

## **ANDRES SANDOVAL, Forced displacement in Colombia: obstacles to safe resettlement through the framework of the *Land Restitution Program***

*By 2014, Colombia had the second largest number of forcibly displaced people inside its borders, only surpassed by Syria (NRC and IDMC, 2015). More than 50 years of internal war has left over 5 million internally displaced persons (IDPs) seeking restitution, reparation, and safe resettlement. In 2011, the National Government of Colombia, and the Senate, approved Law 1448 to assist IDPs. One of the strategic policies associated with the law was the Land Restitution Program (LRP). This paper explores the obstacles faced by IDPs in Colombia in terms of resettlement including the capabilities and limitations of the LRP. Ultimately it argues that security issues fail to guarantee a safe return and non-repetition of displacement, and therefore the National Government of Colombia must establish a framework for a suitable durable solution in order to uphold the rights of this forcibly displaced population.*

### **Introduction**

By the end of 2015, there were more than forty million people internally displaced worldwide as a result of armed conflict and other forms of violence. Colombia's IDPs make up a significant proportion of this number. Human Rights Watch states that by 2013 more than five million people were displaced from their own lands in Colombia due to the internal conflict in the country. According to Amnesty International, by 2015 more than 6 million civilians were registered as displaced (Amnesty International 2016). This paper sets out the causes and consequences of forced displacement in Colombia, the national response to the issue, and the current challenges posing significant problems for achieving successful restitution and resettlement. Although it is difficult to measure the exact impact of the displacement or determine the best way to address it, this article highlights some of the causes and consequences of forced displacement in Colombia, the current national response to the issue, and some important challenges that affect the process of restitution and resettlement.

### **IDPs – development of a status**

An internally displaced person (IDP) is an individual who has been forced to migrate within their nation's boundaries, leaving aside his residence and habitual economic activities (IACHR 1999; UNHCR 2007). Although IDPs only became a discrete category of migrant a few decades ago, due to growing academic and political interest, international documents were produced with the intention of promoting IDPs' rights and creating a new category of forced migrants that could help to elaborate more efficient programs, thereby putting IDPs on the global agenda (Mooney 2005). The *Guiding Principles on Internal Displacement* define IDPs as follows:

*...internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border (UN 2004:7).*

The *Guiding Principles on Internal Displacement* is the most elaborate document addressing how governments should address the issue of IDPs in their countries. During the last decade the impact of these principles has been remarkable. In the case of Colombia, for instance, almost all

of the legal framework constructed by the Constitutional Court and the laws promoted by the National Government address the principles, at least in the production of documents. The Guiding Principles filled a significant vacuum, as Cohen remarks, ‘the *Guiding Principles on Internal Displacement* filled out a big gap in the international protection system for uprooted people. Although its development gave us a number of lessons for those seeking to develop standards in the field of migration it remains a subject of study’ (Cohen 2014:12).

### **IDPs in Colombia**

Forced displacement affects 15% of the Columbia population. Forced displacement in Colombia is a never-ending story. Due to the internal conflict, farmers have been systematically displaced since 1985 when the first mass displacement was registered. During 2016 more than 6000 people were displaced again in Choco and more than 7000 are currently trapped in the middle of conflict (ACNUR 2016). Data is inaccurate and while the national government and independent organisations discuss the numbers, IDPs remain in precarious situations without access to basic goods and services. Despite efforts made in the last decade, IDP-related challenges for the coming years are enormous.

As most IDPs in Colombia inhabited rural areas prior to their displacement, they generally do not have a high level of education or skills beyond growing food on their land. They arrive in the cities without the possibility of return and are exposed to discrimination (Cohen and Deng 2008), trauma and social invisibility (Springer 2007), loss of citizenship (Villa 2006), poverty and violence (Ibañez 2006; 2009), gender discrimination (Marteens, D. and Segura-Escobar 1996) and fear (Jaramillo and Villa 2000). To be a displaced person in Colombia is to be part of the most marginalised sector of the population – vulnerable to a lack of human rights protection, welfare loss, and lack of access to the legal system and fundamental rights. This is a particularly overwhelming issue, one that the National Government has been dealing with for the last few decades.

The concept of ‘displaced’ was included under the principles of the Supreme Court of Justice of Colombia in 1998 and defined as any person who had been forced to migrate within the national territory. Circumstances can change but in all cases, the National Government has the responsibility to attend to the basic needs of the displaced and prevent new forced displacement occurring within the country (Corte Constitucional SU 1150 de 2000). The role of Colombia’s Constitutional Court in the recognition of the human rights of IDPs in the country is particularly significant as in 2004, it issued a landmark decision declaring that the disregard of IDPs’ fundamental rights was an ‘unconstitutional state of affairs’ (UNHCR 2012; Corte Constitucional, T-025 de 2004). A number of orders were issued to improve the situation of IDPs in the country (UNHCR 2012; Corte Constitucional, T-025 de 2004). The Constitutional Court has recognised that IDPs are entitled to a number of rights, including the right to hold property and land, access to justice, the right to liberty and personal security and the right to physical, mental and moral integrity (Constitutional Court T-239 de 2013).

### **LRP: National Response to Forced Displacement**

With the purpose of establishing a solid juridical framework that guarantees reparation and restitution for Colombian IDPs, in 2011 the National Government presented the *Law of Victims and Land Restitution 1448* (Law 1448) to the Congress for approval. This law, as well as the

LRP that followed it, was introduced on the basis that more than 6.6 million hectares of land had been abandoned during the period 1980 – 2010 (Amnesty 2012).

When Law 1448 was passed in 2011, the associated policy (the LRP) was launched but was met with resistance in several political sectors of the country. Some criticised its operational gaps and limited view of the complex problems faced by IDPs. Others opposed it as the Law represented an economic threat to them as some accumulated their wealth by exploiting the IDPs' situation, for instance, by appropriating their abandoned lands. In other words, forced displacement became a business for armed actors such as guerrillas, paramilitary members and corrupt politicians who were able to find and utilise a lucrative opportunity during the war.

Law 1448 states that the land restitution process must be implemented 'gradually and progressively, taking into account the security situation, the historic density of land dispossession and the existence of conditions for return. Land restitution, as well separation generally, will therefore be implemented over a 10-year period, through a process that will prioritise land restitution for specific geographical areas' (Amnesty International 2014). Some key elements were incorporated in order to make the document a procedural guide for those who are required to implement it. The focus on particular areas for restitution, the extension of the concept 'victim', the incorporation of new rights, and the principles outlined to be applied in the restitution process were some of the new innovations contained within Law 1448.

### **Obstacles and limitations of the LRP**

Three obstacles exist which limit the extent to which Law 1448 and the LRP can be implemented and utilised to achieve effective resettlement. The first one is the *slow process of restitution*: by 2014, just 58,500 hectares of land were claimed by farmers, 50,000 hectares claimed by indigenous people and 71,000 hectares claimed by African descendants. Today, most of this process remains unresolved, as some of those who claim rights to land have not received legal title to the land, whilst others who have received legal possession do not in fact occupy their lands, as they remain occupied by armed actors who prevent farmers' resettlement.

The second obstacle to safe resettlement is the *lack of security to ensure a safe return*. Given that conflict continues to affect considerable territory, ensuring a safe return is one of the biggest challenges. According to Amnesty International, 'many land claimants have been threatened or killed. Those leading land restitution efforts and representing displaced communities, human rights defenders accompanying them, and state officials have also been the target of attacks because of their work' (Amnesty 2014:32). The Colombian Government has the primary duty and responsibility to establish conditions, as well as provide the means which allow IDPs to return voluntarily, or to resettle voluntarily in another part of the country (UN 2004). This is a key issue as IDPs' decision to return to their homelands or to resettle, depends on the capacity of the state to protect them.

Additionally, some claimants<sup>7</sup> and human rights defenders have been killed, whilst others have suffered double displacement<sup>8</sup> or threats during the process (CODHES 2013). As a result, forced

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<sup>7</sup> One of the most problematic issues in relation to IDPs in Colombia is determining the category they belong to. The most common concept is "displaced", but in Law 1448 they are named "victims" and "claimants". This generates confusion about the status that IDPs have in Colombia. Ferris says: "the original law recognizing internal

displacement remains out of control in Colombia and the State is unable to provide safe resettlement and non-repetition<sup>9</sup> guarantees for IDPs. If IDPs consider that return will result in a lottery of threats, it is unlikely they will make a claim for restitution through the LRP. On the contrary, guaranteeing safe return will encourage them to assert their rights and therefore start the process of restitution.

The third problem is the *failure to guarantee non-repetition*. Displacement is an on-going process and there are many claimants who have been displaced twice, first by the open conflict between guerrillas and armed forces of the State and secondly by some illegal groups which resulted from the previous peace deal with paramilitary forces - now known as BACRIM (Criminal Gangs), or by transnational companies that have occupied their lands and have the power to intimidate and threaten those who want to recover them (Amnesty, 2008; 2015). BACRIM are spread throughout the country. Their illegal activity includes extortion and control over the production and movement of illegal drugs to the seaports, and therefore have become a central actor in forced displacement in some important areas of the territory like Cauca, Chocó, Valle del Cauca, Nariño, and Antioquia. Further, transnational companies have taken advantage of the conflict and purchased large territories for monocrops, establishing alliances with both BACRIM and guerrillas, and thus also contributing to forced displacement.

## Conclusions

This paper has examined the serious issue of forced displacement in Colombia. First, it presented a general summary of IDPs in Colombia - 15% of the population has been affected by the internal war - exposing them to all kinds of violence, marginalisation, poverty and abuse. Second, this paper discussed the national response to forced displacement contained within Law 1448 and the LRP. Most of the reports presented by independent and international organisations approve the ongoing use of the program and consider it an advancement for the rights of IDPs in the region. However this paper illustrates that there are several obstacles and limitations to the national response. This includes the on-going problem of a slow process of restitution, lack of

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displacement, Law 387 of 1997, presents a much broader definition of internal displacement than that contained in Law 1448: disturbances and internal tensions, generalized violence, massive violations of human rights, infringements on international humanitarian law, or other circumstances deriving from the aforementioned situations that altercate the public order. In explicitly excluding victims of “common crime,” Law 1448 was criticized for denying rights to intra-urban IDPs and to those who were forcibly displaced by the BACRIM [Criminal gangs composed by paramilitary forced demobilized in 2004 that were rearmed in order to control illegal drug routes and production [Can you please re-word this sentence – do you mean ‘criminal paramilitary gangs who were forcibly demobilised in 2004 but who subsequently re-armed themselves [or were they re-armed by someone else] in [insert year]] and now control illegal drug routes and production]. However, the Constitutional Court ruled in Award 119 of 2013 that IDPs from BACRIM should be included in the Victims’ Registry and counted as victims” (Ferris, 2014:25). In sum, IDPs in Colombia are both victims and displaced so they deserve double reparation; they lost not only their land and goods but also their families and friends during the conflict. See also: Meier, J. R. (2007). *¿Por qué son víctimas las personas desplazadas?* Boletín Hechos de la Calle. year 3. PNUD publications.

<sup>8</sup> Persons forced to abandon their lands several times and very often after they have received a piece of land in compensation through the LRP.

<sup>9</sup> Guarantees of non-repetition are measures that the State must implement in order to ensure that IDPs and other victims of the conflict will not be affected again through the violations of human rights or breaches or any other kind of generalised violence. Guarantees of non-repetition are referred to in the Preamble and Articles 2, 29 and 229 of the *Political Constitution of Colombia*. Articles 1, 8, 25 and 63 of the *American Convention on Human Rights* (ACHR); and 2, 9, 10, 14 and 15 of the *International Covenant on Civil and Political Rights* (ICCPR). They are also referred to in the *Guiding Principles on Internal Displacement* (Deng Principles).

security for safe resettlement, and failure to provide guarantees that non-repetition will not occur. As a result Colombia is currently facing a significant human rights challenges as it fails to provide safe and successful reparation for these victims of internal conflict.

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