

Afro-Colombian Solidarity Network (ACSN)*

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Afro-Colombian Victims Ignored in Development of Victims' Law

Colombia Contradicts Intent of Law by Disregarding Participation of Victims



Photo, courtesy of WOLA

Colombian President Juan Manuel Santos signed Law 1448, better known as the Victims and Land Restitution Law, on June 10, 2011. The law offers a historic opportunity to provide reparations to more than four million victims of the internal armed conflict in Colombia, and the United States has expressed its support by pledging considerable financial and technical support for its implementation. However, if the law fails to include the perspectives of the victims themselves, Law 1448 will deepen the

structural disadvantages and obstacles confronting the very people that it intends to help.

[Law 1448 was enacted in violation of the constitutional rights of Afro-Colombians](#), who make up about a fifth of the country's population. Afro-Colombian victims were denied their inherent right to participate in the construction of Law 1448. Colombia's Constitution recognizes Afro-Colombians' right to free, prior, and informed consultation and consent (FPIC) before the implementation or approval of any legislation, administrative measures, public policy or economic/infrastructure project that would potentially affect them. Law 1448 unequivocally falls under this purview, and the Colombian Congress provided President Santos with the special faculties necessary to enact a Decree Law for Afro-Colombian Victims by December 10, 2011. This Decree Law was supposed to be formulated in good faith through processes of FPIC with Afro-Colombian victims, communities, and organizations.

Despite the efforts of Afro-Colombian victims, communities, and organizations to participate in the process, the government has thus far acted in bad faith in drafting the Decree Law for Afro-Colombian Victims. The Ministry of Interior, which is responsible for the development of the Decree Law, has purportedly held some twenty "consultations" with Afro-Colombians throughout the country. However, some communities that participated in the meetings have rejected the legitimacy of those "consultations." The government demonstrated bad faith throughout these "consultations" by delaying the process; arbitrarily defining representation of victims in an entity that lacked the victims' approval; providing inadequate information to the victims before the "consultations;" and rushing consultations by including several other important pieces of legislation in the meetings' agenda in addition to the Decree Law (see the two letters from Afro-Colombian Community Councils in [Valle del Cauca](#) and [Nariño](#) rejecting

the flawed FPIC processes with the government). As the government reached out and allocated resources to a relatively more inclusive and robust consultation process with indigenous peoples, [Afro-Colombian victims, communities, and organizations have been systematically excluded from the decision-making process in developing the Decree Law for Afro-Colombian Victims](#).

Frustrated by the government's lack of political will to reach out to Afro-Colombian victims during the first three months following the law's approval, [the National Working Group of Afro-Colombian Organizations crafted its own proposal for the Decree Law](#).¹ Their proposal was developed with the participation of Afro-Colombian victims, communities, and organizations at five different regional forums.

Concern regarding the lack of victims' participation in drafting Law 1448 is shared by broad sectors of Colombian civil society. [Over 100 Colombian organizations supported a letter sent to President Santos expressing concerns](#) that (1) Afro-Colombian and some indigenous peoples' right to FPIC is disregarded in the construction of the Victims' Law and associated Decree Laws and (2) the government was not complying with its legal obligation to ensure victims' participation in this legislation's development (see the [original letter with signatures](#) in Spanish). If the government fails to address these endemic problems, it is possible that Law 1448 and/or the Decree Law for Afro-Colombian victims may meet the same fate as other laws, which were deemed unconstitutional because of their failure to properly carry out FPIC processes.

After a series of meetings between the National Working Group of Afro-Colombian Organizations and the government, which sought to salvage the Decree Law's development, the Ministry of Interior failed to uphold its promise to initiate a legitimate FPIC process. This violation of the right to FPIC denied Afro-Colombians the ability to manifest their need for reparations and restitution at the individual and collective level. The government must recognize the collective rights of Afro-Colombian communities in order to properly address the unique cultural components that Afro-descendant communities have experienced throughout the course of the conflict.

This experience sets a worrisome precedent for the fate of Law 1448. We share our colleagues' concerns that the government will use a similarly flawed consultation process to push through other legislation that requires FPIC with Afro-Colombian communities, such as the Royalties Law, Genetic Resources Law, Intellectual Property Law, and Rural Development Law. Bad faith in consultation processes will result in legislation that does not respect Afro-descendant peoples' inherent rights.

President Santos was granted special authority to execute the Decree Law, and he therefore has the responsibility to ensure that it respects the legal obligation to carry out FPIC processes in good faith and includes the participation of victims, their organizations, their representatives,

¹ The National Working Group of Afro-Colombian Organizations consists of four of Colombia's largest Afro-Colombian organizations—AFRODES, Black Communities' Process (PCN), National Conference of Afro-Colombian Organizations (CNOA), and Cimarron.

social movements, and human rights organizations. Failure to fulfill this responsibility will have disastrous consequences for the collective and individual rights of Afro-Colombian victims. Colombia has so much to gain from a law for victims of the internal armed conflict that respects the constitutional rights of the victims—the government only needs the political will to do so.

The Afro-Colombian Solidarity Network (ACSN) urges you to contact your Member of Congress and express your concerns regarding the exclusion of Afro-Colombian victims in the development of Law 1448. Call your Representative/Senator by phoning the capitol switchboard at (202) 224-3121 and express your concerns about the discrimination against Afro-Colombian victims in the construction of the Law 1448 (the Victims and Land Restitution Law).

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*The Afro-Colombian Solidarity Network (ACSN) includes the Washington Office on Latin America (WOLA), TransAfrica Forum (TAF), Global Rights, Chicago Religious Leadership Network (CRLN), U.S. Office on Colombia (USOC), International Working Group of the Black Communities' Process (PCN), and activists and scholars Joseph Jordan, Roland Roebuck, Eunice Escobar and Arturo Escobar. Peace Brigades International (PBI) serves as an international observer.