

# **THE VICTIMS AND LAND RESTITUTION LAW IN COLOMBIA IN CONTEXT**

**An analysis of the contradictions between the  
agrarian model and compensation for the victims**

**Paula Martínez Cortés**



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Paula Martínez Cortés | FDCL, TNI | December 2013

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**HANDS OFF THE LAND**

TAKE ACTION AGAINST LAND GRABBING

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# Introduction

Law 1448 passed in 2011, better known as the Victims and Land Restitution Law, has been promoted officially as a demonstration of 'good will' by the Juan Manuel Santos government in Colombia. The law represents a cog in the transitional policy aimed at facilitating steps towards a post-conflict scenario. However, the law's main objective is to provide recognition to the victims of the Colombian armed conflict. This stands in contrast to the policy of denial enacted by the previous government. In order to provide recognition to the victims, the law aims to secure victims' rights to access truth, justice and appropriate compensation while guaranteeing these people will never be victimized again. As such, this law is not merely about officially recognizing the conflict and its victims, it also aims to provide victims of the conflict with compensation.

These demonstrations of political will are representative of the unusual debate surrounding the conflict; a debate that has been confounded by a number of factors that make implementing the law particularly difficult. Furthermore, the law is formulated in a manner that reflects the diversity of the field it seeks to regulate, and this is clear throughout its 80 pages.<sup>1</sup> However, this should not imply that the law is being successfully implemented on the ground. This is a particularly important factor, as the law was only designed to regulate the current transitional period. Moreover, the armed conflict in Colombia continues, and is fundamentally linked to conflict in the political and socioeconomic spheres.

Since Law 1448 was enacted in 2011, various reports have been published that evaluate the law's potential and the challenges faced by its implementation. These reports range from an official analysis that presents data without providing significant references to their context;<sup>2</sup> to publications in national media such as the *Victims Report* in the magazine *Semana* that illustrate the data by focusing on "victimizing events but not the background or meaning

behind victimization".<sup>3</sup> Reports have also been published by NGOs and organizations in an attempt to defend human rights by pressing the Colombian state to fulfill its obligations. At the same time, the Victims and Land Restitution Law has been the object of intense debate among different national and international sectors.

This study seeks to contextualize Law 1448 and frame the discussion in relation to the spatial scenario in which the law is being applied: Colombian rural areas. The aim is then to highlight urgent issues that could act as indicators of rhetorical intention in favor of the (mainly rural) victims. These intentions are not consistent with the development policies imposed by the national government and actually hinder the provision of comprehensive reparations to the very people the law is supposed to defend.

Furthermore, this study aims to relate the land restitution process, and the possibilities of achieving its goals, to the recent national scandals associated with the extractivist, exclusionary and developmentalist model implemented by Juan Manuel Santos' government. These policies include: i) land grabbing in the Colombian *Altillanura*, and other regions such as the Montes de María mountain range; ii) efforts by the government to dismantle the few legal instruments that defend indigenous, Afro-Colombian and peasant farmers' territories; iii) and the repressive treatment of dissent and protests against the imposition of the government's model. One example is the recent national agrarian strike. The government's reaction to the strike was characterized by a lack of understanding of the conflict's complexity: the conflict is more than just an armed conflict; it is also aggravated by diverse policy measures and official decisions.

Finally, this study highlights the role of the international community. Although many of the international community's diverse actions have furthered the defense of human rights, at other times they have sharpened the conflict in Colombia.

# 1. The context of the socioeconomic, political and internal armed conflict in Colombia

Colombia has been submerged in a socioeconomic, political and internal armed conflict for more than a half a century. Its causes have been widely debated, but if there is one factor that traverses the entire conflict, it is the dispute over land and territories as a source of economic and political power. This situation remains unresolved. Additionally, Colombia is also faced by an extremely high concentration of wealth: it is the third most unequal country in Latin America.<sup>4</sup> Clearly, Colombia is not only experiencing an armed conflict, it is also experiencing profound social conflicts that have various forms of expression.

The iStop Now! Report (*iBasta Ya!*) produced by the Historical Memory Group (GMH) estimates that the armed expression of the conflict led to the death of at least 220,000 people between 1958 and 2012.<sup>5</sup> This means that the armed conflict has caused one in every three violent deaths in the country. Furthermore, civilians have been the most affected population: for every dead combatant, four civilians have been killed.<sup>6</sup>

The violence of the conflict also has a wide range of non-lethal dimensions that are just as serious.

*“Up to March 31, the Victims Unique Record (RUV) reported a total of 25,007 missing people, including 1,754 victims of sexual violence. A total of 6,421 boys, girls and adolescents had been recruited by armed groups, and 4,744,046 people had been forcibly displaced. The work done by Cifas & Conceptos for the GMH estimated that there had been 27,023 kidnappings associated with the armed conflict between 1970 and 2010, while the Presidential Program of Integral Attention against Landmines (PAIMA) reported that there had been 10,189 victims of landmines between 1982 and 2012.”*<sup>7</sup>

Discussions about these data have focused on under-registration, and institutional weak-

nesses in collecting information due to the lack of political will to recognize and assume responsibilities in terms of the state’s obligation to guarantee human rights throughout Colombia. For example, in the case of forcibly displaced people, the system of official registration only began in 1997; this was due to an initial lack of recognition of the problem. This situation occurred despite the fact that in 1985 the Colombian Bishops’ Conference publicized the magnitude of this issue.<sup>8</sup> As such, it is important to contrast official data with alternative information collected by other organizations. In this particular case, the Consultancy for Human Rights and Displacement (CODHES) estimates that between 1985 and 1995 819,510 people were displaced as a consequence of the armed conflict. Consequently, a conservative estimate of the number of displaced people could be close to 5,700,000; the majority of these people are peasant farmers, indigenous people and people of African descent. This figure represents 15% of the total population of Colombia.<sup>9</sup>

These displacements have led to between 6.6 and 8 million hectares of land to be expropriated through diverse mechanisms. This “has exacerbated the historical hoarding of land by large landowners, drug traffickers, paramilitary forces and big business”.<sup>10</sup>

*“[...] between 1985 and 2012, the data shows that 26 people were displaced every hour in Colombia as a consequence of the armed conflict, while every 12 hours someone was kidnapped. The period between 1996 and 2005 was even worse: someone was kidnapped every eight hours, and a civilian or soldier was killed every day by a landmine. This means Colombia is second only to Afghanistan as the country with the largest number of landmine victims, but remains the country with the largest number of forcibly displaced people.”*<sup>11</sup>

As the GMH report states, this has been a *limitless war* characterized by a frightening level of cruelty.<sup>12</sup> Paramilitary groups in particular

have practiced this cruelty, but all armed actors have played a role in attacks directed at civilians. Guerrillas, paramilitaries (including the mistakenly labeled ‘*Bandas Criminales Emergentes*’ or ‘emergent criminal gangs’ – BACRIM) and state forces (the National Army, Colombian Air Force, National Police including the Mobile Anti-Disturbances Squadrons – ESMAD) have participated in the conflict in various ways, and deploy diverse modes of violence depending on their particular objectives.<sup>13</sup>

The GMH report also correctly points out that armed violence is not lived and perceived in the same way throughout the country or by all parts of the population. Rural areas have been the settings of extreme violence, and despite the millions of victims many people still consider the conflict to be ‘somebody else’s problem’ and do not view the conflict as linked to their own realities and interests.

*“The violence of the forced disappearances, the violence committed against union leaders, the violence of forced displacements, of the threats to and expropriation of peasant farmers, the sexual violence and many other forms that are often neglected and left out of the public arena are experienced in the midst of profound and painful solitude. The routinization of violence on the one hand, and the rurality and anonymity at the national level of the vast majority of the victims, on the other, has resulted in an attitude of indifference, if not passivity, which is fed by a comfortable perception of economic and political stability.”<sup>14</sup>*

However, such stability is only enjoyed in the main cities, and by the comparatively small numbers of people belonging to the high and middle class.

## 2. Serious human rights violations and denial of the conflict by the previous government (2002—2010)

Without going too far, the previous government, which was headed by Álvaro Uribe Vélez between 2002 and 2010, systematically denied the existence of the internal armed conflict.<sup>15</sup> At the same time, during this period the victims of the conflict remained ‘invisible’. The government of the time argued that the country was faced by terrorists whose strength was diminishing and that should be suppressed by all of the forces available to the state. This perspective led to the polarization of society by diluting the principle of distinguishing between combatants and civilians: the government judged anyone expressing dissent as “collaborators or defenders of the terrorists”.<sup>16</sup> Moreover, this polarization was also a useful means of legitimizing the innumerable abuses committed by state military forces. In some cases, the military collaborated with paramilitary groups in actions taken against the population including people seeking to defend human rights, trade unionists, teachers and students.

Uribe Vélez’s government left behind a constitution that had been reformed so as to enable the former president to be reelected; even Barack Obama told Uribe that he viewed Uribe’s reelection as inappropriate.<sup>17</sup> Uribe’s government was responsible for various grave cases of human rights violations.<sup>18</sup> Among the most well-known are the cases of extrajudicial, summary or arbitrary execution<sup>19</sup> perpetrated by the army. This was an attempt to present “civilians as guerrilla members killed in combat. In reality, these people were civilians who had been deceived, or kidnapped, and then executed and buried in unidentified graves or in mass graves in remote regions so as to avoid repercussions with the families”.<sup>20</sup> This happened as part of a system of incentives through which members of the military were rewarded with days off, promotion and awards depending on the number of kills they reported in combat. More than 3,000 civilians are thought to have been assassinated as part of this system,<sup>21</sup> which belonged to the infamous democratic security policy.

At the time, Juan Manuel Santos was Uribe's defense minister and Freddy Padilla de León served as general commander of the Colombian armed forces. Once president, Santos designated the then retired general as ambassador to Austria. However, Padilla was forced to resign in October 2013 after a complaint by the European Center for Constitutional and Human Rights (ECCHR). The ECCHR had compiled a compendium of serious allegations against the former general; however, his diplomatic immunity meant that no investigation could be carried out.<sup>22</sup>

The other major scandal during Uribe's time in government concerns the intimidation, fear tactics and espionage conducted by the Administrative Department of State Security (DAS)<sup>23</sup> against members of the opposition, NGOs, people defending human rights, journalists, judges from the supreme court, and even against members of the government's own cabinet.<sup>24</sup> This case resulted in the dismantling of the DAS and the investigation and/or condemnation of several of its staff, including its former directors Jorge Noguera,<sup>25</sup> (its director between 2002 and 2005); Andrés Peñate,<sup>26</sup> (director between 2005 and 2007), and Maria del Pilar Hurtado. The latter directed the institution between 2007 and 2008, but was granted asylum by Panama and escaped from the legal case brought against her.<sup>27</sup>

Even former president Uribe is currently under investigation due to his alleged involvement "in the promotion, organization and support of paramilitary groups and Convivir associations that were directly linked to them; through actions and omissions, and colluding with them, not only as governor of Antioquia, but also later as president of the country."<sup>28</sup> This court case was first brought by the justice system,<sup>29</sup> but it has suffered delays that have been criticized by more than twenty members of the European Parliament<sup>30</sup> and judges belonging to the High Court of Medellín. The judges who first ordered the investigation have received death threats.<sup>31</sup>

In 2004, during Uribe's presidency, the constitutional court issued judgment T-025 criticizing the ongoing "unconstitutional state of affairs".<sup>32</sup> The court was referring to the multiple, massive and continuous infringements of fundamental rights against displaced populations as victims of the internal conflict. The ruling not only criticized the lack of state response in the form of providing attention and effective protection to the victims, but also the bureaucratic formalities demanded by the authorities before fulfilling their duty to protect the population. In this sense, the court ordered the government to take specific action to ensure it complied with its constitutional responsibilities. These recommendations included assigning adequate resources to deal with serious breaches of rights, and securing the necessary cooperation between different branches of government.

Nevertheless, the 2011 Monitoring Act (No. 219) led the constitutional court to confirm "the persistence of the unconstitutional state of affairs".<sup>33</sup> The court argued that there was still no effective guarantee of rights for displaced populations.<sup>34</sup>

In short, the Uribe government considered the victims of the conflict to be 'someone else's problem', and saw no link between solving the victims' problems and its own interests. Moreover, the Uribe government left behind a large number of scandals ranging from human rights violations, to authoritarianism, and other illegal acts (or it reformed the law to legalize its actions). Some of these scandals are currently being investigated.

Nonetheless, the former president, whose suspected links to paramilitaries are currently under investigation, is canvassing for the senate. He leads a closed list that includes his previous presidential advisor, Jose Obdulio Gaviria, cousin of the famous illegal drug dealer and head of the Medellín Cartel, Pablo Escobar. Furthermore, Gaviria has been questioned about the role he played in advising the leaders of the 'Don Berna' paramilitary units during their demobilization.<sup>35</sup>



### 3. Juan Manuel Santos' government: 'cleansing' Colombia's image in order to continue the extractivist, neoliberal model of development

After a government such as Uribe's, in which several of the former president's closest aids, as well as senators from congress, have been investigated and/or sentenced for their links with paramilitary groups, some of whom are now fugitives, the Juan Manuel Santos government took up the task of improving the general image of Colombia's state institutions. The new government particularly focused on improving relations with the international community, which was concerned about the multiple, systematic and continued violations of human rights in Colombia and the impunity enjoyed by the perpetrators.

Colombia's 'bad image' abroad led to specific economic consequences that – at least momentarily – hindered the interests of powerful national and international sectors. One example was the proposed free trade agreement (FTA) between Colombia and the US: the ratification process was frozen due to persistent human rights violations against trade unionists.<sup>36</sup>

During his presidential candidacy, Barack Obama stated that he considered signing the FTA "a mockery of the very labor protections that we've insisted be included in these kinds of agreements".<sup>37</sup> However, two years later, the newly elected President Obama called the agreement a 'win-win for both nations'.<sup>38</sup>

In April 2012, Obama enacted a labor action plan urging the Colombian government to stop the violence against trade unionists. This was done to soften the reactions of the US Congress, which did not want to be associated with the country responsible for the highest rate of assassination of trade unionists in the world.<sup>39</sup> The treaty was ratified in October 2011 and finally came into effect on May 15, 2012, despite the complaints and warnings about the adverse effects it might have on the people of Colombia.<sup>40</sup>

Among the reasons that explain why the US Congress decided to ratify the agreement,<sup>41</sup> the following stand out: the recognition of the internal armed conflict by the government of Juan Manuel Santos; the Colombian president's demonstration of 'good will'; and his commitment to human rights through Law 1448 (2011), better known as the Victims and Land Restitution Law. These factors, along with peace negotiations with the Revolutionary Forces of Colombia – People's Army (FARC-EP), were perceived as concrete evidence of political will on the part of the government to begin paying back the historical debt owed by the Colombian state to the victims of the conflict.

As Human Rights Watch points out, even though the United States continues to be the most influential foreign actor in Colombia (in 2012 the US provided almost US\$ 481 million in assistance, of which approximately 58% was destined for the armed forces and the police) it has not demanded that military support be made dependent on compliance with human rights requirements. This situation continues, despite the US Department of State's remarks about the persistence of threats and attacks against people defending human rights, land activists, trade unionists and journalists, among others.<sup>42</sup>

It is important to interpret these supposed demonstrations of 'good will' in the context of the extractivist, neoliberal and exclusionary economic model driven by the Santos government. This model should also be understood as a continuation of what Uribe Vélez was preparing during his mandate. Colombia is currently developing an economic model that does consider rural populations, and that continues to reproduce the conditions which led to the multiple violations of human rights that are still occurring today.

It is no coincidence that this 'good will' was demonstrated at the same time as the president was successfully ratifying free trade agreements

and others negotiated during Uribe's presidency. According to the government's official website, Colombia currently has thirteen commercial treaties, including an FTA with the US, the European Union, Canada, and the EFTA states, among others. Furthermore, two treaties have been endorsed: one with Korea and one with Costa Rica; but these have yet to conclude the ratification processes. Moreover, the Colombian government is also negotiating further agreements with Panama, Turkey, Japan, Israel, the Pacific Alliance<sup>43</sup> and the Dominican Republic.<sup>44</sup>

These treaties have aggravated the internal conflict, and although the government presents the conflict as a simple armed confrontation, the conflict actually has a delicate socioeconomic and political background. The implementation of the FTA with the US on May 15, 2012 exacerbated the obscene levels of violence in rural areas,<sup>45</sup> which have occurred due to disputes over productive and resource-rich territories that promise raw materials with high market value.

Moreover, the implementation of the FTA with the European Union, on August 1, 2013, was the main trigger behind the national agrarian strike started by peasant farmers from different regions of the country.<sup>46</sup> The farmers were protesting against neoliberal policies that forced them to compete with highly subsidized products from Europe. The farmers viewed these policies as a threat to their farms, and to indigenous and Afro-Colombian lands and territories. This situation occurred in a country where these people already face extremely adverse conditions and a history of economic marginalization.

For example, the FTA meant Colombia would have to compete with dairy farmers in the European Union; a region responsible for 30% of global milk production. In fact, according to José Felix Lafaurie, the president of Fedegán (the livestock sector), in just 15 days Europe produces 6,500 million liters of milk; this is equivalent to the total annual Colombian production. Even though Fedegán represents the biggest livestock owners, most Colombian dairy farmers own less than 50 cows, and 236,000 dairy farmers in Colombia own less than 10; in other words, these people are extremely poor smallholders.

Other sectors of the population have joined protests led by the dairy farmers and potato, coffee, cacao and rice growers. These people have included truck drivers and students in urban centers demonstrating their solidarity with the peasant farmers' legitimate demands. These protests remind the government of the existence of large popular sectors that have been made permanently 'invisible' by the developmentalist plans imposed on the country.

The national agrarian strike started on August 19, 2013 and ended in most regions on September 10 after agreement was made on a number of measures in favor of the peasant farmers. Nevertheless, at the current time, some of the strikers have once again criticized the government for breaching this agreement, and the peasant farmers are currently considering mobilizing themselves again.<sup>47</sup>

Additionally, since October 14, 2013, demonstrations initiated by the 'indigenous, social and popular *Minga* in defense of life, territory, autonomy and sovereignty' have blocked 22 major roads in 17 regions of the country.<sup>48</sup> These peasant farmers claim that more than 70% of the agreements that were reached more than three years ago have not been met. These agreements were supposed to solve the historic marginalization and discrimination suffered by indigenous communities, which is aggravated by the armed expression of the conflict.<sup>49</sup> This led the *Minga* to establish a list of demands based on five points (see box).

The different indigenous organizations that form the *Minga* once again denounce the "historic violation" of the rights of the 102 indigenous communities in Colombia, 35 of which are in danger of physical and cultural extinction, as stated by the constitutional court.<sup>57</sup>

The international community has not acted responsibly regarding the humanitarian crisis in Colombia. This is also clear from the discussions held in the European Parliament during the ratification process of the FTA between Colombia and the European Union. On the one hand, this discourse insists human rights be respected; on the other hand, when relevant decisions need to be taken, the economic interests of specific sectors prevail despite the

The list of demands by the indigenous, social and popular *Minga* in defense of life, territory, autonomy and sovereignty:

- 1) "HUMAN RIGHTS, ARMED CONFLICT AND PEACE: adopt the rights set out in the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP); demilitarize the indigenous territories; dismantle the Consolidation Plans, and respect the exercise of territorial control by the indigenous guard."<sup>50</sup> This is aimed at ending the human rights violations occurring as part of the internal armed conflict, and which are being committed by legal and illegal combatants. In 2012, 78 indigenous people were murdered and 10,515 were forcibly displaced.<sup>51</sup>
  - 2) TERRITORY: guarantee protection for the indigenous *resguardos* (territories), because national constitutional laws on their extension and sanitation<sup>52</sup> are not being respected. Furthermore, protect native seeds.<sup>53</sup>
  - 3) CONSULTATION REGARDING MINING, ENERGY AND HYDROCARBON PROJECTS: even though consultation mechanisms are recognized by the constitution, investment projects are commonly implemented without consulting the affected indigenous communities. This is the only mechanism that protects
- the *resguardos*, but even President Santos has stated publicly: "consultations and public audiences are a headache because they are used as an excuse to stop development".<sup>54</sup> In this sense, the *Minga* calls for mining contracts or concessions to be revoked in indigenous territories if such contracts do not conform to the regulations set out in the constitution or to community rights.
- 4) AUTONOMY AND SELF-GOVERNMENT: the exercise of autonomy and self-government is based on the idea of territorial autonomy and on the practice of self-regulated government by indigenous people according to indigenous views of the world.
  - 5) FREE TRADE AGREEMENTS AND AGRICULTURAL POLICY: promote a referendum aimed at annulling the FTAs or re-negotiating them; repeal all regulations that are contrary to food sovereignty".<sup>55</sup> This is important because FTAs prioritize the interests of multinationals over those of ancestral communities, as expressed by Luis Fernando Arias, secretary general of the National Indigenous Organization of Colombia (ONIC).<sup>56</sup>

consequences that these agreements have for people's lives. This situation has even led a number of European parliamentarians and political parties to call for the suspension of the treaty.<sup>58</sup>

It is in the midst of this exclusionary and exploitive economic system's search for legitimacy, which continues despite the profound humanitarian crisis in Colombia, that it is possible to understand the meaning of Law 1448 better known as the Victims and Land Restitution Law. President Santos' diplomatic style has contributed to optimism among the international community regarding the situation in Colombia. However, although we are seeing a change in government style, there has been no substantial change in terms of the economic model that is being imposed on the country. Consequently, it is currently impossible to create the conditions that would enable an 'effective guarantee of rights' in Colombia.

It is also important to highlight that Santos' diplomatic style only applies to the international community; at the national level, the government stigmatizes social dissent, and legitimizes repression carried out by state forces against people who go against the government. This is particularly evident with the approval of Article 353A of the Penal Code, which establishes punishments of between 24 and 48 months imprisonment for people who obstruct transportation routes as part of non-authorized demonstrations.<sup>59</sup> Moreover, the defense minister is seeking to strengthen this article "to enhance the punishments and effectively sanction people who incite, lead, provide means for or promote violent acts and proceedings that affect public order or citizens' normal activities".<sup>60</sup> In addition, the Mobile Anti-Disturbances Squadrons (ESMAD) are to be doubled in size; yet these squadrons are responsible for innumerable abuses of the use of force, and this has even been recorded by passersby and journalists.<sup>61</sup>

## 4. Demonstrations of 'good will': the Victims Law and peace negotiations as inconsistent rhetoric

If we take into account the pressure from the international community on the economic interests defended by Álvaro Uribe Vélez and Juan Manuel Santos, the new government's eagerness to demonstrate 'good will' is understandable. Law 1448, dated June 10, 2010, and the peace negotiations that took place in Havana, Cuba with the FARC-EP, and those that are expected to take place with the National Liberation Army (ELN), are examples of this 'good will'.

There should be no doubt that Colombia needs to end the socioeconomic, political and internal armed conflict, but the problem is actually the lack of government recognition of the socioeconomic and political dimensions behind the conflict. The government continues to reduce the conflict to its armed expression. Even if the negotiators in Havana have reached partial agreement on the agrarian problems in the country, the model of development promoted by the government stands in opposition to the interests of rural communities. Yet these are the very communities that have been excluded from decision-making processes and made 'invisible'. These exclusionary policies affect rural communities, and for example, hinder their ability to collectively develop their own territory. These populations have been forcibly displaced, murdered, and tortured because they lived on lands that multinationals or national enterprises wanted in order to exploit natural resources or the land's productive potential.

The government itself has stated, "the current model of economic development in Colombia; the legal regime that protects private property; the current foreign investment model, and military doctrine are not going to be part of peace negotiations between the government and the FARC-EP".<sup>62</sup> However, it is precisely these issues that have been continually postponed, and that continue to accentuate the socioeconomic and political conflict in the country.

Although the 'peace' negotiations do not involve representatives of popular agrarian sectors, two retired army generals and the president of the National Industrial Association (ANDI) will be taking part. The only space for indirect participation has been organized by the UNDP and the National University of Colombia in a joint effort to bring together diverse sectors of the population to participate in discussion forums on the topics covered in Havana. The results of these forums are to be sent to the negotiations in the form of recommendations by civil society. There are other peace initiatives that are being built by social movements and organizations such as *Congreso de los Pueblos* (People's Congress) and *Marcha Patriótica* (Patriotic March) that are also promoting social empowerment of the peace process.

The government's interest in the negotiations seems to be focused on pacifying Colombian territory to make it easier to implement the large scale extractive investment projects that constitute part of the various free trade agreements.

Even though negotiations with the guerrillas represent a very important step towards the construction of peace in Colombia, these negotiations only represent one dimension of the discussions that need to take place. The implementation of social, political and economic justice is also crucial if a solid foundation for peace is to be constructed.

Assuming the dialog between Juan Manuel Santos' government and the guerrillas evolves into a peace agreement, Colombia will continue to be faced by a situation of 'multiple organized criminality' with the presence of 'black hands', mistakenly known as BACRIM (reorganized paramilitary structures that continue to threaten and murder people). Furthermore, state institutions will continue to be directly or indirectly involved in human rights violations, and this will make it diffi-

cult to generate the necessary environment that could enable the collective construction of peace, and an effective implementation of the Victims and Land Restitution Law. This violence has manifested itself, for example,

through threats to and assassinations of peasant farmers claiming their lands, and through the intimidation of public servants dedicated to implementing the law. This is demonstrated in the next chapter.

## 5. The debates about Law 1448 (2011), better known as the Victims and Land Restitution Law

Juan Manuel Santos' government is implementing Law 1448 to "dictate measures for the consideration, and the provision of assistance and restitution to the victims of the internal armed conflict". From the design-stage to the formulation of the law, several debates arose among different sectors and these were never completely solved.<sup>63</sup> These differences are clear from the inconsistent and lengthy wording of the law, and have been worsened by a number of challenges that surfaced during the law's year-long implementation. Some of these debates and challenges are discussed in the following in the context of their political framework.

### 5.1 A post-conflict law in the midst of an unfinished conflict

Law 1448 is an attempt to move towards social reconciliation. This begins with providing acknowledgement and restitution to victims who have been historically marginalized, particularly by the government of Uribe Vélez. The current government's position is that the law is a demonstration of peace and a firm step towards constructing a post-conflict situation. However, the law is being applied before the conflict has even ended.

The challenge faced by the law is enormous: victims from the past are joining those from the present and the future. This poses serious doubts about the temporary framework being developed by the law. Estimates suggest that the armed expression of the conflict led to 200,000 new victims in 2012 alone.<sup>64</sup>

Even if peace negotiations with the guerrillas are successful, the problem of the reorganized narco-paramilitary groups will persist: the so-called '*Bandas Criminales Emergentes*', which include *Águilas Negras*, *Los Rastrojos*, *Urabeños* and *Erapac*. These groups continue to commit numerous human rights violations<sup>65</sup> and some even specially focus on impeding the land restitution process by murdering the farmers' leaders. These groups call themselves '*Ejércitos anti-restitución de tierras*' (anti-land restitution armies) and are located in Cesar,<sup>66</sup> Magdalena, Guajira,<sup>67</sup> Sucre and Bolívar.<sup>68</sup>

The persistent actions of these groups, and the impunity they enjoy, are permanent reminders of the continued presence of the dirty war in Colombia. Between the late 1980s and the early 1990s, genocide was committed by the *Unión Patriótica*.<sup>69</sup> This organization was granted legal status once again in July 2013,<sup>70</sup> and the murders of Nancy Vargas and Milciades Cano, two former members of this movement, on October 6, 2013, seem to suggest it may be resurfacing.<sup>71</sup>

The *Unión Patriótica* was a leftist party founded in 1985, mainly composed of demobilized members of the FARC who had left the armed struggle to participate in the dynamics of electoral politics. Two of its presidential candidates, eight members of congress, thirteen deputies, seventy councilors, eleven mayors and about five thousand militants were systematically murdered through the joint collaboration of the state security forces, paramilitary groups and drug traffickers. This case has not been taken to the Inter-American Court of Human Rights. As such,

justice has not been done regarding these events; rather they have become a specter that disrupts the ongoing peace negotiations between the FARC-EP and the national government. This leads to the question as to whether demobilized combatants can expect real guarantees of participating in politics, considering that during the current Juan Manuel Santos government, the same government that is holding negotiations in Havana, several leaders of the land restitution process have been murdered.

Even the attorney general, Eduardo Montealegre, accepts that, “there will be a dirty war in Colombia during the post-conflict period, and this will be one of the greatest challenges affecting the Colombian state”.<sup>72</sup> Unfortunately, the dirty war is not something destined for the future: it is already happening, and no effective measures have been put in place to end it.

## **5.2 A transitional law that oscillates between the longing for peace and the persistence of war and impunity**

The Victims Law needs to be interpreted as part of a process that began during Uribe Vélez’s government with Law 975 (2005). This law is popularly known as the Justice and Peace Law (*Ley de Justicia y Paz*) and was aimed at paramilitary demobilization. It formed part of the government’s denial of the armed conflict, and was an attempt to demonstrate to the international community that Colombia was passing through a ‘transitional’ stage and on the path to peace. At the same time, however, it opened the door to impunity for crimes committed by the paramilitaries.

The government’s proposal was strongly criticized by the national and international community, and this led it to be substantially modified.<sup>73</sup> The law was eventually approved in a modified form; although it still did not take into account persistent omissions that had been identified by the law’s retractors. This opened the path to what is known as the situation of ‘transitional justice’ in the country.<sup>74</sup> Both the Justice and Peace Law and the Victims Law are part of that ‘transitional’ process.

Colombia is the first country in history to have begun speaking about transitional justice before it is even clear when armed conflict in the country

will end. Theoretically, conflicting parties would first be expected to agree on peace (or one of the parties would impose peace on the other), before a transitional justice framework would be developed. As this has not yet happened in Colombia, the local context is viewed as particularly interesting by many people.

However, the originality of the Colombian case results in an outlook where the government continues to provide excessive concessions to armed (and unarmed) actors in the name of an unforthcoming situation of peace and social reconciliation. This negatively affects victims’ rights to truth, justice, restitution, and guarantees that they will never be victimized again. The accumulated history of impunity in the country worsens this situation, and the Justice and Peace Law, which paved the way towards ‘transitional justice’, constitutes part of that history.

This juridical framework created to promote paramilitary demobilization has been strongly criticized.<sup>75</sup> First, it has failed in its main objective, as the paramilitaries have reorganized and continue to commit crimes.<sup>76</sup> Second, it passes soft sentences on the actors involved, despite the massive human rights violations being committed and violations of international humanitarian law in return for statements made at ‘free version’ hearings that depend on the willingness of the criminals involved to participate.<sup>77</sup> These hearings often lead to half-truths, and rarely provide new information about the paramilitary phenomenon and its promoters.

Furthermore, the current situation makes it difficult for paramilitaries to make statements at these hearings. There has been a massive extradition of paramilitary leaders to the United States, and this can be viewed as an attempt to conceal inconvenient truths about the most powerful sectors of the country. This has not been widely discussed in the country, and as such, Colombian society is generally unaware of what has been happening.

According to the minister of justice, Alfonso Gómez Méndez, the main problem with the law is that the entire truth is rarely demanded. Demobilized paramilitaries who speak about their versions of the events tend to “suffer from partial amnesia: they only remember people who are no longer in this world and the country has never found out how paramilitary activity began,

who financed it, and who are its accomplices".<sup>78</sup> Crimes against women, and this includes sexual violence, are made particularly invisible, and this is worsened by the difficulties women have in gaining access to justice.<sup>79</sup>

The Victims Law was approved, among other reasons, as a response to criticisms of the Justice and Peace Law, which was providing a juridical framework for the impunity of paramilitaries and enabled them to continue committing crimes. Furthermore, the Justice and Peace Law led the victims to be forgotten. Although the Victims Law corrected the errors put in place by the Justice and Peace Law, the two laws coexist and this is causing difficulties in implementation.

This problem has not yet been overcome. Moreover, implementing flexibility in justice has not led to peace or the fulfillment of victims' rights to truth, justice, reparations and guarantees that they will no longer be victimized.

The lack of justice regarding the atrocities that continue to be committed in Colombia sends a clear message to people participating in the conflict: whether they are involved in the conflict's armed, political or socioeconomic dimensions, they are guaranteed impunity for their crimes, and this particularly remains the case for the most powerful actors.

### **5.3 Discriminatory treatment of victims by a law that is supposed to recognize them**

Although Law 1448 sets out "measures for the provision of attention, assistance and reparation to the victims of the internal armed conflict", the truth is that not all the victims are covered by the law, and those who are, do not necessarily receive the same treatment. This has made it difficult for some people to access compensation and land restitution measures in particular.

The circle of victims has been reduced because of three conceptual distinctions: a temporal distinction; official recognition (or the lack of it) of a person's participation in armed conflict; and a victims' involvement in the dynamics of the armed conflict.

Recalling the argument of Amnesty International,<sup>80</sup> the temporal distinction ensures:

- "The victims of forced displacement and other human rights abuses committed before 1985 may only benefit from symbolic reparations, and not from land restitution or economic compensation.
- The victims of human rights abuses committed between 1985 and 1991 have the right to receive economic compensation but not land restitution.
- Victims whose lands were unlawfully taken or occupied through human rights abuses after 1991, but before the expiration of the law, have the right to land restitution. Since the law is valid for 10 years, this would mean until June 10, 2021".

The second distinction refers to a person's recognition – or lack of it – as having been an armed actor in the conflict. Clearly, victims are unable to benefit from this legislation. This becomes a problem, due to the government's insistence on disregarding continuity among the paramilitary forces.<sup>81</sup> This is not only an attempt to deny the complete failure of the Justice and Peace Law, but also implies marginalizing the victims of paramilitary action before the failed 2006 demobilization process.

It is no coincidence that instead of calling things by their real names, the government labels reorganized paramilitary groups as 'emerging criminal bands' and includes them as part of wider crime. Thus, victims of reorganized paramilitary groups are excluded from the scope of Law 1448, despite the fact that "in many cases, there seems to be a clear relationship between continued paramilitary activity and the constant taking of lands".<sup>82</sup> This situation is worsened by the difficulties faced by victims when they are declared trespassers by state representatives.

The third distinction concerns the victims' level of involvement in the dynamics of the armed conflict. It disregards people who have participated as aggressors, which means:

- Illegal armed actors who have suffered human rights violations or infringements of international humanitarian law cannot be acknowledged as victims.
- This is a particularly thorny issue when applied to minors who are victims of forced re-

cruitment. These young people are only recognized as victims if they are still minors at the time of their demobilization.

- In cases of illegal killings committed by the state security forces, which usually claim that the victims belonged to an illegal armed group, relatives are only recognized as victims if a criminal investigation confirms that the deceased person was not part of one of those organizations. Given the difficulties in clarifying such membership, it may be impossible for relatives to obtain compensation by virtue of this law.

These three conceptual distinctions demonstrate that Law 1448 does not provide measures for the provision of attention, assistance and reparation to all victims of the internal armed conflict. Moreover, practical limitations worsen this situation. Survivors of human rights violations, who have remained close to the lands they claim, only require formal acknowledgement that they are victims of the conflict. In contrast, people who fled the areas where they once lived face difficulties if they have not been recognized as forcefully displaced people.<sup>83</sup>

Consequently, bureaucracy (among other aspects) plays a role in the difficulties faced by people in their attempts to gain victim status. This makes it difficult for victims to access their rights to truth, justice, compensation and guarantees that they will no longer be victimized.

#### **5.4 'Fiscal sustainability' is prioritized over compensation for the victims**

A further debate about Law 1448 regards the so-called criterion of 'fiscal sustainability'. This law was aimed at limiting the amount of compensation provided to victims in order to safeguard the macroeconomic stability of the state. As such, this law never aimed to ensure the return of all belongings to displaced people; neither did it foresee complementary measures such as compensation for loss of profit.<sup>84</sup>

Various actors have criticized the government for continuing to find ways of restricting the social rights of the most vulnerable, instead of questioning "the corruption, the enormous expense on defense, the generous taxes and tax benefits provided to the richest"<sup>85</sup> Colombians and foreign nationals.

This debate was closely related to a constitutional amendment processed the same year by the minister of the treasury, Juan Carlos Echeverry. This amendment modified Article 334 and defined fiscal sustainability "as an instrument to progressively reach the purposes of the social and democratic state based on the rule of law". However, several critics have argued that this was both unnecessary and inconvenient. On the one hand, the government already has the tools to achieve responsible and sustainable public finances. On the other hand, this amendment reflects a narrow understanding of an objective that, although desirable, could be approached in different ways and not just by reducing social expenditure, limiting compensation to victims, and amending the constitution to include fiscal sustainability.<sup>86</sup>

Similarly, Iván Cepeda, a member of the House of Representatives, recalled that under the Victims Law, the massive violations of human rights committed for decades are to be compensated with 40 billion pesos over a period of 10 years. However, the country spends close to 20 billion pesos annually on defense and security, and this is not being questioned by the government.<sup>87</sup>

This narrow and one-sided understanding of fiscal stability is evident in the government's repeal of Presidential Decree 2170 of October 7, 2013. This decree was issued by the State Council in order to reverse the abusive implementation of the health, location and home premiums foreseen by Law 4 of 1992. Law 4 also aimed to increase the – already quite generous – salaries of deputies in congress<sup>88</sup> without justification. As such, had the government not repealed Decree 2170, the nation could have saved more than 2.1 billion pesos<sup>89</sup> (more than 800,000 euros) every month.<sup>90</sup>

These situations demonstrate (among other things) that this narrow and one-sided understanding of 'fiscal sustainability' is used to limit the rights of vulnerable populations in Colombia, and is ignored in discussions on the provision of benefits to the most powerful people in Colombia.

Furthermore, some organizations have denounced the fact that the government seems to have confused the issue of providing access to basic social services with the provision of compen-



sation measures, as it offers preferential access to social services to victims, although such services should be provided to the entire population.

### **5.5 Land restitution: consensus between supporters of opposing models of development**

After reconstructing the institutional debates that led to the Victims and Land Restitution Law, Rodrigo Uprimny and Camilo Sánchez<sup>91</sup> conclude with a question that is interesting in the context of this text: “How was a consensus reached on a topic that society and the state had abandoned for decades and which is affected by so many opposing economic, political and even military interests?”<sup>92</sup>

Several precedents that influenced the law have been mentioned. Uprimny and Sánchez argue<sup>93</sup> that the need for land restitution in Colombia was accepted by different political trends, but they identify two main perspectives with different scopes and purposes. The first perspective conceptualizes land restitution as an instrument of agricultural development and free trade; in other words, clear and legally protected ownership rights are needed to secure incentives for investment, savings and the accumulation of wealth. This perspective, which is based on neoliberalism, criticizes informal ownership titles and the weak institutional protection provided to them.

However, Colombia is characterized by high levels of informal ownership in rural areas, and suffers delays in its official notarial and registry system. This is reflected in the lack of up-to-date and properly systematized information. A cadastral survey has never been undertaken in some areas of the country. “The information concerning areas that have been surveyed was updated in 1994 and 2007; 54% of land registrations were not up-to-date”<sup>94</sup>. Additionally, the information available in these surveys is inconsistent with the information held in other official sources, and it only records ownership of the land but no other rights such as possession, occupation or tenancy.

Informality of ownership, violence and the circuits of illegal economies result in an obscure land market that responds to dynamics which, although they are not difficult to detect, value the land according to variables that are not necessarily related to the actual market price.

Accordingly, this first perspective calls for a massive policy of restitution, the provision of titles and updating the registry and information systems to organize and legitimize existing rural property titles. This would also help remove the suspicion of land ownership being based on expropriation.

In contrast, the second perspective conceives land restitution not only as a means of securing justice for the victims, but also as an acknowledgement of farmers as fundamental social, cultural, economic and political actors. This perspective views farmers’ involvement as essential for the construction of the inclusive agrarian model being advanced in the discussion of the historical problem of inequitable land distribution. It also views this as constituting the root of the conflict.

In summary, whereas the first perspective aims to ‘cleanse’ and organize land property titles as a means of offering legitimacy and juridical security to investments; the second perspective views land restitution as a fundamental step towards building solutions to the diverse dimensions of the conflict.

Although both perspectives could be developed in accordance with the land restitution process, their understandings of ‘agrarian development’ are mutually exclusive: the first perspective aims to enable the accumulation of wealth, and does not seek to guarantee the development of farmers’ territories. Instead, the first perspective would rather move towards intensive large-scale production or the extraction of high-value raw materials for sale on the international markets. In this case, farmers would only have the possibility of acting as cheap labor, or leasing or selling their lands to investors.

In contrast, the second perspective aims to empower historically marginalized farmers and enable them to collectively enjoy, and live and build on, their lands and territories, rather than suffering.

### **5.6 Recovering the land just to die for it**

The title of this subsection is based on an article by Aura Patricia Bolívar, a researcher with *De-justicia* dedicated to assessing the implementa-

tion of the land restitution process.<sup>95</sup> She argues that the state must direct its efforts towards protecting the life and integrity of the people claiming the land, and of public officials, people defending victims' rights and reporters, since all have been subjected to systematic threats with the purpose of undermining the land restitution process.

However, these people have not only faced threats: between 2006 and 2011, the Ombudsman's Office recorded the murder of at least 71 land restitution leaders throughout 14 different regions.<sup>96</sup> Furthermore, by 2011, only one of these crimes had been punished. As Bolivar demonstrates, it will be difficult for the Victims and Land Restitution Law to be successful as long as the aggressors are allowed to continue committing crimes without facing major consequences; without reforms of the systems of protection and prevention to ensure claimants are properly protected; and while the expropriators' power structures remain intact.

Human Rights Watch agrees with Bolivar's arguments and calls on the government to recognize the persistence of the paramilitary phenomenon in order to deal with it properly. Human Rights Watch's last report was subjected to harsh debate, since it argued that there had only been one case of a person being able to return to property that had been reinstated to them. The Land Restitution Unit countered this argument by stating that 233 rulings have been made covering a total of 666 cases and involving almost 15,000 hectares of land. However, the question as to the number of families who have been able to return to their lands was not answered with any certainty.<sup>97</sup>

As part of this debate, Juanita León from *La Silla Vacía* discovered that although there is more than one case of people living on reinstated land, the people who have returned are living in precarious conditions, and in much lower standards than those set out by Law 1448. Furthermore, León discovered so few cases of people having been able to return to, inhabit and work on their own land, that Human Rights Watch's argument about the lack of progress with the law remains valid. It is not enough for a judge to decide in favor of a victim and issue a ruling reinstating rights to a parcel of land; the real difficulty is ensuring families are able to return and live on that land. There have been cases in which farmers have returned to land that has been reinstated to them, only to be confronted

with people with weapons, and threats warning them that it would be better not to return.<sup>98</sup>

However, violence is not the only reason that makes it difficult for people to return to their lands. Although the Land Restitution Unit has granted subsidies to farmers through the Banco Agrario to rebuild houses destroyed by armed actors, León notes that these subsidies have been ineffective because insurance companies refuse to insure rural home-builders due to the history of violence in the area. This is the main reason why people who have returned to their reinstated lands are still living in precarious conditions, and in makeshift shacks.

In a further article, Bolivar highlights the situation of displaced families who live in poverty and find it extremely hard to repay the debts they acquired with financial entities before their displacement. This also applies in cases where restitution rulings have been made in their favor. The constitutional court put measures in place to reduce the amount of debts owed by victims including the cancellation of interest on arrears generated after displacement, and prudential payment terms that take their economic situation into account. However, some of these people have been forced to sell their land at low prices to repay their debts, as in spite of being renegotiated, their debts were not cancelled simply because they lost their property through displacement.<sup>99</sup> Furthermore, although the farmers receive subsidies to enable them to make their lands productive, their socioeconomic situation remains unclear, as they now have to compete under the terms of the free trade agreements that have been ratified by the state.

When examining some of the debates regarding Law 1448, which never cover everything that has been said in this regard, it is very difficult to believe in expressions of 'good will' on the part of the government. Despite the fact that peace negotiations are being held and a new law has been issued on behalf of the victims, the government continues to favor land grabbers to the detriment of rural communities. These communities are being deprived of their lands in regions including Montes de María and the Colombian Highlands. This is further evident in efforts by the government to disrupt the few juridical instruments of defense available to indigenous people, Afro-Colombians and farmers, such as during the recent national agrarian strike by large numbers of farmers and other sectors of the population, which mobilized against the government's exclusionary development policies. At the same time, this is also clear from the

facts that repressive and criminal treatment is the norm when faced by state forces, and that rural communities continue to be marginalized instead of accepted as important social and political actors who should be involved in the construction of agriculture and peace in Colombia.

Contrary to the claims of some analysts that the measures implemented by the Juan Manuel

Santos government represent schizophrenia in handling the problems faced by Colombia; these measures are actually highly coherent decisions aimed at deepening the neoliberal model currently being imposed on the country. This is clearly set out in the national development plan known as *Prosperidad para Todos* (Prosperity For All) (2010—2014),<sup>100</sup> and explained in more detail in the following chapter.

## 6. Favoring the land grabbers: two representative cases

The extent of land grabbing in Colombia has never been clearly established, mainly because the state has no up-to-date registry of rural property, and it is unclear which lands constitute vacant lots and belong to or have belonged to the state. This situation is particularly grave in rural areas, where the last agricultural census was undertaken in 1971.<sup>101</sup>

An Oxfam report detailing the problem states that approximately 80% of land belongs to 14% of landowners. This represents an acute concentration of land ownership and this situation is worsening. Calculations of the Gini Coefficient in Colombia have led to different results, but according to the Atlas of Rural Property Distribution in Colombia, the coefficient increased from 0.841 in 1960 to 0.885 in 2009. This places Colombia as the eleventh worst Country in the world in terms of land distribution, and the second worst in Latin America, only behind Paraguay.<sup>102</sup>

Land has historically been used inefficiently in Colombia, and in some regions it is excessively divided into *minifundia*, and even *microfundia*. In contrast, land is being overused in regions such as Cundinamarca, Boyacá and Tolima. This situation coexists with *latifundian* land distribution in other regions of the country where agricultural land is generally squandered and destined for use as extensive cattle ranches. This is one of the most important reasons behind the concentration of land ownership.

*“From the total 114 million hectares that compose its territory, 37% is considered fit for agri-*

*cultural activity (42 million hectares), of which 10 million hectares are used for agriculture, 10 million for cattle ranching, and the remaining 22 million for rearing cattle in forested areas. However, in 2009, extensive cattle ranching, which is one of the most inefficient uses of land, stretched over 40 million hectares, whereas only 5 million hectares were used for agriculture. This distribution could be changing, as the growing demand for biofuels has led a number of large cattle ranchers to move towards sugarcane and palm oil production.”<sup>103</sup>*

Despite the difficulties regarding the exact numbers, some researchers and members of the opposition have documented specific cases of land grabbing, including cases from the Colombian Highlands, also known as the Orinoquia region, and from the Montes de María mountain range. Both of these cases provide an understanding of the size of the problem and of how the present government prefers to modify the law in the name of ‘development’ to legalize its illegal actions. This favors the economic interests of public officials, and the domestic and multinational companies involved in the scandals.

### 6.1 Land grabbing in the Colombian Altillanura: the Orinoquia region

The most recent case of land grabbing in Colombia occurred in the highlands. This case was investigated and denounced publicly in June 2013 by Wilson Arias,<sup>104</sup> a member of the

House of Representatives, together with the congress deputy, Jorge Robledo.<sup>105</sup> Both politicians belong to the *Polo Democrático Alternativo* party, one of the only opposition parties existing in the country. Their criticism of companies illegally taking ownership of lands unleashed a national scandal with international repercussions. It affected large Colombian companies such as Ingenio Riopaila, and international ones such as the North American multinational, Cargill; the Brazilian company, Mónica Semillas, and the Italian-Spanish owned company Poligrow. This debate has yet to be resolved.

These companies contravened Article 72 of Law 160 (1994)<sup>106</sup> that expressly forbids natural or juridical persons that already own rural land from taking ownership of vacant lots larger than one *Unidad Agrícola Familiar* (UAF – or family agricultural unit). The aim of this law is to ensure that vacant lots are assigned to poor farmers (and not to entrepreneurs) in parcels large enough for a farming family to produce enough to sustain themselves in a specific region and have a profit margin that enables them to save. This unit takes into account the specificities of land in the region such as its fertility, and is defined by regional law. This means the size of one family agricultural unit varies throughout the country, and depends on the quality of the land available.<sup>107</sup> In cases where vacant lots are assigned to people who have rural property or in amounts exceeding the size of one UAF, the Colombian Institute for Rural Development INCODER (the government agency in charge of land tenure) has the power to annul this person's ownership of that land.

The companies mentioned above contravened Law 160 (1994) by means of various legal tricks, which Oxfam criticized in its report *Divide and Purchase*.<sup>108</sup> These tricks consisted of: i) purchasing parcels of land neighboring each other that had been divided up so to not to exceed 1 UAF per property; ii) creating different shell companies ('SAS') to make it seem as if different buyers were purchasing the land, despite the fact the different shell companies had the same owner; iii) buying up each of the neighboring properties using these shell companies.

According to Senator Robledo, the Colombian companies involved include: Riopaila Castilla, which bought a total of 35,500 hectares in Vichada divided into 42 parcels of land for 41

billion pesos (16 billion euros). The company bought the land by setting up 27 shell companies. Corficolombiana, which belongs to Grupo Aval and Luis Carlos Sarmiento Angulo, created 7 shell companies to buy 14 parcels of land totaling 6,000 hectares. La Fazenda created 16 shell companies to purchase 16 parcels of land totaling 22,700 hectares. This last company, a holding company belonging to Antioquian and Santander businessmen, purchased lands that were formerly illegally acquired by relatives of Víctor Carranza, known as the 'the emerald tsar' for his enormous wealth, which he consolidated through his connections to drug trafficking, paramilitaries, land grabbing and violence. Carranza was never prosecuted for his crimes, and as such became a symbol of impunity in Colombia.<sup>109</sup> This land, where agricultural-industrial mega-projects are now being built, was formerly used to train paramilitaries and for torture, 'disappearances' and murders.<sup>110</sup>

Among the multinationals, the case of Cargill is particularly notable. According to an investigation by Arias, Cargill created 40 shell companies to purchase 43 parcels of land totaling 61,000 hectares for a price of 61 billion pesos. The report by Oxfam provides similar figures:

*"The investigation led us to discover that between 2010 and 2012, Cargill used 36 shell companies to buy 39 parcels of land in Vichada in the municipalities of Santa Rosalía, Cumaribo and La Primavera. This area of land extends to at least 52,575.51 hectares (equivalent to six times the size of Manhattan Island)."*<sup>111</sup>

The same report lists the 13 cases of undue clustering of UAF that were investigated by INCODER between 2010 and 2013 under the administration of the ex-minister of agriculture, Juan Camilo Restrepo.<sup>112</sup> Oxfam also highlight a case in which 5,577 hectares of land that had belonged to the Macondo Finca (in Mapiripán, in the province of Meta) was bought by the Italian-Spanish company Poligrow. A further case involved the Santa Ana Finca, which saw 70,000 hectares of land in the same municipality divided into vacant lots that have not yet been allocated by the state. Both cases were criticized in non-official communications and this has led to a more in depth investigation of these and other cases of land grabbing.<sup>113</sup>

The Brazilian company, Mónica Semillas, wanted to create 6 shell companies to purchase 9 par-

cels of land totaling 8,866 hectares in Meta and Vichada. Wood and Timberland have also been involved in suspicious purchases of land in La Primavera in Vichada; but it is more difficult to keep track of these companies since they are incorporated in the British Virgin Islands tax haven.<sup>114</sup>

These cases have resulted in public outcry, not simply because of the astonishing figures involved or the flagrant violations of the law by companies at both the national and international level, but also because high-level members of the government have been variously involved. Carlos Urrutia is one example. He was the Colombian ambassador in Washington, and a partner and director of the Brigard & Urrutia lawyers' office, the company that advised companies such as Cargill and Riopaila Castilla in juridical trickery in order to defeat the law. In the case of Riopaila Castilla, one of Brigard & Urrutia's lawyers even acted as an intermediary by providing his name for the purchase of lands that were then transferred to the company without charge.<sup>115</sup> This led to Urrutia's resignation, who claimed he wished to prevent the executive from being marred by political problems.<sup>116</sup>

This situation, worsened by the national agricultural strike, generated a difficult environment for the political administration. Francisco Estupiñán, the minister of agriculture, soon lost control of the situation, and was unable to counter the opposition's criticism of the illegal appropriation of vacant lots. Furthermore, his ministry provided no clear position on the problem, and he was unable to meet the demands of farmers who were protesting against the FTAs entered into by Colombia.

As minister of agriculture, Estupiñán stated that the companies involved in the land grabbing scandal had clearly acted illegally. He stated this in order to defend an 'inclusive' agrarian model that welcomes both entrepreneurs and farmers. In this sense, he distinguished between ownership of the land and the improvements that have been made to the land on the one hand, and the importance of farmers being able to rent land that legally belongs to them in order for it to be exploited by land grabbing entrepreneurs on the other.<sup>117</sup> This was important to Estupiñán as a means of ensuring the state would not lose investments and the 'development' with which it is associated.<sup>118</sup> This position results from the government's claims of wanting to protect farmers. However, the government only includes farm-

ers in its plans when scandals break, or when it is necessary to ensure that farmers represent the smallest possible obstacle to the interests of large investors. If this position were to be consolidated, farmers would lose their rights to decide how to use their land. Yet this is land that should be used to develop the farming economy. This situation, along with the continuation of the national agrarian strike, cost Estupiñán his post as minister of agriculture; a position he held for just three months.

## **6.2 Land grabbing in the Montes de María mountain range in Bolívar and Sucre**

Together with juridical tools to evade the law, the use of violence has been another typical instrument used to take land from rural communities. The case of the Montes de María mountain range in Bolívar clearly outlines this situation.

According to a report published by the ILSA (*Instituto Latinoamericano para una Sociedad y un Derecho Alternativo*),<sup>119</sup> the Bolívar region has suffered a phenomenon called *empresarización* (entrepreneurization) together with the clustering of land that 'casually' occurs following the displacement of specific communities. This situation has resulted in the expropriation of thousands of farmers. These people lack privileged access to information, and contacts in government, and to the notaries and lawyers who could help them exploit the colorful juridical tricks that would ensure the law finally accommodated their interests.

In this case, the state sold off old debts built up by farmers from the Montes de María mountain range to a private company. These debts were with Caja Agraria and were supported by the farmers' land. In 2007, the farmers' debts were sold to Covinoc, a debt collection company. Covinoc and its army of lawyers ended up owning the land, some of which was given to the company by the state and later ended up in the hands of entrepreneurs. These entrepreneurs included people with contacts working for the administration of the time: the government of Uribe Vélez. The agriculturalists and livestock holders, Vélez Arango, Álvaro Ignacio Echeverría and Luis Esteban Echavarría (and their company Tierras de Promisión) are some of the investors involved in the massive purchases of almost 75,000 hec-

tares of land.<sup>120</sup> Additionally, entrepreneurs from Antioquia, such as Cementos Argos, currently hold 11,200 hectares of land for a reforestation project as part of a social responsibility program run by Reforestadora del Caribe S.A.<sup>121</sup>

According to a 2011 report delivered by the Superintendence of Notaries and Registry Offices to the Ministry of Agriculture, 41% of expropriated land stemmed from UFAs granted by INCODER during the 1990s to landless farmers. The new entrepreneurs that arrived in 2008 bought the land for an average of 300,000 pesos per hectare; by 2011, one hectare was worth more than 2 million pesos; and by 2011 that price had risen to more than three million pesos.<sup>122</sup> These companies defended themselves by stating that nobody had pressured the original land owners to sell. Yet this flies in the face of the well-known instances of violence experienced in the region.

Article 99 of the Victims and Land Restitution Law stipulates that when productive agricultural-industrial projects are undertaken on land that has been expropriated, and the new owner's 'good faith' is proven, a magistrate can authorize an agreement between the displaced individual and the entrepreneur in order to complete development of the project. In cases where good faith cannot be proven, the terrain passes to the Administrative Restitution Unit to be exploited by third parties, whereas the production is divided between the victims' compensation program and the entrepreneur.<sup>123</sup> The question, however, is whether entrepreneurs will be declared as having acted in 'good faith'? This question is also posed by Iván Céspedes, the member of the House of Representatives who disclosed these irregularities. How then will the more than 1,000 applications for land restitution in the Montes de María mountains be solved?<sup>124</sup>

## 7. Conclusion

After reviewing part of the history of the multiple violations of human rights rural populations in Colombia have faced at the hands of the former and current government, it is easy to be tempted towards a skeptical reading of the new government's 'good intentions'. This is particularly the case considering the fact that the current president, Juan Manuel Santos, was also minister of defense under the Uribe Vélez government. However, the Victims and Land Restitution Law constitutes progress in terms of acknowledging the existence of victims who have otherwise been treated as invisible for much of recent history. Furthermore, it is also clear that some judges, members of congress, honest officials and organizations are making commendable efforts to ensure the law is executed in the best possible manner. Despite this progress, Colombia remains a country of great contrasts. On the one hand, sharp economic inequalities coexist; on the other hand, super-human efforts are being undertaken to build an effective peace. Additionally, the country faces a deeply corrupt political arena that serves the interests of the most powerful domestic and international economic sectors as if they were beneficial to the entire population.

This text has attempted to place the debate in context and bring to the surface the interests that underpin apparently noble intentions. Suspicion should be the first criterion we use to interpret the actions of the Colombian government: the burden of history leaves us no other choice.

The problem of Law 1448, besides resulting from an agreement between opposing sectors in pursuance of different purposes, is the difficulty of offering compensation while providing guarantees to the mostly rural victims that they will no longer be victimized. This is because the socioeconomic, political and armed conflict continues, but also because of the purely extractivist agrarian model that provides no place for farmers, indigenous and Afro-Colombian communities. Furthermore, the law prevents farmers from developing their lives on their own terms, on their territories. Instead, the only option the government offers these people is acting as cheap labor in the diverse enclaves used for the extraction of natural resources.

As if that were not enough. The government continues to stigmatize and repress social dissent

with recourse to the same argument: the demonstrations have been infiltrated by the FARC. This is another reason why peace in Colombia will be so important for these communities, because once the guerrillas have been demobilized, the government will no longer be able to deny the legitimacy of social dissent and collective initiatives.

The use of juridical entities such as shell companies by entrepreneurs to sidestep the laws against clustering family agricultural units, and the evasion of the issue by the government, clearly demonstrates that ways to legalize expropriation are being actively sought, while legitimate protest is being criminalized. This is occurring at a time in which a law is being promoted that has supposedly been adopted as a means of returning dignity to the victims.

The international community has had both a positive and negative impact on Colombia. On the one hand, pressure from the international community to respect human rights has been one of the few incentives that has actually worked. However, Colombia's adoption of various free trade agreements, combined with land grabbing in which several foreign companies have been involved, clearly reveals that internal problems in Colombia have been worsened by foreign intervention and that this poses a limited solution for the country.

Faced with this difficult outlook, it is worth pinpointing some fundamental aspects of this issue both at the national and international level for further research:

- ⇒ The scarce juridical defense mechanisms available to indigenous people and Afro-Colombians to defend their collective territories are under threat as are those that help prevent land grabbing. The focus of research needs to be placed on government actions aimed at dismantling the system of prior consultation and public audiences, and restrictions that help prevent land grabbing of vacant lots larger than one family agricultural unit.
- ⇒ The government never tires of denying the legitimacy of social processes and stigmatizing tools used to defend lands and territory. This strategy is supported through official media and aimed at persuading the public

that these processes have been infiltrated and influenced by the FARC and representing the group's interests.

- ⇒ It has become common to claim that social dissent threatens or limits the 'country's development'.

Such statements have an impact on public opinion and the way the public view different social movements. However, shortly after the government makes these claims, the level of threats and harassment by reorganized paramilitary groups tends to increase against people involved in protests or people who are actively defending themselves in other ways.

- ⇒ The Colombian government needs to acknowledge the persistence of reorganized paramilitary groups that are threatening the political participation of the guerrillas. Guarantees are needed that the political genocide carried out against the *Unión Patriótica* will not be repeated. Furthermore, until the government acknowledges the political and socio-economic dimensions of the conflict, it will be difficult to put measures in place that weaken the economic structures that have provided support to illegal armed groups, and maintain and worsen the accumulation of property in Colombia and the exclusionary model of development.

Colombia needs to develop an inclusive agrarian development policy. This policy needs to be developed together with the diverse rural communities existing in the country. Participation in the development of this policy needs to occur in a manner that treats these communities as political actors who have much to impart about development. This would also represent the most useful means of promoting such a measure. The need for an inclusive agrarian development policy is growing increasingly urgent because rural communities are experiencing nothing but indifference, discrimination and repression in their relations with state institutions. This not only increases dissent, it also makes it ever more difficult to construct spaces for dialog. This is the case because relations between the two parties remain governed by an erosion of confidence that has been reinforced by decades of violence.

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- 112 *La Silla Vacía* has criticized the fact that the report “Implementación de la política integral de tierras 2010-2013”, which was published by the outgoing Minister Restrepo, and that Oxfam used to highlight cases of the appropriation and accumulation of vacant lots, is no longer available on the internet. However, at the time of writing the report available at: [http://portalterritorial.gov.co/apc-aa-files/7515a587f637c2c66d45f01f9c4f315c/implementacion\\_politica\\_integral\\_de\\_tierras.pdf](http://portalterritorial.gov.co/apc-aa-files/7515a587f637c2c66d45f01f9c4f315c/implementacion_politica_integral_de_tierras.pdf) See also: Bermúdez Liévano, Andrés 18 Jul 2013 “El negocio ‘baldío’ de Poligrow”, in *La Silla Vacía*, available at: <http://lasillavacia.com/historia/el-negocio-baldio-de-poligrow-45234>
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## **THE VICTIMS AND LAND RESTITUTION LAW IN COLOMBIA IN CONTEXT**

An analysis of the contradictions between the agrarian model and compensation for the victims

Paula Martínez Cortés | FDCL, TNI | December 2013

