

COLOMBIA: RESTORING THE LAND, SECURING THE PEACE

INDIGENOUS AND AFRO-DESCENDANT TERRITORIAL RIGHTS



AMNESTY
INTERNATIONAL





REAR

ALSO

INDONESIA PUPUK

EVOLVING

**“IN THE PAST FEW YEARS THE THREATS
HAVE BEEN CONSTANT; THE OBJECTIVE
HAS BEEN TO DISPOSSESS THE
PEOPLE OF THEIR TERRITORIES.”**

Community leader of La Toma, Cauca Department

LEFT

Boy looking out of the window of the community centre in Aguasal, *resguardo* Alto Andágueda. His family came here after being forced to flee their home by intense fighting in 2012.
© Steve Cagan

Forced displacement and the misappropriation of land, often through violence and intimidation, have been a defining feature of Colombia's internal armed conflict. These human rights violations and abuses have targeted above all Indigenous, Afro-descendant and peasant farmer communities. For these communities, 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 6 million people have been forcibly displaced and at least 8 million hectares of land (some 14% of Colombia's territory) abandoned or forcibly appropriated as a result of the conflict. Some of those who have been forced to flee are 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 rich in natural resources.

For those willing to commit human rights abuses, forcibly removing the inhabitants and snatching their land open up the possibility of large profits. The temptation is all the greater given that very few of those suspected of responsibility for these crimes have been brought to justice.

The restitution of land acquired through violence, intimidation, corruption and other breaches of the law has advanced very slowly. Nearly four years since the process began, under the Victims and Land Restitution Law, only a relatively small proportion of such lands have been returned to their rightful occupants. Only one Indigenous territory, Alto Andágueda, and one Afro-descendant territory, Renacer Negro in the municipality of Timbiquí in Cauca Department, have been the object of a land restitution ruling.

Colombia's internal armed conflict has pitted the security forces and paramilitaries against guerrilla groups for more than 50 years. It has been marked by extraordinary levels of human rights violations and abuses of international humanitarian law, with civilians by far the main victims. More than 260,000 people have been killed, most of them civilians, and tens of thousands abducted or forcibly disappeared.



INTERNATIONAL HUMAN RIGHTS LAW

Indigenous Peoples have a distinctive spiritual relationship with their traditional lands. International human rights law recognizes this by setting out their special rights over their lands. Two key international instruments setting out these rights are the 2007 UN Declaration on the Rights of Indigenous Peoples, which although not legally binding carries significant weight, and International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples, which is legally binding.

Article 26 of the UN Declaration on the Rights of Indigenous Peoples, which was endorsed by Colombia in April 2009, states:

“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.”

ILO Convention 169 also asserts the right of Indigenous Peoples to the lands they traditionally occupy 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”. Colombia ratified ILO Convention 169 in 1991 and in 2003 Colombia’s Constitutional Court ruled that the Convention was also applicable to Afro-descendant communities.

ILO Convention 169 also obliges states to consult Indigenous and tribal people on issues that affect their rights, with the aim of seeking their consent or agreement. The right of Indigenous Peoples and Afro-descendant communities

in Colombia to prior consultation and consent, including over how their territories and natural resources are developed, is enshrined in Colombian law and jurisprudence, although rarely, if ever, applied in practice. States have an obligation to establish and maintain procedures for meaningful consultation and free, prior and informed consent.

The special connection that Indigenous People and Afro-descendant communities have to the land they inhabit has also been recognized in international law and jurisprudence (Inter-American Court of Human Rights, *Saramaka People v Suriname* decision of 28 November 2007).

A number of other human rights are dependent on access to land for their fulfilment, particularly for rural communities. These include the rights to an adequate standard of living, adequate housing, work, health and food, all of which are enshrined in international human rights treaties such as the International Covenant on Economic Social and Cultural Rights.

LAND RIGHTS IN COLOMBIA

OPPOSITE PAGE

The Salvajina Dam has had a huge impact on several Indigenous and Afro-descendant communities, including the community of La Toma. Fishing areas have been destroyed and communities have been physically separated by the Dam, 2012.

© Amnesty International

BELOW

Homes in Aguasal, the main settlement in the *resguardo* Alto Andágueda, 2012.

© Steve Cagan

There are at least 1.4 million Indigenous people in Colombia, according to official figures. More than 70% live in rural areas, many in officially recognized *resguardos* (reservations) covering at least 28% of the country's territory. However, almost half a million Indigenous people do not live in *resguardos* and do not have official recognition of their collective land rights.

Although the last census in 2005 recorded over 4 million Afro-descendants in Colombia, Afro-descendant organizations put the figure at 10 million, around 25% of the total population. The state has granted some 170 collective land titles to Afro-descendant communities covering less than 5% of the country's territory.

The special relationship of Indigenous Peoples with their ancestral lands or territories is acknowledged in Colombian legislation. Domestic law also views the situation of Afro-descendant communities and their land rights as broadly analogous to those of Indigenous Peoples.

Colombia's 1991 Constitution recognizes the country's ethnic and cultural diversity, and asserts that the communal lands of Indigenous Peoples and Afro-descendant communities are "inalienable, inextinguishable and immune from seizure".

LAND RESTITUTION UNDER COLOMBIAN LAW

The Victims and Land Restitution Law (Law 1448) came into force in January 2012. Through Law 1448, the government has sought to settle issues around the formalization of land ownership, land restitution and, more generally, reparation for the victims of the conflict. The restitution of Indigenous and Afro-descendant territories is not covered by Law 1448, which benefits mainly peasant farmers, but by two associated Decree Laws: 4633 for Indigenous Peoples and 4635 for Afro-descendant communities, both of which also came into force in 2012.

Law 1448 and the Decree Laws are not land reforms as such; they are mechanisms to return some illegally acquired lands to their rightful occupants and to give occupants legal ownership over these lands, as well as to provide other forms of reparation to some victims of the conflict.

Decree Laws 4633 and 4635 include measures to guarantee the right of Indigenous and Afro-descendant communities to prior consultation. They also allow for restitution of territories that are

legally recognized, such as Indigenous *resguardos* and Afro-descendant Community Councils, as well as territories not legally recognized by the state.

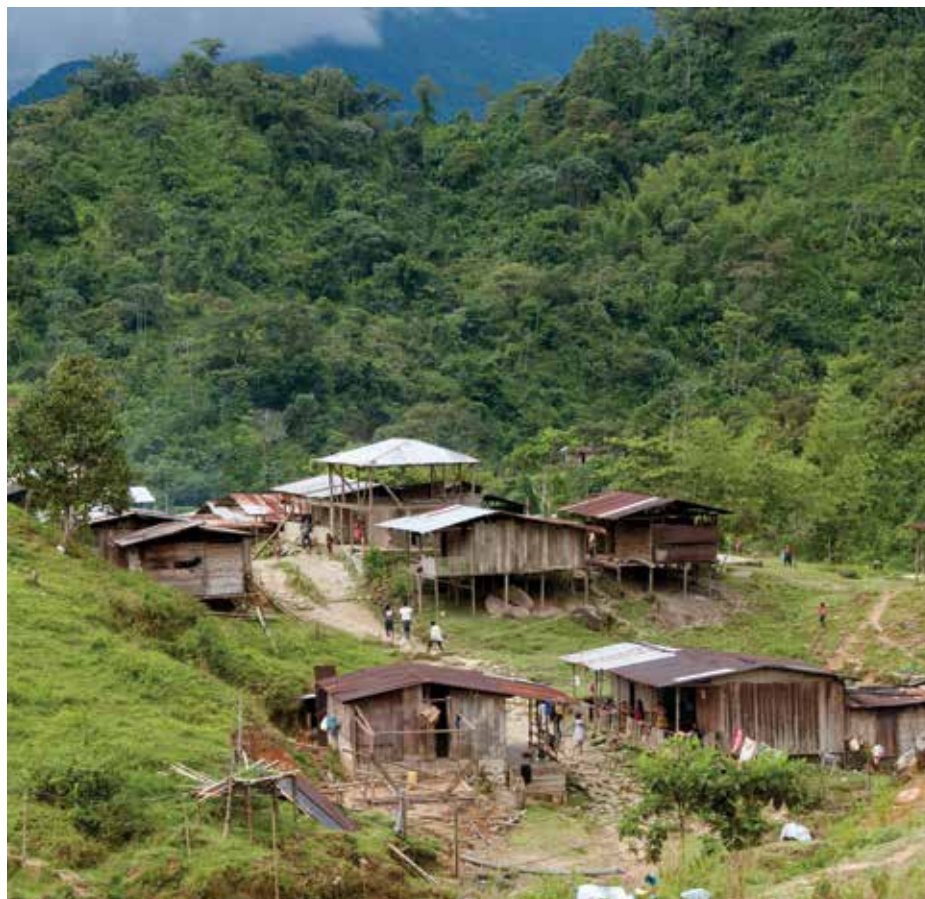
The Decree Laws also allow for precautionary measures to safeguard Indigenous and Afro-descendant territories. Precautionary measures are designed to protect these communities from, for example, further incursions by armed groups or exploitation by mining or agro-industrial companies, in order to prevent further forced displacements and the illegal appropriation of territories, and to guarantee the safety of these communities.

While Law 1448 and the Decree Laws are a significant step forward in acknowledging the rights of victims of the conflict, they also have many weaknesses. The success of the land restitution process will largely depend on whether the authorities are able to guarantee the right of

victims to an effective remedy.

This right lies at the core of international human rights law, and includes adequate, effective and prompt reparation, including land restitution, for harm suffered.

However, Amnesty International has underlined that some aspects of Law 1448 and its application may, in certain cases, actually make it easier for those who are in possession of illegally acquired lands to gain legal tenure over them.¹ Other legislation promoted by the government also threatens to further undermine the right of Indigenous and Afro-descendant communities to collective ownership over their territories. For example, Law 1753, approved by Congress in June 2015, threatens to legitimize land grabs by making it easier to continue to exploit economic potential on misappropriated lands.²







LEFT
Indigenous people queueing to receive health care in Aguasal, one of the main hamlets in Alto Andágueda, in 2012. © Steve Cagan

RIGHTS DENIED

Some Afro-descendant and Indigenous communities have spent decades trying to obtain a collective land title. Representatives of communities seeking recognition of land rights have faced, and continue to face, serious human rights violations and abuses, primarily at the hands of paramilitaries. Amnesty International has documented numerous cases where community members who attempt to oppose outside mining interests and claim their own artisanal mining and other territorial rights have been threatened, forcibly displaced or killed.³

Since 2000, under successive governments, mining authorities have registered applications and granted large numbers of mining titles on Indigenous and Afro-descendant territories. During this period there has also been a growth in illegal mining. These developments have further undermined the territorial rights of these communities.

Affected communities have repeatedly called on the authorities to take action to stop illegal mining operations. They have also complained about the impact on the environment and the threat to their way of life posed by, for example, the use of chemicals and of mechanical diggers and other machinery to dredge and divert rivers. State agencies including the Office of Comptroller General and the Office of the Human Rights Ombudsman have issued numerous reports condemning the negative environmental impact of mining activities.⁴

In this document the term “illegal mining” is used to refer to economic interests, often backed by guerrilla or paramilitary forces, that enter areas without applying for mining rights or that carry out mining activities in areas not covered by mining titles. The Office of the Human Rights Ombudsman has defined illegal mining along similar lines. However, mining titles granted by the state on Indigenous or Afro-descendant territories may also be unlawful if they are granted without the required meaningful consultation and free, prior and informed consent of the affected Indigenous or Afro-descendant communities.

ALTO ANDÁGUEDA

CASE STUDY



The *resguardo* Alto Andágueda (also known as Tahamí) was established in 1979 and covers more than 50,000 hectares, mostly in Bagadó municipality, Chocó Department. Historically, more than 8,000 people have lived in isolation and extreme poverty in this vast and remote territory.

In September 2014, the *resguardo* became the subject of the first judicial sentence for the restitution of Indigenous territory under Decree 4633. The court ruled that the “effective enjoyment of territorial rights of the Emberá Katío people of the *resguardo* Alto Andágueda must be protected and re-established”. This judicial ruling followed a long history of struggle by the community to defend its territorial rights.

Guerrilla groups, as well as paramilitaries and the security forces acting alone or in collusion, have all been responsible for human rights abuses against the Alto Andágueda community during the course of the armed conflict. Some community members, including leaders, have been threatened and killed. Children, men and women have been forcibly recruited as combatants by guerrilla and paramilitary groups. The security forces have been responsible for bombing the *resguardo*, ostensibly to combat guerrilla forces. They have also threatened, arbitrarily detained and tortured community members, accusing them of being guerrilla collaborators.

Since 1981, thousands of Indigenous people from the *resguardo* have been forced to flee their lands. Much of this movement of people has remained invisible because the state has often failed to record these displacements. Many of those displaced have eked out a miserable existence in Bogotá and other large cities; others were displaced to other Indigenous areas.

It is in this context that, over the last decade, (but especially from 2008 onwards), the state mining authorities – the Colombian Mining Agency and its predecessor, the Colombian Institute of Geology and Mines – have registered mining applications and granted mining titles to multinational mining companies on over 60% of the territory of Alto Andágueda.

The encroachment of mining activities, together with ongoing fighting in the area and continued forced displacement, have undermined the community’s right to live on and exploit its territory in a culturally appropriate manner.

On 18 July 2012, more than 2,000 men, women and children from Alto Andágueda were forced to flee their homes because of intense

fighting, including bombing by the security forces.

In January 2013, the state's Land Restitution Unit, which is responsible for implementing land restitution under Law 1448 and its associated decrees, requested precautionary measures for Alto Andágueda. The measures were granted on 4 February 2013 under Decree Law 4633 and were intended to protect the community and suspend mining applications and titles already granted, the latter without an adequate process of consultation and the free, prior and informed consent of the affected communities, pending a decision on whether to include the territory in the restitution process.

In his judgement, the judge quoted from a Constitutional Court ruling (Judicial Decision 004 of 2009): "apparently some economic actors have allied themselves with irregular armed groups to generate, within Indigenous communities, violence that eliminates or displaces Indigenous peoples from their ancestral territories." A few weeks later, on 25 February 2013, the armed forces again bombed the territory, forcing many members of the *resguardo* to flee their homes. Despite the suspension orders, illegal mining in the area has continued.

In addition to the lack of security, the Alto Andágueda community has faced major hurdles in its quest for the restitution of its lands, including cultural and language barriers.

The Land Restitution Unit presented the case to the restitution court judges in February 2014. However, the case was transferred to the Superior Tribunal of Antioquia after three mining companies which had been granted mining titles in Alto Andágueda – Continental Gold Limited Sucursal Colombia (currently known as CGL Buritica Ltd Sucursal Colombia), Exploraciones Chocó Colombia SAS and AngloGold Ashanti Colombia – as well as the Ministry for Mines and Energy and other mining authorities, opposed the restitution claim.⁵

In September 2014, the Superior Tribunal of Antioquia ruled in favour of the Indigenous community and ordered comprehensive measures for the sustainable return of land and the enjoyment of territorial rights, including the suspension of all mining activities and titles and the removal of all mining machinery until there has been prior consultation with the community and its informed consent obtained. Despite the renewed suspension orders, illegal mining continues on the territory.

Meanwhile, the conflict rages on. In March and April 2015, fighting between the warring parties in the area forced more than 600 Indigenous people

to flee their homes, while many others remained trapped in their communities unable to move around freely. Many went hungry as a result.

The September 2014 ruling ordered the state to implement several measures, including on health and housing, to ensure the sustainable return of the community to its territory. A review carried out in July 2015 by the Office of the Comptroller General concluded that there had been a "serious institutional failure" with regards to implementation of the ruling.

Most of the court's orders have not been implemented and the community continues to lack basic sanitation and other infrastructure, while access to education and health services remain very limited. A state official responsible for monitoring the land restitution process who visited the *resguardo* in May 2015 told Amnesty International that no housing had as yet been provided.

The absence of an effective state presence in the *resguardo* has left others, such as those mining illegally, to fill the gap by promising to build infrastructure, such as roads and schools, and to fund desperately needed jobs, a situation which threatens to cause deep divisions in the community.

Indigenous leaders continue to stress that the restitution process will not advance effectively until the authorities begin to focus on restoring territorial rights, rather than focusing mainly on the formalization of ownership. The Alto Andágueda community already collectively owned its territory.

Amnesty International wrote to the companies named above. In its reply, AngloGold Ashanti explained that neither it, nor its joint venture partner, Exploraciones Chocó Colombia SAS, had sought to take advantage of the conflict in applying for mining titles. It stated that in all its sites, it was committed to the principle of free, prior and informed consent and to securing the "lawful consent of indigenous communities for projects/activities and/or changes to sites that are located on lands traditionally owned by or are under the customary use of ethnic groups, and are likely to have a significant impact on these groups". Continental Gold underlined in its reply that it had secured its claims in Alto Andágueda legally and that it has not sought to obtain or ever obtained benefits from human rights violations. The company stated that it had not opposed the community regaining their lands, but had opposed the possible cancellation of the company's mining interests.



“THE TITLE IS THEIRS. NOTHING HAS BEEN RESTORED TO THEM; NOT EVEN A METRE OF LAND, NOTHING... IF THIS IS THE FIRST [RESTITUTION] CASE AND IF IT DOES NOT ADVANCE, IMAGINE WHAT AWAITS US WITH THE OTHERS”.

Representative from the National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, ONIC), 3 June 2015

OPPOSITE PAGE

Women and children of the Alto Andágueda Indigenous community in Aguasal. They took refuge here in 2012 after being forcibly displaced from their homes in different parts of the *resguardo*. © Steve Cagan

The La Toma Afro-descendant community is situated in the municipality of Suárez, Cauca Department, south-western Colombia. It is made up of five hamlets, most of whose 7,500 inhabitants make a living from small-scale artisanal gold mining, as well as agriculture and fishing.

The community of La Toma was created in 1636 by Afro-descendants escaping slavery. The community initiated its application for legal recognition of its ancestral land rights in 2007, but the authorities have yet to grant it. There is concern that the failure to complete the community's registration is linked to efforts to facilitate the development of mining projects in the area. Full recognition of the community's collective land rights would potentially strengthen the community and ensure that the authorities take more decisive action to protect its territorial rights, including its right to be consulted and give or withhold its consent in relation to the development of any economic project on community lands.

In the early 2000s, paramilitaries consolidated their presence in the region. From 2000 onwards, mining companies began registering mining applications in the territory of La Toma.

By 2010, the state mining authorities had registered mining applications and granted a number of mining titles over a large part of La Toma. None of the mining titles had been the subject of any process of consultation or the free, prior and informed consent of the community of La Toma. The community has repeatedly been the target of paramilitary death threats because of its opposition to the arrival of these mining interests.

Following attempts by two holders of mining titles to order the eviction of artisanal miners from their lands, the community submitted a writ for the protection of fundamental rights (*tutela*) which resulted in a Constitutional Court ruling in December 2010. This ordered the suspension of mining titles and applications until such time as a process of free, prior and informed consultation had been carried out. The community reported that following the ruling, mechanical diggers carrying out illegal mining arrived in the area. Community members also reported that they were the target of continuing threats, mainly by paramilitaries, in retaliation for their efforts to obtain a collective title and to stand up for their land rights.⁵

Decree Law 4635 provided the community of La Toma with a new mechanism through which to obtain their collective land title and guarantee

their territorial rights. In 2014, the Land Restitution Unit agreed to take on the case. However, on 4 February 2015, the judge presiding over the case rejected the claim, arguing that the Land Restitution Unit had failed to provide precise geo-referenced information on individual private plots of land located within the collective territory claimed by the community of La Toma. The judge will not now review the community's claim until the geo-referencing work is carried out. At the time of writing, a new submission was understood to have been made. Meanwhile the continued presence of armed groups in the area, including both paramilitaries and guerrillas, is making the land restitution process both difficult and dangerous and is likely to significantly delay the community's efforts to gain legal recognition.

The existence of private plots within the territory of La Toma has complicated the delimitation process. From 2008 onwards the Colombian Institute of Rural Development (Instituto Colombiano de Desarrollo Rural, INCODER) began to proactively grant individual land titles to local inhabitants at a time when it should have been supporting the existing claim for legal recognition of the territory as an Afro-descendant collective territory. Community leaders managed to secure an agreement with some of those that had been granted individual titles to hand these back to INCODER and for these lands to be included as part of a collective land title when formed. Nevertheless, the actions of INCODER have made it more difficult for the community to claim its right of collective title over ancestral lands.

The day after the judge rejected the La Toma community's restitution claim, he granted precautionary measures for the community. These had been requested by the community and the Office of the Human Rights Ombudsman in October 2014 following threats to community leaders in September after they tried to remove diggers carrying out illegal mining operations from their territory. In late 2014, women from Afro-descendant communities in the north of Cauca, including La Toma, marched to Bogotá to demand action by the government to remove diggers and other illegal mining machinery from their lands. It is not clear who these diggers belong to.

The precautionary measures included orders to protect the community and to immediately remove the mechanical diggers from La Toma, as well as measures to protect community leaders. However,

in May 2015, community representatives informed the authorities that illegal mining was continuing despite the precautionary measures and the 2010 Constitutional Court ruling.

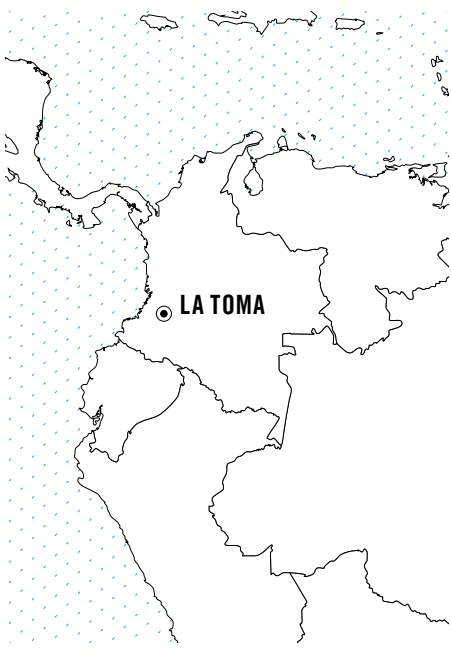
Several community members who are mining on their lands or have sought to secure territorial and artisanal mining rights have been threatened and forcibly displaced. There are fears that the social cohesion of La Toma is under serious threat and that this is making it more difficult for the community to organize itself in defence of its territorial rights.

“ILLEGAL GOLD MINING IN LA TOMA HAS SPARKED INCREASING SOCIETAL CONFLICT AND THE VERY SOCIAL FABRIC OF THESE ETHNIC COMMUNITIES IS DISINTEGRATING UNDER THE PRESSURE.”

Human Rights Ombudsman, “Notice of actions to withdraw mechanical diggers”, 29 December 2014

The authorities' continued failure to enforce the court orders, to tackle illegal mining, to take decisive action to protect community leaders through collective protection measures, to confront illegal armed groups operating in the area and to bring those responsible for human rights abuses against the community to justice continues to put the community under intense pressure.

Under these circumstances, a genuine process of consultation to seek the free, prior and informed consent of the local community before carrying out any mining activity in their territories cannot be guaranteed. It is crucial that companies take care not to draw benefit from this context and that they seek to consult and secure consent from affected communities only when the conditions are right for them to negotiate and express their views free from fear of violence and retaliation. The government must ensure that the process is established and complies fully with human rights standards. It is the responsibility of the government to guarantee these conditions and it must be the communities themselves who determine whether these conditions exist. If these conditions cannot be guaranteed, the mining companies should consider withdrawing from mining projects.



By 2010, several multinational companies – including AngloGold Ashanti Colombia (a fully owned subsidiary of AngloGold Ashanti), Anglo American Colombia Exploration SA (a fully owned subsidiary of Anglo American PLC), SAE Exploration SAS, and Four Points Mining SA (a company partly owned by Red Rock Resources PLC) – were seeking mining licences over a large part of La Toma. Despite the 2010 Court ruling, the mining titles held by three individuals who do not belong to the community, two of whom were behind efforts to evict artisanal miners belonging to La Toma, have not been suspended. One of the mining areas requested by AngloGold Ashanti appears to overlap with at least one of these titles and in the past this company has expressed an interest in purchasing this title. Illegal mining is taking place in areas covered by these concessions and mining applications. The continuation of these operations threatens the social cohesion of the community and the chances of ensuring adequate conditions for any eventual process of free, prior and informed consent. Amnesty International wrote to the companies named above. In its reply, Anglo American said that it would “carry out all the required consultations with the community prior to initiating any exploration activities”. AngloGold Ashanti stated that it had no plans to buy the aforementioned mining title.



ABOVE RIGHT
Gold sold at the local market in La Toma. Thirty people worked for a week to collect the amount shown. It was being sold for 500,000 Colombian pesos in 2012 (approximately US\$175 at 2015 rates).
© Amnesty International

RIGHT
Market in La Toma in Suárez municipality, Cauca Department, where gold is sold, 2012.
© Amnesty International

OBSTACLES TO LAND RESTITUTION

“WE HAVE ALREADY LOCATED ALL THE SNITCHES OF THE COMMUNITY COUNCIL OF LA TOMA WHO ARE OPPOSED TO THE DEVELOPMENT OF THE COMMUNITY... WE ALREADY KNOW THE MOVEMENTS OF THE LEADERS AND YOUR FAMILIES... WE HAVE ORDERS TO CARRY OUT A CLEANSING IN THE SOUTH OF VALLE CAUCA”.

This death threat, signed by the Black Eagles (Águilas Negras) paramilitary group, was sent by SMS on 8 February 2015 to Sabino Lucumi, President of the Community Council of the Afro-descendant community of La Toma. The threat also named and targeted three other leaders: Eduar Mina, Co-ordinator of the Human Rights Committee of La Toma; Jhon Jairo Valverde, the community's financial officer; and Francia Márquez, their legal representative. The text followed several other death threats against community leaders who are calling on the national and regional authorities to take action to put an end to illegal mining operations in La Toma.

One of the main obstacles to land restitution has centred on the lack of security as a consequence of the ongoing armed conflict. Many claimants, their representatives in human rights organizations and state officials involved in restitution have been threatened or killed by the warring parties, often as part of a process of advancing economic interests.

Many state authorities are also failing to effectively implement the measures ordered by the judges to ensure that claimants can return and do so in a sustainable manner. A lack of political will and institutional capacity, including poor intra-institutional co-ordination, and a lack of state presence in the most vulnerable communities have been largely to blame.

Links between some regional and local institutions and economic and political elites, paramilitaries and, to a lesser degree, guerrilla groups have been well documented.⁸ Land restitution is viewed by many regional and local elites as an attempt by central government to undermine their interests. These elites are thus undermining restitution through the control they exercise over some local and regional institutions.

The process to return Indigenous and Afro-descendant territories has faced additional hurdles, such as a lack of effective consultation during the restitution process. Since many Indigenous people do not speak Spanish, the lack of interpreters, along with the lack of cultural awareness, are effectively limiting the participation of many Indigenous communities in the process.

Many Indigenous and Afro-descendant women also face additional barriers because of their gender and as a result of being part of an ethnic minority group. Women from these communities who have been forcibly displaced have faced particular difficulties in asserting their territorial rights because of entrenched discrimination that can manifest itself in the form of gender-based violence and higher rates of poverty.

Many peasant farmers have settled and are seeking legal ownership, via Law 1448, of lands located in territories claimed by or already collectively owned by Indigenous and Afro-descendant communities. These conflicting rights have led to tensions between peasant farmers, many of whom are themselves victims of the conflict, and Indigenous and Afro-descendant communities.

The armed conflict persists in territories where many of these communities are located. This has severely hampered the restitution process. Combat between the warring parties is a staple of daily life for many Indigenous and Afro-descendant communities, while many of those suspected of forcing these communities from their homes are still present on their territories.

Criminal investigations into those suspected of responsibility for illegally appropriating lands, including state officials, national and international business people and landowners, have made very little, if any progress. Many of the land claims being made by Indigenous and Afro-descendant communities under the Decree Laws have faced powerful opposition from vested interests.

The impact of the armed conflict, combined with the pressure exerted by powerful economic actors, has permeated and destroyed many communities' organizational structures and the social fabric that helps sustain them. The continuing corrosive effect on communities is making it increasingly difficult for Indigenous and Afro-descendant communities to use the land restitution process to assert their territorial rights. This situation is exacerbated by legislation that threatens to open up Indigenous and Afro-descendant territories to large-scale mining and other economic projects; ride roughshod over rights to free, prior and informed consent; and block the restitution of misappropriated lands.

RIGHT

Members of the La Toma Afro-descendant community with the Salvajina Dam in the background, 2012.
© Amnesty International





CONCLUSIONS

The cases of Alto Andágueda and La Toma illustrate some of the serious challenges Indigenous and Afro-descendant communities face in recovering and returning to their land in a sustainable manner. The current land restitution process is only the latest of many attempts, mainly by the Constitutional Court, to guarantee the territorial rights, including the right to return, of these two communities. However, the fact that they continue to struggle for a sustainable return to their land does not bode well for other, less high-profile, Indigenous and Afro-descendant communities seeking restitution of their territories.

The failure of successive governments to resolve the “land problem” is arguably one of the main reasons why hostilities have lasted for as long as they have. Land has been one of the

central issues in the current peace process, which began in 2012 and offers the best chance in over a decade to put an end to the conflict. But for this process to have a chance of long-term success, it must place at its heart the right of victims to truth, justice and reparation.

Sustainable land restitution, including the restitution of Indigenous and Afro-descendant territorial rights, is a key part of reparation. Unless the authorities can ensure that these rights are effectively respected as a matter of urgency, not only will Colombia be in breach of its international human rights obligations, but it risks leaving one of the principal causes of the armed conflict unresolved. This could have serious repercussions for the long-term viability of any eventual peace agreement.

OPPOSITE PAGE

Members of the Afro-descendant community of Yolombó, one of the five hamlets that are part of the La Toma Community Council, in front of two mechanical diggers on the Ovejas River in December 2014. Shortly after this photo was taken, the diggers were decommissioned by the authorities at the request of the community.
© PCN- Derechos Humanos

BELOW

Poster advertising a national meeting on land, territory and sovereignty in Cali, Valle del Cauca Department, 2012.
© Amnesty International



RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE COLOMBIAN AUTHORITIES TO:

■ Fully comply with Colombia's international obligations to ensure reparation, including through land restitution, to all victims of the armed conflict.

■ Carry out effective and impartial investigations into the human rights abuses and violations carried out by the security forces, paramilitaries and guerrilla groups which led to lands being misappropriated using violence, intimidation, corruption and other breaches of the law, including the responsibility of state officials and business interests, and bring those suspected of criminal responsibility to justice in ordinary civilian courts.

■ Implement effective protection measures for land claimants and those supporting them, including the provision of collective preventative protection measures for Indigenous People and Afro-descendant communities. Such measures should be agreed with those affected and be in line with international protection standards.

■ Take effective measures to prevent the forced displacement of Indigenous Peoples and Afro-descendant and peasant farmer communities.

■ Repeal legislation that could hinder land restitution by facilitating economic projects on lands belonging to or claimed by Indigenous People and Afro-descendant communities without their free, prior and informed consent.

AMNESTY INTERNATIONAL CALLS ON THE COLOMBIAN AUTHORITIES AND THE GUERRILLA TO:

■ Comply fully with human rights and international humanitarian law and avoid harm to rural communities by fully respecting the principle of distinction between combatants and civilians during combat operations.

■ Ensure that the peace process fully respects the right of all victims to truth, justice and reparation, and fulfil the authorities' responsibility to make sure that all those suspected of criminal responsibility for human rights abuses and violations, including crimes under international law, are brought to trial before civilian courts.

AMNESTY INTERNATIONAL CALLS ON THE INTERNATIONAL COMMUNITY TO:

■ Call on the Colombian government and the guerrilla forces to comply with these recommendations and provide the government with any assistance it may require to do so.

■ Underline that action to end impunity, protect vulnerable sections of the civilian population and respect international humanitarian law is in line with repeated UN recommendations.

AMNESTY INTERNATIONAL CALLS ON THE HOME STATES OF EXTRACTIVE COMPANIES OPERATING IN COLOMBIA TO:

■ Require these companies by law to undertake human rights due diligence with regard to their existing or future mining projects in Colombia and ensure they do not operate on land illegally appropriated through human rights abuses or violations or on land belonging to, occupied or claimed by Indigenous or Afro-descendant communities without the free, prior and informed consent of those communities.

■ Guarantee that they do not provide funds to extractive and other economic projects on lands illegally appropriated through human rights abuses and which allow the perpetrators to benefit from such lands.

AMNESTY INTERNATIONAL CALLS ON COMPANIES INVESTING OR PLANNING TO OPERATE IN COLOMBIA TO:

■ Undertake human rights due diligence with regard to their existing or future mining projects in Colombia and ensure they do not operate on land illegally appropriated through human rights abuses or violations or on land belonging to, occupied or claimed by Indigenous or Afro-descendant communities without the free, prior and informed consent of those communities.

■ Guarantee that they do not provide funds or other support to extractive and other economic projects on land illegally appropriated through human rights abuses or violations or on land belonging to, occupied or claimed by Indigenous or Afro-descendant communities without the free, prior and informed consent of those communities.



ENDNOTES

¹ See Amnesty International's report *Colombia: A Land Title is Not Enough – Ensuring Sustainable Land Restitution in Colombia* (Index: AMR 23/031/2014), available at <https://www.amnesty.org/en/documents/AMR23/0031/2014/en/>.

² See Amnesty International Public Statement: *Colombia: National Development Plan threatens to deny the right to land restitution to victims of the armed conflict and allow mining firms to operate on illegally acquired lands* (Index: AMR 23/2077/2015), available at <https://www.amnesty.org/en/documents/amr23/2077/2015/en/>

³ See *Colombia: Threats made against Indigenous defenders*, available at <https://www.amnesty.org/en/documents/AMR23/018/2014/en/>; *Colombia: Community leader killed, others at risk*, available at <https://www.amnesty.org/en/documents/AMR23/1448/2015/en/>; and *Colombia: Community leader repeatedly threatened: Yomaira Mendoza*, available at <https://www.amnesty.org/en/documents/AMR23/009/2014/en/>.

⁴ See, for example, the series of studies on mining entitled *Minería en Colombia* by the Office of the Comptroller General published in four volumes between May 2013 and November 2014, available at: <http://justiciaambientalcolombia.org/2014/08/11/coleccion-estudios-contraloria-mineria-colombia/>

⁵ Tribunal Superior Distrito Judicial de Antioquia, Sala Civil Especializada en Restitución de Tierras, Sentencia No.007 (Land Restitution Sentence), 23 September 2014, para 4.

⁶ For more details on the threats see <https://www.amnesty.org/en/documents/AMR23/0006/2015/en/>, <https://www.amnesty.org/en/documents/AMR23/024/2011/en/>

⁷ This company is a subsidiary of SAEF Exploration which is being dissolved.

⁸ 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).

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(COVER IMAGE) Indigenous families set up camp under the school building in Aguasal in Alto Andágueda after being forcibly displaced from their homes in 2012. © Steve Cagan

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