

Bogotá
October 20, 2011

Juan Manuel Santos Calderon
President of the Republic of Colombia

Re: right to the participation in the process of regulation of
the Law 1448 of 2011, known as the “Victims Law”

Mr. President:

We, the undersigned victims, social, human rights, and peace organizations, find it necessary to speak out about the following important and urgent issues facing the regulation of the Victims Law: the concerns of the National Working Group of Afro-Descendant Organizations¹ and some indigenous populations related to the disregard of the right to prior consultation in the design process of the Decree Law which will apply to them; and the way in which the regulatory process for the Victims Law is being implemented.

In regards to the first point, we want to state that three (3) months after the Victims Law was issued, the legislative process has not abided by the principles of the right to prior consultation with the Afro populations, as has been expressed by Afro-descendant organizations and some indigenous peoples. In this regard, we call attention to the public statement issued on September 26 by the National Working Group of Afro-Descendant Organizations, which solicits a modification to the strategy for participation and consultation used until now. This should be done in such a way that Afro-Colombian organizations, many of which have worked on a proposal regarding reparations for victims, can participate in the development of the Decree Law for Victims in order to guarantee the right to free, prior, informed consultation and consent.²

In regards to the second point, the right to participation is not being effectively guaranteed for victims, their organizations, their representatives, social movements, and human rights

¹ The National Working Group of Afro-Descendant Organizations is made up of (i) The National Association of Displaced Afro-Colombians (AFRODES) [founded in 1999 in response to forced displacement of the Afro-Colombian communities from their ancestral territories with the purpose of demanding the necessary conditions for the return to their collective territories]; (ii) the Black Communities' Process (PCN) [made up of 120 ethno-territorial organizations, community councils and grassroots organizations located in the following regions: Inter-Andean Valleys, Costa Caribe, Magdalena Medio, Pacific Coast, Buenaventura, Tumaco, the coast of Cauca, Villavicencio and Bogotá, among others]; (iii) the National Conference of Afro-Colombian Organizations (CNOA) [consists of 264 women's, youth, and displaced organizations and Community Councils and Urban Organizations that make up 15 Mingas: Afrotumaco, Afrovallecaucana por la Vida, Atlantico and Magdalena, Buenaventura, Cartagena and Bolivar: “Benkos Bioho”, Cauca – UAFROC, Cesar – Guajira “Jose Prudencia Padilla” Cordoba. District of Bogotá. Eje Cafetero, Foro Interétnico Solidaridad Chocó – Sector Afro, Magdalena Medio. San Andres, Providencia and Santa Catalina, Urabá-Darién and Minga del Valle del Aburra and its Metropolitan Area]; (iv) Movimiento Nacional Cimarron [founded in Buenaventura on December 15, 1982 and is associated to the National Union of Afro-Colombian Organizations (UNOAFRO), a group made up of more than 100 organizations that promote the strengthening, coordination, identity and unity of the Afro-Colombian organizations and communities].

²National Working Group of Afro-Descendant Organizations Release No. 002. Bogotá, September 26, 2011.

organizations. This motivates us to speak out and request that the maximum efforts be made to fill these gaps in participation.

As defined by the 1991 Constitution, international human rights norms, and Law 1448 of 2011, the victims have the right to participate in an opportune and effective manner, incorporating a differentiated approach in the formulation, implementation, and evaluation of the public policy for the prevention, attention, assistance, and reparation of victims. This should be applied specifically in spaces for the design, execution and evaluation of the compliance with this law, in addition to the plans, projects and programs created for it. Victims also have a right to the information, assistance, and legal support necessary to obtain the effective protection of their rights, choose their representatives in the spaces for decision-making and evaluation defined by the law, and that the authorities responsible for the enforcement of the law are held accountable.

Nevertheless, the government has not held an authentic process of participation in relation to the regulation of the law, and we would like to present our arguments. The way in which participation has been conceived until now has left the testimonies of the victims, who are directly affected by the decisions being made, in last place. The process has also ignored how important participation in the design of policies, plans, programs, and means of reparations can be for victims.

In fact, almost three (3) months after the approval of the law, the victims have not participated in the regulatory process. The mechanisms established in the law for victims' participation are very precarious and limited. This is aggravated by the lack of consultation. As of today, the formula for participation designed by the Government has not responded to the principle of transparency. It is even more worrisome that this formula was not developed with the participation of victims, their organizations, their representatives, social movements, and human rights organizations.

Victims' participation in the regulation of the law has been ignored, while its "technical" formulation has been privileged behind closed doors. There are no conditions that guarantee that the regulation of the law will have a social component. As a result, the process currently proposed is an exclusive conversation in which the basis of the purpose of the decree is not built with regard to the voices or realities of the victims, but, instead upon the technical concepts of some governmental authorities.

We consider it important that the relative advances to the draft of the regulatory decree law and initial document for the "National Plan for the Integral Attention and Reparation of Victims" were released a few days ago. However, there are tendencies that do not promote effective participation.

Firstly, we should emphasize that the absence of the victims' participation in the design of these documents is even more serious because Law 1448 (the Victims' Law) mandates the participation of victims in the creation of the "National Plan for the Integral Attention and Reparation of Victims." By creating the Plan without forming Victims' Working Groups and without the participation of coordinating and oversight committees in which victims would participate, as established by the same law, the Plan is not participatory as mandated by the law.

Secondly, we recognize the usefulness of mechanisms such as the recent webpage on the Victims' Law, which contains information about various topics and contains an email address where people can send statements. However, the information is incomplete to this day, thereby decreasing its utility. It does not include information regarding land restitution from the Ministry of Agriculture and Rural Development, which is fundamental for the ability of victims and organizations to provide observations and recommendations on this topic of great interest. It does not provide information on what type of participation the government is planning to include. That is to say, there is no information about how to participate.

Nor is there information on the webpage about the regional forums and workshops referred to by the government. It does not include information on the invitations, conditions for participation, times, places where these events will take place, agendas, methodologies, government interlocutors, observers, or the participants in general. Furthermore, since there was not a process of prior consultation in the departments to name the representatives that would participate in the regional meetings, the possibility for participation is very limited and confusing. There is not a clear procedure for the election of departmental representatives; this is especially concerning given the level of victimization. It has been said that 100 victims participated in every regional forum. If 100 victims participated in each of the seven forums, then 700 victims participated in the process—there are at least four million victims in Colombia. That means that only .0175% of the victims participated in the process, not even 1%.

Thirdly, considering the presented observations which demonstrate the lack of effective participation, some of the signing organizations will not participate in the events until there is improvement in the conditions, and others will attend in order to provide their observations on the issues. In any case, we all agree on the need to call on the National Government to ensure that the process is carried out in due process, correcting all of the deficiencies regarding victims' right to participation in at least the following aspects:

In relation to the Afro-descendant and indigenous populations:

1. Change the prior consultation process with Afro-descendant populations that has been used to date so that Afro-Colombian organizations can participate in the development of the Decree Law for Victims in order to guarantee the right free, prior, and informed consultation and consent and promote the participation of women and of ethnic populations.
2. Ensure that the strategy of prior consultation and consent considers all of the indigenous peoples and pays attention to their particular observations about the process.

En relation to the victims in general:

1. Agree upon and publish the methodology for participation.
2. Recognize the victims as the principle participants in the process. The victims should enjoy humane and proper treatment because of their high level of vulnerability due to the circumstances that preceded their condition as victims. This entails giving them a leading role in the design of the new laws.

3. Review the impact that the “National Plan for the Integral Attention and Reparation of Victims” (*Plan Nacional de Atención y Reparación Integral a las Víctimas*) has had without the participation (as established by the law) of the National Attention System, victims’ organizations, and the committees and bodies established by the law whereby victims should be represented.
4. Publically name a government interlocutor that is independent of the national inter-institutional coordination. He or she should provide clarity for the victims regarding the spokesperson in participatory spaces and guarantee that the functionary will be present during victims’ presentations. The interlocutor should have highest decision-making abilities possible.
5. Provide all necessary resources to guarantee the broad participation of the population. This should be in accordance with Constitutional Court Order 008 of 2009 (twentieth order) relating to victims of forced displacement. This participation should also recognize existing processes and promote the participation of those that have not been affiliated with organizational processes.
6. Guarantee protection and security for people that would like to participate in the process and provide protection for people who are currently threatened in the regions for their work in defense of victims’ rights. The government should prevent the possibility that these spaces become a new source of stigmatization that will put participants at risk.
7. Provide appropriate, clear, and timely information about the spaces of participation and what will be discussed in said spaces. In this regard, we recognize the advance of publishing the draft decrees, but it is necessary to complete the information related to the restitution of lands, an issue of much interest for victims.
8. Clearly and publicly establish the mechanisms for incorporating the comments and observations of the participants in the regulation of the law (for example, consulting the victims in forums on the creation of working groups in order to continue discussions and provide oversight on the ways in which commentaries are incorporated).
9. Adopt mechanisms that guarantee the representation of differentiated organizations. Just to name a few: Victims of different kinds of violations: forced disappearance, forced recruitment, torture, extrajudicial executions, kidnapping, sexual violence, displacement, minors, women, LGBT population, the elderly, people with physical disabilities, and collective victims, such as unions, political collectives, peasant organizations and women’s organizations.
10. Guarantee that the creation of the law is not considered a done deal for the victims or even the newly created institutions. This is in regard to the fact that the President’s delegates to the Executive Committee have not been clearly defined, which as established in the Victims Law is the highest entity for the implementation of the policy for Integral Attention and Reparation. Nor has the person responsible for the Special Administrative Unit for the Integral Attention and Reparation of Victims been appointed. This is all to say that the institutions created for the law with the participation of victims will not be the ones that define the regulation and National Plan for the law.

We consider that the victims’ right to participation with a differential focus is an urgent need. We insist that you use your highest powers to make the regulatory process for the law a space where those directly affected by it will be able to participate. That is why believe it is important to submit the aforementioned observations.

Sincerely,

[SEE ORIGINAL FOR FULL LIST OF SIGNATURES]