



Colombia 

Building momentum for land restoration

Towards property restitution for IDPs in Colombia

Acknowledgements

This report was developed and written by Sebastián Albuja, Country Analyst for Colombia, with the support of Barbara McCallin, Adviser on Housing, Land and Property Issues. It may be downloaded at www.internal-displacement.org.

IDMC would like to thank the following individuals and organizations for sharing their insights and points of view on land restitution in Colombia and for their comments on drafts of this report: Atle Solberg (NRC Colombia), Natalia Cepeda (NRC Colombia), María Angélica Alvarado (NRC Colombia), Juan Manuel Bustillo (Comisión Colombiana de Juristas), Nelson Camilo Sánchez (DeJusticia), Clara Elena Reales (Corte Constitucional de Colombia), Alfonso Castillo (ANDAS), Donny Meertens (Universidad Javeriana), Gladys Prada (Comisión de Seguimiento de la Sociedad Civil), Nelly Velandia (Mesa de Unidad Agraria), Patricia Buriticá (Comisión Nacional de Reparación y Reconciliación), Sergio Roldán (Consultor independiente), Adriana Buchelli (UNHCR Colombia), Carlos Lozano (ICTJ Colombia), Juan Carlos Betancour (UNDP), Yamile Salinas (independent consultant), Myriam Hernández (Programa de Protección de Tierras), Samir Elhawary (Overseas Development Institute), Peter Van der Auweraert (International Organization for Migration), and other interviewees.

Cover photo: The Sierra Nevada mountains of Santa Marta in the department of Magdalena, December 2009.
(*Photo: NRC*)

Cover design by Laris(s)a Kuchina, laris-s-a.com

Published by the Internal Displacement Monitoring Centre
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November 2010



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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 do so, 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 Interinstitucional 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.

1

Introduction

Decades of conflict and violence have left millions of people internally displaced in Colombia, most of them peasants, indigenous people and Afro-Colombians. Armed groups have also displaced people as a mechanism to appropriate land. The number of internally displaced people (IDPs) in Colombia is estimated to be between 3.3 and 4.9 million. The first figure is taken from the government's Registry of Displaced People (*Registro Unico de Población Desplazada* or RUPD). The second figure is generated by CODHES, a civil society organisation, which cross-references a variety of sources.¹ The large difference is due to the fact that CODHES's system has been estimating IDP movements since for a longer period than the RUPD. Additionally, as the government has acknowledged, there is a high rate of under-registration in the RUPD.

According to a 2009 report by the Civil Society Monitoring Commission (*Comisión de Seguimiento de la Sociedad Civil* or CSSC) a civil society group created with a mission to provide support to the Constitutional Court's oversight of the government's response to internal displacement,² 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.³ There is a wide range of estimates of the extension of land lost by IDPs (discussed below), but a programme of the government body *Acción Social* has estimated that 6.8 million hectares, or around six per cent of national territory, have been abandoned.⁴ 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 newly-instated administration of Juan Manuel Santos presented to Congress a bill for the restitution of land.⁵ This bill signals a strong commitment from the government to fulfill its promise to give IDPs back their land, and as such is a welcome initiative. The restitution scheme that it proposes includes a number of measures that are in line with international standards on restitution. However, the publication of the bill presents an opportunity for questions about how the scheme might be implemented, as it leaves out some fundamental measures to ensure equitable application and the sustainability of returns.

This report considers the bill in the context of various previous attempts at property restitution in Colombia. It is informed by IDMC's analysis of the proposed legislation, interviews, exchanges with experts on displacement

in Colombia and on housing, land and property issues in the context of displacement, and by a review of legal documents and literature.

The first section describes the extent of land dispossession in Colombia and its relationship with displacement, both as a mechanism and an outcome of displacement. The second section looks at the proposed bill in the context of other restitution initiatives that have developed, analysing the restitution mechanism proposed within the bill. The third section considers how to ensure the sustainability of the eventual returns of IDPs whose land is restituted in the context of ongoing conflict.

2

Violence and displacement: driving people off their land, forcing millions into destitution

Long-standing inequalities and the unwillingness of successive governments to address them, the ineffectiveness of institutions, and the incoherence of their policies have all combined to create conditions that have led to conflict, exclusion, human rights abuses and forced displacement in many areas of Colombia. A long-running insurrection by armed guerilla 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) has failed to improve the situation of poor or landless peasants, even though it may have had its origins in an attempt to address social inequality and unequal access to land.

The self-defence forces set up by large landholders as a response to the insurrection developed into fully-fledged paramilitary groups, which in turn grew more autonomous, and became the most ruthless perpetrators of abuses including land dispossession against the civilian population, which they sometimes carried out in collusion with powerful corporate groups.⁶ The paramilitary groups were formally demobilised in 2006, but new armed groups that emerged in their place have perpetrated human rights abuses with increasing frequency.⁷ The Colombian Commission of Jurists (*Comisión Colombiana de Juristas*) maintains that despite its formal legal basis, paramilitary demobilisation has never effectively taken place, and that the so-called new armed groups are rather the same groups with different names.⁸

All these groups have 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. In addition to illegal crops, paramilitary groups have appropriated land for large monoculture projects owned by corporate groups which have benefited from government support.⁹ IDPs have also lost land when they have fled fighting between the armed groups and state forces.

The widespread extent of informal land tenure means that many IDPs have been unable to protect their rights over land left behind, and in their absence other occupants have qualified to claim ownership by adverse possession.

2.1 Means of forced dispossession

Direct force and threats

As well as engaging in fighting which has forced people to flee their land, guerrilla and paramilitary groups alike have seized land and forced the owners or occupants to flee as a fundamental tactic in strengthening and perpetuating their military, political and economic position. They have in many cases killed or threatened to kill family members in order to force owners or occupiers to abandon their land. According to a commission which the government established to draw up a plan for property reparations, displacements following threats such as: "It's your choice: either the whole family leaves together now, or the widow leaves with the children" have been widespread and everyday.¹⁰

Forced and fraudulent sales

In many cases illegal groups, notably the paramilitaries and subsequently post-demobilisation armed groups, have acquired formal ownership of land through forced or false sales.¹¹ In some of these cases, they have registered land which they have forcibly seized in the name of a front man, concealing their identity as perpetrators and so making it difficult to trace the crime.

In the cases of forced sales, victims have been threatened and forced to sign contracts and subsequently to register a deed. In many documented cases, family members have been killed when the owner has refused to sell. Often no payment is made for these "sales"; if any payment is made at all, it is normally significantly below the market value. However, all the formalities required for a land sale are observed, and the transaction appears legal.

In other cases, parties looking to appear as the legitimate owners of land after displacing owners or occupants have obtained sales contracts if the property was not previously registered with a deed, forged the signatures of the contracted parties or forced them to sign, and used the document to complete and register title deeds. The transfer of property in this way requires appearance before a public notary, whose negligence (at best) or complicity in formalising forced sales has been widespread.¹² This practice has frequently enabled the dispossession of peasants or settlers who were assigned land within land reform initiatives; the Colombian Institute of Agrarian Reform INCORA (replaced in 2003 by the Colombian

Institute of Rural Development, INCODER) assigned large tracts of land to peasants and settlers, and the beneficiaries never registered the title deeds due to the cost and complexity of the process.¹³

Loss of property used as collateral

A further category of land loss by IDPs also deserves consideration. A significant number have lost land used as collateral when they have defaulted on a loan after their displacement.¹⁴ Financial institutions are legally entitled to recover land used as collateral, but in the context of conflict the question arises as to whether flexible repayment conditions should be made in the cases of those who cannot honour their obligations as a result of displacement. The Constitutional Court has ruled that, under the “solidarity principle” in Article 95 of the Colombian constitution, financial institutions must take displacement into account when seeking to recover loans guaranteed on land or property, and renegotiate or extend payment terms.¹⁵

Collectively-owned land

Peoples with a special dependency on or attachment to their lands have been dispossessed following either threats and the direct use of force, or the indirect use of force through corrupted and co-opted state authorities.

Territories owned collectively by indigenous and Afro-Colombian communities¹⁶ have been acquired, by force or fraudulently, by armed groups intending to cultivate illicit crops, and also by armed paramilitary groups in collusion with corporations wishing to use the land for large-scale monocultures, particularly African palm for biofuels.¹⁷ A 2007 report by IDMC documented this mode of land appropriation and the resulting displacement in Chocó department.¹⁸ In 2010, the Prosecutor’s office (*Fiscalía*) jailed 24 African palm entrepreneurs following an investigation into their links with paramilitaries and land appropriations.¹⁹

The state’s use of compulsory purchase orders to acquire collectively-owned land for development and new agricultural projects has also led to the displacement of communities. Compulsory purchase orders are legal under Article 58 of the constitution, assuming that there is a valid public interest, but the consultation required in cases affecting indigenous populations, enshrined in ILO Convention 169 and incorporated into the Colombian legal system, has been omitted in a number of cases.²⁰

2.2 The scale of forced dispossession

The 1997 statute on internal displacement charged INCORA, later replaced by INCODER, with the creation of a registry of land abandoned by IDPs, as one way to

prevent illegal groups making claims on it. A subsequent decree of 2001 reaffirmed the need to protect land and specified rules for such a registry. But it was not until 2003, when *Acción Social’s* Land Protection Programme (*Programa de Protección de Tierras* or PPT) was created, that a registry started to be compiled systematically. The PPT was set up with the backing of the World Bank; it now has the support of bodies including the UN High Commission for Refugees, the International Organization for Migration, and the American government’s economic and humanitarian assistance agency USAID.

The mechanism devised by the PPT to protect land from appropriation through forced and false transactions allows people who are either displaced or at risk of displacement to request a prohibition of sale or transfer on their property, followed by the inclusion of the property in the Registry of Abandoned Properties and Territories (*Registro Unico de Predios y Territorios Abandonados* or RUPTA). This mechanism has been applied in favour of individuals with different forms of land tenure (in the Colombian legal system these include owners, possessors, occupants, and holders)²¹, to oblige local authorities to put in place restrictions of transfer over defined areas.

In the context of the high levels of corruption and co-optation of local authorities by illegal groups, which could easily lead to a prohibition of sale being overridden, the key to the mechanism’s success has been that once a prohibition is in place, the power to decide on any future transactions relating to that piece of land is transferred from the local authorities to a committee for the protection of IDPs.²² Giving decision-making power to a body with more independence and less exposure to the local impact of illegal groups has proved effective. This mechanism has been successful in protecting roughly 2.4 million hectares of land²³ against sale or transfer, and should be maintained and strengthened. However, according to a 2009 survey, fewer than eight per cent of IDPs who reported that they had abandoned land when they registered as IDPs had been able to protect their land through the PPT scheme.²⁴

To date, RUPTA includes about 3.2 million hectares of land, and provides a measure of the scale of land lost by IDPs.²⁵ Yet RUPTA does not only include land that has been stolen – it also includes land that has been included in *Acción Social’s* PPT to prevent appropriation. Neither does it reflect the full extent of land that has been seized by illegal groups.

RUPTA has suffered various management difficulties which have undermined its completeness. It was first managed by INCODER, and then transferred to the Superintendence of Public Notaries (*Superintendencia de Notariado y Registro* or SNR).

In addition to RUPTA's own limitations, roughly half of the families forced to abandon property had not declared having abandoned it with an official body, as revealed by a 2007 survey by the International Committee of the Red Cross (ICRC) and the World Food Programme (WFP). This may have been because they do not know about the procedures, they had no title over the land, or they were afraid they would then face further violence.²⁶

Because of these problems with registration of land taken or abandoned, efforts have been made to estimate the extent of land in other ways. Such estimates vary widely. Estimates published between 2001 and 2008 ranged between 1.2 million and ten million hectares, as Table 1 below shows.

The scale of the discrepancy between the estimates may be due to the methodologies used and limitations in the gathering of data, including the size of the sample used, lack of agreement as to the number of displaced families that have abandoned their land, and variations in the estimated average size of property abandoned. By any account, however, the amount of land abandoned or stolen in Colombia stands between six and nine per cent of the country's arable land according to the larger estimates. It is also important to note that these estimates do not cover the entire period during which displacement has taken place. Most go back only a few years, a decade at most, and so do not reflect the true scale of a phenomenon prevalent since at least the 1960s. The further back in time the loss of land, the harder it is to document, making the need for a restitution programme all the more pressing.

Some attempts have been made at improving the accuracy of estimates. The CSSC included questions about abandoned land in its last nationwide survey of IDPs, conducted in 2008. The survey found that 55 per cent of internally displaced families had occupied or were occupying land prior to their displacement, and 94 per

cent of those, or around 385,000 families, had either abandoned it or had it taken by force.²⁷ Roughly 40 per cent of those who had lost land had lost small plots of under five hectares, 30 per cent had lost plots between five and 15 hectares, and the rest had lost more than 15 hectares.²⁸ By multiplying the number of internally displaced families who had lost land by the average area lost, the CSSC estimated that 5.5 million hectares of land had been appropriated since 2000, when the government registry was put in place.

In addition to representing a violation of property rights, 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. Many thousands of internally displaced families whose livelihoods depended on the land they owned or occupied prior to displacement have been driven into poverty. Around half of Colombia's IDPs were above the poverty threshold before their displacement, compared with only three per cent afterwards.²⁹ The government's governance review office, the Procurator's office or *Procuraduría*, found that 76 per cent of IDPs had land-related livelihoods that were destroyed by their displacement.³⁰ Overall agricultural output has also fallen as a result of this displacement: over the 11 years up to 2009, around 25 per cent of cultivated land – an estimated one million hectares – fell fallow as a result.³¹

Table 1: Estimates of the extent of land abandoned by IDPs

Source	Estimated area (millions of hectares)	Proportion of Colombian territory (per cent)
Ibáñez, Moya, and Velásquez	1.2	1.1
Government Comptroller's Office	2.9	2.5
World Food Programme	4.0	3.5
Colombian Agrarian Reform Worker's Union	4.4	3.9
CODHES	4.8	4.2
Acción Social, land protection programme	6.8	6.0
Alternative Cadastre, National Victim's Movement	10	8.8

Source: Comisión de Seguimiento de la Sociedad Civil, *Reparar de Manera Integral del Despojo de Tierras y Bienes*, p. 45.

3

Giving IDPs back their land: the new bill, its context and its mechanisms

In September, 2010, the government announced its intention to try to reconstitute land to IDPs, and brought to Congress a property restitution bill. This new Government initiative and the bill that has been brought for debate constitute a new process which is separate from other initiatives for land restitution that have been ongoing. Given that restoring land to IDPs is a hugely complex process, it is important that the new property restitution initiative build on the relevant achievements of some of these past initiatives.

3.1 Preceding restitution and reparation initiatives

The Justice and Peace Law

In 2005, the Law for the Demobilisation of Paramilitary Groups, also known as the Justice and Peace Law (*Ley de Justicia y Paz*) 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. This framework has to date not yielded any results because, five years after the law was adopted, there have been no confirmed convictions of individual perpetrators. The first conviction of two demobilised paramilitaries, which might also order reparations for their victims, was issued in June 2010 by an appeals court in Bogotá. The decision, however, has been further appealed and therefore has yet to take effect. In this context, it is reassuring that under the new bill restitution does not depend on the conviction of an individual perpetrator.

The second framework in the Justice and Peace Law had greater scope as it was meant to apply in the absence of the conviction of individual perpetrators. The law created the National Commission for Reparations and Restitution (*Comisión Nacional para la Reparación y Restitución* or CNRR) with an eight-year mandate to devise a national plan for reparations. The CNRR has pioneered the movement towards reparations and restitution since its inception in 2005, by engaging different government and civil society bodies in the drafting of the national Property Restitution Plan (*Plan de Restitución de Bienes* or PRB), by setting up pilot cases for restitution, and by making reparations more visible in public debate. The CNRR has not yet published the PRB, but, before the new Government bill was presented, it was due to pass it to the Ministry of the Interior for consideration later in 2010. The

new bill thus bypasses the PRB process, even though the PRB has been the outcome of a long progression of consultation and research. It is therefore important that various elements already included in the PRB, which are discussed below, are included in the new bill.

In addition to the ongoing Justice and Peace Law processes, there have been two other initiatives in past years which have failed to result in redress for IDPs. The most recent was a bill proposed in 2007 for a victim's law that included a reparations plan, which the government initially backed, before withdrawing its support in 2009 towards the end of the debate in Congress. The government rejected the proposed legislation for two main reasons: 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 have been impossible to implement because of the difficulty inherent in identifying such property and the amount of funding required to provide reparations and compensation when required. It is thus not surprising, and perhaps more realistic, that the new bill only targets restitution of land.

The failure of this bill after almost two years of debate was discouraging for the victims, but it did have the positive effect of putting the issue of reparations on the national political agenda. Victims of displacement were given a first opportunity to air their grievances, needs and expectations in Congress, with some 4,000 victims appearing before nine congressional hearings.³² Public awareness of the need to restore the land of internally displaced peasants and offer them effective reparations grew, as did the awareness that this was an outstanding obligation of the state.³³ In part because of this, the issue of land restitution was raised during the recent presidential election campaign, during which Santos pledged to reconstitute land and support peasants and small farmers.³⁴

2008 reparations scheme

The second initiative was a reparations scheme adopted in 2008 through a decree by the government which created a mechanism for administrative reparations (rather than reparations awarded by a judicial body) for victims of abuses by illegal armed groups of the rights to "life, physical integrity, health, individual liberty, and sexual liberty".³⁵ This decree has provided some measure of redress to victims of such abuses. However, it does not cover land appropriations and does not include the pos-

sibility of giving land back. Furthermore, the decree has been criticised because it offers as reparations non-restorative “awards” such as subsidies and humanitarian aid which are generally considered elements of basic social protection programmes. Finally, it excludes victims of human rights violations committed by agents of the state.³⁶

Rulings of the Constitutional Court

In January 2009, the Constitutional Court identified the restitution of land and the protection of land rights as an important issue where decisive government action was needed. In a notable example of the judiciary’s involvement in policy making,³⁷ the Court ordered the government to take comprehensive steps towards redressing the land rights of IDPs,³⁸ and to put in place mechanisms to prevent future violations. With this order the Court upheld its landmark 2004 ruling that the violation of IDPs’ land rights was unconstitutional, and also complemented and expanded upon its 2007 ruling that declared that the government had a duty to fulfil the rights of victims to reparation and property restitution.³⁹

In response, the government put forward two documents laying down principles for a comprehensive land restitution plan, to be drafted by a new inter-agency land forum (*Mesa Interinstitucional de Tierras*), which it had set up for this purpose. This land forum included representatives from 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 CNRR. But the new bill seems to bypass the work and outputs of this inter-agency forum, as it does not refer explicitly to them.

Thus there has been no lack of initiatives for reparations in Colombia, but IDPs have not yet seen their property rights redressed, although many have placed their hope for restitution in these past initiatives. The Santos bill is a welcome initiative as it offers an opportunity to unblock the process and provide restitution with the government support that previous attempts lacked. It will be important to incorporate into the debate some of the guidelines offered by the PRB and the land forum, processes that will now most likely be sidelined. Much of the contents of the documents advanced by these two forums remain relevant and should inform the debate for the new government’s bill.

3.2 Agrarian reform and ongoing inequality

The media in Colombia and internationally have referred to the proposed bill as an agrarian or land reform.⁴⁰ However, it includes no elements of agrarian reform intended

to redistribute land to correct the country’s historic inequalities that date back to colonial times. 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.

As the history of failed agrarian reform in the past four decades shows, redistributing land is an outstanding task facing Colombia. There have been several attempts in the past decades to realise a more egalitarian distribution of land through institutional and legal reforms. However, the two mechanisms employed, agrarian reform and progressive tax over rural property, have proved equally ineffective. The tax was quickly rejected by landowners and tax authorities in the 1960s. Agrarian reform has been tried for over four decades; one attempt, also in the 1960s, promoted land distribution through direct occupation by peasants operating under an umbrella organisation, the National Farmworkers Association (*Asociación Nacional de Usuarios Campesinos*). This scheme was supported, though only temporarily, by the government. The latest attempt at agrarian reform, in the 1990s, was market-based; subsidies were made available so that landless peasants could buy land. It too failed to make an impact, because of the limited availability of state resources and the opposition of powerful landholders.⁴¹

In addition to the failure of agrarian reform, violence and associated displacement have given rise to what has been tagged counter-agrarian reform, i.e., a process where dispossession by illegal actors has made unequal distribution of land even worse.

In the long run, sustainable peace will only be attained if the conditions that gave rise to the conflict and dispossession, notably including the extremely unequal distribution of land, are changed. Nevertheless, an effective property restitution plan paired with support for returns and development of small-scale agriculture would be an important first step towards consolidating peace in Colombia and establishing an environment in which agrarian reform could be implemented.

3.3 The new bill’s mechanisms

The property restitution bill introduced by the government is likely to be modified during the congressional debate. In the meantime, below is an analysis of its main features, including its strengths and the areas in which it fails to meet the international standards set out in the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles),⁴² in the United Nations Guiding Principles

on Internal Displacement, and in the decisions of the Constitutional Court.

Restitution or compensation?

Firstly, the bill chooses restitution in preference to alternative means of reparation, a principle set forth in Pinheiro Principle 2, which establishes that States should prioritise the right to restitution as the preferred remedy for displacement, and Principle 21, that compensation should be used only when restitution is not factually possible. However, the bill conditions restitution upon the desire to return: Article 19 of the bill declares that if a victim does not want to return, they will be given compensation instead of restitution of their land.

Who is eligible?

In the bill, eligibility will be principally determined by the location of the lost or abandoned land: the government will delimit areas for implementation of property restitution prior to the implementation of the mechanism. The departments or areas that have been earmarked for restitution are those where generalised paramilitary violence has taken place. Informally, it has been announced that they will include Sierra Nevada de Santa Marta, Montes de María, the southern part of Bolívar, Magdalena Medio, Córdoba, Urabá, the northern part of Chocó, Valle del Cauca, and the northern part of Nariño.⁴³ An IDP displaced from land within these areas will in principle be able to bring a restitution claim.

Within these zones, the bill establishes a presumption that dispossession happened, following Pinheiro Principle 15.7. This presumption will clearly benefit IDPs, as it will remove the burden of proof of dispossession. Furthermore, the bill makes eligible for restitution not only those with property titles, but also people who had informal tenure over land, in agreement with Pinheiro Principle 16. This is an important development given the widespread extent of informal land tenure and the incompleteness of land cadastres in the country. Finally, the bill does not explicitly include time limitations for bringing a claim.

Nevertheless, the bill does not specify what right the restitution process would award claimants that do not have a title to the land. It is not clear if a former possessor claiming restitution of property would be awarded possession and expected to acquire formal ownership of the land through acquisitive prescription (that is, by meeting statutory requirements of continuous possession), or if they would be awarded a formal property title. It would be useful to clarify this in the law.

Even though the bill calls the restitution zones priority zones, in reality they are the only zones where restitution

will take place, and these zones are those where violence caused by paramilitary groups has been documented as part of the paramilitary demobilisation process under the Justice and Peace Law. Organising restitution by prioritising zones for urgent action is a practical measure to handle the complex task of restituting land, and the CNRR's PRB took the same approach.⁴⁴ However, in reality they are the only areas selected for restitution, since there is no mention of a second phase of the programme to include land outside those areas.

Property in other areas will be excluded from restitution, and IDPs who have lost land outside the areas mentioned above would not be able to bring a claim. The bill therefore limits the accessibility of claims and leaves many victims outside those areas without recourse, and so does not follow Pinheiro Principle 13 which determines that states should not establish preconditions for filing a restitution claim.

In focusing on zones noted for paramilitary violence in the Justice and Peace Law process, the bill remains silent on victims of dispossession caused by the armed conflict. Additionally, the bill only includes restitution for people displaced within the country, which means that people who have fled to neighbouring countries cannot qualify for restitution even if their land is within the determined zones.

The government agency *Acción Social's* land protection programme has estimated the extent of land lost at 6.8 million hectares. The government has already announced that the plan will probably target for restitution about 2.2 million hectares⁴⁵ within the restitution zones. This difference gives an idea of the extension of appropriated land that would be excluded by the programme: about 4.6 million hectares or over two-thirds of affected land.

How will restitution be handled, and who will do it?

The bill proposes the creation of a new registry of appropriated land (*Registro de Tierras Despojadas*) within the areas tagged for restitution. People with restitution claims in these zones will be included in this registry, either upon request or "ex-officio". The bill does not say how the 'ex-officio' determination would be made. Additionally, the current text of the bill does not specify further rules to decide who will be admitted or excluded, and the bill does not mention if land already registered in the National Registry of Abandoned Property (*Registro Unico de Predios y Territorios Abandonados* or RUPTA) will automatically be included in the new registry of appropriated land. Indigenous territories are to be included in the registry after consultation according to ILO Convention 169.

The bill creates a hybrid judicial/administrative mechanism for adjudicating the claims, and creates a special administrative unit for management of dispossessed land (*Unidad Administrativa Especial de Gestión de Tierras Despojadas*) as the overseeing power. The administrative unit will have a mandate for ten years to manage the new registry, and it will then bring the claims before appeal judges, acting on behalf of the victims.

Having a state agency bring the claims before the adjudicating courts will clearly facilitate accessibility for IDPs, many of whom do not live in the zones where the procedures will take place. However, the bill does not specify which means will be admissible to enable claimants without a formal land title to identify the land being claimed; and it does not clarify what property rights such claimants can apply for. But the administrative unit may serve to ensure balance of power between the opposing parties, by giving victims stronger representation. The text does not say which measures it will take to inform people of the process and to provide support to bring claims for those who may need it.

Despite these benefits, the system limits accessibility because the administrative unit can decide not to accept a claimant into the new registry, and so prevent their case being heard by a judge. The bill does not make clear when and on what bases the administrative unit can reject a claimant. Furthermore, if there is more than one claim over the same property, as is to be expected, the unit will have the power to decide which claim is legitimate, without bringing this decision for consideration in court. Additionally, the bill gives the administrative unit the power to decide when claims cannot go forward for procedural reasons, without specifying what those reasons may be.

Having an administrative agency take care of the management aspects of the restitution process is advantageous because it speeds up the process; however it is of concern that its decisions are not subject to review. For example, the proposed process does not give IDPs a right to appeal the decisions by the administrative unit. All elements of the process in which justice is being administered should be decided by judges in agreement with preset rules to guarantee independence and procedural rights particularly in the context of the battle to maintain separation of powers and judicial independence in Colombia.

What happens when the administrative unit approves the claims?

Once the administrative unit has compiled the registry, it will bring the claims to newly-appointed agrarian appeals judges. This particular jurisdiction is not new: it was put in

place decades ago as part of one of the agrarian reforms, but was never staffed with judges. These judges will rule on claims after an abbreviated procedure of four months in total (a very short period compared to the normal time span of law suits in Colombia, which often take many years) in which anyone opposing the restitution claim will have to prove that they acquired the land lawfully. Ordinary rules of evidence will apply, but judges are allowed to issue their judgment at any time in the process, and need not accept all evidence if they have made up their mind. The bill does not provide the possibility to appeal against these judicial decisions.⁴⁶

What happens to current occupiers of the land?

If the agrarian judges issue a decision in favour of the displaced claimant, the administrative unit will evict those occupying the land, and will restore the title to the land to the victim. It is not clear whether the rights of victims without formal ownership will be upgraded to give them full legal title over the property. In any case, having the administrative unit act as an intermediary protects IDPs and guarantees that they can repossess the land.

According to Pinheiro Principle 17, it is necessary to compensate secondary occupants who are found to have occupied the land in good faith. In the proposed system, they will be paid compensation from a trust fund that will be created for this purpose and funded by the government and international donors.

IDP participation and special protections for women

Pinheiro Principle 14 establishes that property restitution programmes should be carried out with adequate consultation and participation with the affected persons, groups, and communities. There is no evidence that the drafting of this bill has yet included participation from victims, and it is necessary to assure that IDPs are consulted during the congressional debates, as they were during the debate on the Victim's Law in 2009. Furthermore, the results of the consultation processes led by the CNRR in its preparation of the PRB should also be taken into account and inform this law.

Another important issue which the bill does not address is equality between men and women in the restitution process, enshrined in Pinheiro Principle 4. It has been documented that in Colombia women are in a more precarious situation than men when it comes to property rights. Informal marriages fail to give women a share in the ownership of land, inheritance practices favour men, and informal rules and social practices favour men's participation in land markets and access to credit.⁴⁷ Women's land rights are often only indirectly protected, via those of their male partner.⁴⁸ It has also been reported that without

a male voice to back them, women often struggle to be heard at community or town meetings.⁴⁹

As a result, women are largely uninformed about land ownership and tenancy. They tend to be unaware of how property was acquired, or the existence or lack of documents and titles. When displaced women declare their situation to the government's IDP register, they rarely have information about their land, and in some cases do not consider themselves owners. For these reasons widows and female heads of households are much more vulnerable to losing their land. To counter these factors, the bill should include additional measures (some have already been proposed⁵⁰) with which to protect the property rights of women.

3.4 Obstacles which the restitution plan will face

Any effort to support property restitution in Colombia will inevitably face a variety of challenges. The first is political opposition, even in the case of proposed legislation such as the latest bill, which only addresses land appropriated by paramilitaries and other non-state groups. Many representatives in Congress have links with powerful corporate and paramilitary groups that could be affected by land restitution: as many as one in three members of the newly-elected Congress is under investigation for allegations including links with paramilitary groups, which were made public during the Justice and Peace investigations, and which led to the "parapolitics" scandal.⁵¹ Even though it is impossible to predict the outcome of the debates, opposition to the law is to be expected despite the fact that it is a government bill.

If the plan does overcome opposition to be passed in Congress and go on to become law, it will then face practical, procedural and technical problems. The first is related to the judicial capacity necessary to prevent restitution processes from dragging on for years due to bottlenecks. To ensure sufficient capacity, it is important that agrarian judges are appointed exclusively to handle restitution claims. The bill, however, implies that they will also rule on other issues, by declaring in Article 10 that they should give preferential treatment to restitution cases.

Both judges and officials in the administrative unit need authority and legitimacy to carry out the roles. To this end the process of their appointment should be transparent and accord to established guidelines to prevent corruption and undue influence.

There is also the risk of violence against claimants by the illegal occupiers of land. Threats and killings of land

advocates have shown the risks associated with the issue: 45 grassroots leaders have been killed for advocating for land restitution.⁵² By having the administrative unit bring claims before the judges, the mechanism provides some protection for candidates, but provisions to provide additional protection measures, both during the process and following restitution, should be included.

Experience with problems arising from the restitution of collectively-owned land should also be taken into account to avoid the same pitfalls. In a restitution case in 2010 in Chocó department, where the previous administration had ordered the restitution to members of Afro-Colombian communities of 29,000 hectares appropriated by paramilitaries, it emerged that the leaders of the communities to whom the land was to be restituted had been influenced by the African palm corporations that held the land, and had previously agreed to grant them control of it. Assassinations and violence against those denouncing this influence followed, and the Constitutional Court intervened to stop the process ruling that it was not clear if these leaders represented the communities.⁵³ The Court ordered a census of the population in the communities, which is ongoing. To prevent this case from repeating itself, it is crucial that genuine participatory consultations take place according to ILO Convention 169.

4

The road ahead: towards non-repetition of violations and sustainable returns

4.1 Restitution in the midst of ongoing violence

Solving the immediate problem of giving land back to IDPs will be a complex enough process. But beyond this complexity, the greatest challenge to property restitution in Colombia is likely to arise from the fact that it will inevitably take place alongside continuing violence and displacement. The situation has been described as one of “transitional justice without transition”⁵⁴, because transitional justice processes are generally implemented at the end of an armed conflict or dictatorship as a way to enable the transition to peace and democratic rule.

As has been widely documented, following the paramilitary demobilisation process, new groups with similar structures operating in the same areas emerged and have continued to perpetrate human rights abuses. If it is adopted, the restitution programme will have to reflect this reality. For example, it will be necessary to give beneficiaries a broad range of options to enable them to exercise their property rights after formal restitution, and so recover the self-sufficiency which they lost in being displaced. If they are to enjoy a free choice of settlement,⁵⁵ they must have an option not to return to their point of displacement but rather to sell, rent, or otherwise dispose of restituted land. For this to be a realistic possibility in areas still under the control of perpetrators of violence or their successors, the government would have to implement a scheme to enable IDPs to exchange restituted land with equivalent property in the area where they have resettled.⁵⁶

The current proposal does not include any such measures. In fact, it goes in the opposite direction: to prevent repetition of dispossession, the bill bans any transaction on restituted land for two years. This measure may help to make returns sustainable, but it denies IDPs the means to seek to integrate in the place of their displacement or resettle in a third location. Thus it limits the possibilities of the vast majority of Colombia’s IDPs, who, as surveys have shown, are not interested in returning in the current conditions.⁵⁷ Apart from the prevailing insecurity, many IDPs are no longer in a position to rebuild rural livelihoods after living for many years in urban areas. Guiding Principle 28 underlines their right to return voluntarily, in safety and with dignity, or to resettle voluntarily in another part of the country, while Pinheiro Principle 10 underlines that the pursuit of durable solutions other than return does not prejudice displaced people’s right to the restitution of their housing, land and property.

The restriction on transactions has clearly been incorporated in the bill to protect returnees, perhaps drawing on the success of *Acción Social*’s land protection programme (the PPT). Even though the underlying idea may be the same in the two-year restriction on transactions included in the restitution bill, the main difference with the PPT mechanism is the blanket restriction on transferring restituted land, with no possibility for the owner to request a lifting of the ban on transactions. While farmers at risk of displacement may choose to prevent loss of their land through forced or false transactions by freezing its title, people who have already been displaced and have then repossessed their land should be able to sell their property if they realise after restitution that their return is not feasible or desirable.

There are two possible ways to give victims the choice of how to exercise their property rights while still preventing new dispossessions. One would be to give them the right to request lifting the restriction on transactions over the property at the end of the judicial process, which would allow judges to assure that the request is voluntary. Another one would be to remove the two-year restriction altogether, giving victims the opportunity to request judges to include their newly-restituted land under the protection scheme of the PPT when restitution takes place.

If none of these measures are included, the two-year restriction could defeat its own purpose: if people are restituted their land but do not return, the land would effectively stay abandoned for two years until they can sell it or rent it, which will be conducive for new appropriations. Overall, there should be more consultation and participation with IDPs on this issue, as mentioned above and emphasised by Pinheiro Principle 14.

4.2 Economic opportunities for small farmers and returnees

In addition to ongoing violence, the second challenge to the success of the restitution process is that it will take place in a context of declining economic opportunities for small-scale farmers, as evidenced by the extent of economic migration from rural to urban areas. The phenomenon has only been encouraged by the rural development model enshrined in the 2006-2010 national development plan and the 2007 rural development statute (later repealed by the Constitutional Court), which promoted large agricultural businesses at the expense of

peasants and small landowners. The Santos administration has pledged to reverse this trend and help peasants rebuild small-scale agriculture. It has also pledged to reverse the direction of the previous government's agrarian development policy to provide support to small-scale farmers and returnees.⁵⁸

However, the proposed restitution bill does not include any of these measures in its articles. It is mentioned in the "motivations" section of the bill, but there is significant difference between this section, which is essentially rhetoric, and the articles of the bill itself. The motivations section mentions measures to support agricultural production by returnees, incentives for rural development, and the allocation of land to landless peasants. All these supplementary measures figured prominently in the draft PRB as additional programmes, and they could easily be incorporated into the new government bill.⁵⁹ Following Pinheiro Principle 18, it will be desirable to consolidate all these measures in the restitution bill itself, as the PRB did, rather than leaving them to be adopted by other eventual legislation that is still uncertain.

The long-term success of the restitution plan is ultimately in the government's interest. It should not stop at the point of achieving restitution of land: for those wishing to return to their land after restitution, the government should aim to make returns sustainable by providing support for returning IDPs to rebuild their livelihoods and become productive again.⁶⁰ This will be essential to assure that restitution truly contributes to the consolidation of the peasant small-holder class (*campesinado*) and the construction of peace.

4.3 Additional measures to document land lost and streamline land registers

The restitution plan set forth creates a mechanism for documenting land lost within the restitution areas delimited by the government, but it does not include a nationwide census of all land lost. Again the "motivations" section of the bill mentions that it sets out to implement the orders given to the government by the Constitutional Court, but the bill does not include these programmes in its articles. It is thus not clear how the government will seek to implement all these measures.

Pinheiro Principle 15.1 determines that cadastres for registration of land rights should be established as part of restitution programmes. The Constitutional Court has also ordered the government to take these steps in addition to setting up a restitution mechanism. It has recommended two particular steps: to carry out what it calls a "census" of land, to identify down to every single property that has been lost by IDPs in the country; and to streamline and

update the cadastral system for registering ownership of land.⁶¹ In other words, the government should go beyond registering land in the limited restitution areas to include the entire country.

Harmonising legislation and repealing of conflicting measures

Pinheiro Principle 18.1 establishes that states should amend, reform, or repeal laws, regulations and practices that hinder the right of IDPs to property restitution. This is an outstanding task in Colombia, which should accompany the adoption of a restitution plan. A variety of norms and policies in different domains have coalesced to create a complex patchwork of piecemeal, obstructive and sometimes contradictory law, which must be amended or repealed alongside the adoption of a new restitution programme.⁶²

Some of this has already been achieved by the Constitutional Court, which declared unconstitutional a rural development statute, Law 1152 of 2007,⁶³ which placed the entire focus of rural development on large business projects, many of them running counter to the interests of peasants and indigenous peoples.⁶⁴ But Law 1182 of 2008 is still in force; this law 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. Its provisions are highly detrimental to victims of dispossession, particularly in a conflict setting, and should be repealed.⁶⁵ This law has been described by human rights leaders as the law that legalised the violent appropriation of land.⁶⁶

Additionally, rules drafted for circumstances of peace and for stronger institutional arrangements must be repealed or amended because of their unintended harmful effects in the context of ongoing conflict. In particular, norms contained in the civil code of 1887, which allow for limitations to the dominion of the owner over the property by giving rights to a non-owner over the same object (based on the Roman legal concept of *ius in re aliena*). In a conflict context, such norms add instability and facilitate appropriations.



Notes

- 1 For more on the figures and the methodologies used to collect them, see IDMC's Colombia page at www.internal-displacement.org/countries/colombia.
- 2 The CSSC has conducted research into the situation of IDPs including two comprehensive nationwide surveys. The CSSC's reports are available at http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52.
- 3 CSSC, *Reparar de Manera Integral el Despojo de Tierras y Bienes*, 2009, p.46.
- 4 Acción Social, *Proyecto de Protección de Tierras, Diseño de una metodología participativa para la recolección de la información y protección de bienes muebles*, 2005.
- 5 The text of the restitution bill and its motivations section (*Proyecto de ley por el cual se establecen normas transitorias para la restitución de tierras*), September 2010, are available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/4E7785BDBFFD797BC12577B5004DC3A0/\\$file/PROYECTO+DE+LEY+TIERRRAS.doc](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/4E7785BDBFFD797BC12577B5004DC3A0/$file/PROYECTO+DE+LEY+TIERRRAS.doc), and [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/89B2B0F280851AEFC12577B5004E07C3/\\$file/EXPOSICION+DE+MOTIVOS+AL+PROYECTO+DE+LEY.doc](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/89B2B0F280851AEFC12577B5004E07C3/$file/EXPOSICION+DE+MOTIVOS+AL+PROYECTO+DE+LEY.doc).
- 6 For more on land appropriations by corporations for monocultures, notably African palm plantations for biofuels, see IDMC, *Resisting displacement by combatants and developers: Humanitarian Zones in north-west Colombia*, 2007.
- 7 Human Rights Watch, *Paramilitaries' Heirs*, 2010, p.6.
- 8 Comisión Colombiana de Juristas, *Colombia: La Metáfora del Desmantelamiento de los Grupos Paramilitares*, segundo informe de balance sobre la aplicación de la ley 975 de 2005, 2010.
- 9 For more on the different motivations for dispossession, see Comisión Nacional de Reparación y Reconciliación, *Area de Memoria Histórica, El Despojo de Tierras y Territorios, aproximación conceptual*, 2009, pp.65-73, and IDMC, above note 6.
- 10 Comisión Nacional de Reparación y Reconciliación, above, p. 40.
- 11 Acción Social's, project for the protection of land and patrimony (*Proyecto de Protección de Tierras*), 2010. See also Salinas, *La Protección y Restitución de las Tierras y los Bienes Inmuebles de las Víctimas*, in Rodríguez, César, *Más Allá del Desplazamiento*, 2010, p.100.
- 12 Universidad de los Andes, CEDE, *Del campo a la ciudad en Colombia: La Infiltración Urbana de los Señores de la Guerra*, 31 January 2005.
- 13 Interview with Patricia Buriticá, Bogotá, November, 2009.
- 14 See for example *El Espectador*, *Bancos deben refinanciar deudas de desplazados*, 2 June 2008.
- 15 Constitutional Court of Colombia, Decisions T-520 of 2003 and T-419 of 2004, among others.
- 16 Collective ownership of land by indigenous and Afro-Colombian groups was established by Law 160 of 1994 (indigenous groups) and Law 70 of 1993 (Afro-Colombian groups).
- 17 Committee on the Elimination of Racial Discrimination (CERD), concluding observations, Colombia, CERD/C/COL/CO/14, August 2009, para.19.
- 18 IDMC, above note 6.
- 19 *El Espectador*, *El primer capítulo de la 'paraeconomía' Semana*, 22 May 2010.
- 20 CERD, above note 17.
- 21 Acción Social, *Programa de Protección de Tierras*, accessed 2 October 2010 at www.proyectierras.org/opencms/export/sites/default/public/comunicaciones/portlets/documentos/perfil.pdf.
- 22 Telephone interview with Protection Officer, UNHCR, 29 June 2010.
- 23 Acción Social, *Programa de Protección de Tierras*, Background document for World Bank Workshop on Protection of Land Rights, 2010.

- 24 Comisión de Seguimiento, Reparar de Manera Integral del Despojo de Tierras y Bienes, 2009, p.86.
- 25 Departamento Nacional de Planeación, Propuesta de Lineamientos de Política de Tierras [...], 2009, para. 2.
- 26 ICRC/WFP, Una Mirada a la Población Desplazada en Ocho Ciudades de Colombia: respuesta institucional local, condiciones de vida y recomendaciones para su atención, 2 November 2007, pp. 63.
- 27 CSSC, above note 3, p.46.
- 28 CSSC, above, note 3. p. 46.
- 29 CSSC, above, note 2, p.16.
- 30 Procuraduría General de la Nación, Proyecto Control Preventivo y Seguimiento a las Políticas Públicas en Materia de Reinserción y Desmovilización, seguimiento a la protección de las víctimas del conflicto en materia de bienes patrimoniales, Bogotá, 2006, p.185. Cited in Comisión Colombiana de Juristas, Camino al Despojo y la Impunidad.
- 31 UNDP, Update no. 47, El Rompecabezas de la Restitución de Tierras, June 2009.
- 32 Nelson Camilo Sánchez, ¿Perder es Ganar un Poco? Avances y Frustraciones de la Discusión del Estatuto de Víctimas en Colombia, in Reparar en Colombia: Los Dilemas en Contextos de Conflicto, Pobreza, y Exclusión, 2009, p.712 onwards.
- 33 Nelson Camilo Sánchez, as above.
- 34 President Juan Manuel Santos, inaugural address, 7 August 2010. Available at http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807_15.aspx.
- 35 Decree 1290 of 2008.
- 36 Colombian Commission of Jurists (*Comisión Colombiana de Juristas*), La Metáfora de la Desmovilización, 2010, pp. 314-320.
- 37 For an in-depth analysis of the effects of the court's ruling promoting the rights of IDPs, see Rodríguez, C, and Rodríguez, D, Cortes y Cambio Social: Cómo la Corte Constitucional Transformó el Desplazamiento Forzado en Colombia, Dejusticia, 2010.
- 38 Constitutional Court of Colombia (*Corte Constitucional de Colombia*), Auto 008, January 2009.
- 39 Constitutional Court of Colombia, Sentencia T-821, 2007.
- 40 See for example Enrique Ramirez in El Tiempo, Reforma Agraria, 27 September 2010.
- 41 For more information see Machado, Absalón, Tierras, Problema Agrario y Conflicto, La cuestión agraria en Colombia a fines del milenio, El Áncora Editores, Bogotá, 1998; and Reyes Posada, Alejandro, Guerreros y Campesinos, El Despojo de la Tierra en Colombia, Norma, 2009.
- 42 The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles) were adopted by the United Nations in 2005 to provide guidance to States, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. They are available at <http://cohre.org/store/attachments/Pinheiro%20Principles.pdf> (last visited 13/10/2010).
- 43 A map of priority zones for restitution has been published by El Espectador at http://static.elespectador.com/especiales/2010/09/d16895bf8bcc04402740d5foeff6adad/m_restitucion.html
- 44 Comisión Nacional de Reparación y Reconciliación, Programa de Restitución de Bienes, July 2, 2010, available at [http://idmc.nrc.ch/8025708F004CE90B/\(httpDocuments\)/006B86436CDDC863C12577C100358343/\\$file/PRB+\(02JUL10\)-1.pdf](http://idmc.nrc.ch/8025708F004CE90B/(httpDocuments)/006B86436CDDC863C12577C100358343/$file/PRB+(02JUL10)-1.pdf)
- 45 'El complejo reto de la restitución de tierras,' Semana, 19 August, 2010, available at <http://www.semana.com/noticias-politica/complejo-reto-restitucion-tierras/143259.aspx> (last visited 13/10/2010).
- 46 For more detail on the process and other legal aspects of the bill, see CSSC, Observaciones al Proyecto de ley 'Por el cual se establecen normas transicionales para la restitución de tierras', September, 2010.
- 47 Constitutional Court of Colombia, Auto 092 of 2008, p.46.
- 48 Constitutional Court of Colombia, Auto 092 of 2008, p.45.
- 49 UN FAO, Gender and Land Rights Database, Situación de las Mujeres Rurales, Colombia.
- 50 See Donny Meertens for NRC, Propuesta de Lineamientos para Construir un Programa de Facilitación del Acceso a la Propiedad de la Tierra por las Mujeres Desplazadas, 2008; also UNIFEM, Justicia Desigual, Género y Derechos de las Víctimas en Colombia, 2009.

- 51 *Diario La Opinión*, La bancada de los investigados en el nuevo Congreso, 3 July 2010; also *The Guardian*, Colombia's 'parapolitics' scandal casts shadow over president, 23 April 2008.
- 52 *El Tiempo*, Ya Son 45 Los Líderes De Víctimas Asesinados Por Reclamar Sus Tierras; En 15 Días Murieron Tres, 2 June 2010; Report of the Special Rapporteur on the situation of human rights defenders, Addendum Mission to Colombia (7-18 September 2009), A/HRC/13/22/Add.3, 1 March 2010, para.27; Comisión Colombiana de Juristas, Almost five million displaced persons in Colombia require protection of their rights, 4 October 2010.
- 53 Constitutional Court of Colombia, Decision of 18 May 2010; see also *Semana*, 'El drama de la restitución', 23 May 2010.
- 54 Rodrigo Uprimny Yepes, *Justicia Transicional en Colombia. Algunas Herramientas Conceptuales para el Análisis del Caso Colombiano in ¿Justicia transicional sin transición? Reflexiones sobre Verdad, Justicia y Reparación en Colombia*, 2006; Comisión Colombiana de Juristas, above, note 36.
- 55 Guiding Principle 28 recognises that the competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. For more on the implications for national authorities, see the IASC Framework on Durable Solutions for Internally Displaced Persons, March 2010.
- 56 *Displacement Solutions*, Comments on the Proposed Victims' Law and National Restitution Plan, December 2008; Williams/ ICTJ Occasional Paper Series, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, May 2007.
- 57 Comisión de Seguimiento, *Garantizar la Observancia de los Derechos de la Población Desplazada*, 2009, p.57.
- 58 Minister of Agriculture Juan Camilo Restrepo, cited in *Semana*, ¿Tierra a la vista?, 21 August 2010.
- 59 Comisión Nacional de Reparación y Reconciliación, *Programa de Restitución de Bienes*, 2 July 2010.
- 60 For more on humanitarian and development action to support resolution of land issues, see Elhawary, Samir/ODI, *Between War and Peace: Land and Humanitarian Action in Colombia*, 2007.
- 61 Constitutional Court of Colombia, Auto 008, January 2009, para.82.
- 62 Interview with Yamile Salinas, Bogotá, 16 Jun, 2010. See also *Displacement Solutions*, above, note 56.
- 63 Constitutional Court of Colombia, decision C-245, 2009.
- 64 UNDP Colombia, *Hechos del Callejón, La tierra, para quién?*, March 2007.
- 65 Salinas, Yamile, *La Protección y Restitución de las Tierras y los Bienes Inmuebles de las Víctimas*, in Rodríguez, César, *Más Allá del Desplazamiento*, 2010, p.96.
- 66 Comisión Colombiana de Juristas, *Boletín 26, Aprobada Ley que Legaliza la Usurpación Armada de Tierras*, 13 March 2008.



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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