation of the land restitution policy, which was not taken into consideration initially, is the presence of land mines and unexploded ammunitions (MAP/MUSE, as they are known by their Spanish acronyms) in the territories subject to restitution. In 2012 and in the first half of 2013, as a result of the assistance and observation Mission of the work of UAEGRTD in micro-focused rural areas of Departments such as Norte de Santander, Putumayo, Bolivar and Antioquia, this concern was evident and, therefore, the suggestion is to proceed with land restitution after completing demining. In this regard, the challenge faced by the institutions is to devise a plan of action to address the emergence of this new factor, which heretofore had not been taken into account, that is, minefields in the focus areas. The General Secretariat reiterates in this regard the commitment to Colombia with regard to demining through its Program of Comprehensive Action against Antipersonnel Mines (AICMA), on which it has been collaborating with the National Government.

Currently, the AICMA Program serves a variety of purposes in aiding the Government's anti-personnel mine action. Since 2005, AICMA has been providing logistic and administrative support and technical advisory services for outfitting, training and sustaining almost 400 humanitarian de-

miners of the Military Forces, organized in 27 teams specialized in humanitarian demining, with the capacity to operate autonomously. As a result of this partnership, Colombia completed the removal of all antipersonnel mines planted by the Military Forces in 35 minefields under government jurisdiction. As of 2008, these humanitarian de-mining units have been focusing their efforts in 14 priority municipalities in the Departments of Antioquia, Bolívar, Caldas, Meta, Nariño, Santander and Tolima. In May 2013, the national authority for action against antipersonnel mines added an additional 11 municipalities as priorities in these Departments for de-mining interventions.

AICMA also conducts crucial complementary activities for socioeconomic recovery of the affected areas, particularly, through its education campaigns on the perils of land mines to the inhabitants of the municipalities where the interventions are taking place. As for victims of antipersonnel mines, AICMA helps to build national capacity in the physical and psychosocial rehabilitation of survivors, vocational training and business projects for survivors and for the socioeconomic reintegration of the victims, their families and communities. AICMA also facilitates the incorporation of affected communities into macro-projects funded by international development agencies for the productive use of demined lands.

We have observed in different locations of the country that, despite the efforts of the Government, threats, intimidation and murders of individuals linked to the processes of land restitution and victims of forcible abandonment and dispossession of lands, are still looming large. This has sowed great fear among victims and discourages them from asserting claims for their rightful lands, from actively participating in the process and undermines the confidence that the population has placed in the institutions in charge. Consequently, the General Secretariat stresses the need to strengthen mechanisms of collective protection to prevent the social fabric from being torn apart and to create the necessary conditions for victims to be able to gain access to the process with confidence and security. Additionally, authorities are urged to take the necessary measures to locate the perpetrators and masterminds behind these crimes, to get to the bottom of the facts of the cases, prosecute those responsible and provide assurances to those who report this type of crime to the appropriate authorities.

In the first half of the current year, the number of threats, assaults and even murders of broadcasters by allegedly illegal groups in different locations of the country has risen. In many of these instances, many of the human rights defense and journalists' rights organizations assume that these incidents are directly linked to the vested interests of the *de facto* powers that attempt to prevent broadcast media dissemination and coverage of the land restitution process. Particularly noteworthy in this regard are the latest cases in Departments such as Cesar and Cordoba, about which the General Secretariat has issued emphatic statements.

In the view of the Secretariat, meager results in the prosecution of the perpetrators of these crimes are of particular concern. These criminal offenses sow terror and distrust in the population, which had recently pinned its hopes on the process of land restitution.

Threats against women and organizations associated with the land restitution process are also issues of great concern, which require special attention. Several organizations defending the right of women to restitution have been threatened by email, signed by a group that calls itself the "Anti-Restitution Army." Additionally, in May, in the city of Valledupar (Cesar), a pamphlet was circulated that was attributed to the "Anti-Restitution Army" and threatened a considerably large group of journalists involved in one way or another in the victims and land restitution issue. It must

be noted that in the first half of the current year, the number of threats, assaults and murders of broadcasters in different locations of the country has risen. The human rights defense and journalists' rights organizations assume that these incidents are directly linked to vested interests, which attempt to prevent broadcast media dissemination and coverage of the land restitution process. The General Secretariat has issued emphatic statements about the cases occurring in the Departments of Cesar and Cordoba. The meager results of prosecutions against those responsible are troubling to the Secretariat.

Officials linked to the land restitution process have also been the targets of intimidation and this in turn has adversely affected effective performance of their duties. The judges and magistrates of the special land restitution courts have expressed their concerns for their own safety in processing property cases and conducting the on-site inspection visits, as requested by the parties to the cases, due to adverse interests to the public policy of land restitution. Several municipal ombudsmen have received threats because of their efforts to support victims.

In light of this situation, we must underscore the effort of the National Protection Unit (UNP), which provides protection to officials of the Land Restitution Unit<sup>19/</sup> and to the Judges and Magistrates of the Special Courts for land restitution at the national and territorial level. It should be noted that on April 8, 2013, a total of 495 land claimants were granted protection measures, of which 93 were in the Department of Chocó, 80 in Antioquia, 56 in Bolivar and 45 cases in Cesar, which are the regions with the highest numbers of individuals under the protection of the UNP. These three regions are also at the top of the list of Departments with the highest number of applications for Entry in the Registry of Forcibly Abandoned and Dispossessed Lands of the UAEGRTD.

Despite the best efforts of the UNP, there has been a failure to disseminate information about the duty performed by this entity and the procedures, paths and requirements in place to request protection measures. Consequently, the General Secretariat urges the National Protection Unit to continue to work on the outreach and education campaign about its duties, especially in the most remote areas of the country where the communities and the victims have the greatest difficulties in gaining access to the information and learning about the path to protection.

The efforts of the Integrated Intelligence Center for Land Restitution (CI2RT) must also be noted, conducting 12 follow-up meetings, which were attended by the Minister of Defense. The aim of these meetings has been to review the actions of the CI2RT, examine the security situation relating to the process of land restitution, and evaluate and verify the status of threats that have been leveled in the framework of this body.

The General Secretariat is concerned that in most of the cases of violent actions committed against individuals involved in the restitution process, no perpetrator has been identified, which hampers clarification of the facts. According to the theories of some of the authorities, these incidents are linked to the so-called criminal gangs (BACRIM), whose economic interests would be adversely affected<sup>20/</sup> or third parties are being hired to carry out violent actions. The methods of

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19. The National Protection Unit provides this protection in the Departments of Sucre, Córdoba, Cesar, Putumayo, Meta, Tolima, Valle del Cauca, Bolívar, Norte de Santander, Santander, Magdalena, Nariño and Atlántico, as well as in Urabá of Antioquia.

20. The latest murder of a land claimant in the Municipality of Bello, Department of Antioquia, according to the first press releases was attributed to the criminal gang "Los Triana," because they had an

threat employed by the illegal actors to intimidate the victims include telephone calls, sending written messages, email messages, texting and information delivered through third parties. The Departments of Bolívar, Antioquia, Chocó and Cesar are the most affected by these actions. A noteworthy case has been threats against leaders of El Carmen de Bolívar (Bolívar) via text message, forcing some of them to leave the municipality and move along with their families to other areas of the country.

Special attention must be paid to possible returns of victims to formerly abandoned and unlawfully dispossessed land, which may take place without adequate accompaniment by the public security forces and the competent institutions, inasmuch as any act of violence that takes place not only may endanger the life of the individuals returning to their land, but also may jeopardize implementation of the land restitution process in the area. The General Secretariat is attentive to strategic developments aimed at supporting the return process, such as those planned in the framework of inter-agency cooperation between the Victims Assistance Unit and the Land Restitution Unit in cases such as San Jacinto (Bolívar), as cited above. There is also widespread perception that in many instances the act of return will not be sufficiently protected by the public security forces. On this score, the IACHR received reports regarding the Early Warning System and on the lack of effectiveness of the State response to the return process. The Office of the People's Ombudsman itself has issued a warning about the need to design and implement measures of collective protection.<sup>21/</sup>

The General Secretariat urges the State to continue to implement the current measures and programs, review its strategies and the measures it has executed and determine how suitable they are, examine its approach to risk analysis and the needs of the individuals it protects, as well as put into place improved conditions of security in territories where the process of land restitution is under way or is anticipated to get underway, since this is a fundamental element to guarantee the sustainability of the process and to put into operation future agrarian projects in Colombia.

## V. JUDGMENTS ISSUED BY RESTITUTION JUDGES

The first half of 2013 has been marked by a significant amount of judgments handed down by the Judges and Magistrates<sup>22/</sup> of the special courts for land restitution. With respect to effective recognition of the rights of the victims of forcible abandonment and dispossession of lands, progress has been evident in the administrative stage, given the fact that as of April 30, 2013, UAEGRTD had received 39,399 applications for inclusion in the Register of Dispossessed Properties and had proceeded to process 6,732 of said applications, which cover 314,459 hectares under claim.<sup>23/</sup>

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economic stake in the urban land claim. However, that is a preliminary, uncorroborated version of the facts and, therefore, it is necessary to wait for the results of the respective investigation.

21. Office of the Ombudsman of the People, Legal Commission for Follow-up on the Victims' Law, *Mandates established in the Law of Assistance, Reparation and Land Restitution and the Decree Regulations*, December 5, 2012, pgs. 3-5.
22. During the judicial stage of the process, 39 Judges, one roving Judge and 15 Magistrates, appointed as of the present date, are hearing approximately 1,221 cases and, as of the present time, have issued 57 rulings covering 253 properties. Figures of the Special Administrative Unit for Management of Dispossessed Land, as of April 8, 2013.
23. Figures from the Special Administrative Unit for Management of Dispossessed Land, as of April 8, 2013.

One of the major advances has been the way in which the restitution process has been addressed by UAEGRTD and by the Judges and Magistrates to redress and reverse the effects of the armed conflict and the unlawful seizure of lands from thousands of Colombians. Thus, the process has successfully established itself as an exceptional instrument of transitional justice, which is designed to restore the fundamental right to restitution of lands and territories of the victims of forcible abandonment and dispossession, by adopting principles of international human rights law, in order to recognize the status of the victim and achieve effective enjoyment of rights.

The General Secretariat highlights the judicial activism with which the Judges and Magistrates have operated, by making innovative decisions which, together with the far-ranging powers granted to them, has made it possible for them to order measures to ensure the rights of the victims to comprehensive restitution including: i) Annulment of decisions of State authorities and contracts entered into between the victims and third parties, ii) Restitution of urban real properties, iii) Subsidies for rural housing, iv) Exoneration of payment of real property taxes, v) Steps to ensure access to public services and repair of roads; vi) Access to education, technical training and comprehensive land subsidy (subsidy for adaptation of land, technical farming assistance, and inclusion in productive programs); and, vii) Recognition of victims of the abandonment and dispossession caused by the illegal armed groups subsequent to demobilization, among other things.

The OAS General Secretariat would like to take this opportunity to recognize the commitment that has been shown by the Colombian judiciary, as represented in the High Council of the Judiciary and in each Judge of the Circuit Court Civil and Magistrate of the Superior Court of the Special Judicial District for Restitution Matters; in focusing all of their resources on implementation of this emergency justice-application system, which is settling disputes over land tenure, by setting aside the rigidity and rigorosity of the procedural rules regulating ordinary civil proceedings in order to benefit the victims.

Nonetheless, it is important to mention some aspects of concern to the Mission, which have been evident during the assistance and observation that has been conducted on the process of land restitution,<sup>24/</sup> to wit:

- i. Despite the important work of the Land Restitution Unit, the Judges and Magistrates and the Historical Record Center, greater effort is required to clarify the patterns of macro-crime involved in the forcible abandonment and dispossession of land and to learn the truth behind forced displacement and unlawful land seizure in Colombia. For this purpose, the influence of economic and political interests must be looked at, as well as the armed and criminal groups;

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24. The IACHR has noted that civil society has identified some obstacles to implementation of Law 1448. In particular, a lack of guidelines or directives and specific budget allocation for the Territorial Tables (Committees) and difficulties in the processes of restitution, such as: (i) disregard of evidence produced by the Land Restitution Unit – and at times by the Office of the Attorney General of the Nation -, which are ordered to be produced again, thus causing delays; (ii) request for investigatory practices that are not provided for by law or are simply economically prohibitive for the victims to pay –such as announcements and publications in the media and posting expensive bonds -, as well as (iii) difficulties in ensuring the confidentiality of the names and other particulars of the land claimants.

- ii. In practical terms, it has become evident that both UAEGRTD and some judges have found interaction between the institutions to be difficult at all stages of the process of the administrative and judicial restitution procedure; and,
- iii. Doubts have been cast and concerns have been raised about compliance with and execution of judgments. This stage requires a heightened, inter-institutional commitment that is well coordinated in order to enforce judgments. The MAPP/OAS has observed that coordination between the local government entities, as well as with the Unit for Comprehensive Assistance and Restitution to Victims, needs to be strengthened regarding the enforcement of judgments, inasmuch as this is an essential element for the success of the policy and the achievement of comprehensive reparation.

## **VI. LESSONS LEARNED: STRATEGY TO OVERCOME DIFFICULTIES AND RECOGNITION OF LEGAL, REGULATORY AND INSTITUTIONAL DEVELOPMENTS IN COLOMBIA**

Bearing in mind that Law 1448 of 2011 is not the first attempt at Transitional Justice in Colombia, the General Secretariat has paid particular attention to the interconnection between the wording of the different laws and regulations that have been developing over time for the purpose of putting an end to the armed conflict and its effects on the communities and populations, as well as the recognition and guarantee of the rights of the victims to the truth, justice, comprehensive reparation and assurances of non-repetition.

Consequently, the MAPP/OEA has been promoting the systematization of judicial monitoring tools in the framework of the process of Justice and Peace (Law 975 of 2005), as well as the lessons learned in said process, as one of the first experiences related to the development of Transitional Justice in Colombia. These important lessons serve to expand the coverage of the land restitution and formalization of rights processes, in the framework of Law 1448 of 2011. Participating in this systematization exercise were the institutions of the State and the communities with whom the Mission has been working over the course of these nine years and all appear in the document: *“La restitución de tierras en la Ley 975 de 2005: Lecciones aprendidas para la aplicación de la Ley 1448 de 2011 o Ley de Víctimas y de Restitución de Tierras”* [‘Land restitution in Law 975 of 2005: Lessons Learned for the application of Law 1448 of 2011 or Victims and Land Restitution Law’]. For the purposes of the instant report, the following conclusions are highlighted:

- i. Based on an examination of the path to land and territorial restitution, the conclusion can be drawn that some amendments need to be made to the law in order to make the process of land restitution more expeditious, step up the pace of the claims brought by victims for forcible abandonment and dispossession, and overcome certain procedural obstacles that have arisen. In this regard, consideration could be given, as was mentioned in the prior report, to paving the way for restitution to operate via administrative proceedings in cases in which the properties have not been unlawfully seized and an earlier court order is in effect.
- ii. Psychosocial support for victims is an essential element of comprehensive reparation and, therefore, should be provided at every stage of transitional justice processes.

- iii. It is imperative to reinforce the lines of communication and coordination between the institutions responsible for comprehensive reparation and land and territorial restitution, in order to enhance coordination between the different agencies involved at the national and territorial level.
- iv. Since the time Law 1592 came into effect in 2011, amending Law 975 of 2005, the need has become apparent to put into place a process and procedure to connect cases that were being processed under Law 975, to the institutions and the procedures provided for under Law 1448 of 2011, under which the same cases are now required to be dealt with, so that the transfer between the old and new system in dealing with these same cases is smooth, comprehensive and effective.
- v. Law 1448 of 2011 incorporated the criteria of the gradual and progressive nature in the restitution and formalization of land rights, in light of the complexity faced by a State in processing thousands of claims simultaneously. As a result of the lessons learned in implementing the Justice and Peace law, macro and micro-focused procedures were established, with specific criteria under which the geographic areas where the land restitution process will move forward are selected,<sup>25/</sup> and the decision-making bodies were defined and regulated. Nonetheless, the administrative acts upon which the macro and micro-focused decisions are based, in order to set the process in motion, are not public. Consequently the Mission suggests that other options be evaluated so that both the community and public opinion are privy to the line of reasoning and arguments on which the decisions are based, and in this way introduce transparency and public disclosure into the process.

In conclusion, the Mission recommends paying special attention to the conflicts or the connection between the provisions of Law 1448 of 2011 and other provisions of Laws 975 of 2005, 418 of 1997, 387 of 1997 and Decrees 2007 of 2001 and 1290 of 2008, which may prove to be problematic in the interpretation of aspects such as compensation via administrative proceedings; the so-called urban housing restitution; judgments for subsidies, assistance and humanitarian relief and the protection of real and personal property. Regarding this last aspect, it is urgent to adopt pertinent and adequate specific policies of prevention, in order to keep further incidents of forcible abandonment and unlawful seizure from occurring; and to restart the system of land and property protection of the displaced population, which has not been included in the current policy.

## **VII. CONCLUSIONS**

The General Secretariat concludes that there is a high level of commitment on the part of Colombian institutions to assist the victims of forcible abandonment and unlawful dispossession of lands. The incorporation of instruments of a transitional nature by the National Government to provide solutions to the complex situation of thousands of victims is viewed in a positive light as a way to strengthen any democracy. However, the policy is facing some challenges, stemming from both the institutional framework in charge of implementing it (the Special Administrative Unit for

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25. Article 5, Decree 4829 of 2011, "Whereby Chapter III of Title IV of Law 1448 of 2011 is regulated with regard to restitution of lands."

Management of Dispossessed Lands and all of the judicial and administrative entities that are competent in the subject matter), as well as challenges of an external nature relating to insecurity and illegal interests throughout the regions.

As was explained above, the implementation mechanism of transitional justice has taught important lessons that can serve to enhance the process of land restitution that has recently gotten under way. In the view of the OAS General Secretariat, it is important to take a closer look at the experiences of transitional justice and other actions implemented in the country in order to capitalize on the progress obtained from them, learn from mistakes and promote the transfer of knowledge and expertise, under the premise that Colombia should not squander away important efforts made over the past years.

The participation of the victims of the armed conflict in the venues of transitional justice requires the development of mechanisms and implementation of measures, which effectively boost the capacity of victims and their organizations to bring their views to bear in the different bodies and at the different levels of the process of comprehensive assistance and reparation to victims.

## **VIII. RECOMMENDATIONS**

1. Recognize prior experiences and lessons learned in the area of transitional justice in Colombia in order to properly develop and implement the Victims and Land Restitution Law.
2. Strengthen prevention and protection measures in order to raise the level of security and make protection more effective for victims, human rights defenders, public servants, judicial officials, journalists and persons linked to the process of land and territorial restitution.
3. Step up the pace of investigations and the clarification of incidents linked to threats and murders of persons involved in the process of restitution. It is imperative to determine who is responsible, either directly or indirectly, for these crimes, as they represent the principal obstacle to this process. Delay in the investigations to locate those responsible for the crimes, as well as failure to successfully prosecute them, contributes to a climate of unrest and distrust in the process and authorities.
4. Conduct a far-ranging assessment of the inherent risk of land and territory restitution from a multidimensional perspective and of the variety of actors, which begins with examining regional contexts, present threats and vulnerability in the micro-focus areas. Eventually, the vulnerability analysis should incorporate the vision of the actual capacity of the institutions and society to address the process of restitution. In this regard, the OAS General Secretariat, through the Mission, places at the disposal of Colombian institutions and organizations its methodological know-how in this area.
5. Give high priority to identifying families and communities that have decided to return, or intend to return, voluntarily or on their own, to their land so that local, regional and national authorities can assist them by holding meetings with them to examine whether their safety can be guaranteed. If not, then find alternatives for these families and communities and help to keep these people from jeopardizing their lives and the land restitution and comprehensive reparation process.

6. Ensure and build spaces of participation for the victims of forcible abandonment and unlawful dispossession of land, by encouraging their input in the design, execution and follow-up to the restitution policy.
7. Make effective the right of women to restitution, by enforcing a differentiated gender-based approach to training and sensitization imparted by the territorial authorities, disseminating information on rights, providing women with differentiated assistance and preferential access to restitution. This means addressing with sensitivity the special vulnerability and differentiated impacts that forcible abandonment and dispossession of land has on women and helping them to overcome both the social and legal obstacles to access to restitution.
8. Ensure that the Program of Special Access to Women, Girls and Adolescents in the Administrative Stage of the Land Restitution Process is effectively implemented and has broad coverage among the entities responsible at the local level and make sure that clear procedures for action are in place in these entities.
9. Encourage further development of public policies with a differentiated approach that recognizes infringements of territorial rights of indigenous, ROM, Afro-Colombian, Raizal and Palenquera communities, as collectives who are entitled to rights and who, in the context of the conflict, have been disproportionately impacted, and urgently require further progress over the next months.
10. Continue with efforts to improve inter-institutional coordination between the competent entities, especially efforts within the framework of the Territorially Focused Reparation Strategy.
11. Take comprehensive measures regarding agrarian matters in the micro-focus areas in order to meet the demands of the victims of forcible abandonment and dispossession of lands while, at the same time, take into account the needs of the vulnerable population, which requires formalization of its rights and access to comprehensive programs. In this way, comprehensive and non-discriminatory intervention can be ensured and prevent any actions that tear apart the social fabric and stand in the way of reconciliation in Colombia.

Lastly, the General Secretariat reiterates its gratitude to the donor countries and friends of the OAS Mission to Support the Peace Process in Colombia for the political and financial support that they have provided over these nine years, especially:

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