



Colombia 

Building momentum for land restoration

Towards property restitution for IDPs in Colombia

Summary and recommendations

Acknowledgements

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(Photo: NRC)

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Executive summary

The long-running internal armed conflict and the massive scale of human rights abuses by illegal armed groups in Colombia have resulted in extensive loss of land by internally displaced people (IDPs) over the last decades. The number of IDPs is estimated to be between 3.3 and 4.9 million, most of them peasants, indigenous people and Afro-Colombians.

According to a civil society group created to support the constitutional court's oversight of the government's response to internal displacement, roughly half of internally displaced families had owned or had occupied land before their displacement, and almost all of them have lost it as a result. In this context, redressing the land rights of IDPs is an urgent task, and an unfulfilled obligation of the state under international law. In September 2010, the new government of Juan Manuel Santos presented to Congress a bill for the restitution of land, which is a welcome initiative. This report evaluates the bill and proposes amendments which should increase its chances of protecting the land rights of IDPs who have been forced to abandon their land.

Armed groups including the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia* or FARC) and the National Liberation Army (*Ejército de Liberación Nacional* or ELN), paramilitary groups, and the new armed groups that emerged in their place following their formal demobilisation from 2006, have all appropriated land to expand their strategic military presence, secure access routes, and establish zones of political influence.

They have also appropriated land for coca plantations which have brought them enormous economic gain, while paramilitary groups have appropriated land for large monoculture projects owned by corporate groups which have benefited from government support. IDPs have also lost land when they have fled fighting between the armed groups and state forces.

The illegal armed groups have in many cases killed or threatened to kill family members in order to force owners or occupiers to abandon their land. In other cases, illegal groups have acquired formal ownership of land through forced sales in which victims have been threatened and forced to sign contracts and subsequently to register a deed, or fraudulent "false sales", in which illegal occupiers have obtained sales contracts, forged the signatures of the contracted parties or forced them to sign, and used the document to complete and register title deeds.

Peoples with a special dependency on or attachment to their lands have also been dispossessed following direct and indirect use of force. The state's use of compulsory purchase orders to acquire collectively-owned land for development and new agricultural projects, without the consultation process required by law, has also led to the displacement of these communities.

The government started in 2003 to protect land from appropriation through forced and false transactions by enabling people who are either displaced or at risk of displacement to request a prohibition of sale or transfer on their property, and add their property to a registry of abandoned properties.

This mechanism has been applied in favour of individuals with different forms of land tenure, and the registry includes about 3.2 million hectares of land. However the scale of land loss is believed to be much higher: a civil society organisation's nationwide survey of IDPs led to an estimate of 5.5 million hectares.

The appropriation of land has also had significant economic impacts, both for victims, who have clearly become more vulnerable, and for the country as a whole. Around half of Colombia's IDPs were above the poverty threshold before their displacement, but only three per cent afterwards. Overall agricultural output has also fallen: from 1998 up to 2009, around 25 per cent of cultivated land fell fallow as a result of forced displacement.

Thus the restitution of land to IDPs is a task long overdue. There have been several attempts to start the process. The 2005 Justice and Peace Law created two frameworks for reparations. The first was to be applied when individual perpetrators of human rights abuses had been identified and convicted as part of the paramilitary demobilisation process; however no such convictions have yet taken effect.

The second framework within the Justice and Peace Law was to apply in the absence of the conviction of individual perpetrators. It included the establishment of the National Commission for Reparations and Restitution, which has drafted a national property restitution plan.

In 2007 a bill was proposed for a victim's law that included a reparations plan. The government initially backed it, but finally rejected the proposed legislation because it included victims of violations perpetrated by agents of the state, and it included reparations for movable personal property, as opposed to immovable real estate. These

reparations, the government argued, would be impossible to implement because of the difficulty inherent in identifying such property and the amount of funding required.

A separate scheme adopted in 2008 created a mechanism for administrative reparations (rather than reparations awarded by a judicial body) for victims of human rights abuses by illegal armed groups. However, the mechanism does not cover land appropriations and does not include the possibility of land restitution. Furthermore, it has been criticised because it offers as reparations non-restorative “awards” such as subsidies and humanitarian aid, and because it excludes victims of human rights violations committed by agents of the state.

Thus the government’s will to restitute land to IDPs has been shown lacking. Nevertheless, these processes have made more visible the ethical and legal obligations to restore IDPs’ land. In addition, the Constitutional Court has taken steps to encourage restitution. In January 2009, it ordered the government to take comprehensive steps to redress the land rights of IDPs and to put in place mechanisms to prevent future violations. With this order the Court upheld its 2004 ruling that the general failure to protect IDPs’ land rights was unconstitutional, and built on its 2007 ruling that the government had a duty to fulfil the rights of victims to reparation and property restitution. In response to these rulings, the government laid down principles for a comprehensive land restitution plan, to be drafted by a new inter-agency land forum.

The newly-instated Santos administration, which during the election campaign pledged to restitute land to Colombia’s IDPs, has recently taken steps to fulfill its promise by introducing a bill for land restitution in Congress in September 2010. The bill offers an opportunity to provide restitution, with the government support that previous attempts lacked.

The scheme that it proposes is welcome, and it includes a number of measures that are in line with international standards on restitution, including those set out in the “Pinheiro Principles” on Housing and Property Restitution for Refugees and Displaced Persons.

However, the bill excludes some fundamental measures to ensure equitable application and the sustainability of returns. In focusing exclusively on areas affected by generalised paramilitary violence, it does not allow victims outside those zones and victims of abuses by other perpetrators to bring claims.

The bill establishes an administrative entity which may play a major role in supporting the claims of IDPs. However the bill assigns this unit important decision-making powers, without specifying rules to govern decisions or enable claimants to appeal against them.

The bill exclusively privileges return by preventing beneficiaries from subsequently selling their land for two years. While intended to protect against renewed dispossession, this limits people’s right to dispose of their property. In addition, the bill lacks specific measures to guarantee property restitution for people displaced from collectively-owned land, and for women. In Colombia women have a more precarious enjoyment of property rights than men, and displaced widows and female heads of households are much more vulnerable to losing their land.

The bill should be amended to resolve these issues and to build more effectively on the relevant achievements of some of the past initiatives. The guidelines offered by the National Commission for Reparations and Restitution and by the inter-agency land forum remain relevant, and should inform the new bill.

Restitution will inevitably face opposition by powerful land-owners and companies who have benefited from displacement, and it will take place alongside continuing violence and displacement. If the programme goes forward, measures must be taken to prevent the repetition of violations following restitution. To this end, the Constitutional Court has called for land registries to be improved and updated and a nationwide “census” of land lost to be compiled. In other words, the government should go beyond registering land in the limited restitution areas to include the entire country.

If restitution is to prove sustainable and promote peace in Colombia, it will have to be accompanied by a new agrarian development model that promotes small-scale agriculture instead of large-scale agroindustry. The government has pledged to revitalise small-scale agriculture by providing incentives and support for returnees. Even though these measures are mentioned as part of the motivations of the bill, they should be developed within its articles.

The government should also amend or repeal norms that hinder the right of IDPs to property restitution. For example, the provisions of Law 1182 of 2008, which established an abbreviated oral procedure to deal with incomplete or encumbered land titles and those transferred by parties without the legal rights of ownership to so do, are highly detrimental to victims of dispossession in a conflict setting, and should be repealed.

The media in Colombia and internationally have referred to the proposed bill as an agrarian reform. However, it includes no elements intended to redistribute land to correct the country’s historic inequalities. It addresses a more immediate and narrow problem: giving back land to those who lost it as a result of conflict and human rights abuses. Restoring the circumstances of victims before the abuses took place is a duty under international law, but it does not directly tackle the underlying issue of inequality.



Recommendations for the Government of Colombia

The government should fulfill its obligations under international law to redress the property rights of IDPs and should comply with the Constitutional Court's rulings on IDP land rights, including Decisions T-821 of 2007, 092 of 2008, and 004, 005, and 008 of 2009. To that end:

- It should promote the enactment of the bill on restitution of property which it brought to Congress in September 2010, subject to the considerations below.
- It should take all measures to implement the resulting law, and launch campaigns to inform IDPs of the restitution mechanisms available to them.
- The government should continue to improve the coordination between its institutions with responsibilities related to land rights, including the National Planning Department, the Ministry of Agriculture and Rural Development, the Ministry of the Interior, *Acción Social*, the Colombian Institute for Rural Development, the Agustín Codazzi Geographic Institute, the Public Notaries and the National Commission on Reparations and Reconciliation. It should build on the recent positive experiences of the inter-agency land forum (*Mesa Inter-institucional de Tierras*), and of the National Commission on Restitution and Reparations' technical committee.
- The new national development plan should promote small-scale agriculture and recognise returnees as a group needing particular support; responsible institutions should implement those support measures, which should be included in the restitution plan.
- In line with Pinheiro Principle 18.1 and Article 2 of the American Convention on Human Rights, the government should amend or repeal articles of the Civil Code that prevent the restitution of land in areas affected by conflict, and in particular Law 1182 of 2008, which established an abbreviated oral procedure to reinforce encumbered or incomplete land titles and those transferred by parties without the legal rights of ownership to so do, so it can no longer be used as a shield by parties who have forced others to abandon their land.
- The government should continue to provide full support to *Acción Social*'s land protection programme. It should boost and extend the reach of this programme.
- The government should complete a nationwide registration of land in line with the recommendations of

the Constitutional Court, and combine national land registers so as to simplify the formalisation of land rights.

- The government should strengthen institutions at all levels to protect IDPs' land rights. It should strengthen the capacities of the national and municipal offices of the Superintendent of Public Notaries, and update and digitise the abandoned land registry (RUPTA).
- The government should urgently ensure the safety and security of IDPs and IDP leaders advocating for property restitution. These fundamental guarantees should also cover human rights advocates and organisations that assist and support IDPs in land-related complaints.
- Finally, as ordered by the Constitutional Court in Auto 008, the government should put in place and support mechanisms to further investigate the patterns of dispossession.

When debating, adopting, and implementing the property restitution plan as proposed in the 2010 bill, the government should take the following recommendations into account:

- The participation of IDPs in the design of the plan should be guaranteed, including during the Congressional debate, as it was the case during the debate of the Victim's Law in 2009. Furthermore, experience in participation processes led by the CNRR in preparing its PRB should also be taken into account and inform this law.
- Provisions should be included in the plan to provide necessary protection to victims and their representatives, to prevent further violence associated with restitution claims.
- The bill should make explicit what rights will be granted to victims who did not enjoy formal ownership of property, and what means will be used to establish their rights over the property.
- Specific and differential provisions to guarantee women's rights to property restitution should be included, in line with Pinheiro Principle 4.
- The bill should make explicit the measures to be taken to ensure that restitution of land collectively owned by communities benefits all members of those communities.

- Pinheiro Principles 2 and 21 make clear that restitution is a preferred remedy for displacement, which is not prejudiced by their return or non-return, and that compensation should not be imposed as an alternative. The bill explicitly follows this in Article 1, and gives victims of dispossession a choice between restitution and compensation. However, Article 19 of the bill later limits restitution to those intending to return, in stating that those not wishing to return are not given the option to receive restitution, only compensation. Article 19 should be modified to say that victims can benefit from restitution regardless of their intentions regarding return.
 - Guiding Principle 28 and Pinheiro Principle 10 establish that victims should be able to choose between return and other settlement options. As it stands, the bill does not allow for the sale of repossessed property for two years, which could stop the owner integrating or re-settling elsewhere should the option of return prove unsustainable. The bill should either allow the owner to sell repossessed property within two years by applying to the restitution judge for the two-year ban on sales to be lifted, or by removing the two-year ban altogether and instead including land in the PPT land protection program at the moment of repossession, at the request of the beneficiary.
 - Pinheiro Principle 13 establishes that states should not establish preconditions for filing a restitution claim. To this end:
 - The bill should not limit the accessibility of claims of victims outside the areas of its exclusive focus, which the bill misleadingly calls priority zones. Instead it should propose a restitution programme to be extended across the country in phases, alongside the nationwide land registration programme recommended by the Constitutional Court and Pinheiro Principle 15.1.
 - By restricting restitution to areas affected by generalised violence recognised in the Justice and Peace processes, the bill discriminates between victims of dispossession based on the nature of the perpetrator. The property restitution programme should apply to victims of all illegal organised armed groups and also victims of state violations.
 - Victims living outside the country should be explicitly included in the restitution process.
 - The “administrative unit” proposed in the bill brings many potential benefits, and the bill should invest it with the managerial powers necessary to support the administration of justice by the agrarian judges, such as collecting information, preparing cases, and managing the proposed registry. However, the bill should be amended so that the unit does not assume powers that should belong with the judiciary, without setting forth the rules to govern these decisions and without the possibility of appeal. To this end:
 - The unit should not be assigned the power to issue a pre-judgment on who can access the judicial restitution procedure by deciding if they can be admitted into the RUPTA registry of abandoned land.
 - The unit should not be assigned the power to decide not to advance a claim for “procedural” reasons.
 - When there is more than one claim on the same property, the conflicting claims should be transferred to the judges who should decide which claim is legitimate through a judicial process.
 - In line with Pinheiro Principle 17, those who, after the judicial process are determined to be good-faith secondary occupants, should be offered the option of alternative property rather than just monetary compensation.
- If the bill becomes law, the government should support its effective implementation by ensuring that:
- Both agrarian judges and officials in the administrative units are appointed in a transparent manner, according to established guidelines to prevent corruption and undue influence.
 - The agrarian judges who will decide on the restitution claims are not assigned other workload or responsibilities, to avoid slowing down the restitution process.
 - Implementation of decisions in favour of communities with collective ownership of land, should include prompt and proper consultation in line with ILO Convention 169, without delaying the restitution of their lands.
 - Even though the motivations of the law mention supporting returns by adopting programmes to support agricultural production by returnees, rural development incentives, land allocations to landless peasants, the actual bill does not include articles on this. Following Pinheiro Principle 18 which calls for developing a clear and consistent legal framework, it is important to include these measures as part of restitution itself or to pass them as part of an articulated restitution legal framework.
 - For this purpose, the support programmes already set out by the PRB drafted by the CNRR should be taken into account.



About the Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC) was established by the Norwegian Refugee Council in 1998, upon the request of the United Nations, to set up a global database on internal displacement. A decade later, IDMC remains the leading source of information and analysis on internal displacement caused by conflict and violence worldwide.

IDMC aims to support better international and national responses to situations of internal displacement and respect for the rights of internally displaced people (IDPs), who are often among the world's most vulnerable people. It also aims to promote durable solutions for IDPs, through return, local integration or settlement elsewhere in the country.

IDMC's main activities include:

- Monitoring and reporting on internal displacement caused by conflict, generalised violence and violations of human rights;
- Researching, analysing and advocating for the rights of IDPs;
- Training and strengthening capacities on the protection of IDPs;
- Contributing to the development of standards and guidance on protecting and assisting IDPs.

For more information, visit the Internal Displacement Monitoring Centre website and the database at www.internal-displacement.org

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