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**Between despair and hope: the case of Colombia
about the implementation of the standard of
reparation of the Inter-American System of
Human Rights****

*Entre la desesperación y la esperanza: el caso de Colombia
Sobre la aplicación de la estándares de reparación del
Sistema Interamericano de Derechos Humanos*

*Entre o desespero ea esperança: o caso da Colômbia sobre
a implementação dos padrões de reparação do Sistema
Interamericano de Direitos Humano*

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** Este artículo hace parte de su investigación sobre los derechos humanos y la reparación de víctimas del conflicto armado en Colombia.

Abstract

This article argues that the Colombian legal framework, and specially the Law of victims and restitution of lands (Law 1448 of 2011), satisfies the requirements of the Inter-American Human Rights Commission and Court about the reparation of victims from an internal conflict. However, the persistence of the conflict in Colombia, constrains the success of the implementation of the measures of reparation. It is especially true with regards of the restitution of lands to the victims. Also, a series of recommendations are presented to contribute to solving the problems.

Keywords: Inter-American Human Rights System, Repair, Armed conflict, Law 1448, Colombia.

Resumen

Este artículo muestra como el sistema jurídico colombiano, y especialmente la Ley de víctimas y restitución de tierras (Ley 1448 de 2011), satisface los requerimientos de la Comisión y de la Corte Inter-Americana de Derechos Humanos, para reparar a las víctimas del conflicto. Sin embargo, las normas sobre reparación pierden efectividad al momento de ser implementadas, debido a la permanencia del conflicto armado en Colombia. En particular, se estudia el caso de la reparación de víctimas a través de la restitución de tierras. Así mismo, se ofrecen una serie de recomendaciones para contribuir a la resolución de los problemas.

Palabras claves: Sistema Inter-Americano de Derechos Humanos, Reparación, Conflicto armado, Ley 1448, Colombia.

Resumo

Este artigo argumenta que o marco legal colombiano, e especialmente a Lei de vítimas e restituição de terras (Lei 1448 de 2011), satisfaz as exigências da Comissão de Direitos Humanos Interamericana e Tribunal sobre a reparação de vítimas de um conflito interno. Sin embargo, las Normas Sobre reparación pierden efectividad al momento de Ser implementadas, debido a la permanencia del conflicto armado en Colombia. En particular, se estudia el caso de la reparación de víctimas a través de la restitución de tierras. Así mismo, se ofrecen una serie de recomendações para contribuir para a resolução dos problemas.

Palavras-chave: Inter-americana de Direitos Humanos do Sistema, reparação, O conflito armado, Act 1448, Colômbia.

“No hubo tiempo para la tristeza”. Víctima de Los Montes de María
 [“There was no time for sadness”. Victim from the Marie Mountains]

Introduction

Colombia has lived an internal armed conflict for more than fifty years. The most important actors of this conflict have been the guerrilla movements, the paramilitary groups, the drug cartels and some agents of the Colombian State. The Colombian civil society has suffered the effects of the confrontations between the mentioned actors¹. To stop the war and its effects on the civilian population, different Colombian governments have implemented peace processes and celebrated peace agreements with different illegal armed groups. The execution of the peace agreements has required the creation of a legal framework to investigate, prosecute and punish the members of the illegal armed groups. It has also been created a legal framework to assist and repair the victims of the Colombian armed conflict.

Colombia is a party of the American Declaration and Convention. Besides, it has also recognized the authority of the Inter-American Human Rights Commission and the Inter-American Court. In consequence, the Colombian legal framework must satisfy the standards, concerning internal armed conflicts, i.e. those on legal subjects such as victims integral reparation, truth, and justice, which have been developed by these international organizations.

This article argues that the Colombian legal framework develops each one of the forms of reparation established by the Inter-American Human Rights Commission and the Inter-American Court (restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition). It is done mainly through the Law 1448 of 2011². However, the persistence of the conflict constrains the success of the implementation of the aforementioned forms of reparation. It is especially true with regards of the restitution of lands to the victims.

1 According to the National Center for Historical Memory –Centro Nacional de Memoria Histórica- (2013), between 1989 and 2012, 223 persons died as a result of terrorist attacks. Between 1980 and 2012, 11,751 persons were victims from massacres. Between 1970 and 2010, 39,059 acts of kidnapping were registered. Each one of these kidnappings victimized 1 or more persons. Between 1983 and 2013, 10,204 persons were affected by anti-personnel landmines (minas antipersonales). Between 1988 and 2012, 2,981 civilians were killed as a result of actions of war. Between 1981 and 2012, 23,161 people were victims of selective killings. National Center of Historical Memory.

2 Law 1448 of 2011. Called “Law of victims”.

In fact, the persistence of a conflictive environment, characterized by threats, forced displacement, assassinations against displaced population, as well as the lack of investigation, prosecution, and punishment against the authors of those crimes, amounts to an intensification of the climate of fear that surrounds land restitution in different regions of Colombia. Therefore, the internal displaced people and their leaders are losing their motivation to file land restitution claims, and to finally re-possess the lands that the authorities recognized as under their legal ownership.

If the victims cannot recover the land where they lived before their victimization; or, if the victims cannot receive and use another land as a compensation, they will not have a place to restart their lives, and the projects of their families.

In order to overcome the aforementioned problematic situation, the author recommends the adoption of the following measures: (i) The creation of a special body in the army, intended to protect the areas where the victims receive lands. Once this policy is made effective, the returned or relocated people will have support from both the national and territorial entities, from military personnel trained on human rights, and from regional centers of attention and reparation. (ii) The intervention of welfare services, and specifically social services and security staff in zones of conflict, so that these zones could be made available for restitution processes. (iii) The strengthening of executive, legislative and judicial branches of the Colombian State, so that these governmental entities may meet the challenges concerning the investigation, prosecution, and punishment of those who have committed crimes against the population, including displacement, and whether or not they are recognized as members of illegal groups. (iv) The public officials who support the intimidations, killings and forced displacement of land restitution claimants have to be strongly investigated, prosecuted, and punished. (v) The Colombian government must ensure the demobilization of illegal armed groups. (vi) The guerrilla groups known as Fuerzas Armadas Revolucionarias de Colombia (FARC), and Ejército de Liberación Nacional (ELN) must refrain themselves, as part of their compromises with the Colombian government within the framework of the current peace process negotiations, from issuing any more threats, nor committing any more killings and forced displacements against land restitution claimants.

The first part of this paper is dedicated to the study of the way in which the Colombian legal framework develops each form of reparation established by

the Inter-American Human Rights Commission and the Inter-American Court, as well as the way in which the persistence of the armed persistence conflict both constrains and curtails the successful implementation of reparation efforts, specifically in what concerns the restitution of lands to the victims. The second part presents a set of recommendations, which have been developed so that they can be useful to address the problematic situation. The third part will conclude.

Although the Colombian legal framework develops each form of reparation established by the Inter-American Human Rights Commission and the Inter-American Court, the persistence of the conflict curtails the successful implementation of such forms of reparation, and especially those concerning the restitution of lands to the victims

The equality of all the citizens before the law is one of the fundamental aspects of the rule of law. But, in the Colombian case, it is necessary to advance towards a concrete re-establishment of the conditions of equality that are required in order to make possible the full-fledged recognition of the victims' status as citizens. Only when this issued could be met by means of policy and actual actions on the ground, the victims of an internal armed conflict can regain trust in the public institutions, which is a fundamental step on the path towards the achievement of peace.

In order to regain the way of life that they had before being affected by the armed conflict, the victims of crimes committed as part of that conflict, have the right to receive an adequate reparation for the harm they have suffered.³

Reparation measures should be sufficient, effective, prompt, and proportional to the gravity of the crime and the extent of the suffered harm. They must be also aimed to the re-establishing of the victim's prior situation, and must be enforced without discrimination⁴. The nature and amount of the

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3 The inter-American Human Rights Commission Follow-up on the demobilization process of the AUC in Colombia, Digest of published documents (2004 – 2007), Report on the demobilization process in Colombia, December 13, 2004, p. 20. The Inter-American Human Rights Court has noted that measures of reparation should tend to wipe out the effects of the violations committed. See: I/A Court H. R., Case of Myrna Mack Chang, Judgment of November 25, 2003, Series C No. 101, p. 237. Cantos Case, Judgment of November 28, 2002, Series C No 97, p. 108. Caracazo Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of August 29, 2002, Series C No 95, p. 78.

4 Inter-American Human Rights Commission, Follow-up on the demobilization process of the AUC in Colombia, Digest of published documents (2004 – 2007), Report on the demobilization process in Colombia, December 13, 2004, p. 21.

reparations depend on the kind and extent of injury inflicted. Reparations may neither enrich nor impoverish the victims or their heirs.⁵

The reparation should take the form of individual measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁶ However, notwithstanding the fact that the Colombian legal framework develops each form of reparation established by the Inter-American Human Rights Commission and the Inter-American Court, the persistence of the conflict constrains and curtails the successful implementation of the reparation forms, especially in what concerns the restitution of lands to the victims.

In order to address this subject, we will, firstly, give a short explanation on how the Colombian legal framework addresses both the Inter-American Human Rights Commission and the Inter-American Court requirements concerning reparation. Then, the discussion will be focused on the restitution of lands.

How does the Colombian legal framework address each form of reparation stated by the Inter-American Human Rights Commission and the Inter-American Court?

The Inter-American Human Rights Commission has stated that the reparation of a victim may require **measures of rehabilitation**, such as medical and psychological care, and legal and social support services.⁷ The Law 1448 of

5 Inter-American Human Rights Commission, Follow-up on the demobilization process of the AUC in Colombia, Digest of published documents (2004 – 2007), Statement by the Inter – American Commission on Human Rights on the application and scope of the justice and peace law in Colombia, August 1, 2006, p. 63. I/A Court H.R., Case of the Massacre of Pueblo Bello, Judgment of January 31, 2006, Series C No. 140, p. 228. Case of the “Mapiripán Massacre”, Judgment of September 15, 2005, Series C No. 134, p. 245. Case of Acosta Calderón, Judgment of June 24, 2005, Series C No. 129, p. 148. Case of the Indigenous Community Yakye Axa, Judgment of June 17, 2005, Series C No. 125, p. 182. Case of Caesar, Judgment of March 11, 2005, Series C No. 123, p. 123.

6 United Nations, Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1990/10, July 26, 1990. I/A Court H.R., Blake Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No 48, p. 31. Suárez Rosero Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No 44, p. 41. Castillo Páez Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C No 43.

7 Inter-American Human Rights Commission, Follow-up on the demobilization process of the AUC in Colombia, Digest of published documents (2004 – 2007), Report on the demobilization process in Colombia, December 13, 2004, para. 21.

2011 understands the rehabilitation as a group of strategies, plans, programs and actions of medical, psychological, juridical and social characteristics, aimed to the reestablishment of the physical and psychosocial conditions of the victims.⁸ According to the same law, the government has to implement a general program of rehabilitation, which has to include both individual and collective measures intended to support the development of the victims within their familiar, cultural, labor and social environments.

The psychosocial support that the government is bound to offer to the victims, must cover all the steps of a reparation process; and its length must be determined as to meet the necessities of the victims, their families, and the community⁹. Additionally, the government has to design and implement a particular program for the psychosocial attention, and the integral health, of the victims. The government has also to guarantee attention by professionals with specific technical formation, and related experience concerning cases of sexual violence, which victims are mostly women. This program must cover the cost of the expenditures related to services, medicines, and transport if it is required.¹⁰ Furthermore, the legal services and the social support to the victims are provided through the measures of assistance¹¹ and attention¹², a particular category of the Colombian public policy for the victims from the conflict.

In addition to the measures of rehabilitation, a legal framework to the management and overcoming of internal armed conflicts must have **measures of satisfaction**. These measures include the public and complete disclosure of the outcomes from the judiciary investigations that are aimed to the establishment of the truth about what happened. This must be done without giving rise to unnecessary security risks for both victims and witnesses. It has also to address the requirements for the search of both the disappeared and the remains of the dead.

8 Article 135, Law 1448 of 2011.

9 Article 136, Law 1448 of 2011.

10 Article 137, Law 1448 of 2011. In addition to the measures established by the Law 1448 of 2011 about mental rehabilitation, the Law 986 of 2005 develops psychological and psychiatric measures about the care of the kidnapped people and their families (article 18, Law 986 of 2005).

11 The measures of assistance are humanitarian support, funeral assistance, health, education, identity, food, familiar reunification, accommodation, and generation of incomes.

12 The measures related to attention are information and orientation, juridical support, and psychosocial support

Furthermore, it must deal with the issuance of official declarations or judicial decisions related with the reestablishment of the dignity, reputation, and rights of the victims; and of the persons linked to them. Finally, such a program must serve to assure the public recognition of the events and the responsibilities; as well as the recovery of the memory of the victims, and the teaching of the historical truth.¹³

The Law 1448 of 2011 determines that the measures of satisfaction must offer welfare benefits to the victims, and must contribute to assuage their pain. The guarantees of satisfaction are, inter alia, the following: (i) Investigation, judgment and sanction of the people liable for human rights violations. (ii) Public and complete diffusion of the victim's recollections about the facts concerning the crimes committed against them. However, there is a caveat regarding this specific measure, according to which it must not be enforced if the victim can be further harmed while trying to recall and tell his or her story. (iii) The government must contribute to the search of disappeared people, and it must support the process identification of human remains, as well as their subsequent inhumation, which should be carried out in accordance to the familiar and communitarian traditions. (iv) The government must grant the public recognition of the status of victim, which includes his/her dignity, name and honor. All of these aspects must be guarantee before both the community and the offender. (v) The government must grant the public recognition about the responsibility of the authors of the violations against human rights. (vi) The government must assure the means necessary to the diffusion of apologies from offenders, and acceptances from victims, concerning violations of human rights. (vii) The government must build memorials and establish commemorative acts and public tributes.¹⁴

It is important to emphasize the relevance that the Law 1448 of 2011 gives both to the recovery of the memory and the teaching of the historical truth. In

13 Inter-American Human Rights Commission, Follow – up on the demobilization process of the AUC in Colombia, Digest of published documents (2004 – 2007), Report on the demobilization process in Colombia, December 13, 2004, p. 21. The Inter-American Human Rights Commission established that general guarantees of satisfaction require measures aimed at remedying the injury suffered by the victim, including the cessation of continuing violations, and the verification of the acts constituting international crimes. These measures relate to the guarantees of non-repetition and will be explored later.

14 Article 139, Law 1448 of 2011.

fact, that law establishes April 9th as a day to be consecrated, every year, as a national memory commemoration, during which solidarity with the victims is to be expressed and exerted.¹⁵

Within this governmental and legal framework the reconstruction of the memory is bound to encompass the principles of pluralism, participation, solidarity, and the right of free-speech. Moreover, it must comply at every time with the constitutional prohibition of censorship¹⁶. The Law 1448 also creates the Center of Historical Memory. This center is in charge of the retrieving and collection of the documental stuff and archive material, as well as the oral testimonies or any material related to the violations of the victims' rights.¹⁷

In addition, Colombia, as a member of the Inter-American Human Rights System, which has an internal armed conflict situation, must device **guarantees of non-repetition**. These guarantees are intended to prevent further human rights violations.

In concrete, such guarantees imply the dissolution of illegal armed groups, the derogation of laws that favor the commission of human rights violations or trespasses against the boundaries established by the international humanitarian law; the effective governmental control, exerted by civilian authorities, of the armed and security forces. This last measure implies the limitation of the jurisdiction of military courts, which are limited to deal only with cases that are related with service related crimes. In addition, the Colombian government must strengthen the independence of the judiciary. It must be done in such a way as to increase the protection conferred to judicial officers, human rights defenders, and journalists.

Furthermore, the Colombian government must device mechanisms through which both Colombian citizens and state agents could be trained on correct handling of human rights issues by means of the compliance to the codes of conduct and ethical standards that are required by the international treaties. In order to achieve that goal, the Colombian government must create and improve as many mechanisms as might be necessary to deal with the issues of preventive intervention and conflict resolution.¹⁸

15 Article 142, Law 1448 of 2011

16 Article 143, Law 1448 of 2011

17 Article 146, Law 1448 of 2011

18 Inter-American Human Rights Commission, Follow-up on the demobilization process of the AUC in Colombia, Digest of published documents (2004 – 2007), Report on the demobilization process in Colombia, December 13, 2004, p. 21

The Inter-American Commission of Human Rights has repeatedly held that reintegration into civilian life of demobilized personnel from illegal armed groups is a guarantee against the repetition of crimes committed during the length of the conflict¹⁹.

As a result of the aforementioned, the Colombian legal framework provides that the state will work on: (i) Demobilization and dismantling of the illegal armed groups. (ii) Derogation of laws or administrative acts that have been used as legal buttresses and shields to allow and legitimize the violation of the victims' rights. (iii) Control of the armed forces by the civil authorities. (iv) Creation and implementation of strategies to train the victims about legal issues, in order to empower them. (v) Creation of a pedagogical strategy concerning the teaching of the principles that underlie the respect of human rights, as well as the teaching of the humanitarian international law to public officers and to the members of the armed forces. This strategy must include a policy of zero tolerance regarding sexual violence within public entities. (vi) Promotion of mechanisms to prevent and resolve social conflicts.²⁰

The Colombian legal framework also establishes measures about the integral protection of victims, witnesses, and public officers who participate in the administrative and judicial processes of reparation; and especially, the processes related to the restitution of lands. These measures could be extended to the family if it is deemed as necessary after the evaluation of the risk.²¹

Furthermore, the **measures of restitution** included into the Colombian legal framework lead to the restitution of lands, housing, employment, productive projects, and management of assets and liabilities. The restitution of lands will be explained in the next section.

According to the measures related to **housing**, the victims who were affected by dispossession, abandonment, loss or impairment of their houses as a result

19 Inter-American Human Rights Commission, Follow – up on the demobilization process of the AUC in Colombia, Digest of published documents (2004 – 2007), Report on the implementation of the justice and peace law: Initial stages in the demobilization of the AUC and first judicial proceedings, October 2, 2007, p. 92.

20 Article 149, Law 1448 of 2011

21 Article 31, Law 1448 of 2011. In particular, it was created, at the Office of the Prosecutor, the program to protect witnesses, victims, participants in criminal processes, and public officers. This program pretends to give integral protection and social assistance to the aforementioned persons and their families (article 4, 1106 of the 2006). The Office of the Prosecutor protects the victims, witnesses, and experts who are willing to participate in the judicial process. The Office of the Ombudsman protects the witnesses and experts of the defendants (article 15, 975 of 2005)

of the armed conflict, will have priority and a preferential access to programs of housing subsidies. These subsidies could be used to fund either the building of a house, the acquisition of housing, or the improvement of a house legally retrieved through the mechanism that serve the processes of land restitution.

The person liable for the harms caused to a victim might be condemned to build or reconstruct the house; or to the payment of a compensation in favor of the victim²². On the other hand, one of the measures about **employment** establishes that young and adult victims will have priority concerning the access of technical education programs.

To fulfill that commitment, the government will design programs aimed to serve the generation of rural and urban employment²³. At this point it is important to note that, although the Law 1448 of 2011 does not refer to **productive projects**, it establishes that the national government must design a policy to regulate the development of rural areas. This policy will give priority, regarding access to credits, the tilling of land, and commercialization programs focused on farming products, to the stripped and displaced victims²⁴.

Measures related to the **management of assets and liabilities** include mechanisms to make easier the payment of credits and taxes on restituted lands²⁵; to assuage the payment of credits issued from financial institutions, which are devised to support the productive endeavors of the victims²⁶; to give priority concerning the access to financial credits, to the stripped and displaced victims²⁷; to facilitate the payment of tuition fees and other educational expenses to the offspring of the kidnapped people²⁸.

When *restitutio in integrum*²⁹ is not possible due to the nature of the crime, the actors of the armed conflict who are responsible for it must compensate the victim, or his or her next relative, for the damages caused by the aggression.

22 The internal displaced population will have access to the housing programs that have been designed by the government. These programs privilege the women, elderly and disabled among the displaced population. Families who decide to return to the lands where they lived before will have a priority in the access to the programs of familiar subsidies for housing (article 123, Law 1448 of 2011)

23 Article 130, Law 1448 of 2011

24 Article 206, Law 1448 of 2011

25 Article 105, Law 1448 of 2011

26 Article 129, Law 1448 of 2011

27 Article 206, Law 1448 of 2011

28 Article 19, Law 986 of 2005

29 I/A Court H.R., Blake Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No 48, p. 31. Suárez Rosero Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No 44, p. 41.

. In the cases in which the persons liable for the illicit actions are unable or unwilling to carry out their obligations, the Colombian State should take upon itself the responsibility for the payment of a compensation to the victim³⁰.

The Colombian legal framework allows the possibility of a judicial **compensation**. This action is the product of a judicial decision, which both asserts the responsibility, concerning the crime under judgment, of a member of an illegal armed group, and orders the issuing of an administrative compensation, recognized by the government, in benefit of the victims³¹.

A victim could accept an administrative compensation as part of a “contrato de transacción”. It implies that the victim accepts the amount of money offered to him or to her as an adequate compensation for all the harm he or she has suffered. By accepting such an arrangement, the victim resigns his or her right to initiate a judicial process in search of other forms of compensation. Moreover, if a victim accepts the contrato de transacción, he or she is abiding to a legal situation in which every pending conflict is considered as utterly settled down, and, in consequence, the struggle for compensation is also considered as ended.

This measure does not eliminate the obligation, pending on the person who is liable for the harm brought upon the victim, to repair her / him, in accordance with the respective judicial decision³².

30 United Nations, Economic and Social Council, Final Report of the Special Rapporteur Cherif Biassiouni pursuant to Resolution 1999/33 of the Commission on Human Rights on “The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms” and “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law,” attached to the report, E/CN.4/2000/62 January 18, 2000, p. 10.

31 Article 132, Law 1448 of 2011

32 If the victim accepts to receive the administrative compensation under these conditions, she or he will receive a bigger amount of money as compensation (article 132, Law 1448 of 2011). When the victim does not accept an administrative compensation as part of the “contrato de transacción”, and the Colombian State has been condemned by a judicial authority to compensate the victim, the amount of money received by the victims as reparation will be discounted from the compensation attributed by the judge. Also, it will be discounted the value of the lands given to the victim as restitution (article 133, Law 1448 of 2011). The government will create a program to support the victims regarding the use of the money received as administrative compensation. The investment of the money has to be oriented to technical or professional education, creation or strengthening of enterprises or productive activities, housing and / or acquisition of rural estates (article 134, Law 1448 of 2011).

The persistence of the conflict constrains and curtails to varied extents the possibility of a successful implementation of the reparation forms, and especially those related with the restitution of lands to the victims.

Processes of reparation can be implemented during the unfolding of an internal conflict or after the conflict. The government of the president Juan Manuel Santos decided to create and execute legislation and regulation to repair the victims of the Colombian armed conflict even while it is still under development. Although it is a courageous political decision, it is definitely risky. Basically, the existence of the confrontations between the different actors of the conflict hinders the successful implementation of the different forms of reparation.

The persistence of the confrontations between the different actors of the conflict discourage to displaced people, who are the majority of the victims from the Colombian conflict, when it comes to claim their ownership over the lands from which they were stranded, and to take possession of the lands legally recognized as the ones that belonged to them before the displacement event.

If the displaced population cannot find a safe place to resettle their lives, they neither can start any permanent economic activity (carried on through their own productive project or employment), from which to obtain an adequate income, as well as the financial means necessary to sustain the payment of the debts into which they have incurred.

Additionally, the persistence of the confrontations hinders the possibility of psychological recovery for the victims, who oftentimes maintain the fear of being again re-victimized³³. Moreover, the existence of both the internal conflict and the illegal armed groups means that the victims do not have guarantees of non-repetition of the facts that have generated the violation of their rights.

The author wants to emphasize the importance of the restitution of lands³⁴,

33 An order from the Colombian Constitutional Court, concerning the situation of displaced female leaders, confirmed the devastating impact of threats and harassment against them; and noted that such intimidation has caused: "(..) Serious and severe psychological and psychiatric effects, including anxiety and sleep disorders, grave depression, the onset or worsening of cardiovascular sicknesses (..) The fear instilled by the threats (..) in more than a few cases has developed into panic disorder." (Colombian Constitutional Court, 2013, p. 33). On the other hand, male restitution leaders interviewed by Human Rights Watch similarly expressed that they have experienced fear and anxiety as a result of the threats they have received. Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013. p. 48.

34 The restitution of lands is one of the most important developments of the Law 1448 of

a measure that impacts 4,866,844 Colombians who have been displaced between 1985 and August of 2013. The displaced Colombians are the world's largest population of internally displaced persons (IDPs)³⁵. The Colombian State had estimated that, up to 2013, as a result of the promulgation of the Law 1448 of 2011, there would be 75,000 land restitution claims. It has also estimated that at 2021, the number of land restitution claims would rise to an amount rounding the 360,000 land restitution claims.

But, as of December 31 of 2013, just 54,063 land restitution claims had been filed before the Unit of Restitution of Lands. 28.3% of these claims have been examined by the Unit of Restitution of Lands. 1.7% of the claims have resulted in court rulings ordering land restitution; and the 70% of the claims have not being examined yet by the Unit of Restitution of Lands³⁶. These data follows the same tendency as the data offered by other instances such as the

2011. This statute establishes that the Colombian State will adopt the measures to achieve the juridical and material restitution of the lands to the stripped and displaced people. If the restitution of these lands is not possible, the State will adopt measures to determine and recognize a compensation. The juridical restitution implies the recognition of the rights of property or possession. The re-establishment of the right of property requires the registration of the measure into the official folder for registration of property ("folio de matrícula inmobiliaria"). In the case of the right of possession, its re-establishment could be accomplished with the declaration of membership ("declaración de pertenencia") (article 72, Law 1448 of 2011). When the juridical and material restitution of the estate ("inmueble") is impossible, or when the stripped or displaced person cannot come back to the estate because her or his life and personal integrity would be put in danger, the state will offer alternatives of restitution by equivalent ("restitución por equivalente") which imply the access to estates ("inmuebles") with similar characteristics but in another location. The compensation in money will only proceed when it will not be possible any of the aforementioned forms of restitution (article 72, Law 1448 of 2011).

People with rights of property, rights of possession, or who exploited wastelands ("terrenos baldíos"), and were stripped or pushed to leave their estates ("inmuebles") as a result of the internal armed conflict between January 1, 1991 and June 10, 2021, can request the juridical and material restitution of their estates ("inmuebles"). The petition of restitution of lands is presented before the judges of restitution of lands, which follow a particular process established by the Law 1448 of 2011 (articles 76 to 102, Law 1448 of 2011). The Law 1448 also creates an institution in charge of the restitution of estates ("inmuebles"), called the Special Administrative Unit to the Management of Restitution of Lands ("Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas") (articles 103 to 113 of the Law 1448 of 2011); as well as particular rules for women who ask for the restitution of their estates ("inmuebles") (articles 114 to 118, Law 1448 of 2011).

³⁵ Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013. p. 4.

³⁶ Fundación Forjando Futuros, Universidad de Antioquia, Medio Ambiente y Sociedad. "Restitucion de tierras 'gota a gota'. Avances y dificultades". March, 2014.

“Contraloría General de la Nación”³⁷ and Human Rights Watch³⁸.

In addition, the international NGO said that, as of July 2013, only 1 family had returned to dwell into their land as a result of rulings under the Law 1448 of 2011. In contrast, according to the data of the Unit of Restitution of Lands, as of June 2013, the claimants of 308 cases returned to the claimed lands; while in other 112 cases, the lands under dispute have not been restituted in a material sense, and the victims of 50 cases have not returned.

The difference between the data of Human Rights Watch and the data of the Unit of Restitution of Lands can be explained as a result of their different concepts about what must be considered as a return. The international NGO considers that there is a return when the displaced people have come back, in similar conditions to that which existed before the displacement, to their former place of residence. The Unit of Restitution of Lands includes, in the concept of a return, the cases of the victims who visit the restituted land, although they do not have their residence there³⁹.

This information shows the poor results of the measures of restitution of lands included in the Law 1448 of 2011. This law was enacted in June 2011. After three years, only 15% of the Colombian displaced population has claimed for the restitution of their land. Between June 2011 and July 2013 only 1 family have returned to live on their land as a result of rulings under the Law 1448. The strongest reasons to explain these results are the persistent **threats, forced displacement, assassinations against displaced population, and the absence of effective justice against the authors of the crimes. This**

37 43,590 land restitution claims have been filed before the Unit of Restitution of Lands as of June 30, 2013. That number of claims represent the 15.2% of the potential beneficiaries of the land restitution policy. 425 of the claims have resulted in court rulings ordering land restitution. The beneficiaries of these court rulings have been 1,216 persons linked to the family of the claimant. Contraloría General de la República de Colombia. “II Informe de seguimiento al proceso de restitución de tierras. Sistema de indicadores de la CGR para el seguimiento y monitoreo a la restitución de tierras”. October, 2013.

38 After the Law 1448 of 2011, the Colombian State estimated that it would process 360,000 restitution land claims through that law as to 2021. Only 43,590 land restitution claims have been filed to the Unit of Restitution of Lands as of June 30, 2013. 8,477 of these claims have been examined by the Unit of Restitution of Lands. The 446 of the claims have resulted in court rulings ordering land restitution. 1 family, as of July 2013, returned to live on its land as a result of rulings under the Law 1448 of 2011. Human Rights Watch. “The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia”. 2013

39 Comisión Colombiana de Juristas. NGO with consultant status before the United Nations Organization (ONU). “II Informe sobre el proceso de restitución de tierras en Colombia”. December 27, 2013. p. 9.

breaks down the incentives to the IDP (internal displaced people) to file land restitution claims, and to possess or repossess the lands given to them by the authorities⁴⁰.

The IDP, and especially their leaders, have been object of violent **threats and criminal acts intended to provoke intimidation, as a result of their actions directed towards the retrieving of their lands⁴¹,**

These criminal actions against the claimants are performed with the aim of demoralize and deterred them from taking any action directed towards any claim of justice and restitution of lands. So, these crimes, break the restitution land process in many ways, such as by making the victims fearful, discouraging them from pursuing claims, restricting the leaders' participation in the process, and pushing those who have returned home to flee their land again. Human Rights Watch documented threats against more than 80 IDP land claimants and leaders since 2008. These denounces included more than 60 cases between 2011 and 2013. Government data shows that between January 2012 and May 2013, at least 510 land restitution claimants and leaders, who were involved in various judicial and administrative processes –including the Law 1448 of 2011– reported, to the Unit of National Protection, that they were being threatened. The authorities found that 363 of these threatened claimants and leaders were at “extraordinary risk” due to their reclamation activities⁴².

40 According to “Alianza de las ONG”, the 85% of the IDP have not presented land restitution claims. The first reason that explains this result is the threats and killings against the land restitution claimants. Another reasons are the feeling of distrust with respect of the authorities, the belief that other mechanisms of restitution have failed; the absence of knowledge about the rights of the victims; an imbalance between the juridical assistance given to the victims by the State, and the juridical sources of the opposition parties in the process of restitution. Finally, “Alianza de las ONG” argues that the victims do not want to claim their lands because the Unit of Restitution of Lands requires a exaggerated number of conditions that have to be fulfilled in order to attend the claims. Fundación Forjando Futuros, Universidad de Antioquia, Medio Ambiente y Sociedad. “Restitucion de tierras ‘gota a gota’. Avances y dificultades”. March, 2014. p. 5

41 Contraloría General de la República de Colombia. “II Informe de seguimiento al proceso de restitución de tierras. Sistema de indicadores de la CGR para el seguimiento y monitoreo a la restitución de tierras”. October, 2013. p. 46. See also: Comisión Colombiana de Juristas. NGO with consultant status before the Unit Nations Organization (ONU). “II Informe sobre el proceso de restitución de tierras en Colombia”. December 27, 2013. p. 9.

42 This determination requires that the risk have to be, among other criteria, “concrete, founded in particular and manifest actions or events (..) Present, not remote or eventual (..) Important, meaning that it threatens to hurt legally-protected rights (..) Serious, of probable materialization because of the circumstances of the case (..) [And] exceptional in the measure that it should not be endured by individuals in general.” Human Rights Watch. “The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia”. 2013.

According to the Unit of Restitution of Lands, 447 claimants and leaders who were reclaiming their land under the provisions of the Law 1448 reported that they were being threatened⁴³. These threats are carried out in many ways, ranging from text messages and phone calls, to verbal messages delivered face to face. The content of the threats also varies. Some threaten the victims or their family members with death; while others command them to stop reclaiming land, to “keep quiet”, or to abandon the region where they are living. In some cases, the threats oftentimes include an accusation, against the victims, of being members of the illegal groups known as guerrillas, or of the paramilitary groups⁴⁴.

Multiple factors contribute to making the threats both credible and terrifying. Land disputes are a major source of violence in Colombia, and are widely identified as one of the root causes of the country’s conflict. Many victims of these threats originally fled brutal abuses, committed by paramilitaries and guerrillas, oftentimes as part of a campaign to take over land or to control territory.

Several groups, which have succeeded the paramilitaries or the guerrilla groups, frequently maintain a presence in the areas where the victims are reclaiming their land. These successor groups, in particular, are known to have killed land claimants and leaders. This happens in the same regions, communities, or IDP associations in which live, or to which are linked the victim of the threats. Many times, the threats are of such a grave nature that IDP land claimants and leaders decide to flee their homes, despite the fact that, in doing so, they are facing a new forced displacement⁴⁵.

Human Rights Watch documented more than 30 such cases since 2008. Between January 2012 and May 2013, the Unit of National Protection temporarily relocated 94 land claimants and leaders to new areas because of grave risks to their lives. These new incidents of displacement of IDP land claimants, leaders and their relatives have had an impact both upon the victims and the restitution efforts. They force the victims to confront again the

43 Comisión Colombiana de Juristas. NGO with consultant status before the Unit Nations Organization (ONU). “II Informe sobre el proceso de restitución de tierras en Colombia”. December 27, 2013. p. 25

44 Human Rights Watch. “The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia”. 2013

45 Human Rights Watch. “The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia”. 2013

economic and social hardships that arise from being removed from their homes, sources of income, and support networks. In addition, when the few people who are willing to assume the risks of being leaders have to abandon the area due to threats, the community members they represent are left without a spokesperson, after they have observed firsthand the dangers of stepping forward to replace them⁴⁶. As a result of these threats and displacements against land restitution claimants and their leaders, the Unit of National Protection had received 1,847 requests of protection at December 2013. 877 of these requests related to processes of restitution of land, and 970 to internal displaced people.⁴⁷

Human Rights Watch also documented 21 cases of **killings** of IDP land claimants and their leaders, which were committed since 2008. In 17 cases, the evidence strongly suggests that the victims were targeted due to their efforts to reclaim land or a similar form of activism. For example, many of them received death threats prior to their assassinations, related to their leadership⁴⁸. In addition, the Office of the Ombudsman reported at least 71 killings of land restitution leaders committed between 2006 and 2011. The Office of the General Attorney reported 49 investigations of killings of IDP land claimants, which took place between 2000 and 2013.⁴⁹ Similarly, the Inter-American Commission of Human Rights and the Office of the Prosecutor of the International Criminal Court reported that they have received information concerning the killings of at least 45 displaced leaders who were seeking land restitution between 2002 and 2011⁵⁰. Murders made IDP feel insecure about pushing forward with restitution claims and re-possession of lands.

It is truth that there have been relatively few killings of such individuals carried out since the Law 1448 of 2011 started to be implemented. One of the

46 Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013

47 Comisión Colombiana de Juristas. NGO with consultant status before the Unit Nations Organization (ONU). "II Informe sobre el proceso de restitución de tierras en Colombia". December 27, 2013. p. 24

48 Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013

49 Comisión Colombiana de Juristas. NGO with consultant status before the Unit Nations Organization (ONU). "II Informe sobre el proceso de restitución de tierras en Colombia". December 27, 2013. p. 25

50 Killings against land restitution claimants have been also recognized by the "Contraloría General de la Nación". See: Contraloría General de la República de Colombia. "II Informe de seguimiento al proceso de restitución de tierras. Sistema de indicadores de la CGR para el seguimiento y monitoreo a la restitución de tierras". October, 2013. p. 46

reasons that explain this effect is that the process of land restitution under the Law 1448 remains in the initial stage of implementation. As of December 2013, the 1.7% of the claims have resulted in court rulings ordering land restitution. By July 2013, just 1 family had returned to live on their land as a result of the Law 1448. Human Rights Watch found that there is a consensus among a range of officials involved in land restitution according to which, as the cases advance, so the level of risk for claimants escalates.

The main actors of the mentioned abuses are groups that have taken over the spaces left after the dismantling and demobilization of the paramilitary groups⁵¹ (which carried out the majority of killings, attempted killings, new incidents of forced displacement, as well as a significant portion of threats); third parties who acquired IDPs' lands (these ones range from paramilitary front men who have held and hidden the AUC's assets, to cattle ranchers, politicians, landowners, businesspersons, and demobilized paramilitaries)⁵²; and guerrillas (guerrilla groups' practice of using antipersonnel landmines poses a significant security risk for IDPs seeking to return to their land)⁵³. Regardless

51 These paramilitary successor groups have different denominations. They are known under monikers such as "Aguilas Negras", "Autodefensas Gaitanistas", "Ejército Anti-estitución", "Ejército Revolucionario Anti-Subversivo de Colombia", "Rastrojos", "Urabeños". Comisión Colombiana de Juristas. NGO with consultant status before the United Nations Organization (ONU). "II Informe sobre el proceso de restitución de tierras en Colombia". December 27, 2013. p. 28

52 Claudia Lopez, a recognized Colombian policy analyst has spoken about the support of politicians to paramilitary groups that have displaced people, stole their lands, developed agro-industrial projects, and participated in the drugs business. The developed territorial, military, and economic structure let the appropriation of the political power in Colombia. The Supreme Court and the Office of the Prosecutor have demonstrated that 1 out of 3 offices of popular election were co-opted by this project of the political and economical regional elites, which created military forces to warrant their own security, to displace people, and to implement profitable businesses. See: Hollman Morris and Juan José Lozano. "Impunity". Documental. 2012. <https://www.youtube.com/watch?v=439wCruslC4>

53 According to the "Contraloría General de la Nación", guerrilla groups are the perpetrators in the 31,9% of the cases (37,5% of the reclaimed lands), and paramilitary structures are the victimizers in the 28,3% of the cases (25,6% of the reclaimed lands). See: Contraloría General de la República de Colombia. "II Informe de seguimiento al proceso de restitución de tierras. Sistema de indicadores de la CGR para el seguimiento y monitoreo a la restitución de tierras". October, 2013. In contrast, the "Comisión Colombiana de Juristas" suggests that successor paramilitary groups are the main authors of violent actions against the victims. Between 2012 and the first semester of 2013, the paramilitary structures were the main factor of risk in the 78% of the risk situations issued by the "Sistema de Alertas Tempranas" (SAT). According with the SAT, the guerrilla groups Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN) were responsible for the 62% and the 24% of the risk situations

of the perpetrator, a common motive behind the abuses is to preserve control over a property or rural area from which the claimants have been displaced. **The absence of investigation, prosecution, and punishment against these actors, intensifies the climate of fear surrounding restitution in different regions of Colombia and, in consequence, the lack of motivation to claim land restitution and to re-possess the restituted lands.**

First, there has been little accountability for threats targeting IDP claimants and their leaders in retaliation for their restitution efforts. The Office of the Attorney General reported that all of its investigations concerning threats against IDP land claimants and leaders remain at a preliminary stage, which means that not a single suspect has been charged, let alone convicted. Justice authorities are correct to point out that death threats, often issued through anonymous phone calls or text messages, are very difficult to investigate.

Nevertheless, victims of threats have reported that they face a range of obstacles when they are seek for justice. Sometimes, authorities do not contact victims after they have filed a criminal complaint; or even refuse to accept a criminal complaint in the first place. The message for the IDP's claimants of lands is that it is futile to report threats. This situation contributes to the climate of under-reporting, so deepening the atmosphere of ongoing impunity. This message is strengthen by the links among some authorities and the perpetrators. The lack of accountability for threats that target IDP claimants and their leaders also enforces the perception according to which perpetrators will not face consequences, and they can continue threatening claimants of land restitution⁵⁴.

Second, there has been a lack of accountability for killings targeting IDP claimants. As of August 2013, among the 49 cases of killings of IDP land claimants and leaders that the Office of the Attorney General reported it was investigating, prosecutors had obtained convictions just in 8 cases, and have charged suspects just in 7.

The slow progress of the cases can be attribute to several reasons. Sometimes, the portfolio of one case is assigned to one prosecutor, but then it is reassigned to other, and then again to another. Each time the cases are

attributed to guerrillas. Comisión Colombiana de Juristas. NGO with consultant status before the Unit Nations Organization (ONU). "II Informe sobre el proceso de restitución de tierras en Colombia". December 27, 2013. p. 30

⁵⁴ Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013

reassigned, prosecutors have to start from scratch when it comes to familiarize themselves with the investigations, instead of being able to develop a deeper understanding of the cases. Furthermore, in some cases, prosecutors have not already taken basic steps to advance investigations, such as visiting the municipality where the victim lived and was killed, and looking for new evidences, different to that the police have reported from the day of the killings. What is worse is that, in some cases, there has not even been any appointed prosecutor. Another problem hindering the progress of the investigations about the killings is that these processes often remain, for more than a year, in the hands of local prosecutors, before being reassigned to the Unit of Human Rights. This situation prevents the unit from overseeing the initial stage of the investigation, which is crucial both to pursuing immediate leads as well as to the gathering of key evidence.⁵⁵

Third, the High Commissioner of the United Nations for the Refugees and the Center for the Study of Law, Justice and Society (DeJusticia) have confirmed the prevalence of impunity around the crime of forced displacement. The High Commissioner of the United Nations for the Refugees have said that the judicial decisions about forced displacement represent the 0,02% of the cases. In consequence, the 99% of the cases remain in a state of impunity⁵⁶. Dejusticia concluded that:

Of every 200 cases that enter the Attorney General's Office, a little more than one culminates with an accusation before a judge (..) Given that the majority of cases of forced displacement do not even enter the judicial system, impunity for this crime is very close to 100%⁵⁷.

93

To combat this problem, the Office of the Attorney General established in November 2010 the National Unit Against the Crimes of Enforced Disappearance and Displacement (UNCDES), with 66 prosecutors for 15 cities. Although it is important to recognize such an initiative, the unit

55 Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013

56 Comisión Colombiana de Juristas. NGO with consultant status before the Unit Nations Organization (ONU). "II Informe sobre el proceso de restitución de tierras en Colombia". December 27, 2013. p. 31.

57 Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013.

has made limited progress. As of January 2013, the unit was investigating 17,109 cases of forced displacement, and have obtained convictions for only 28 cases. Other prosecutorial units have similarly produced limited results prosecuting cases of forced displacement. As of March 2013, nearly eight years since the Law 975 of 2005⁵⁸ was enacted, defendants under the law have confessed 11,833 cases of forced displacement. Specialized Justice and Peace unit prosecutors have obtained convictions against demobilized paramilitaries in 6 cases. Since the enactment of mechanism of the free version, which has to be offered from demobilized paramilitaries subjected to the tribunals, and is exerted through the Law 975, , the “Unidad Nacional de Fiscalías” has sent 300 cases to the ordinary justice, which, according to the former paramilitaries’ free version accounts of the crimes has the duty of investigate the participation of third parties in the displacement of people. This means that only the 2,5% of the confessed displacements is under the competence of the ordinary justice. Of the 20,667 open investigations into cases of forced displacement pursued by all the other prosecutors outside of the UNCDDES and the Unit of Justice and Peace, 99% were in a preliminary stage as of January 2013⁵⁹.

Justice authorities have also consistently failed to hold accountable those who are responsible for land takeovers (or, in spanish, “despojo”). As of January 2013, the UNCDDES reported that it had obtained only 3 convictions for crimes related to this conduct, and formally linked a suspect to an investigation in just 6 cases. For its part, the Unit of Human Rights has not obtained any convictions for crimes related to land takeovers, and did not have any opened investigation related with such crimes as of March 2013. Similarly, the Unit of Money Laundering and Asset Confiscation of the Office of the Attorney General, who seizes assets belonging to guerrilla and paramilitary front men, have not reported investigations linking any front men with cases of land takeovers. Finally, the Sub-Unit of Assets, which is a specialized unit of the Office of the Attorney General charged with investigating land takeovers carried out by paramilitary and guerrilla

58 Law 975 of 2005. Called “Law of peace and justice”.

59 Comisión Colombiana de Juristas. NGO with consultant status before the Unit Nations Organization (ONU). “II Informe sobre el proceso de restitución de tierras en Colombia”. December 27, 2013. Human Rights Watch. “The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia”. 2013

defendants under the Law 975 of 2005, had obtained just 4 rulings ordering restitution as of February 2013. This unit does not prosecute those responsible for illegally appropriating the land, but identify the stolen pieces of land and procure court orders for restitution to IDPs⁶⁰.

To conclude, the persistence of a conflictive environment, characterized by threats, forced displacement, assassinations against displaced population, as well as the lack of investigation, prosecution and punishment against the authors of those crimes, intensify the climate of fear surrounding land restitution in different regions of Colombia. As a result, the IDP and their leaders lose their motivation to file land restitution claims, and to finally repossess the lands recognized by the authorities as under their legal ownership.

Recommendations

Creation of a special body in the army to protect the areas where the victims receive lands. The returned or relocated people will have support from the national and territorial entities, the trained militaries, and a regional center of attention and reparation.

The president of Colombia, as head of the army, can create a special body of militaries, with military training but also with training on human rights, and especially on the rights of the victims from the conflict. This military body would be responsible for both overseeing and guaranteeing the security of the return or relocation processes of displaced population. So then, the returned or relocated people in a particular territory will have the support of the national and territorial authorities, as well as the military officials' support, who would accompany the return or the relocation. The militaries will support the security of the returned or relocated people until the Ministry of Defense and the Unit of National Protection determine that they are safe without the necessity of military presence.

Any municipality that receives more than 50 returned or relocated persons will have a regional center of attention and reparation (article 121 of the Decree 4800 of 2011). This center will have the presence of territorial and national public entities, which will be in charge of giving attention and providing reparation services to the returned or relocated people.

⁶⁰ Human Rights Watch. "The risk of returning home. Violence and threats against displaced people reclaiming land in Colombia". 2013

Intervention of conflictive zones with social services and security to make those zones available to land restitution processes.

The Colombian government has been implementing land restitution processes where the conditions of security are as good as it is necessary to make possible and feasible the implementation of those processes. Inasmuch as Colombia is a country affected by an armed conflict, there is a scarcity of territories that, due to their qualities in terms of security, are available for land restitution processes. However, the “Contraloría General de la Nación” has pointed out the importance of the intervention of conflictive zones, which requires not only the presence of military forces but also the presence of social services and investment in infrastructure. With these measures, the government could turn many zones that presently are risky ones into zones available for land restitution. This intervention must be the result of a plan devised with the aim of articulating the actions of the different public institutions involved in its implementation⁶¹.

The executive, legislative and judicial branches of the Colombian State have to strength the investigation, prosecution and punishment of the people who displace population, independently if they are members of illegal armed groups or not.

96 The Colombian peasants have not only been displaced by paramilitary successor groups and guerrillas, but also by third parties, such as paramilitary front men who have held and hidden the AUC’s assets, cattle ranchers, politicians, landowners, businesspersons, and demobilized paramilitaries. To curb this trend, the Colombian State must develop stronger sanctions, as well as it must reinforce the public institutions and services that are in charge of the investigation, prosecution, and punishment of the persons who are liable, before the law, for crimes related with the displacement of civil population whether they are members of illegal armed groups or third parties which have benefitted from the armed conflict.

The public officials who support the intimidations, killings and forced displacement of land restitution claimants have to be strongly investigated, prosecuted and punished.

61 Contraloría General de la República de Colombia. “II Informe de seguimiento al proceso de restitución de tierras. Sistema de indicadores de la CGR para el seguimiento y monitoreo a la restitución de tierras”. October, 2013. p. 45-48.

The Colombian government has to ensure the demobilization of the illegal armed groups

The demobilization of the illegal armed groups will contribute to diminish the intensity of the conflict, and to reinforce the efficiency and effectiveness of the implementation of the measures of reparation. In consequence, the Colombian government has to work on the signature of peace agreements with the guerrilla groups Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN). Moreover, the Colombian government must both attack and disarticulate the successor paramilitary groups.

As part of the commitments to which they have to abide within the current negotiations with the Colombian government, the guerrilla groups known as Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN) must stop their threats, killings and forced displacements against land restitution claimants.

The guerrilla groups known as Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN) are currently involved in a process of peace conversations with the Colombian government. One of the main topics that are included in the thematic agenda that is being discussed between the FARC and the Colombian government is the reparation of the victims from the internal conflict.

Concerning this critical point of the agenda, the FARC must commit themselves to stop the issuing of any threats, as well as the committing of any more killings or displacements against land restitution claimants. The same pledged must be expressed by the ELN.

Conclusion

The Colombian legal framework develops each one of the forms of reparation established by the Inter-American Human Rights Commission, and the Inter-American Court, which include the actions of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. However, the persistence of the Colombian conflict dramatically hinders the successful implementation of these forms of reparation, and especially in what concerns to the restitution of lands to the victims.

In fact, the persistence of a conflictive environment, characterized by threats, forced displacement, assassinations against displaced population, as well as the lack of investigation, prosecution, and punishment against the authors of these crimes, intensify the climate of fear surrounding land restitution in different regions of Colombia.

As a result of the aforementioned atmosphere of insecurity and constant threat, the internal displaced people and their leaders tend to lose their motivation to file land restitution claims, and to finally re-possess the lands recognized by the authorities as under their ownership. If the victims cannot recover the land where they lived before their victimization, or if the victims cannot receive and use another land as a compensation, they will not have a place where to restart their life projects and the projects of their families.

In an attempt to offer an alternative to the current situation, and to contribute with the planning of policies that could bring the suffering of the displaced population to an end, the author recommends the adoption of the following measures: (i) The creation of a special body in the army to protect the areas where the victims receive lands, so that the returned or relocated people could have support from the national and territorial entities, as well as from trained militaries on human rights, and a regional center of attention and reparation. (ii) Intervention of conflictive zones with social services and security officials to make these zones available to land restitution processes. (iii) The executive, legislative, and judicial branches of the Colombian State have to strengthen the investigation, prosecution, and punishment of the persons who are liable for the displacement of population. It must be done in such a way that the enforcement of the law could encompass either the cases in which these persons have been directly linked with illegal armed groups, as well as those in which there have been participation of third parties in the commission and profiteering from the crimes. (iv) The public officials who have supported the intimidations, killings, and forced displacement of land restitution claimants must be strongly investigated, prosecuted, and punished. (v) The Colombian government must ensure the demobilization of the illegal armed groups. (vi) The guerrilla groups Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN) must stop, as part of their commitments within the current negotiations with the Colombian government, their issuing of threats, as well as the committing of killings, and forced displacements, against land restitution claimants.

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