

Bogotá, 9 February 2012

Her Excellency Madam
TERRY MOREL
High Commissioner of the United Nations
For Refugees, UNHCR
Bogotá, Colombia

RE: There is a big difference between the facts about land restitution to the victims of violence in Colombia and what the Santos government would have us believe about this process.

"The goal for the next four years is 160 thousand processed applications. In addition, we expect that agricultural judges will authorize at least 2,100 cases of restitution in 2012"

Juan Camilo Restrepo, Minister of Agriculture

(<http://bit.LY/Ahieqd>)

Dear Excellency:

Given the importance of the information contained in this letter I have copied it to numerous leaders, institutions, governments, organizations and media, in Colombia and abroad, interested in the restitution of lands to rightful owners who were driven off by violence.

The reality behind the numbers and their manipulation

I am sure you are puzzled by the Colombian Government's goal of restoring in 2012 only 2,100 rural properties to victims of violence, a number to be added to 699 land returns (18,119 hectares) put into effect in 2011 by administrative authority (<http://bit.ly/zWvgwL>). The Director of the Dispossessed Lands Unit confirmed the goal of 2,100 returns for 2012, adding that "the figure will quadruple in 2013", i.e. to 8,400 rural properties (<http://bit.ly/w7jiLM>). Thus by the end of 2013, with only seven months left in the current administration, total land returns would amount to only 11,199, that is 149,146 fewer units than the 160,345 promised by President Juan Manuel Santos to the 350,000 families dispossessed through violent means. There is nothing to indicate that the presidential promise will be fulfilled.

Given the above numbers, it surely will surprise you to find that Colombia's media coverage is replete with very large numbers that make it appear as if President Santos' policy of land restitution were a great success. Such coverage makes it possible for the President and his Agriculture Minister to speak of a "monumental effort" [that] "is changing the face of the country", of a "historical milestone" and even of "a genuine agrarian revolution" (<http://bit.ly/yRiTGk>). How can the government gain such superlative media evaluations in the face of the actual mediocre achievements in the policy of rural property returns?

The explanation is simple: the Government has managed to get Colombians to ignore the small number of land restitutions for 2011, 2012 and 2013, while subjecting the public to a systematic bombardment of figures of hundreds of thousands and millions of hectares (for example, the numbers 500 thousand, 800,000 and 3.5 million hectares appear in *El Tiempo* on Jan.26.12, Jan.25.12 and Feb.09.12) to persuade Colombians that these numbers refer to land returns to the victims of violent dispossession, something which is far from the truth. Here's a case in point: a Presidency of the Republic newsletter on 3 August 2011 was entitled, "Government exceeded the goal of delivering, in its first year, 350 thousand hectares to victims of violence", when only 14,208 of the stated total were restitutions for victims of violence, according to official figures (<http://bit.ly/A0mlv9>).

The Santos' administration makes it a practice to avoid any mention of the fact that, in addition to its land restitution program --the only new land program created by the Santos administration-- there are six additional programs in the books, inherited from previous administrations that award titles in rural properties. Those programs provide land titles but are not returns of farm land to dispossessed victims of violence under the terms of the Law 1448 of 2011 (see land programs and numbers since 1990: <http://bit.ly/wOEFam>). Thus, in response to a recent article by columnist Daniel Samper Pizano who expressed concern over the minimal number (2,100) of land sites returned to victims in 2012 (<http://bit.ly/zNOW9X>), Agriculture Minister Juan Camilo Restrepo waxed proudly of "having achieved the historic record of awarding titles covering 800,000 hectares to peasant, displaced persons, and ethnic communities" (<http://bit.ly/xajW2i>).

The figure cited by the Minister represents all the lands processed by this Administration beginning on August 7, 2010 (286,352 hectares) and going through 2011 (512,354 hectares), hardly a "historic record", since previous administrations' annual average of rural property titles processed since 1990 amounted to 967,844 hectares. A breakdown of the aggregate figures shows that only 18,119 hectares --just 2.2% of the total-- represent land returned to (699) victims of dispossession; 2,535 hectares represent lands confiscated from narco-traffickers; 165,374 are made up of land in indigenous reservations; and 598,857 hectares that required little action by the Administration as they correspond to the titling of idle State lands that were either long occupied by settlers or granted to Afro-descendants (<http://bit.ly/wOEFam>), titling from as long ago as colonial times (<http://bit.ly/wOEFam>).

We do not question official decisions regarding the titling, adjudication or return of rural properties in Colombia. What we defend is the right of Colombians to receive truthful information; numbers about land programs other than the one designed to return properties to those dispossessed by violence should not be utilized to obscure what is really happening with the restitution program, because inflation of the actual numbers may contribute to the permanent dispossession suffered by 350,000 families. The Polo Democrático Alternativo presented and voted for our own program of land restitution to the victims of violence. We did so not because we opposed the payment of indemnities and the return of rural properties but simply because we felt the official program suffered serious deficiencies. We reject any act of violence perpetrated against agrarian leaders who are struggling for the return of their properties. We urge the government to guarantee their right to life and to organize and struggle to gain their lands back.

When it comes to manipulation of land statistics, one case may actually represent a true historic record: the delivery by President Santos of the "Las Catas" lands to 304 peasant families in Ayapel, Córdoba, on 12 January. The event was described as a direct, personal gift by the President. The reality is quite different. The land in question had been expropriated from narco-traffickers in 2005 and already transferred to the peasant families on a provisional basis back in 2006, nearly six years ago! (<http://bit.ly/ycCjMY>). The President merely presided over the final, definitive step of the transfer. At the official event organized by the President's supporters in Barranquilla, Santos announced that there would be "50 more gifts like 'Las Catas' before the end of the year." Did he mean another disingenuous handling of the facts?

The sad factual reality of the process is also highlighted by the Minister of Agriculture's report of 12 January announcing that to date only 5 judges had been assigned to adjudicate rural property returns, and that only 22 of the envisioned total of 134 property adjudication judges would be appointed by the end of 2012 (<http://bit.ly/xBJ23E>).

Eliminating the reversal of the burden of proof is bad policy

The Polo Democrático Alternativo supported Article 78 of the draft law of return of rural property to victims of violence and dispossession. It established a reversal of the normal burden of proof, stipulating that, in these cases, it was up to those in possession of properties claimed by victims to demonstrate that current possession did not originate from dispossession. The reversal of the burden of proof recognized that the victims lacked resources to collect and provide evidence to establish the truth of their claims. In any event, evidence in these kinds of claims is always difficult to collect even for those who possess greater means. The reversal was geared to guide the processes so that Courts would decide against those bearing the burden of proof if they provided insufficient evidence of ownership. Reversal of the burden of proof was understood to show good faith towards the victims of violence and dispossession.

Therefore the removal of the burden of proof reversal from Decree 4829 of 2011, which was merely intended to implement Article 78 of Law 1448, is cause for serious concern. The Santos administration deliberately eliminated the burden of proof reversal, as evidenced by the following statements, presumably of support for the reversal, by the Minister of Agriculture: "In practice," he said, "the reversal of the burden of proof means that once a claim is submitted, the government will take responsibility for the immense and delicate burden of assisting in the collection of evidence", "the government will help [the victimized claimants] search for and submit evidence," and the law --something which is not true--, "requires the government (...)" "to engage in support of the victims in order to help them document their claims" (<http://bit.ly/xOJpOj>). According to Agriculture Minister Juan Camilo Restrepo, then, the burden of proof is not on the current property holder, i.e. the alleged perpetrator of the dispossession, but on the victimized claimant. This interpretation is in violation of Article 78, which establishes the reversal of the burden of proof. This violation cannot be remedied merely by government bureaucracy assisting dispossessed victims to gather evidence. It is highly likely that this substantial alteration in the implementation of the law explains the minimal official goal of just 11,199 rural property returns to dispossessed owners by the end of 2013.

I cannot fail to mention Article 73 --and its implementation via Article 99--, through which, as Minister Restrepo explains, "the right to **return** to one's former property is not equivalent the right to **own** it, those being rights separate and independent from each other" (<http://bit.ly/xUcrta> and <http://bit.ly/xbJ23E>). By way of this legal subterfuge a gap is opened so that the perpetrators of violence, their accomplices or the government are in sole possession of crop production in the lands under litigation, and in actual practice with the land properties themselves, even if they are formally **returned** to the victims. In this manner the government will produce a set of poverty-stricken *rentiers*, i.e. peasants who will remain displaced in the cities or working as day laborers on their rural properties, and receiving a lease payment for the rural lands **returned** to them.

This end result fits perfectly with the main agricultural policy of President Juan Manuel Santos for whom the Colombian countryside is to become a paradise for bankers and local and transnational agri-business monopolies and turns Colombian peasants into peons (<http://bit.ly/whQqrd>). To this end Law 1448 will play a complementary political and economic role.

I hope you find the above information useful to better understand what is really happening with the process of restitution of rural properties to the victims of Colombian violence and dispossession.

Cordially yours,

JORGE ENRIQUE ROBLEDO CASTILLO

Senator of the Republic

Bogotá, Colombia