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Territory, Displacement and Land Restitution in Colombia: The Victims Law as a New Perspective for Internally Displaced Persons?

By Christian Konrad

For first time in recent history, the Colombian government has centred its attention on the victims rather than on the victimisers in striving to bring an end to the country's long-standing armed conflict. Despite a government-led demobilisation process beginning in 2005, aiming to reintegrate over 30,000 paramilitary combatants into society, the policy has thus far produced little tangible change. Indeed, confrontations between government forces, guerrilla groups and successors of the paramilitaries continue. However, rather than pursuing the exclusively military doctrine adopted by the former government, the current administration under President Juan Manuel Santos signed and approved a law intent on bringing justice to the victims of the conflict. The Presence of the United Nations Secretary-General Ban Ki-Moon for the approval of the act in June 2011 underlined the political importance of and the high level of expectations surrounding the Victims Law, both nationally and internationally. This has led some to characterise this legal initiative as a "historical step" (Semana 28 May 2011: n.p.).

Against this backdrop, this paper introduces the legal content of the Victims Law, highlighting in particular the importance of rural land in Colombia as a basis of political and economic power. Viewed as such, the acquisition of land in Colombia becomes an important motive for forced displacement. Secondly and relatedly, this article will discuss the potential of the Victims Law to improve the situation of the Internally Displaced Persons (IDPs) in Colombia. While recognising the incipient nature of this legislation, this article ultimately concludes that the law represents an important though incomplete instrument to deal with the complex land situation in Colombia and provide justice to the victims of the conflict.

The Victims Law

on 10 June 2011, a broad political coalition adopted the Victims Law following several months of debate. The enactment of this law is remarkable in its recognition of the victims of the internal conflict in Colombia at the governmental level. Importantly, it overturns the position adopted by previous administrations, which denied responsibility for civilians adversely affected by the violence. The alleged purpose of this legislation is two-fold and brings together two pieces of legislation that were formerly separate. Firstly, the law mandates the provision of humanitarian, and psychological and financial assistance signifying both symbolic and substantive compensation to the millions of displaced, kidnapped, disappeared, threatened and assassinated persons. Secondly, the Victims Law requires the implementation of measures to return land titles to their former owners (Semana 28 August 2011: n.p.). Though it is estimated that four million people will potentially benefit from the law, IDPs represent the largest single group of beneficiaries. According to the Internal Displacement Monitoring Centre (IDMC), between 3.6 and 5.2 million Colombians have been forcibly displaced as a result of the conflict (IDMC 2010: n.p.)³, with levels of displacement peaking in 2002 when approximately 450,000 people fled their homes. Notwithstanding the drop in numbers of newly displaced persons, in 2010 an estimated 280,000 IDPs were registered (CODHES 2011). Although Colombia established a legal

³ The figures published by Acción Social, the Colombian authority responsible for IDPs, reflect the number of persons officially recognised by the state who benefit from Law 387. In contrast to the so-called official numbers, Colombian civil society headed by the non-governmental organisation CODHES also includes persons excluded in the official reference. The reasons for being excluded were investigated by the *Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado* (2008).

framework for displaced persons in 1997, Law 387, the recently enacted Victims Law goes much further. Indeed, the scope of Law 387 is limited to IDPs and only provides basic assistance to its beneficiaries, and unlike the Victims Law, does not provide broad compensatory or land restitution measures.⁴ Nevertheless, both laws overlap in several respects and it is difficult to predict how they will interact in practice.

According to the Victims Law, victims are defined as “those persons who have individually or collectively suffered damages after 1 January 1985 as a consequence of infractions of International Humanitarian Law or severe and manifest violations of the norms of International Human Rights, which occurred in the context of the internal armed conflict” (Ley de Víctimas 2011, author’s translation). The key ideas in the text are “truth”, “justice” and “reparation”. These notions are to be enacted through five programmes, including: psychosocial support, administrative indemnification, restitution of land titles, material reparation and guarantee of non-repetition of the conflict-related human rights violations (Presidencia de Colombia 10 June 2011: n.p.). Notwithstanding the aforementioned political progress marked by the Victims Law, it has, nevertheless, provoked a number of debates, and some civil society organisations, such as the *National Movement of Victims of State Crimes* (MOVICE) or the critical *Lawyers Collective José Alvear Restrepo* have raised concerns regarding its legal content, in addition to questioning the substantive viability of the provisions. This is strongly evidenced by the land restitution programme. Inextricably intertwined with territorial and land disputes, and widely identified as one of the root causes of the conflict, this particular aspect of the legislation has set expectations high, simultaneously provoking strong disputes (El Colombiano 2 August 2010: n.p.).

The land issue as a factor of displacement

Indeed, land conflicts are a seemingly ever-present problem in Colombia. In 1984, 0.5% of landowners possessed 32.7% of farmland, whereas in 1996, 0.4% of the populace possessed 44.6% of land and in 2009, 62.91% of cultivatable land was in the hands of only 0.43% of the population. Behind these numbers lies what analysts call a process of ‘counter-agrarian reform’ (Prensa Rural 15 August 2009: n.p.). Land concentration, growing use of land for cattle breeding, diminishment of food production and constantly high rates of displacement of landowning peasants have increased in previous decades and have intensified as a result of the dynamics of the armed conflict (Prensa Rural 15 August 2009: n.p.). It is estimated that seven million hectares of land formerly owned by small landowners have been appropriated illegally. Now, in view of the magnitude of land-grab, the Victims Law intends to return only a part of the land to the displaced population. It is, nonetheless, expected that over the next decade, two million hectares of land will be redistributed.

The difficulties facing the land restitution programme become evident when we consider the complexities surrounding landownership in rural Colombia. For instance, the legal status of different landholdings are often unclear and the property titles difficult to distinguish. Moreover, these issues tend to be further complicated by the scarcity of official information. Crucially, the possession of land appears to be a question of power and wealth, as demonstrated by the fact that the majority of territories appropriated in the last decades have ended up in the hands of big

⁴ According to Law 387 (1997), a displaced person is defined as “any person who has been forced to migrate within the national territory, abandoning his place of residence or customary economic activities, because his life, physical integrity, personal freedom or safety have been violated or are directly threatened as a result of any of the following situations: internal armed conflict, civil tension and disturbances, general violence, massive Human Rights violations, infringement of International Humanitarian Law, or other circumstances arising from the foregoing situations that drastically disturb or could drastically disturb the public order.”. The law mandates that the government provide humanitarian aid, guarantee free access to the health and education system and to re-establish the economic self-sufficiency of IDPs.

landowners, agro-industrial companies, paramilitaries, members of organised crime, drug dealers or local Caudillos. As a result of the boom of the palm oil industry, many of the formerly peasant-owned estates were converted into large-scale plantations to meet the growing demands of the world market. This has led to whole villages being displaced by a variety of actors, as seen most famously in the case of Cacarica in the Chocó region in 1997 whereby paramilitary groups supported by the Colombian army murdered and displaced inhabitants to exploit the region's rich natural resources. As part of the displaced population of Cacarica returned to their lands years after the incident, they found it covered with palm oil plantations (Comisión Intereclesial de Justicia y Paz: n.p.). The case of Cacarica serves to exemplify the connection between economic interests and forced displacement, or so-called development-induced displacement. As Colombia mainly exports natural resources, such as mining or agrarian products like bananas or the palm oil, the availability of large territories is an important economic necessity.

However, processes of forced displacement and land acquisition in Colombia are not necessarily achieved by violent means. Over time, agents of dispossession and displacement have developed more inconspicuous methods to realise their aim often threatening inhabitants to sign a purchase contract. In other cases, agents of displacement exploit the desolate situation of the conflict-affected population, convincing them to sell their land for less than fair value. The 'legally' attained properties can be resold to third parties or companies that incorporate them into their stock of real estates. In such situations, the original land title is increasingly dissolved, and responsible actors become harder to locate. Thus, the challenges facing displaced persons seeking to prove their claims to certain estates are high, especially given the fact that many peasants in Colombia have never possessed a legal document of land ownership. Some rural areas lack state authorities and many property acquisitions are not the result of a sales contract, but the gradual taking-over of formerly uncultivated land. Though Colombian law provides legalisation on the possession of territory acquired after several years of active cultivation, many peasants have never made use of this law.⁵

Arguments for and against the Victims Law

This, broadly speaking, outlines the context in which the Victims Law entered the legal and political stage in 2011. As the principal authorities in charge of implementing the land restitution programme, Acción Social (a Social Services Ministry assigned to the Presidency), the Ministry of Agriculture and the Colombian Institute for Rural Development (Incoder) face the difficult task of unravelling the non-transparent property situation to return to the victims the land that once belonged to them. That the law includes mechanisms that acknowledge the complexity of the conflict and the social situation represents a positive step in the right direction. Furthermore, when former landowners claim their purported land, under the new law it is the current owner who must establish the legitimacy of his or her contract. This contrasts directly with the usual jurisprudence where the burden of proof lies with the claimant. Moreover, the fact that the sale was authorised in the past by a judge or other local authority does not automatically render it valid. This accounts for the possibility of corruption between local authorities and agents of displacement, which may have facilitated the formalisation of illegally acquired land titles (La Silla Vacía 1 June 2011: n.p.). Such provisions might prove helpful in implementing the land restitution programme in a sustainable way.

Still, many concerns and criticisms exist with regards to the forthcoming restitution process. First, there is the question of the security of returning persons. As the armed conflict persists, the security risks facing IDPs have not disappeared. They may become victims of further

⁵ Following the NGO *Corporación Jurídica Yira Castro*, the spectrum of methods of land-grab in Colombia are diverse and even include legal jurisprudence to induce displacement (Corporación Jurídica Yira Castro 2007).

aggression, or be displaced for a second, or even third time. Though the law is supposed to provide protective measures, they remain vague, while the experience of previous legal initiatives shows that the state is not very vigilant in the application of these provisions. Between 2002 and 2011 alone, 49 people were allegedly murdered for attempting to claim their rights to land restitution (Semana 5 July 2011: n.p.). These threats continue and are likely to increase as the most recent restitution programme is implemented.

A second point of contention lies in the decision to limit the restitution process to those estates that were illegally appropriated after 1 January 1991 (Amnesty International 6 June 2011: n.p.). This temporal restriction has been criticised by a number of civil society organisations, as well as by the government's opposition, and was heavily debated before the bill passed. Since displacement and land accumulation in Colombia have occurred for several decades, the law is not designed to indemnify all damaged persons. Furthermore, the decision to only restore two of the estimated seven million hectares provoked many critics and it is believed that only the economically less important territories will be part of the restitution process.

While at this early stage it is not possible to give a full prognosis vis-à-vis the development of the Victims Law, this paper has highlighted the importance of the long-overdue step made by this legislation to create a more expansive legal framework for the victims of the Colombian conflict. Within the different pillars forming the law, the article focused on the land restitution programme because of its important role for the displaced population. It argued that the programme contains remarkable instruments to face the complex situation of landholdings in the rural areas, which represent one of the conflict's key issues. However, in light of its lack of protective measures for the returning population and its failure to indemnify the totality of IDPs, future amendments will be indispensable.

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