

# NOREF Report

## Stopping irreparable harm: acting on Colombia's Afro-Colombian and indigenous communities protection crisis

**Gimena Sanchez-Garzoli**

### Executive summary

Despite security gains on the part of the armed forces and the demobilisation of the United Self-Defence Forces of Colombia paramilitaries, Colombia's protracted internal armed conflict persists. Civilians continue to be hard hit by violence, displacement and human rights abuses perpetrated by armed groups. Afro-Colombian and indigenous communities are disproportionately affected by this violence and displacement, potentially leading to their cultural and physical extinction. Protection mechanisms for ethnic minorities and their collective lands rights remain ineffective in spite of the Colombian Constitutional Court's efforts. State-led security strategies, the mining boom, land restitution efforts and free-trade agreements bring with them additional security challenges for Afro-Colombian and indigenous groups. This report seeks to describe the protection

challenges facing ethnic minorities and to provide recommendations for how the international community can act to guarantee Afro-Colombian and indigenous communities' protection. The main thrust of the recommendations is that the international community should put pressure on the Colombian authorities to apply in practice the model theoretical protection of communities' rights that exists in the Colombian Constitution. The U.S. and Colombian authorities should be pressured to reconsider their indiscriminate crop-spraying programme that supposedly targets only coca crops, while countries who have concluded free-trade agreements with Colombia should be pressured to ensure that these do not further threaten the rights of indigenous and Afro-Colombian communities.

**Gimena Sanchez-Garzoli** is an expert on Colombia and international humanitarian law. She has worked as a senior associate at the Washington Office on Latin America (WOLA), a U.S. NGO dedicated to changing U.S. foreign policy towards Latin America so that it respects human rights and supports democracy and socioeconomic justice. She leads WOLA's Human Rights in the Andes Programme, which focuses on human rights, internal displacement, the dismantling of armed groups, ethnic minorities' rights and labour rights since 2006. WOLA's work involves influencing U.S. policymakers and bringing Colombian independent and civil society voices to these policymakers. This report was prepared while she was a guest researcher at NOREF in early 2012.

## Background

Colombia's multifaceted internal armed conflict dates back to the mid-1960s. It followed the period of partisan violence known as La Violencia, when liberals and conservatives fought each other and left-wing guerilla insurgencies developed. The two guerilla groups that remain active today are the Revolutionary Armed Forces of Colombia (FARC) and the smaller Popular Liberation Army (ELN). Guerilla groups claim that they took up arms to fight the state in order to combat inequality, and the political and social exclusion of the rural classes.

Political and economic elites protected themselves from attacks, kidnappings and extortion by guerillas with private militias licensed by the government. These right-wing militias, known as CONVIVIR, operated legally until Colombia's Constitutional Court outlawed them in 1997. Fueled by financing from the cocaine trade and extortion, the militias continue to operate illegally. In the mid-1990s the militias united and formed the United Self-Defence Forces of Colombia (AUC).

To control territories and root out the guerillas, the AUC brutally targeted civilians by engaging in war crimes, including massacres and mass displacements. In some cases, the AUC acted in collusion or with the complicity of members of the armed forces. These paramilitaries allied themselves with many landowners, the political elites, and powerful economic sectors to control territories and implement large-scale development projects. These groups were financed by the drug trade, extortion rackets, and the political and economic elites. The large-scale displacement of rural farmers from their lands that resulted from paramilitary violence was a deliberate strategy to depopulate areas in order to facilitate the implementation of both legal and illegal, mainly drug, economies. Land grabs took place utilising many tactics: violence, threats, coercion, forced sales and falsified land transactions. Guerillas also committed human rights abuses and atrocities, and displaced civilians. As the AUC increased its dirty tactics and crimes against humanity, the guerillas increased their violations. FARC guerillas have also notoriously not respected

international humanitarian law and, as such, have harmed many civilians, as is evidenced by the Bojayá massacre of over 80 Afro-Colombians, including women and children, who sought refuge from combat in a church in May 2002.

In 2003 the Colombian government initiated a peace process with the AUC paramilitaries that led to the official demobilisation of some 30,000 people. While this controversial process led to a decrease in paramilitary abuses, it did not lead to the full dismantling of their military, social and economic structures. Paramilitaries who did not demobilise maintained much of the AUC's modus operandi and regrouped with new recruits. These splintered factions of the AUC continue to operate in collusion with narcotics traffickers, elites, parts of the military and even guerilla groups.

Today,<sup>1</sup> new paramilitary groups are present in 209 Colombian municipalities, where they engage in human rights abuses, violence and illegal activities. Armed combat threatens civilians' security and generates new displacements. In 2011, in Cordoba Department alone, homicides numbered 500. The Colombian government refers to the new paramilitary groups as Bacrim, or emerging criminal bands, and estimates their number to be 5,000. Analysts find it may in reality be closer to over 10,000.

FARC guerillas have increased their armed activities since 2004, with 2,000 attacks taking place in 2011 alone.<sup>2</sup> The ELN engaged in 217 armed actions in 2011 and continues the practice of kidnapping. All illegal armed groups finance their operations via the cocaine trade, extortion rackets and the control of other illicit economies. Colombia's conflict should not be viewed solely as one between the state and multiple illegal armed groups; it is far more complex than this. One facet that enabled the level of violent paramilitary control of most areas of the country under the AUC was the links that existed among members of the military, political elites and business interests.

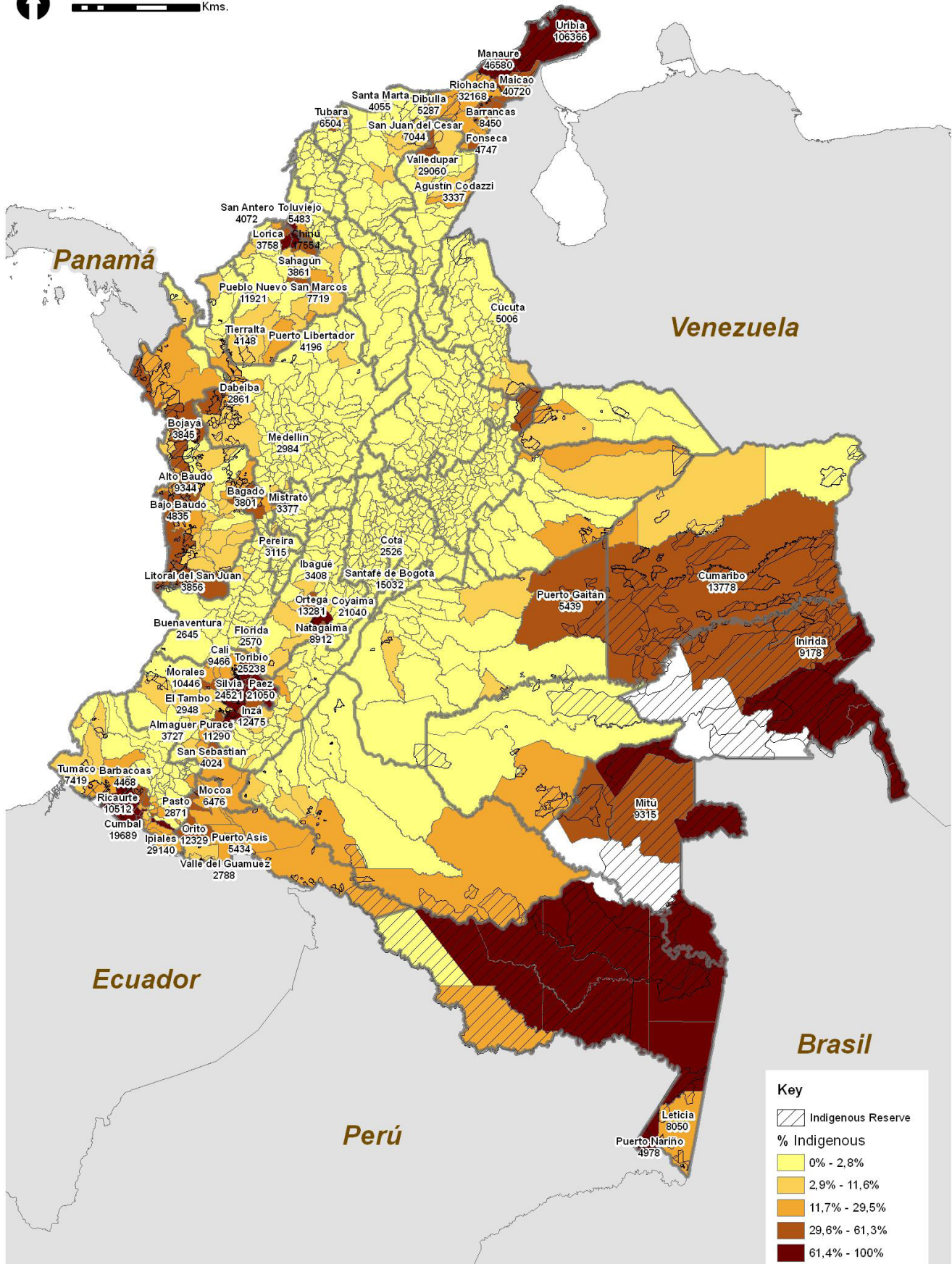
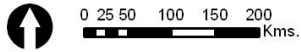
Colombia's Supreme Court has in recent years made considerable progress in investigating

<sup>1</sup> Observatorio de Conflicto Armado Arco Iris, *Informe anual de la Corporación Nueva Arco Iris, Política y violencia en 2011: "Las cuentas no son tan alegres"*, Bogotá, Observatorio de Conflicto Armado Arco Iris, 2012.

<sup>2</sup> Ibid.



**INDIGENOUS POPULATION**  
2005  
Source: DANE Census 2005



Colombian Congress members accused of collaborating with paramilitaries. In the "para-politics" scandal, more than 120 former Congress members have been investigated and approximately 40 convicted. In February 2011 former Senator Mario Uribe – former president of the Colombian Congress and second cousin of former President Uribe – was convicted of having ties with paramilitaries. While demobilised paramilitaries have also made statements about extensive collaboration with local politicians, senior military officers and businesspeople, the Attorney-General's Office's investigations of such people have advanced slowly.

While many of these links were exposed through the "para-politics" scandal and a long list of officials are either in jail or under investigation, a complete clean-up of paramilitarism's infiltration of regional economies has yet to take place. There are concerns of ongoing infiltration of the political system by paramilitaries and their successor groups. As of September 2011 the Supreme Court has opened investigations against ten current members of Congress for allegedly having had ties to paramilitaries. Colombia's Ombudsman's Office reported that 119 municipalities faced a high risk of electoral violence or interference by paramilitary successor groups during the October 2011 local elections.

In 2011 two former paramilitaries publicly claimed that former President Uribe had been directly involved with a paramilitary group while governor of Antioquia department in the 1990s. Uribe has denied the allegations.

## Colombia's rich cultural and ethnic diversity

### *Indigenous peoples*

While there is consensus on the fact that Colombia contains a vast number of indigenous ethnic groupings, the Colombian government and the indigenous leadership differ on the total number of indigenous peoples. The National Authority for Indigenous Government (ONIC),<sup>3</sup>

which is an official grouping of indigenous organisations, states that the total number of indigenous groups is 102. The government's 2005 census only recognises 87 different ethnicities, thus omitting 15. The census also found that indigenous peoples make up 3.4% of Colombia's population. These indigenous peoples speak an estimated 64 different languages and exhibit a tremendously rich diversity in terms of cultures, social organisation, governance, cosmology and way of life.

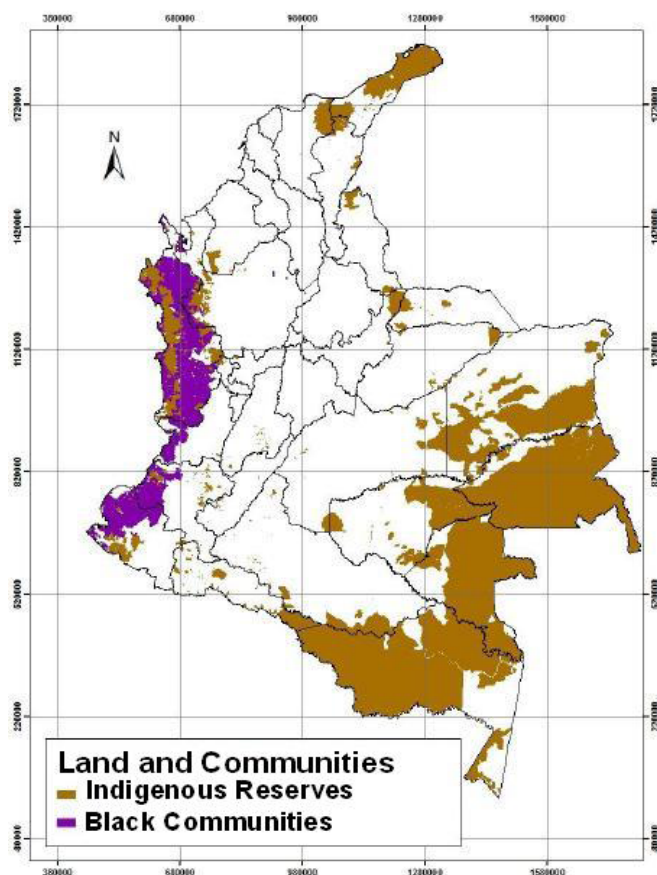
Most indigenous peoples still live in rural areas. Colombia recognises 710 reserves located throughout the country, totalling an estimated 34 million hectares. However, several communities have not obtained such recognition. Indigenous populations are more concentrated in the areas of Guainía, Vaupés, La Guajira, Vichada and Amazonas. The lack of effective state protection for indigenous civilians and their collective land rights in the context of armed conflict has generated the internal displacement of a rising number of indigenous people to urban areas. In the past 20 years indigenous communities throughout Colombia have struggled to gain their autonomy from all the armed groups that are a party to the conflict. They have been hard hit by abuses committed by all sides, including paramilitaries that have links with economic interests in their territories.

### *Afro-Colombians*

The 2005 census found that over 4.3 million Colombians identified as Afrodescendant, i.e. 10.5% of Colombia's population. However, Afro-Colombian organisations estimate that the real figure is closer to 26%. Most Afro-Colombians reside in the rural areas and cities along the Pacific and Atlantic coasts. The Pacific coast is an area that was historically ignored and marginalised in terms of the presence and services of the central state. Similar to the displacement of indigenous communities, displacement and economic migration have led to an Afro-Colombian presence in all of the principal urban centres of Bogotá, Cali, Barranquilla, Buenaventura, Cartagena, Santa Marta and Medellín. The armed conflict has forcibly displaced millions of Afro-Colombians over the last 20 years, to the point where the population is now mostly urban.

<sup>3</sup> Anonymous, *Palabra dulce, aire de la vida*, Bogotá, ONIC, 2010. (Note: the authors of many Colombian human rights publications are not identified for their own protection.)

## Indigenous Reserves and Collective Territories



Map of Indigenous Reserves and Afro-Colombian Communities

Description	Area (hectares)	% of National Area
Indigenous Reserves	30,554,254	27%
Afro-Colombian Communities	5,182,489	5%
Total	35,736,743	31%

- Almost 70% of the indigenous reserves and 71% of the Afro-Colombian collective territories are in forest reserves.
- In the Pacific forest reserve, the collective land titles of Afro-Colombian and indigenous peoples overlap. This has generated another source of conflict.

Between 1996 and 2010,<sup>4</sup> 159 titles of collective land constituting just over 5.2 million hectares were legally granted to Afro-Colombian communities in Antioquia, Valle del Cauca, Nariño, Chocó, Cauca and Risaralda.

### Progressive constitution, regressive implementation

Afro-Colombian and indigenous communities' human rights are protected by Colombia's 1991 Constitution, as well as specific laws that detail these rights. Articles 1 and 7 of the Constitution recognise that Colombia is a multi-ethnic and pluri-cultural society, and that the Colombian state will protect its ethnic and cultural diversity. Other articles of the Constitution emphasise equality before the law regardless of race and language, and that the state must promote effective actions

in favour of groups that are discriminated against or marginalised.

Transitory Article 55 of the Constitution states that the Congress will develop a law that addresses the rights of Afro-Colombian communities and that it will establish mechanisms for the protection of their cultural identity, rights, and social and economic development. In 1993 Colombia adopted Law 70, which grants Afro-Colombians a series of cultural and collective rights over the territories they have inhabited for generations.

Law 89 of 1989 established the guidelines for indigenous reservations (*resguardos*). Law 160 of 1994 further defines the legal recognition indigenous *resguardos*. Decree 2569 of 1995 provides clearer definitions of indigenous *resguardos* and what is needed to found a *resguardo*. Articles 63, 286 and 330 all support indigenous collective land rights.

Both Afro-Colombians and indigenous peoples are entitled to all of the rights guaranteed to them in international humanitarian law and human

<sup>4</sup> Anonymous, *Bicentenario: Nada que celebrar!: Informe sobre los Derechos Humanos de las Comunidades Afrocolombianas en el marco de la celebración de los doscientos años de vida republicana en Colombia*, Bogotá, Global Rights and AFRODES, 2010.

rights law. Afro-Colombian and indigenous displaced people are also covered by Colombia's ample acceptance of the United Nations (UN) Guiding Principles on Internal Displacement. These restate the protection and humanitarian rights of internally displaced persons (IDPs) throughout all phases of displacement. The UN Guiding Principles include the right not to be arbitrarily displaced, the right to protection and assistance during displacement, and other options for durable solutions to displacement that respect the rights of IDPs.

In 2009 Colombia signed on to the UN Declaration on the Rights of Indigenous Peoples. This declaration upholds the human rights of indigenous peoples, their right to culture, their right to not be discriminated against, and their right to their traditional lands. Colombia ratified International Labour Organisation Convention 169 in 1991 that protects indigenous and tribal groups' right to be previously consulted on economic projects designated for their territories and to exercise control over their economic, social and cultural development.

## Effects of violence, conflict, and displacement on Afro-Colombian and indigenous communities

Afro-Colombian and indigenous communities' physical, cultural and territorial integrity has been systematically violated by the internal armed conflict, violence, human rights abuses, death threats and internal displacement.

The human rights and humanitarian situation for indigenous communities in Colombia remains dramatic. The alarming crisis faced by indigenous communities led ONIC to launch a global campaign to stop the physical and cultural extinction of indigenous peoples in Colombia in 2010. According to ONIC,<sup>5</sup> all of Colombia's indigenous peoples are at risk of becoming extinct. Among these groups, 32 peoples, residing mainly in Amazonía and Orinoquía, consist of less than

500 members, with 18 consisting of less than 200 people, while 10 have less than 100 members.

The murder of indigenous people – and especially their leaders – is a deliberate strategy to disarticulate the movement to defend indigenous peoples' rights. The UN<sup>6</sup> reports that at least 79 indigenous people were killed between January through October 2011, a 54.9% increase over the same period in 2010. The indigenous authorities report that the total number reached 107 in November 2011. Forty-three of the indigenous people murdered during January-September 2011 were killed for political and social reasons, and 12 of these people were leaders of their communities. Between 2002 and 2009 indigenous communities faced 4,700 collective threats, 90 kidnappings and 195 disappearances by both legal and illegal armed groups.<sup>7</sup>

Displacement continues to disproportionately affect indigenous communities. Mass displacement affected approximately 3,451 indigenous people in Colombia between January and October 2011.<sup>8</sup> The government is legally obliged to protect these vulnerable communities from displacement, but it has failed to do so.

Forced displacement is caused by a severe lack of respect for international humanitarian law, human rights and the sanctity of indigenous territories. All parties to the conflict (the Colombian armed forces, guerilla groups and paramilitaries) have perpetrated displacements. Aggressive actions taken by armed groups against indigenous people include armed combat in their territories, targeted assassinations, massacres, threats, intimidation, forced occupation of community shelters, the stigmatisation of entire communities, the laying of landmines and the use of indigenous people as human shields.

While some indigenous communities are forcibly displaced, others are subjected to confinement by armed groups and unable to flee to safety. Confinement gravely threatens communities' personal security and food security. Often confinements lead to humanitarian emergencies.

6 UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, A/HRC/19/21/Add. 3, New York, UN, January 31st 2012, p 17.

7 Anonymous, *Palabra dulce, aire de la vida*, 2010.

8 Interview with Consultancy for Human Rights and Displacement (CODHES).

5 Anonymous, *Palabra dulce, aire de la vida*, 2010.

Indigenous communities maintain a collective identity and special relationship with their territories. Displacement destroys this relationship, and can lead to irreversible cultural and economic transformations. In addition to facing the same obstacles as other IDPs (lack of protection, the inability to cover their basic needs, and vulnerability to exploitation and harm), indigenous IDPs confront culture shock, racial discrimination, and ruptured access to their traditional foods and medicines. As a result, their organisational processes, languages, traditional practices, and teachings are weakened and, in some cases, lost.

While less dramatic in terms of cultural extinction, the situation of Afro-Colombian communities is also grave. Although the Colombian government was asked by the Constitutional Court to properly document abuses committed against Afro-Colombians, it has yet to do so. As a result, no reliable figures exist on the total number of Afro-Colombians and their leaders killed, but the Washington Office on Latin America and the Association for Internally Displaced Afro-Colombians (AFRODES) has documented numerous cases of murders, death threats and disappearances perpetrated by illegal armed groups. The National Working Group of Afro-Colombian Organisations<sup>9</sup> found that at least 40 Afro-Colombians, including leaders, were murdered between January 2009 and January 2012.

Today, more than 60% of the Afro-Colombians who possess legal titles to their lands are now internally displaced due to the armed conflict, threats and massacres; the violence linked to large-scale development projects; aerial crop-spraying (see below); and violations of humanitarian law and human rights.

As noted by Colombia's Constitutional Court and UN Special Mechanisms,<sup>10</sup> the total number of internally displaced Afro-Colombians is not known due to fear, discrimination and other factors. Official government figures place the percentage Afro-

Colombian IDPs to be 10.5%; CODHES places the figure at 22.5%; the Organisation of American States (OAS) puts it at 30%; while according to Global Rights and AFRODES, it is closer to 37%. The departments officially registering the highest number of new displacements in 2011 are Nariño, Valle del Cauca, Chocó, Cauca and Antioquia, all containing a high number of Afrodescendants. Similar to indigenous peoples, Afro-Colombians are displaced due to actions taken by the paramilitaries and FARC, and violent acts committed by multiple groups at the same time.

In 2012 the UN<sup>11</sup> reported that the situation of Afro-Colombians in the Pacific coast requires special attention, citing the deterioration of the security situation, the increasing urban displacement of Afro-Colombians within Buenaventura (Valle del Cauca), the confinement of civilians in the Medio Atrato (Chocó) and confrontations between illegal armed groups in Tumaco (Nariño). These areas are experiencing displacement, killings, kidnappings and disappearances.<sup>12</sup>

The FARC and ELN guerillas were involved in numerous armed actions in Cauca and Nariño Departments, including bombings that put civilians at risk of harm. Paramilitary groups expanded their presence in this region, causing displacements and confining peoples, as well as threatening civilians. Areas hard hit by violence included Timbiquí, Guapi, Santiga and Mosquera in Nariño, and San Juan municipality in Chocó. Currently in the Medio and Bajo Atrato River region and Quibdó, Chocó, over 27 Afro-Colombian, community council, IDP and female leaders are under threat of death by illegal armed groups.

Indigenous and Afro-Colombian women and girls are also extremely vulnerable to sexual violence, forced prostitution and harassment by armed groups. A 2010 report found that Colombia experiences the second highest number of femicides after Mexico.<sup>13</sup> Areas where the conflict is most acute are where multiple forms of violence against women occur.

9 Anonymous, *Informe de evaluación de la respuesta del gobierno nacional a las ordenes de proteccion de la población afrocolombiana, emitidas por la Corte Constitucional de Colombia en el Auto 005 de enero 2009*, Bogotá, Mesa de Organizaciones Afrocolombianas (PCN, CNOA, CIMARRON, AFRODES), 2012, annex.

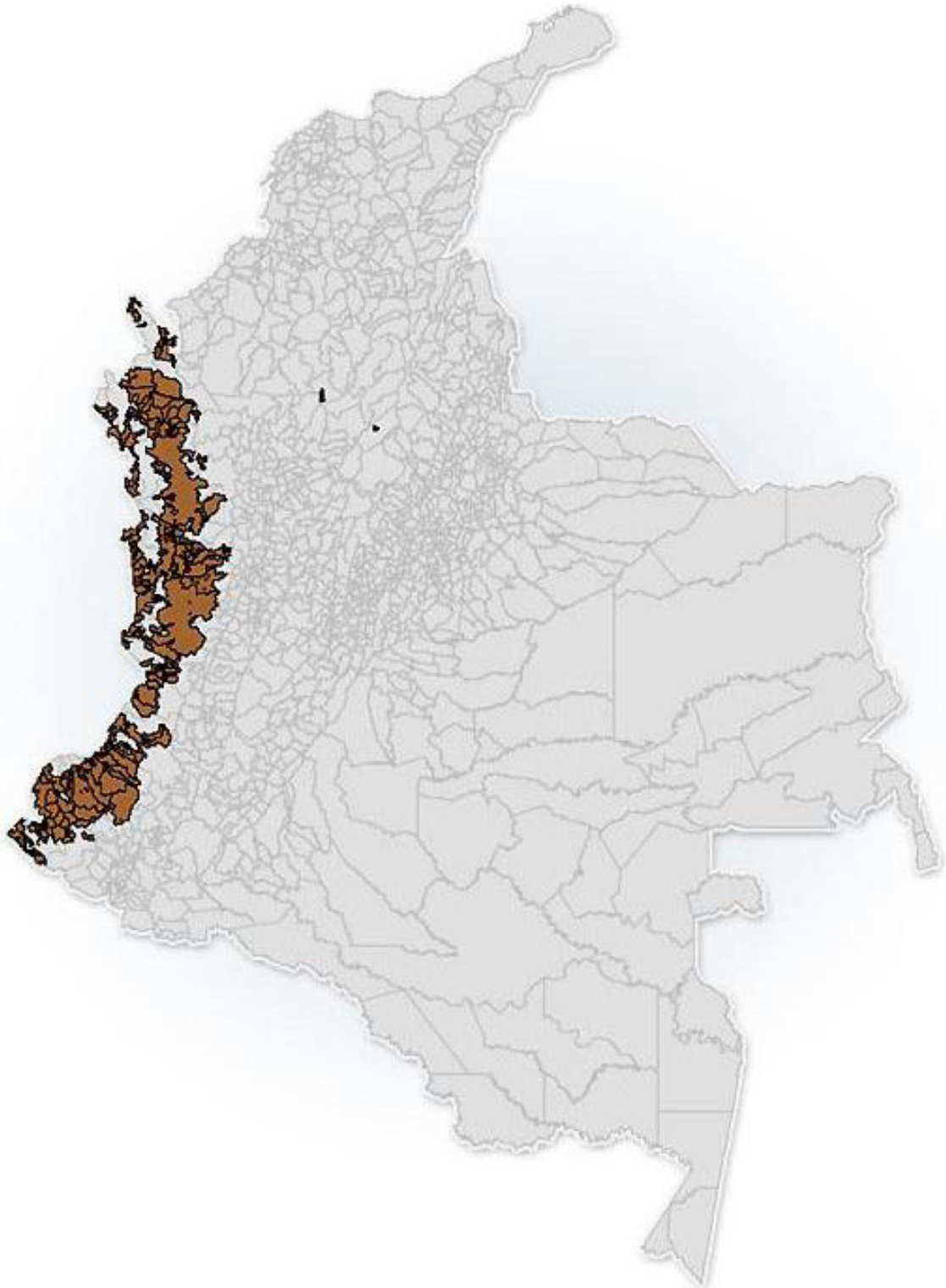
10 Ibid.

11 UN, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, 2012, pp 17-18.

12 Ibid., p 17.

13 Ibid., p 2.

## Afro-Colombian Collective Territories



Source: Instituto Geográfico Agustín Codazzi (IGAC)



Violent attacks and murders of women and girls in Buenaventura, Valle del Cauca, have increased since 2009. Illegal armed groups targeted female human rights defenders, community leaders, and young girls for their alleged relationships with a member of the army, police or one of the illegal armed groups. Women, especially adolescents, often engage in relationships with armed men for protection or to address their socioeconomic problems. In the poorest neighborhoods, where employment is limited, the largest employers are illegal armed groups and drug traffickers.

Another category of abuse that can lead to displacement is the abuse and forced recruitment of minors into illegal armed groups' ranks. According to a March 2012 UN report, "children of Afro-Colombian and indigenous origins have been especially vulnerable to grave violations. Decades of armed conflict between Government, paramilitary and guerrilla forces have played out largely in Afro-Colombian and indigenous territories".<sup>14</sup> This report also highlights that guerilla groups mainly recruit minors in rural areas, while the other groups, including Los Rastrojos or the Urabeños, recruit in urban settings. The UN further reports that "children of indigenous and Afro-Colombian origins are particularly exposed to recruitment and use by all non-State armed groups".<sup>15</sup>

A root cause of the internal displacement of indigenous people and Afro-Colombian is the disregard for their legal rights concerning decision-making processes that affect their livelihoods. The "free, prior and informed consultation" (FPIC) mechanism from International Labour Organisation Convention 169 that applies to these communities in Colombia stipulates that territorial authorities must give their approval prior to the implementation of any new projects planned on their land. Additionally, Colombia's Constitutional Court and legal code further recognise this right. The FPIC mechanism is often not applied, poorly implemented and at times manipulated.

The result is that it is not enforced, and indigenous communities and Afro-Colombians are increasingly being forced off of their lands without compensation due to combat between

paramilitaries, guerrillas and Colombian military forces; coercion; manipulation; and pressures from political and economic interests. Once people become displaced they lose their autonomy with regard to the administration and control of their lands.

Many actions that generate internal displacement are carried out by armed groups seeking to control indigenous communities' and Afro-Colombian territories so that either the land can serve as a drug corridor, its natural resources can be exploited or large-scale economic projects can be implemented.

When illegal armed groups take over territories, they often begin to force the locals to cultivate coca, which makes the entire territory vulnerable to aerial crop-spraying, an anti-narcotic programme whereby herbicides are sprayed by aircraft over a territory. These activities are problematic because they are not accurate and also destroy food crops, poison the drinking water and force locals to move to areas where illegal armed groups may harm them. Indigenous communities, particularly the Awá in Nariño, have suffered displacements due to aerial crop-spraying financed by the U.S. in their territories. Communities situated close to Colombia's borders are often forced to flee as refugees to the neighbouring countries of Panama, Ecuador and Venezuela.

Areas inhabited by indigenous peoples and Afro-Colombian collective territories are often rich in biodiversity and mineral resources. U.S. counter-narcotics policies,<sup>16</sup> in particular aerial spraying, damage the environment and biodiversity found in these territories. Aerial spraying has also led to adverse health effects among Afro-Colombian and indigenous people, in particular children. According to reports, 33 indigenous peoples and 105 reserves were fumigated in 2006.<sup>17</sup> In recent years coca cultivation has grown along the Pacific coast and, because of this, more and more Afro-Colombians have suffered the effects of crop-spraying efforts.

<sup>14</sup> For further information, see John Walsh and Gimena Sanchez-Garzoli, *Chemical Reactions-Fumigation: Spreading Coca and Threatening Colombia's Ecological and Cultural Diversity*, Washington, DC, WOLA, February 2008.

<sup>17</sup> Maria Angelica Gomez, "Cuando atacan la resistencia cultural": *Desplazamiento forzado y pueblos indígenas en Colombia*, Bogotá, CODHES, 2009.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., p 6.

## Additional civilian protection challenges

Afro-Colombians and indigenous communities will remain at risk as long as the internal armed conflict continues and their legal rights are not respected and protected. A politically negotiated solution is the only way to end the armed conflict.

In recent years, however, additional challenges to protection have developed that require attention.

### *Consolidation zones*

Colombia began the process of implementing the National Plan for Territorial Consolidation in 14 areas of the country in 2006.<sup>18</sup> This effort, financed by the U.S., is a counterinsurgency and development programme that seeks to establish a state presence in neglected and ungoverned areas. The process of consolidation consists of first militarily securing the area to establish security and then introducing a civilian-led government presence. The implementation of the consolidation programme has slowed since Juan Manuel Santos became president in 2010. In 2011, the Santos administration initiated an effort to rethink the consolidation programme in order to make it more effective.

Afro-Colombian and indigenous communities were not consulted in the reformulation of the consolidation programme, despite the correlation of consolidation zones and ethnic territories. The expanded presence of armed forces in Afro-Colombian and indigenous territories has increased human rights and international humanitarian law abuses, and the authorities have missed a key political opportunity to jointly decide with ethnic authorities how best to minimise the occurrence of such abuses.

The Indigenous Cabildos of Northern Cauca<sup>19</sup> have expressed concern over the negative effects of the consolidation project on indigenous territories. They note that in such zones the government de

facto places control of public resources in the hands of local military commanders. As such, civilian institutions and authorities become subordinate to the military's demands. Also, these soldiers take on civilian agency roles like the construction of roads, bridges and aqueducts, and the running of social programmes like health campaigns. To the indigenous peoples, this greatly blurs the line between civilian and military institutions and therefore places the entire civilian population at risk of being caught in the crossfire between warring parties.

Militarisation increases the vulnerability of indigenous and Afro-Colombian women and girls to sexual violence, and boys and adolescents to forced recruitment by armed groups. Furthermore, international law states that communities must give consent prior to the construction of military installations in their territories. Often this does not happen.

Organisations monitoring the implementation of the consolidation programme<sup>20</sup> have found obstacles and problems in its implementation, including the protection of Afro-Colombian and indigenous people's human and territorial rights.

The dominant role played by the military in consolidation zones leads to a blurring of the humanitarian lines that exist between combatants and non-combatants. Also, the military is not passing on the baton fast enough to civilian authorities. This accentuates the notion that consolidation is mainly a military plan, thereby sidelining any civilian-led component.

This blurring of the international humanitarian law principle of distinction translates into a perception by guerilla groups that civilians are aiding and abetting the military. As such, civilians become the targets of guerilla groups. In the case of the Las Varas Afro-Colombian community council situated in the Tumaco consolidation zone, FARC guerillas have murdered at least six people since the community decided to cooperate with the state in abandoning coca cultivation and implementing alternative development projects.

<sup>18</sup> See the WOLA, CIP, INDEPAZ and MINGA website on the National Plan for Territorial Consolidation in Colombia, <http://ccai-colombia.org/>.

<sup>19</sup> Anonymous, *Por la autonomía y armonía territorial y el cese de la guerra: Minga de resistencia*, Cauca, ACIN, 2011, p 13.

<sup>20</sup> WOLA, INDEPAZ, CIP and MINGA, *Waiting for Consolidation: Monitoring Colombia's U.S.-aided Counterinsurgency and Development Program*, February 2012, <http://www.ciponline.org/research/entry/waiting-for-consolidation>.

Another obstacle is the lack of clarity and coordination between the armed forces and police as paramilitaries move between rural and urban areas. Generally, the armed forces are responsible for fighting such groups in rural areas and the police in urban areas. In reality, there is a lack of coordination, resulting in an ineffective response towards such groups, leaving the local population exposed to harm.

Thirdly, there is a risk that, given the precariousness of most land holdings, consolidation efforts may lead to small farmers being driven off their lands in order to pave the way for large landowners who wish to implement monoculture economies. Local corruption, clientelism and a bias towards large land owners create a scenario where the protection of land holdings remains fragile and paramilitarism persists. This in turn perpetuates the vulnerability of Afro-Colombian and indigenous peoples to displacement and loss of autonomy in terms of their collective land rights. Given that this has historically been a problem for ethnic minorities, there is concern that consolidation will deepen the problem.

## ***Victims and the land restitution process***

It is a positive step that President Santos passed the Victims' and Land Restitution Law. This law intends to provide reparations for victims of the internal armed conflict and restore land to some of the more than five million IDPs. This initiative recognises victims' rights and attempts to address injustices generated by the conflict.

Regrettably, this process is taking place without adequate attention to protecting the lives of Afro-Colombian and indigenous land rights activists and communities who have already returned or who are planning to return to their stolen lands. The initiative is also occurring in a context where the internal armed conflict persists and illegal armed groups have usurped some six million hectares of land. Unless serious steps are taken by Colombia's authorities to protect Afrodescendant and indigenous land rights activists, and dismantle the paramilitary and other illegal groups behind the violence, returnees and land activists will continue to be killed.

Since President Santos took office, and before the land return effort has even begun to be fully implemented, we have seen the murder of more than 20 land rights leaders. A lack of effective protection measures for human rights defenders, IDP leaders, community activists, trade unionists, and Afro-Colombian and indigenous community leaders continues to make Colombia one of the most dangerous countries in the world for human rights and community organising.

Somos Defensores,<sup>21</sup> which tracks attacks against human rights defenders and activists, found that murders of such people rose from 32 to 49 cases from 2010 to 2011 and that death threats increased from 109 to 140 in the same period. It also found that every 36 hours a defender was subjected to an attack and that every eight days one was assassinated. Among the most targeted persons were indigenous leaders, victims' rights defenders and leaders of land restitution processes.

Compared to other countries, Colombia contains extensive protection programmes for human rights defenders; however, such programmes are plagued with problems and ineffective when it comes to protecting Afro-Colombian and indigenous community leaders. In general, the processing of applications is lengthy, there are problems with risk evaluations, and when protective measures are finally authorised, they are not compatible with the level of risk that the recipient faces.

These programmes exclude a gender focus and do not respond to the needs of Afro-Colombian and indigenous community leaders. In many cases, community and land leaders need collective and differential protective measures that are not considered in Decree 1740 of 2010. Colombia has not developed effective protective measures that are discussed with Afro-Colombian and indigenous communities and that take into account the specificities of their ethnicity and the collective nature of their communities. Despite repeated advocacy efforts on the part of Afro-Colombian and indigenous activists asking Colombia to rectify this, it has not done so.

<sup>21</sup> Somos Defensores, *Informe anual 2011, 2012*, [http://www.somosdefensores.org/attachments/article/106/INFORME%20SOMOS%20DEFENSORES%202011\\_ESPAÑOL.pdf](http://www.somosdefensores.org/attachments/article/106/INFORME%20SOMOS%20DEFENSORES%202011_ESPAÑOL.pdf).

## **Free, prior and informed consultation (FPIC)**

Historically, Afro-Colombian and indigenous communities' basic human, territorial and cultural rights are not taken into account when large-scale infrastructure and development projects are implemented. Often, the right to be previously consulted through FPIC is violated, poorly implemented, or manipulated by politicians and companies interested in extracting natural resources from Afro-Colombian and indigenous community lands. In many cases, these FPICs are taking place in areas where the internal armed conflict is under way and illegal armed groups operate. As such, ethnic minorities are forced to negotiate in a climate of fear.

As such, the Afro-Colombian and indigenous community leaders engaged in FPICs encounter not only manipulation by those running the FPICs, but also violent pressure, including death threats, intimidation and murder. Armed groups are often in the service of economic interests. Afro-Colombian, indigenous leaders and their communities are therefore viewed as obstacles to the implementation of large-scale economic projects.

Afro-Colombians and indigenous communities become military targets for these groups. It is common that "legal and illegal armed groups have been used to sow fear and panic before a project is implemented, thereby completely bypassing adequate prior consultation".<sup>22</sup> This was the case when paramilitaries murdered Kimy Pernia Domico in 2001 due to his fight against the Urrá dam. In Vichada, the Hercaucho Company was linked to the burning of two indigenous communities, threats against community members, the poisoning of rivers, the destruction of sacred cemeteries and subsequent displacement.

In the case of indigenous communities, 83 FPIC processes were carried out between 1994 and 2009. According to ONIC, "there is not one single example of good practices among these 83 processes".<sup>23</sup> On the contrary, most generated tremendous difficulties for indigenous

communities and divisions among indigenous organisations. The influx of money, power and often violence disrupts the organisational processes of communities undergoing FPIC processes. Several particularly damaging FPIC processes noted by ONIC<sup>24</sup> include those concerning the U'Wa people over oil exploration, the Embera Katio over the Urrá hydroelectric dam and mining projects in Cara e' perro.

Most consultation processes do not involve real FPIC. The authorities and companies often take advantage of the poor economic conditions faced by Afro-Colombian and indigenous communities by promising community improvements. Sadly, the consent of desperate peoples is bought by promises of services and improvements that the authorities should be providing for these communities in the first place.

In other FPIC cases, the government often does not offer real alternatives or solutions to the indigenous peoples and Afro-Colombians who will be affected by the economic project. In many cases, communities are forced into impoverishment due to the implementation of an economic project. Tactics such as making false promises about the projects' benefits, understating the health and environmental risks, not allowing enough time for communities to fully understand or consult among themselves about a project, or consulting with random people rather than leaders are often used by companies to appear as if they are meeting the FPIC requirement.

Since Santos took office, the government has shunned its FPIC responsibilities on various legislative projects. The Victims' and Land Restitution Law was developed and passed without an FPIC process with Afro-Colombian and indigenous communities. In order to rectify this so that the law was not declared unconstitutional, the government promised an FPIC process in the law's implementing decree. With indigenous communities, this process was adhered to. However, no FPIC process was undertaken for Afro-Colombians, despite repeated efforts on the part of national Afro-Colombian groups and their development of a proposal based on an informal FPIC process.

<sup>22</sup> Anonymous, *Palabra dulce, aire de la vida*, 2010.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

The Victims' and Land Restitution Law served as an historic opportunity to recognise the rights of Afro-Colombians. By moving forward with a law without an FPIC with Afro-Colombian groups, Colombia has in essence revictimised the victims and squandered a key opportunity to right wrongs committed against a marginalised and disenfranchised group.

The National Development Plan in its entirety did not follow an FPIC process with ethnic minorities. Indigenous peoples denounced the fact that the government denied their request to revise the declaration of mining as an engine of the Colombian economy. The FPIC process with Afro-Colombian communities was equally flawed. Given the large-scale negative impacts of the mining sector on ethnic minorities' territories and communities (see the next section), the government missed another opportunity to work with these groups to devise safeguards that would have mitigated negative impacts on these communities.

Additionally, it has set a negative precedent regarding the FPIC process with ethnic minorities for future policies and large-scale economic projects. This is highly problematic, as all FPICs for development projects linked to free-trade agreements with Canada, the U.S., and others in Afro-Colombian and indigenous community lands are likely to follow this model. The lack of enforcement of FPICs will increase the vulnerability of Afro-Colombian and indigenous peoples to abuses linked to economic projects.

## **Mining boom**

President Santos has declared mining as one of the engines of Colombia's economy. Currently, 40% of Colombia's land is licensed to or solicited for mining concessions.<sup>25</sup> The government has promoted legislation to facilitate large-scale mining, granted mining licences in indigenous reserves and Afro-Colombian territories, and declared protests against the mining industry to be illegal.

Indigenous and Afro-Colombian peoples are greatly affected by this mining boom. The

<sup>25</sup> PBI Colombia, *Minería en Colombia: A qué precio?*, Boletín Informativo no. 18, November 2011.

authorities have granted some 236 licences in Afro-Colombian territories and there are 1,868 pending applications.<sup>26</sup> A total of 168 licences were granted in 2011 in indigenous reserves, with another 978 pending applications.<sup>27</sup>

In the past decade, 80% of human rights abuses have originated from areas where mining and energy production are most concentrated.<sup>28</sup> These regions are also the sites of the majority of the more recent displacements. Grupo Semillas<sup>29</sup> highlights that some 89% of indigenous people and 90% of Afro-Colombians murdered in recent years correlate with these same areas.

There are many examples of conflictive mining-related situations involving Afro-Colombian and indigenous communities. Afro-Colombians and indigenous leaders in the Atrato River region of Chocó strongly objected to the Mandé Norte gold-mining project in 2009.<sup>30</sup> This project is moving forward without their consent and as a result these communities were stigmatised as guerillas. In 2010 the military bombed these communities, putting all of their members at risk and leaving two indigenous people severely wounded. Coal mining in El Cerrejon has led to the displacement over 70,000 indigenous people in the La Guajira and Cesar Departments. Afro-Colombians and indigenous communities in northern Cauca have suffered multiple death threats, massacres and displacements due to conflict over gold mining.

## **Free-trade agreements (FTAs)**

In 2011 FTAs between Colombia and other countries moved forward. In August the Canada FTA moved forward, while on October 12th the U.S. FTA was signed. The FTA with the European Union (EU) is anticipated to go into effect in September 2012. Canada, the U.S. and the EU are all seeking to deepen their ties with Colombia's agricultural, mining and oil sectors. These FTAs are likely to deepen the security crisis faced by Afro-Colombian and indigenous communities and to weaken the mechanisms that exist to protect their human rights and collective land rights.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

Prior to the passage of the FTAs, Colombia's Constitutional Court overturned legislation, including the Mining Code (Law 1392) and the Rural Development Statute and the Forestry Law, for not complying with FPIC requirements for Afro-Colombian and indigenous communities. These are all examples of legislation that Colombia passed with the purpose of adjusting national legislation so that it could facilitate FTAs' entry into force. The FTAs were formulated in a climate of extreme violence, inequality, and impunity that did not allow Afro-Colombian and indigenous community leaders to participate equally in national development plans. The FTAs themselves did not follow the FPIC process with such groups.

The chapters of the U.S. FTA regarding investment, intellectual property, and the environment do not take into account the legal and constitutional rights of Afro-Colombians and indigenous communities or their development interests. On the contrary, the language in these chapters violates their collective property rights and, consequently, would increase the poverty, discrimination, exclusion and persecution that are already devastating their communities.

As such, there is warranted concern among Afro-Colombian and indigenous communities that the implementation of these FTAs will intensify the pressure and influence of illegal and legal armed groups and drug traffickers on collective and ancestral territories and their natural resources, incentivising greater displacement. This displacement is instigated by the expansion of large-scale development projects known as "mega-projects" (the extensive cultivation of oil palm and sugarcane, and the exploitation of gold and other minerals) designed to benefit actors within global markets. The FTAs will intensify multinational investment in Colombia's mining and biofuel sectors, which are already linked to numerous abuses against Afro-Colombian and indigenous communities.

## ***Roadmap to protection exists***

Colombia's internal displacement crisis – affecting over five million civilians, with 308,736 newly

displaced in 2011<sup>31</sup> – disproportionately affects indigenous and Afro-Colombian communities. While Colombia contains some of the most advanced norms in the world for addressing the problem of internal displacement, the rights enshrined in these norms remain largely on paper and are far from being applied. While Colombia is touted as the global model for how to address displacement in theory, it is not a model for the practical application of these norms.

This gap between the norms and the reality faced by the internally displaced population led Colombia's Constitutional Court to pronounce in April 2004 in Decision T-025 that the state of affairs regarding IDPs rights was unconstitutional. In other words, after reviewing 108 *tutelas*<sup>32</sup> of the more than a thousand it received from IDP families, it ruled that Colombia had not guaranteed a wide range of rights, including the most basic political, economic and cultural rights, for its internally displaced citizens. This landmark decision ordered the several organs of the Colombian state to rectify the situation by remedying administrative and budgetary gaps, as well as securing protection for IDPs. The decision included two sets of instructions, one intended to address the overall protection and assistance gaps facing IDPs in the country as a whole and another aimed at addressing the particular requests of the plaintiffs in the *tutelas*.<sup>33</sup> In October 2011 the court reiterated that the state of affairs regarding the rights of the displaced had not been rectified.

In January 2009 the Constitutional Court issued Orders 004 and 005, which specifically address the situation faced by Afro-Colombian and indigenous IDPs. The court ordered Colombian authorities to develop a differentiated strategy for ethnic populations affected by internal displacement. It also outlined the need to generate emergency action plans for the 34 indigenous peoples in need of urgent attention and 62 Afro-Colombian communities at high risk of displacement.

These Constitutional Court orders note that ethnic

<sup>31</sup> Interview with CODHES.

<sup>32</sup> Legal complaints by Colombian citizens where there is a claim that their constitutional fundamental rights have been violated.

<sup>33</sup> Republic of Colombia, Constitutional Court, Third Review Chamber, Decision no. T-025 of January 2004.

minorities are not only at high risk of displacement due to the armed conflict, but that other factors related to interests in ethnic minorities' lands, including mining, agro-industrial and port projects, deepen the risk of rights abuses faced by these historically marginalised populations. Other indigenous peoples have been added since these orders were issued.

In 2008 the Constitutional Court also issued Order 092 on IDP women that urged the government to enact a series of measures to prevent the disproportionate impact of armed conflict and displacement on women. These include creating 13 programmes to fill the existing gaps in public policy for the assistance of displaced people from a gender perspective so that they address the "gender risks" associated with armed conflict.

The Follow-up Commission on Displacement reported in October 2011 that while Colombia has taken steps regarding Orders 004, 005 and 092, it is very far from implementing the recommendations found in the court's orders. In sum, Orders 004 and 005's call on the Colombian authorities to implement a series of policies and programmes designed to promote and protect the constitutional rights of Afro-Colombians and indigenous peoples already displaced and at high risk of becoming displaced in Colombia has raised awareness of Afro-Colombian and indigenous rights, but this has not led to the formulation and application of policies that protect these groups' collective and individual rights.

More efforts were made with indigenous communities where the government set up a thematic commission that held meetings with indigenous groups. However, of the 34 life-saving plans ordered by the Constitutional Court to protect indigenous peoples, up until June 2011 none of these was adopted and none of the communities involved in such plans was consulted. The majority of steps taken by Colombia were thus formalisms and not concrete actions.

Colombia has made even less progress in implementing Court Order 005 on Afro-Colombians. Colombia has not addressed the lack of differentiated statistical analysis regarding Afro-Colombians that explains why there are no adequate figures regarding this population.

The general plan to protect and assist Afro-Colombians and the life-saving plans for 62 communities have not been implemented three years after this decision.

In addition to these broader court orders, specific rulings on emblematic cases such as La Toma (Cauca) and Curvaradó and Jiguamiandó (Chocó) also exist that seek to protect Afro-Colombian communities' land and human rights. These two cases were also presented to the Inter-American Human Rights System of the OAS and other international institutions. Even with the explicit directives given by the Constitutional Court in both orders, these rulings face serious obstacles to implementation because of a lack of political will. The failure of the Colombian authorities to provide effective protection has meant that at least five members of the Curvaradó and Jiguamiandó communities attempting to protect their homes have been murdered by paramilitaries since 2004 and over 30 members of these communities have received death threats.<sup>34</sup>

Colombia appointed Oscar Gamboa Zuñiga as the director of the Presidential Programme for Afro-Colombian Issues and Gabriel Muyuy Jacanamejoy as the director of the Presidential Programme for Indigenous Issues. These directors promoted a law passed by the Colombian Congress that penalises racial discrimination.

Up until now, the Presidential Programmes for Afro-Colombian and Indigenous Issues have not mobilised the necessary political and budgetary will of other governmental entities responsible for defending and protecting the rights of Afro-Colombian and indigenous communities. These programmes have also not received the budgetary and political support necessary to effectively guarantee the fundamental individual and collective rights of these peoples.

## Addressing the problem

A multilayered and multifaceted approach on the part of the international community is required in order to improve protection for Afro-Colombian

<sup>34</sup> Comisión Intereclesial de Justicia y Paz, *Desaparecidos reclamantes de tierras del Curvaradó*, Bogotá, March 2012.

and indigenous communities' individual and collective rights. Recommend actions include the following:

- Global campaigns should be undertaken to raise awareness of the internal armed conflict in Colombia, and its humanitarian and human rights effects on indigenous and Afro-Colombian communities. Public statements should be made and letters directed to the Colombian authorities and press that express concern about the abuses taking place related to the internal armed conflict and encourage efforts to find a politically negotiated solution with Colombia's FARC and ELN guerilla groups.
- Efforts to dismantle the military, political and economic structures of paramilitary groups should be monitored and supported.
- The actions of the armed forces in Afro-Colombian and indigenous territories should be monitored, as well as their respect for international humanitarian law and human rights, in particular for the principle of the distinction between combatants and non-combatants in consolidation zones.
- International humanitarian law and human rights violations against Afro-Colombian and indigenous communities committed by all armed groups – the armed forces, FARC, ELN and paramilitaries – should be condemned.
- The full implementation of Constitutional Court Orders 004, 005 and 092 and other relevant rulings should be promoted, supported and monitored.
- The Colombian government and UN agencies operating in Colombia should be encouraged to implement protection mechanisms that take into account the collective nature of Afro-Colombian and indigenous communities, in consultation with such groups.
- Efforts to strengthen the previous consultation process should be supported and monitored in order to guarantee that consultations are carried out in good faith in a free, informed and consultative manner. Such efforts should include international observers who can guarantee that the processes take place with due respect for international law.
- The U.S. and Colombia should be encouraged to decrease aerial crop-spraying efforts and employ approaches to reducing coca growing that centre on working in co-operation with the indigenous and Afro-Colombian authorities to develop viable economic alternatives suited to their culture and ecosystems. Both countries should also be encouraged to target enforcement at drug traffickers and not the victims of the drug war.
- The U.S., the EU and Canada should evaluate the impact that their FTAs will have on Afro-Colombian and indigenous communities, and develop plans with Colombia on how to mitigate the negative effects of these agreements.
- An international consortium of NGOs should be mobilised to protect indigenous and Afro-Colombian rights.
- Actions by the international community (governments and multilateral organisations) to protect indigenous and Afro-Colombian communities' rights should be encouraged.