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Law of Victims and Land Restitution: Colombia's Ambitious Law Faces Implementation Challenges

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Law of Victims and Land Restitution: Colombia's Ambitious Law Faces Implementation Challenges

*Isaura Velez**

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I. INTRODUCTION

The socioeconomic and political instability that permeated Colombia during the first half of the twentieth century, particularly during *La Violencia*, gave rise to the armed conflict that persists to date.¹ Peasant

* *Juris Doctor* Candidate, 2014, Florida International University College of Law. I want to thank my faculty advisor, Professor M.C. Mirow, for his invaluable help and guidance, and Marisol Floren for her assistance with research. I also want to thank my parents, Libardo and Lourdes Velez, for their unconditional love and support.

¹ ANGEL RABASA & PETER CHALK, COLOMBIAN LABYRINTH: THE SYNERGY OF DRUGS AND INSURGENCY AND ITS IMPLICATIONS FOR REGIONAL STABILITY 23 (2001) [hereinafter RABASA, ET AL., COLOMBIAN LABYRINTH].

farm workers, or *campesinos*, armed themselves and revolted against the elitist government.² The underlying causes of the popular unrest were grievances over socioeconomic issues and demands for an agrarian or land reform.³ The leftist guerrilla insurgency emerged in this environment of political unrest and violence.⁴ During the second half of the twentieth century, the drug boom heightened the violence in Colombia.⁵ Guerrillas and large landowners were at war over control of the illicit drug trade.⁶ To resist the guerrillas, landowners formed their own counterinsurgent group: the paramilitaries.⁷ Both the guerrillas and the paramilitaries became the actors of brutal attacks against the civilian population.⁸ Their violent acts and their war over territorial control resulted in massive displacement.⁹

With six million displaced innocents, the government enacted the Law of Victims and Land Restitution in 2011.¹⁰ It promised the “integral reparation” of the victims of forced displacement.¹¹ As part of the integral reparation, the Law of Victims promises the return of lands to displaced victims and seeks the socioeconomic stabilization of the victims upon return to their lands.¹² Also, the Law of Victims provides a warranty of no repetition, by which it promises that the victims will not be subject to forced displacement again.¹³ The Law of Victims seems ideal, and its implementation is necessary for the adequate compensation of individuals who have suffered the most as a result of the internal conflict.

However, the Law of Victims faces substantial challenges to its implementation. First, the environment of socioeconomic inequality in which the internal conflict is rooted still exists.¹⁴ The Law of Victims

² See *infra* Part II (A).

³ See generally DAVID BUSHNELL, *THE MAKING OF MODERN COLOMBIA: A NATION IN SPITE OF ITSELF* 185-87 (1993).

⁴ For the proposition that the leftist guerilla insurgency was a new phenomenon during the period known as *La Violencia*, see *id.* at 223.

⁵ *Id.* at 249.

⁶ CENTER FOR JUSTICE AND ACCOUNTABILITY, *BACKGROUND ON COLOMBIA: LONGEST-RUNNING CIVIL WAR IN THE AMERICAS*, <http://www.cja.org/article.php?list=type&type=400> (last visited Oct. 29, 2012).

⁷ *Id.*

⁸ See *infra* Part II (B)-(C).

⁹ See *infra* Part III.

¹⁰ Law of Victims, L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], art. 71 (Colom.).

¹¹ *Id.* at art. 25; *Abecé de Ley de Víctimas y Restitución de Tierras [ABC of the Law of Victims and Land Restitution]*, EL UNIVERSAL (Colom.), Mar. 19, 2012, <http://www.eluniversal.com.co/cartagena/bolivar/abece-de-ley-de-victimas-y-restitucion-de-tierras-69429>.

¹² Law of Victims, L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], art. 73, ¶ 3 (Colom.).

¹³ *Id.* at art. 1, ¶ 25.

¹⁴ For the proposition that Colombia experiences an unequal distribution of agricultural land, see

offers a series of measures that attempt to provide for the socioeconomic stabilization of the victims upon return, but the established measures are ineffective. Second, the internal conflict in Colombia continues,¹⁵ making the restitution of lands impossible in areas where the illegally armed groups retain control.¹⁶ Even if the process of land restitution proves successful, the victims are still exposed to violence in those areas. Last, illegally armed groups continue to plant landmines in areas under their control.¹⁷ Colombia is already the subject of a serious landmine problem, and the presence of mine fields places a substantial burden on the restitution of lands. On account of the foregoing, the Law of Victims faces the danger of achieving only symbolic significance. The Law of Victims is ideal for a post-conflict environment, but the internal conflict in Colombia is far from its end. Certain measures can be taken in order to overcome some of the challenges. And, unless the Colombian government adopts a necessary implementation plan or alternative measures, the Law of Victims will not achieve its purposes. In the interest of the victims, governmental action is urged to address the existing issues in order to overcome the burdens in achieving land restitution.

II. COLOMBIA'S ARMED INTERNAL CONFLICT

Colombia has been the subject of an armed internal conflict for the last fifty years.¹⁸ The internal conflict is rooted in a long history of inequality.¹⁹ Peasant farm workers demanded an agrarian or land reform that would have modified the unequal pattern of land tenure, and the controlling elite failed to implement such reforms that would have addressed the agrarian problem.²⁰ Colombia experienced an era of turmoil in which illegally

David L. Attanasio and Nelson Camilo Sanchez, *Return within the Bounds of the Pinheiro Principles: The Colombian Land Restitution Experience*, 11 WASH. U. GLOBAL STUD. L. REV. 1, 44 (2012). For the proposition that the internal conflict is mainly rooted in the socioeconomic inequality resulting from the high concentration of land distribution, see Nadia Margarita Rodriguez, *Land Restitution in Colombia*, GLOBAL DIALOGUE, <http://isa-global-dialogue.net/land-restitution-in-colombia-2/> (last visited Oct. 29, 2012).

¹⁵ LISA HAUGAARD, LATIN AMERICA WORKING GROUP EDUCATION FUND (LAWGEF), ET AL., STILL A DREAM: LAND RESTITUTION ON COLOMBIA'S CARIBBEAN COAST 1 (2012), available at http://www.lawg.org/storage/documents/Still_a_Dream.pdf; see also Rodriguez, *supra* note 14.

¹⁶ See Rodriguez, *supra* note 14.

¹⁷ Anastasia Moloney, *Caring for Colombia's Landmine Survivors*, 373 THE LANCET 2013, 2013 (2009), available at http://download.thelancet.com/pdfs/journals/lancet/PIIS0140673609610953.pdf?id=aaa0r_9up2ATbf_pXTAtu; HUMAN RIGHTS WATCH, WORLD REPORT 2012: COLOMBIA (2012), <http://www.hrw.org/world-report-2012/colombia> [hereinafter HUMAN RIGHTS WATCH, WORLD REPORT 2012].

¹⁸ Oliver Kaplan & Mike Albertus, *Colombia's Rebels and Land Reform*, N.Y. TIMES, Oct. 9, 2012, www.nytimes.com/2012/10/10/opinion/colombias-rebels-and-land-reform.html?_r=2&.

¹⁹ CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6.

²⁰ Garry Leech, *Fifty Years of Violence*, COLOMBIA JOURNAL (May, 1999),

armed groups, the guerrillas specifically, emerged.²¹ Subsequently, the paramilitaries, another illegally armed group, emerged in reaction to the guerrillas.²² The battle against each other and against the government created a wave of violence that has resulted in massive displacement.²³ Despite the demobilization of some of these groups, the violence in Colombia persists.²⁴

A. The Political Instability that Led to the Arming of Peasants

The Conservative Party controlled Colombia's politics between 1880 and 1930.²⁵ The Conservative hegemony ended in 1930, when the Liberal Party assumed control of politics until 1946.²⁶ While the Conservative Party was composed of members of the elite, peasant farm workers and the lower class supported the Liberal Party.²⁷ The parties's ideological clash and political tactics led to much friction between them,²⁸ which resulted in vast outbreaks of violence.²⁹

During Alfonso Lopez Pumarejo's term in office (1934-1938), the country experienced popular unrest over socioeconomic issues.³⁰ Workers sought social reforms.³¹ Scattered instances of agrarian unrest were occurring throughout the country.³² These instances appeared in the form of peasant occupation of unused parts of private land, conflicts over land titles, and struggles over rent payment.³³ Although limited to certain areas, the agrarian unrest showed the pressure of a growing rural population, and the then-existing pattern of land distribution severely curtailed the population's ability to meet its needs.³⁴

<http://colombiajournal.org/fiftyyearsofviolence#one> (last visited Oct. 29, 2012).

²¹ See RABASA ET AL., COLOMBIAN LABYRINTH, *supra* note 1.

²² CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6.

²³ CODHES, CODHES INFORMA, BOLETÍN DE LA CONSULTORÍA PARA LOS DERECHOS HUMANOS Y EL DESPLAZAMIENTO [CODHES INFORMS, BULLETIN FROM THE CONSULTANCY FOR HUMAN RIGHTS AND DISPLACEMENT] [hereinafter CODHES, CODHES INFORMS 2011] 1-2 (2011), available at <http://ccai-colombia.org/files/primarydocs/110919codh.pdf> [hereinafter CODHES, CODHES INFORMS 2011].

²⁴ See *id.*; HUMAN RIGHTS WATCH, WORLD REPORT 2012, *supra* note 17; CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6.

²⁵ CÉSAR TORRES DEL RÍO, COLOMBIA SIGLO XX: DESDE LA GUERRA DE LOS MIL DÍAS HASTA LA ELECCIÓN DE ÁLVARO URIBE [COLOMBIA 20TH CENTURY] 45 (2010).

²⁶ *Id.* at 91; BUSHNELL, *supra* note 3, at 181.

²⁷ Leech, *supra* note 20.

²⁸ See BUSHNELL, *supra* note 3, at 161-63.

²⁹ *Id.* at 157; see also *id.* at 181-83.

³⁰ *Id.* at 186.

³¹ TORRES DEL RÍO, *supra* note 25, at 118.

³² BUSHNELL, *supra* note 3, at 186.

³³ *Id.*

³⁴ See *id.*

The assassination of Jorge Eliécer Gaitán in 1948 caused a wave of violence in Bogotá.³⁵ The Liberal leader was an avid supporter of agrarian and labor reforms.³⁶ His murder led to a major uprising of the lower classes in Bogotá known as the *Bogotazo*.³⁷ Violent outbreaks also occurred in other large cities and small liberal towns.³⁸

Peasant insurgency against the government continued when Laureano Gómez assumed the presidency in 1950.³⁹ Approximately 4,000 armed peasants resisted the government politics and the attacks of the armed bands of Conservatives.⁴⁰ The armed peasants formed the first nucleus of liberal guerrillas.⁴¹ The violence resulted in the forced displacement of civilians, including those who inhabited liberal towns in Boyacá, Santander, and North of Santander.⁴²

Gómez's regime ended in 1953 when General Gustavo Rojas Pinilla seized power through a *coup d'état*.⁴³ Rojas Pinilla was highly supported, as he was in the position to bring *La Violencia*⁴⁴ to an end.⁴⁵ His initial efforts included reclaiming the property of landowners who were forced to flee and abandon their lands.⁴⁶ In response, the armed peasants demanded an agrarian reform.⁴⁷ In 1953, Rojas Pinilla created the Office for Rehabilitation and Relief to respond to peasant demands, and he issued an amnesty to the armed peasants in an effort to end *La Violencia*.⁴⁸ The

³⁵ *Id.*

³⁶ See TORRES DEL RÍO, *supra* note 25, at 123.

³⁷ *Id.* at 192. The incidents following Gaitán's death were more of a *Colombianazo* than a *Bogotazo*, because the outbreaks and riots occurred throughout the country. *Id.*; see also BUSHNELL, *supra* note 3, at 202 ("The . . . term [*el nueve de abril*] is preferable, because *Bogotazo* focuses attention strictly on disturbances in the national capital, whereas in actuality what happened was a nationwide outburst, with scenes of violence repeated not only in other large cities but also in many small towns of heavy Liberal majority.").

³⁸ BUSHNELL, *supra* note 3, at 202.

³⁹ TORRES DEL RÍO, *supra* note 25, at 198.

⁴⁰ *Id.*

⁴¹ *Id.*; see also LIBRO NEGRO DE LA REPRESION: FRENTE NACIONAL 1958-1974 [THE BLACK BOOK OF THE REPRESSION: NATIONAL FRONT] 5 (1st ed. 1974) [hereinafter THE BLACK BOOK OF THE REPRESSION].

⁴² TORRES DEL RÍO, *supra* note 25, at 198.

⁴³ BUSHNELL, *supra* note 3, at 215; see also TORRES DEL RÍO, *supra* note 25, at 221.

⁴⁴ *La Violencia* was a period in which the country experienced outbursts of violence between 1946 and 1957. BUSHNELL, *supra* note 3, at 201. Between 100,000 and 200,000 individuals were murdered during this period. See, e.g., Mario Chacon et al., *When is Democracy an Equilibrium? Theory and Evidence from Colombia's "La Violencia"*, 55 J. CONFLICT RESOL. 369 (2011).

⁴⁵ BUSHNELL, *supra* note 3, at 215.

⁴⁶ Leech, *supra* note 20.

⁴⁷ *Id.*

⁴⁸ *Id.*

Office did not fulfill the purpose of alleviating the agrarian problem.⁴⁹ But despite not achieving its intended purpose, Rojas Pinilla's actions had negative consequences on his popularity and support. They raised suspicion amongst Liberals and Conservatives, who deemed the President's ineffective reform as an attempt to gain popular support.⁵⁰ Ultimately, Rojas Pinilla's efforts to end *La Violencia* were unsuccessful.⁵¹

The political battle between Liberal and Conservative leaders over power ended in 1957 with the creation of the National Front.⁵² The National Front was an alliance between Liberals and Conservatives,⁵³ in which both parties agreed to alternate between them the control over the executive branch for four terms, or sixteen years.⁵⁴ The agreement ameliorated the political unrest,⁵⁵ but the country faced the main consequence of the long conflict between the elite and the peasants: the new phenomenon of leftist guerrilla insurgency.⁵⁶

B. Rise of the Guerrillas

Guerrilla groups that originated in the mid-century violent era settled in areas of public land.⁵⁷ In the 1950s and 1960s, the first wave of land colonization took place.⁵⁸ Peasants joined guerrilla groups after guerrilla concealment of land parcels forced peasants out of their lands.⁵⁹ Some groups settled in inhospitable places deemed public land in Magdalena, Cauca, and the eastern plains.⁶⁰ Tolima was also the subject of armed colonization by the guerrilla group which later became the *Fuerzas Armadas Revolucionarias de Colombia* (FARC).⁶¹ Their colonization expanded, taking control over vast portions of land.⁶²

The guerrillas became infamous for committing dreadful atrocities as a strategy to gain control.⁶³ In October 1998, for example, the *Ejército de*

⁴⁹ *See id.*

⁵⁰ *Id.*

⁵¹ BUSHNELL, *supra* note 3, at 222.

⁵² *See id.* at 223; *see also* THE BLACK BOOK OF THE REPRESSION, *supra* note 41.

⁵³ THE BLACK BOOK OF THE REPRESSION, *supra* note 41, at 7.

⁵⁴ *Id.*

⁵⁵ BUSHNELL, *supra* note 3, at 223.

⁵⁶ *Id.*

⁵⁷ CHARLES W. BERGQUIST, VIOLENCE IN COLOMBIA: THE CONTEMPORARY CRISIS IN HISTORICAL PERSPECTIVE 198 (1992).

⁵⁸ *Id.*

⁵⁹ *See, e.g., id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 199.

⁶² *Id.*

⁶³ Alexandra De La Asuncion, comment, *Colombia: The Ignored Humanitarian Crisis*, 31 U.

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Liberación Nacional (“ELN”) bombed a pipeline at night.⁶⁴ The oil and gases from the bombing extended to a nearby community, igniting sixty-four houses and killing seventy-three sleeping innocents.⁶⁵ The purpose behind the bombing of the pipeline was to collect money through extortion, and to express its opposition to the country’s dealings with multinational companies.⁶⁶ In December of the same year, the FARC attacked a community it suspected was in support of paramilitaries.⁶⁷ The FARC killed women and children, while torturing, decapitating, and castrating men.⁶⁸ The murders, kidnappings, and other abuses by the guerrillas have forced the internal displacement of affected victims.⁶⁹

C. Rise of the Paramilitaries

Landowners created paramilitary counterinsurgent groups in the 1980s.⁷⁰ These groups originated with the purpose of resisting the guerrillas.⁷¹ They launched offensives against the guerrillas and anyone in support of the guerrillas.⁷²

The paramilitaries were declared illegal in 1989.⁷³ Despite their illegality, the Colombian Army has supported paramilitary groups with training and logistical support.⁷⁴ The Army has tolerated the gruesome acts by paramilitaries, and it has failed to protect innocent civilians.⁷⁵ It also has, in conjunction with paramilitaries, launched several offensives against guerrillas, resulting in the brutal murder of innocent civilians.⁷⁶

The paramilitaries have been the perpetrators of egregious human

MIAMI INTER-AM. L. REV. 439, 448 (2000).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ HUMAN RIGHTS WATCH, WORLD REPORT 1999: COLOMBIA (1999), available at <http://www.unhcr.org/refworld/country,,HRW,,COL,,3ae6a8bf8,0.html> [hereinafter HUMAN RIGHTS WATCH, WORLD REPORT 1999].

⁶⁷ De La Asuncion, *supra* note 63, at 448.

⁶⁸ *Id.*

⁶⁹ CODHES, CODHES INFORMS 2011, *supra* note 23, at 1-2.

⁷⁰ CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6.

⁷¹ *Id.*

⁷² De La Asuncion, *supra* note 63, at 450.

⁷³ *Id.*

⁷⁴ *See id.*; see also HUMAN RIGHTS WATCH, WORLD REPORT 1999, *supra* note 66.

⁷⁵ HUMAN RIGHTS WATCH, WORLD REPORT 1999, *supra* note 66.

⁷⁶ *See id.*; Latino Daily News, *Retired Colombian General Sentenced for Killing Peasant Leader in 1997*, HISPANICALLY SPEAKING NEWS, Aug. 25, 2012, <http://www.hispanicallyspeakingnews.com/notitas-de-noticias/details/retired-colombian-general-sentenced-for-killing-peasant-leader-in-1997/18080/> [hereinafter *Retired Colombian General Sentenced*].

rights abuses.⁷⁷ They have tortured, murdered, and displaced combatants, peasants, indigenous people, Afro-Colombians, religious leaders, and trade unionists among others.⁷⁸ Numerous massacres have been charged to them.⁷⁹ In July 1997, for example, a group of paramilitaries killed thirty people during a five-day massacre.⁸⁰ Some of their victims were cut to death with machetes, while others were decapitated with chainsaws.⁸¹ The bodies, some still alive, were dumped into a nearby river.⁸² Confidential paramilitary sources later revealed that the Colombian Army had been involved in the planning of the massacre.⁸³

Another example of human rights abuses perpetrated by paramilitaries in conjunction with the Colombian Army is the 1997 attack in the region of Urabá.⁸⁴ The Afro-Colombian leader Marino Lopez Mena was brutally murdered during the attack.⁸⁵ After decapitating Lopez Mena, the paramilitaries played soccer with his head.⁸⁶ As a result of these human rights violations, innocent civilians have been forcibly displaced.

D. The Conflict in the Twenty-First Century

The election of Álvaro Uribe Vélez brought significant changes to the conflict.⁸⁷ His administration was proactive in efforts to end the violence, achieving great success.⁸⁸ But despite all efforts and positive outcomes of Uribe Vélez's administration, the violence in Colombia persists.⁸⁹

⁷⁷ HUMAN RIGHTS WATCH, WORLD REPORT 1999, *supra* note 66.

⁷⁸ CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6.

⁷⁹ A massacre is the slaying of four or more people within the same locality at the same time. HUMAN RIGHTS WATCH, WORLD REPORT 1999, *supra* note 66.

⁸⁰ *The Massacre in Maripipan*, COLOMBIA HUMAN RIGHTS NETWORK (1997), <http://colhmet.igc.org/newsletter/y1997/winter97art/mapiri.htm>; see also Jo-Marie Burt, *The Massacre at Maripipan*, COLOMBIA JOURNAL (Apr. 3, 2000), <http://colombiajournal.org/colombia6.htm>; Michael Evans, *Declassified Documents: 1997 Maripipán Massacre: Coordinated in Advance with Colombian Army*, GLOBAL RESEARCH (July 19, 2012), <http://www.globalresearch.ca/declassified-documents-1997-mapirip-n-massacre-coordinated-in-advance-with-colombian-army/31962>.

⁸¹ Burt, *supra* note 80.

⁸² *Id.*

⁸³ Evans, *supra* note 80.

⁸⁴ *Retired Colombian General Sentenced*, *supra* note 76; Susana Pimiento, *Winds of Peace in Colombia and the Fate of Paramilitary Structures*, FELLOWSHIP OF RECONCILIATION (Aug. 31, 2012), <http://forusa.org/blogs/susana-pimiento/winds-peace-colombia-fate-paramilitary-structures/10985>.

⁸⁵ *Id.*

⁸⁶ Pimiento, *supra* note 84.

⁸⁷ See CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6; HUMAN RIGHTS WATCH, WORLD REPORT 2012, *supra* note 17; Lt. Oliver North, *The Other War on Terror*, MILITARY.COM (Jan. 13, 2005), http://www.military.com/Opinions/0,,FreedomAlliance_011305,00.html.

⁸⁸ *Id.*

⁸⁹ See CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6; CODHES, CODHES INFORMS 2011, *supra* note 23, at 2; HUMAN RIGHTS WATCH, WORLD REPORT 2012, *supra* note 17.

III. INTERNAL DISPLACEMENT

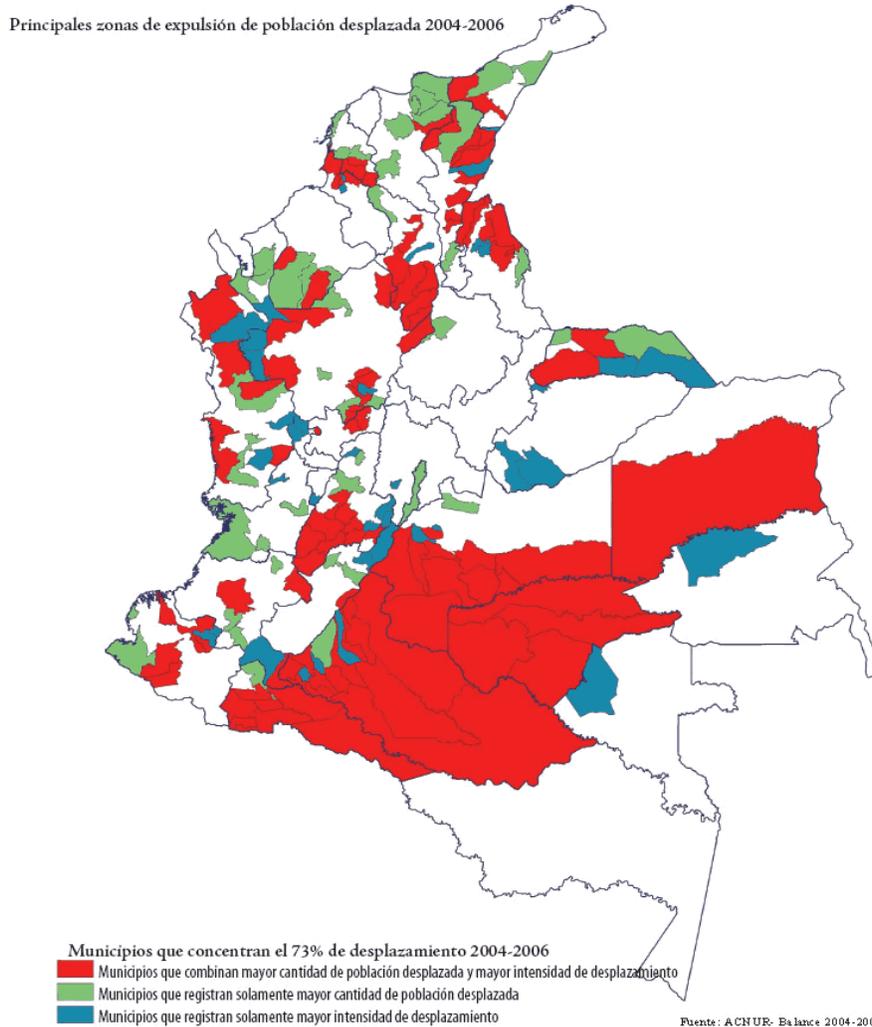
The internal conflict has been the principal cause of forced displacement from its beginning.⁹⁰ Fifty years into the conflict, peasants remain the most affected individuals.⁹¹ Millions of peasants have been forcibly displaced.⁹² The activities and abuses by the guerrillas, the paramilitaries, and the Colombian Army have forced peasants to leave their homes behind in search for the safety of the cities.⁹³

⁹⁰ See TORRES DEL RÍO, *supra* note 25, at 198.

⁹¹ See CODHES, CODHES INFORMS 2011, *supra* note 23, at 1; Marc Hanson, *Refugees International, Colombia: Transformational Change Must Include Urban IDPS*, REFUGEES INTERNATIONAL (Sept. 12, 2012), <http://refugeesinternational.org/policy/field-report/Colombia-transformational-change-must-include-urban-idps>.

⁹² See HANSON, *supra* note 91.

⁹³ CODHES, CODHES INFORMS 2011, *supra* note 23, at 1-2.



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The map illustrates the principal areas of expulsion of displaced individuals. It also shows the municipalities that housed seventy-three percent of the displaced population between 2004 and 2006. The red area (“Municipios que combinan mayor cantidad de población desplazada y mayor intensidad de desplazamiento”) highlights the municipalities with the most displaced individuals and areas with the highest rates of displacement.

⁹⁴ *Proyecto Terranova: Análisis Sobre el Desplazamiento y Tierras [Terranova Project: An Analysis of Displacement and Lands]*, UNIVERSIDAD DE LOS ANDES, <http://terranova.uniandes.edu.co/sobreterranova.html> (last visited Mar. 22, 2013).

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The green area (“Municipios que registran solamente mayor cantidad de población desplazada”) highlights municipalities that report only high numbers of displaced individuals. Last, the blue area (“Municipios que registran solamente mayor intensidad de desplazamiento”) highlights municipalities that report only high rates of displacement.

In 2011 alone, an estimated 259,146 individuals were displaced, escaping intimidation and violence.⁹⁵ Of these, about 29,521 individuals were forced out of their towns in crowds in seventy-three different instances of massive displacement.⁹⁶ Between 1985 and 2011, approximately 5.5 million people had been displaced.⁹⁷ Over ninety percent of these individuals found refuge in urban areas.⁹⁸

Internally displaced persons are three times more likely to live in poverty and five times more likely to live in *extreme* poverty than the average Colombian.⁹⁹ Accustomed to a rural life, they struggle to make a living in urban areas.¹⁰⁰ Their income is thirty percent less than the income of non-displaced individuals living within the same area.¹⁰¹ As a consequence of displacement, inter-generational poverty results, because displacement forces children to delay or suspend their education.¹⁰²

Internally displaced persons usually live in urban areas of high-risk.¹⁰³ These areas, which are overcrowded with houses and susceptible to natural disasters such as floods, have restricted access to public services.¹⁰⁴ The levels of violence are extremely high.¹⁰⁵ Women and young girls are often exposed to sexual abuses, while young men are forced to join illegally armed groups with presence or dominion over marginalized neighborhoods.¹⁰⁶

IV. THE LAW OF VICTIMS AND LAND RESTITUTION

In response to the situation of millions of internally displaced individuals, the government enacted the Law of Victims and Land

⁹⁵ CODHES, CODHES INFORMA [CODHES INFORMS] 2 (2012), available at http://www.acnur.org/t3/uploads/media/CODHES_Informa_79_Desplazamiento_creciente_y_crisis_humanitaria_invisibilizada_Marzo_2012.pdf?view=1 [hereinafter CODHES, CODHES INFORMS 2012].

⁹⁶ *Id.* at 5.

⁹⁷ *Id.* at 35; HANSON, *supra* note 91.

⁹⁸ HANSON, *supra* note 91.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *See id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Restitution in June 10, 2011.¹⁰⁷ The Law of Victims intends to achieve reconciliation between the conflict victims and the National Government, and reestablish the victims's lost confidence in the government.¹⁰⁸ It seeks to reinstate the conflict victims to their condition prior to facing the violations listed under the Law.¹⁰⁹ Also, it provides a framework that recognizes the rights of the conflict victims, and gives them priority over the benefits the government affords.¹¹⁰ The framework establishes a set of judicial, administrative, economic, and social standards to achieve its ends.¹¹¹

A. Who is a Victim under the Law

The Law of Victims defines as victims those individuals who suffered human rights violations in connection with the armed conflict.¹¹² Human rights violations under the Law include: murder; displacement; disappearance; dispossession of lands; kidnapping; false positives, and other attacks against civilians; sexual abuses, and other crimes against sexual integrity; and victims of landmines, and any other illegal war strategy.¹¹³ The perpetrators of the violations must be the guerrillas, paramilitaries, or the Colombian Army.¹¹⁴ The Law of Victims limits its protection to victims harmed after January 1, 1985.¹¹⁵

The definition of victim includes spouses and permanent partners, including same-sex partners.¹¹⁶ It also includes family members of harmed individuals that are in first degree of consanguinity, or first degree of affinity, when the direct victim was assassinated or went missing.¹¹⁷ If no relative of first degree is identified, relatives of ascending second degree will be considered victims.¹¹⁸ The definition of victims also covers any individual harmed during efforts to prevent victimization or in assisting an actual victim in danger.¹¹⁹

¹⁰⁷ See Ley de Víctimas y Restitución de Tierras [Law of Victims and Land Restitution], L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], Prólogo 3 (Colom.), available at <http://www.colombiaenaccion.gov.co/victimas?cat=37>.

¹⁰⁸ *Id.*; HANSON, *supra* note 91.

¹⁰⁹ Law of Victims, L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], art. 71.

¹¹⁰ *Id.* art. 3.

¹¹¹ *See id.*

¹¹² *Id.*

¹¹³ *ABC of the Law of Victims and Land Restitution, supra* note 11.

¹¹⁴ Law of Victims, L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], art. 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Members of the armed groups are not considered victims, unless the member renounced any association to the group while he was a minor.¹²⁰ Spouses, partners, or relatives of members of armed groups are considered victims, but not indirect victims of the violent acts committed by these groups.¹²¹ Victims of ordinary crimes are not considered victims for the purposes of the Law.¹²²

B. Measures for Relief

The Law of Victims offers the following measures for relief, respectively.

1. *Land Restitution*

The first form of relief the Law of Victims provides is the restitution of land.¹²³ Under the Law, the government will reinstate property title or possession to the victims.¹²⁴ It will make efforts to obtain the land the victims were displaced of.¹²⁵ In case the restitution of land is not feasible, due to impossibility in obtaining the land, or because the victim's return will endanger her life or personal integrity, alternative equivalent measures are offered to the victim.¹²⁶ These measures include a grant of land in a different location with characteristics that are similar to those of the property lost.¹²⁷ The victim will receive monetary compensation for her land, only if all of the foregoing measures are unfeasible.¹²⁸ Monetary compensation will not exceed the land value appraised during the restitution process.¹²⁹

The Law of Victims is not limited to the return of parcels of land; it also provides for restitution of homestead.¹³⁰ Victims, whose homes have been damaged by abandonment, dispossession, or any type of loss, have priority over home subsidies for the construction of, improvements to, and the acquisition of new homes.¹³¹ Those who return to their original

¹²⁰ *Id.* art. 3, ¶ 2.

¹²¹ *Id.*

¹²² *Id.* art. 3, ¶ 3.

¹²³ *Id.* art. 72.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* art. 98.

¹³⁰ *Id.* art. 123.

¹³¹ *Id.*

properties will have priority in receiving home subsidies.¹³²

2. Indemnification

The Law of Victims indemnifies victims depending on the severity of the victimizing act and the number of household members.¹³³ After considering these factors, the government determines the amount the victim is entitled to.¹³⁴ Victims receive their indemnification through any of the following: (1) integral land subsidies; (2) home replacement; (3) land acquisition and adjudication; (4) lot adjudication and entitlement for displaced individuals; (5) home subsidies for improvements, repairs, or construction; or (6) home subsidies for acquisition, improvement, or construction of new homes.¹³⁵ Any monies the victims received as administrative indemnification prior to the enactment of the Law of Victims will be deducted from the total amount that the Law of Victims entitles them to.¹³⁶

3. Rehabilitation

Rehabilitation consists of different legal, medical, psychological, and social programs, aimed at the recovery of victims, who suffered psychological or physical harm.¹³⁷ The programs will provide for psychological and medical treatment to the victims.¹³⁸ The length of psycho-social support will vary, based on the needs of the victim.¹³⁹

C. Education

The Law of Victims requires academic institutions to take all necessary measures to ensure access and exemption of all educational costs to the victims.¹⁴⁰ The Law of Victims includes only basic education.¹⁴¹ Victims who can afford costs of education are not entitled to receive these

¹³² *Id.*

¹³³ *Id.* art. 132.

¹³⁴ *Id.*

¹³⁵ *Id.* art. 132, ¶ 3.

¹³⁶ *Id.* art. 132, ¶ 4; DEPARTAMENTO PARA LA PROSPERIDAD SOCIAL, RESUMEN GENERAL DE LA LEY [GENERAL SUMMARY OF THE LAW] 5-6 (2011), available at <http://es.scribd.com/doc/75893565/Resumen-General-de-La-Ley>.

¹³⁷ Law of Victims, L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], art. 135; see also Germán Gómez Polo, *Ley de Víctimas Está Paralizada en Bolívar* [*The Law of Victims is Paralyzed in Bolívar*], EL UNIVERSAL (July 29, 2012), <http://www.eluniversal.com.co/cartagena/bolivar/ley-de-victimas-esta-paralizada-en-bolivar-85731?iframe=true&width=90%&height=90%>.

¹³⁸ *Id.* arts. 137-38.

¹³⁹ *Id.* art. 136.

¹⁴⁰ *Id.* art. 51.

¹⁴¹ *Id.*

benefits.¹⁴² The Law of Victims mandates that post-secondary institutions establish selection, admission, and matriculation processes to facilitate the victims's accessibility to their programs.¹⁴³ Priority is given to female heads of families, incapacitated individuals, and adolescents.¹⁴⁴

D. Measures for Protection of the Victims

Pursuant to the Law of Victims, law enforcement agencies must adopt necessary measures to protect the victims, witnesses, and government officials involved in judicial and administrative processes for reparation and land restitution.¹⁴⁵ The Law of Victims recognizes that these individuals are susceptible to risks of danger.¹⁴⁶ As such, it requires law enforcement officials to establish preventive measures to mitigate the risk of danger.¹⁴⁷

V. CHALLENGES TO THE IMPLEMENTATION OF THE LAW

The Law of Victims benefits six million *campesinos*, or peasant farm workers, who have fallen victim to the internal conflict and have faced internal displacement.¹⁴⁸ The Law is a groundbreaker because it offers a great deal of unprecedented benefits. It is significantly descriptive in creating quasi-judicial and other administrative agencies to effectuate its objectives. Nonetheless, the Law is problematic, for it is too ambitious and faces substantial implementation challenges. The Law is ideal for a post-conflict environment, yet Colombia's internal conflict is far from over. Despite successful efforts in demobilizing thousands of members of armed groups,¹⁴⁹ and in diminishing cocaine production,¹⁵⁰ violence persists in the country. The ongoing violence, together with sequels of the conflict, is the main impediment to the implementation of the law.

The challenges and difficulties the Law of Victims faces can make it an ineffective method to restore the victims.¹⁵¹ Among the rights it sets

¹⁴² *Id.*

¹⁴³ *See id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* art. 31.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* art. 31, ¶ 2.

¹⁴⁸ Santi Quiñones, 'Blanqueo de Tierras' en Colombia ['Bleaching of Lands' in Colombia], PERIODISMO HUMANO (Spain), Nov. 11, 2012, <http://periodismohumano.com/en-conflicto/blanqueo-de-tierras-en-colombia-la-guerra-como-coartada-para-arrebatat-a-los-campesinos-10-millones-de-hectareas.html>.

¹⁴⁹ HUMAN RIGHTS WATCH, WORLD REPORT 2012, *supra* note 17.

¹⁵⁰ North, *supra* note 87.

¹⁵¹ María Cano Roldán & Octavio Augusto Caro Garzón, *Las Grandes Dificultades de la Reparación Administrativa de las Víctimas de la Violencia en Colombia: Algunos Comentarios Respecto a la Implementación del Decreto 1290 de 2008* [The Great Difficulties of the Administrative

forth, the Law of Victims promises the “integral reparation” of the victims.¹⁵² And, as part of the integral reparation, it includes the right to land restitution, which seeks to place the victims in their position prior to falling victim to the conflict.¹⁵³ It also establishes the “warranty of no repetition,”¹⁵⁴ which guarantees to the victims that they will not be subjects of second instances of the same crime.¹⁵⁵ The challenges the Law faces make these rights of an enuciative efficacy nature because they impede the law from achieving its objectives.¹⁵⁶ These challenges include the social inequality and lack of effective measures to guarantee the socioeconomic stabilization of the victims,¹⁵⁷ the ongoing internal conflict,¹⁵⁸ and the current landmine situation in Colombia.¹⁵⁹

Reparation of the Victims of the Violence in Colombia: Some Comments with Respect to the Implementation of the Decree 1290 of 2008], 41 REVISTA FACULTAD DE DERECHO Y CIENCIAS POLÍTICAS 451, 479 (2011) (Colom.), available at <http://revistas.upb.edu.co/index.php/derecho/article/view/1072/969>.

¹⁵² Law of Victims, L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], art. 25; see also *ABC of the Law of Victims and Land Restitution*, supra note 11.

¹⁵³ *Id.*

¹⁵⁴ Law of Victims, L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], arts. 1, 25.

¹⁵⁵ See *id.*

¹⁵⁶ See Cano Roldán et al., supra note 151, at 476. The effectiveness of a law can be measured through the standards for *instrumental efficacy* or *symbolic efficacy*. *Id.* A law achieves instrumental efficacy when the legal aspect of the law is linked to its social aspect. *Id.* Furthermore, the law must have clear and definite goals, which can be achieved so long as the framework created to achieve them is carried out. *Id.*

In contrast, a law acquires mere symbolic efficacy when no connection exists between the specific goals of the law, the law’s framework to achieve those goals, and the actual results. *Id.* at 477. In this case, the law becomes nothing more than a legal order seeking to achieve its goals through an idea. *Id.* Symbolic efficacy also takes place when a law dictates only a social obligation. *Id.* It calls for “doing something” that “will serve to create a representation in the public opinion,” rather than imposing a specific conduct or procedure. *Id.*

There are two types of symbolic efficacy: *enunciative efficacy* and *argumentative efficacy*. *Id.* Enunciative efficacy takes its form in laws which goals are not achieved due to lack of performance or application. *Id.* The instrumental object of the law is never achieved; thus, it only accomplishes a symbolic objective. *Id.* A law is of an argumentative efficacy nature when no link is formed between its specific goals and the results. *Id.* The law is successful in achieving other goals that are different from those it directed. *Id.* Thus, the law is deemed effective but not efficacious. *Id.* Argumentative efficacy also occurs when the individuals applying the law (*i.e.*, the judiciary and administrative authorities) are not in accord with the agency creating the law (*i.e.*, Congress). *Id.* In this case, the law serves a political use, where its objectives are not carried out. *Id.*

¹⁵⁷ Aura Patricia Bolívar Jaime, *Internally Displaced Population, Debts and Restitution*, DEJUSTICIA (Colom.) Aug. 17, 2012, available at http://dejusticia.org/index.php?modo=interna&tema=justicia_transicional&publicacion=1264&lang=en [hereinafter Bolívar, *Internally displaced population*].

¹⁵⁸ See Nicole Summers, *Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict?*, 25 HARV. HUM. RTS. J. 219, 220 (2012).

¹⁵⁹ See *70% de Tierras Despojadas por la Guerrilla Pueden Tener Minas [70% of Lands Abandoned by the Guerrillas may be Infected with Landmines]*, EL TIEMPO (Colom.), (Oct. 3, 2012), <http://www.eltiempo.com/colombia/tolima/70-de-tierras-despojadas-por-la-guerrilla-pueden-tener->

A. Social Inequality and Lack of Effective Measures for Economic Stabilization

The environment of socioeconomic inequality, in which the internal conflict originated, persists in Colombia. The high concentration of land ownership was one of the leading causes of the internal conflict.¹⁶⁰ To date, Colombia has an unequal pattern of land ownership.¹⁶¹ This distribution of lands has created an agrarian structure of two contrasting forms, where a small number of individuals hold ownership of the vast majority of productive land.¹⁶² Such distribution has resulted in inequalities that are economic, social, and political in nature.¹⁶³ It has also restrained rural development.¹⁶⁴

The main challenge to the socioeconomic stabilization of the returning victims is the high concentration of land ownership, because the Law does nothing to change the unequal pattern of land tenure.¹⁶⁵ Restitution of lands differs from a land reform with regard to land tenure.¹⁶⁶ A land reform changes the pattern of land tenure.¹⁶⁷ Restitution returns previously owned lands, whether the plots are large or small. On the contrary, a land reform, appropriates large tracts of land, or *latifundios*, which are owned by few, and redistributes them amongst a higher number of individuals in small to medium plots.¹⁶⁸ This redistribution has the tendency of curing socioeconomic inequalities in rural areas.¹⁶⁹

The inability of small plot farmers to benefit from their lands is associated with the unequal distribution of land tenure.¹⁷⁰ Agricultural policy generally harms the productivity of small plot farms, even though small plot farms are more productive than large farms per hectare.¹⁷¹ Small plot farmers are at a disadvantage because they lack machinery, education, and political connections, and current government policies favor large

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¹⁶⁰ Rodríguez, *supra* note 14.

¹⁶¹ Attanasio et al., *supra* note 14, at 44.

¹⁶² Rodríguez, *supra* note 14.

¹⁶³ *Id.*

¹⁶⁴ *Id.*; see also Attanasio et al., *supra* note 14, at 4.

¹⁶⁵ Attanasio et al., *supra* note 14, at 4, 11; see also Rodríguez, *supra* note 14.

¹⁶⁶ See Nelson Camilo Sánchez, *Reforma Agraria y Restitución [Land Reform and Restitution]*, DEJUSTICIA (Colom.), Sept. 16, 2012, available at http://www.dejusticia.org/index.php?modo=interna&tema=justicia_transicional&publicacion=840.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See *id.*; David Wilson & Roy Laishley, *Land Reform—Success and Failure*, NEW INTERNATIONALIST (Nov. 1, 1979), available at <http://newint.org/features/1979/11/01/land-reform/>.

¹⁷⁰ Attanasio et al., *supra* note 14, at 11.

¹⁷¹ *Id.*

farms.¹⁷² Further, large farmers are in a better position to adjust their prices and to respond to income inequalities.¹⁷³ Absent social support, small plot farmers have limited access to farm equipment, new agricultural techniques, and markets.¹⁷⁴

The lack of means affects land productivity and, consequently, the victims's socioeconomic advancement.¹⁷⁵ Handing lands to inexperienced farm workers is fatal to agricultural production.¹⁷⁶ The victims need knowledge or experience in agriculture or animal husbandry to make their lands productive.¹⁷⁷ Title IV of the Decree 4800 attempts to resolve this issue through the creation of programs for education, training, and professional development.¹⁷⁸ However, these programs lack effective coordination.¹⁷⁹ In addition, in order to function on a sound basis from the outset, the victims will also need access to subsidies, equipment, and markets, among other things.¹⁸⁰ The socioeconomic advancement of the victims is at stake unless the government provides the victims with adequate means to take advantage of their lands.¹⁸¹ Also, stagnant or decreasing land productivity restrains rural development.¹⁸² Rural development is another outcome expected from the implementation of the Law of Victims.¹⁸³

Other factors are also contributing to the obstruction of the victims's ability to take advantage of their lands.¹⁸⁴ For example, forced displacement brought along the abandonment of the lands.¹⁸⁵ From

¹⁷² *Id.*

¹⁷³ See Wilson et al., *supra* note 169.

¹⁷⁴ Attanasio et al., *supra* note 14, at 11.

¹⁷⁵ See *id.*; Wilson et al., *supra* note 169.

¹⁷⁶ See Wilson et al., *supra* note 169.

¹⁷⁷ See, e.g., *id.*

¹⁷⁸ Attanasio et al., *supra* note 14, at 48; see also L. 4800/11, diciembre 20, 2011, DIARIO OFICIAL [D.O.] (Colom.), available at <http://www.leydevictimas.gov.co/documents/10179/19132/completo.pdf>.

¹⁷⁹ Attanasio et al., *supra* note 14, at 48.

¹⁸⁰ See Wilson et al., *supra* note 169.

¹⁸¹ See *id.*; see also Attanasio et al., *supra* note 14, at 4, 11.

¹⁸² See Wilson et al., *supra* note 169.

¹⁸³ Rodrigo Uprimmy-Yepes & Nelson Camilo Sánchez, *Los Dilemas de la Restitución de Tierras en Colombia* [The Dilemmas of the Restitution of Lands in Colombia], 12 ESTUD. SOCIO-JURID. 305, 308 (2010) (Colom.), available at http://www.scielo.org.co/scielo.php?pid=S0124-05792010000200010&script=sci_arttext.

¹⁸⁴ See Juan Carlos Díaz, *Ley de Tierras Vistas por los Campesinos de los Montes de María* [Law of Victims as Seen by Peasants in Montes de María], EL TIEMPO (Colom.), Apr. 9, 2012, available at http://www.eltiempo.com/colombia/cartagena/ARTICULO-WEB-NEW_NOTA_INTERIOR-11524641.html.

¹⁸⁵ *Id.*; see also Aura Patricia Bolivar Jaime, *Land Restitution: Is it a Trap?*, DEJUSTICIA (Colom.) (Nov. 22, 2012), available at

approximately ten million hectares of displaced land, about four million hectares remained abandoned and unattended in 2012.¹⁸⁶ The abandonment of the lands has made them unsuitable for livelihood and for production.¹⁸⁷ This situation hinders the ability of the victims to work their land and earn an income.¹⁸⁸ The lands must be “civilized” before they can become productive.¹⁸⁹ However, the cost of “civilizing” one hectare of land is at least three million pesos or \$1,679 dollars, a cost that most victims living in poverty cannot afford.¹⁹⁰

In certain cases where victims sold their lands to escape violence, succeeding owners reforested the lands and planted non-native species.¹⁹¹ This has had a grave environmental impact on the lands.¹⁹² In Montes de María, for instance, the non-native eucalyptus has invaded the lands.¹⁹³ The invasion of these trees has caused native animals to migrate in search for food.¹⁹⁴ These species, which include iguanas, wolves, and squirrels, depend on native plants for their survival.¹⁹⁵ The environmental impact results in loss of productivity of the land and, consequently, inhibits the victims’s ability to depend on their land for livelihood, and to work it for income.¹⁹⁶

As a result of the foregoing issues, the Law of Victims, along with the supplementing framework for rural development that the Decree 4800 attempts to establish, could achieve only symbolic efficacy.¹⁹⁷ The Law is in danger of becoming a total failure unless the government implements an effective framework to ensure a source of income for the victims upon their return.¹⁹⁸ If governmental efforts fail, the victims will be victimized again, and the government’s obligation to restitute the victims and guarantee their enjoyment of rights would increase.¹⁹⁹

http://dejusticia.org/index.php?modo=interna&tema=justicia_transicional&publicacion=1380
(hereinafter Bolívar, *Land Restitution: Is it a Trap?*).

¹⁸⁶ Quiñones, *supra* note 148.

¹⁸⁷ Díaz, *supra* note 184.

¹⁸⁸ *See id.*; Bolívar, *Land Restitution: Is it a Trap?*, *supra* note 185.

¹⁸⁹ Díaz, *supra* note 184.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *See id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *See id.*

¹⁹⁷ Bolívar, *Internally Displaced Population*, *supra* note 157.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

B. The Ongoing Internal Conflict

As part of its objectives to achieve the victims's "integral reparation," the Law of Victims provides a warranty of no repetition.²⁰⁰ The Law promises that the victims will not face the same abuses again, including forced displacement.²⁰¹ The Law establishes measures to protect the victims and prevent their re-victimization.²⁰² However, the internal conflict in Colombia is far from over.²⁰³ The conflict poses the most difficult challenge to the implementation of the Law of Victims and its warranty of no repetition.²⁰⁴ So long as the violence persists, the warranty of no repetition will become a complete failure, achieving only symbolic efficacy.²⁰⁵

The presence of armed groups in areas intended for restitution prevents the restitution of lands and the fulfillment of the warranty of no repetition.²⁰⁶ Existing and newly armed groups continue to displace peasant farm workers,²⁰⁷ making it extremely difficult for the government to guarantee that the victims will not be subjected to displacement again.²⁰⁸ Although former President Álvaro Uribe Vélez engaged in successful efforts to demobilize the armed groups,²⁰⁹ successor groups continue to commit atrocious crimes, forcing the displacement of civilians.²¹⁰ In Maria La Baja, for example, paramilitary successor groups broke into six homes between April 2011 and January 2012.²¹¹ The armed men held the victims in captivity and stole property from their homes.²¹² They also forced

²⁰⁰ L. 1448/11, junio 10, 2011, DIARIO OFICIAL [D.O.] arts. 1, 25 (Colum.).

²⁰¹ *See id.*

²⁰² *See id.* arts. 31-34, 149-50; Summers, *supra* note 158, at 233.

²⁰³ HAUGAARD, ET AL., *supra* note 15, at 1; *see also* HUMAN RIGHTS WATCH, COLOMBIA: VICTIMS LAW A HISTORIC OPPORTUNITY (June 10, 2011), <http://www.hrw.org/news/2011/06/10/colombia-victims-law-historic-opportunity> [hereinafter HUMAN RIGHTS WATCH, VICTIMS LAW A HISTORIC OPPORTUNITY]; LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, http://www.the-monitor.org/custom/index.php/region_profiles/print_profile/450 (last updated Dec. 17, 2012).

²⁰⁴ Summers, *supra* note 158, at 219; *see also* Política, *Piden a Santos Acciones Concretas Contra Ejércitos Anti-Restitución [Santos Is Called for Concrete Measures Against Anti-Restitution Armies]*, EL ESPECTADOR (Nov. 29, 2012), <http://www.elespectador.com/noticias/politica/articulo-389813-piden-santos-acciones-concretas-contra-ejercitos-anti-restitucion>.

²⁰⁵ *See* Summers, *supra* note 158, at 233.

²⁰⁶ Rodríguez, *supra* note 14; *see also* Daniel Valero, *Víctimas Reclaman 700,000 Hectáreas Robadas por las Farc [Victims Reclaim 700,000 Hectares Stolen by the Farc]*, EL TIEMPO (Sept. 30, 2012), http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-12269101.html.

²⁰⁷ HAUGAARD ET AL., *supra* note 15, at 11.

²⁰⁸ Rodríguez, *supra* note 14.

²⁰⁹ CENTER FOR JUSTICE AND ACCOUNTABILITY, *supra* note 6.

²¹⁰ *Id.*; HAUGAARD ET AL., *supra* note 15, at 11; Summers, *supra* note 158, at 233.

²¹¹ HAUGAARD ET AL., *supra* note 15, at 11.

²¹² *Id.*

women to wash their clothes and serve them before raping eleven of them.²¹³ The victimized families fled their homes after the abuses and invasions.²¹⁴ Additionally, the guerrillas have also been the perpetrators of abuses against peasant farm workers.²¹⁵ The guerrillas have been involved in extortion; killings; forced recruitment of civilians, including children; confinement of communities; and forced displacement.²¹⁶

The enactment of the Law of Victims brought along a new wave of illegally armed groups, whose purpose is to resist its implementation.²¹⁷ These groups are known as the *Ejércitos Anti-Restitución*, or “Anti-Restitution Armies.”²¹⁸ Large landowners are the main financiers of these insurgent groups.²¹⁹ Landowners who fund these groups are often subject to investigations for illegal acquirement of land title.²²⁰ These landowners are attempting to keep their illegally acquired lands by impeding the return of lands to the rightful owners.²²¹

Lumber, mining, and cement companies, among others, are also involved in Anti-Restitution Armies.²²² The companies and landowners employ legal and illegal tactics to appropriate the *campesinos’s* lands.²²³ These include: the appropriation of lands that *campesinos* lack title to; the prevention of the *campesinos’s* access to life-sustaining resources, such as water and markets; pressuring the *campesinos* into selling their lands; and employing former illegal groups to threaten the *campesinos* and to commit

²¹³ *See id.*

²¹⁴ *Id.*

²¹⁵ HAUGAARD ET AL., *supra* note 15, at 11; HUMAN RIGHTS WATCH, WORLD REPORT 2012, *supra* note 17.

²¹⁶ *Id.*

²¹⁷ *Carta del MOVICE al Presidente Juan Manuel Santos Previa Movilización 6 de Marzo* [MOVICE’s March 6th Letter to President Juan Manuel Santos], MOVICE (July 16, 2012), http://www.movimientodevictimas.org/index.php?option=com_content&view=article&id=1207:carta-del-movice-al-presidente-juan-manuel-santos-previa-movilizacion-del-6-de-marzo&catid=50:6-de-m; HAUGAARD ET AL., *supra* note 15, at 11; *see also* ONG Denunció Amenazas de “Ejército Anti-Restitución de Tierras” [NGO Denounces Threats from “Anti Land Restitution Army”], LA F.M. (Feb. 23, 2012), <http://www.lafm.com.co/noticias/colombia/23-02-12/ong-denuncio-amenazas-de-ejerc-10>; Santos Is Called for Concrete Measures Against Anti-Restitution Armies, *supra* note 204.

²¹⁸ *Id.*

²¹⁹ MOVICE’s March 6 Letter to President Juan Manuel Santos, *supra* note 217.

²²⁰ *See* Camilo Segura Álvarez, *Los “Líderes” del Ejército Anti-Restitución* [“Leaders” of the Anti-Restitution Army], AGENCIA PRENSA RURAL (July 13, 2012), <http://prensarural.org/spip/spip.php?article8610>; Político, *¿Un Ejército Anti-Restitución?* [An Anti-Restitution Army?], EL ESPECTADOR (July 5, 2012), <http://www.elespectador.com/noticias/politica/articulo-357427-un-ejercito-anti-restitucion>.

²²¹ *Ejército Anti-Restitución Amenaza a Sucre* [Anti-Restitution Army Threatens Sucre], EL HERALDO (June 24, 2012), <http://www.elferaldo.com/noticias/nacional/ejercito-anti-restitucion-amenaza-sucre-72367>.

²²² HAUGAARD ET AL., *supra* note 15, at 11.

²²³ *Id.*

abuses against them.²²⁴

In Montes de María, where the United States and Colombian governments have declared that security is restored, large companies have been seizing the *campesinos's* land and forcing their displacement since 2008.²²⁵ These companies are employing paramilitary successor groups as security guards and enforcers.²²⁶ *Campesinos* who bring up the issue to the companies's agents or authorized personnel are subject to death threats.²²⁷ For instance, a *campesino* leader from Montes de María revealed that he began receiving death threats after complaining with the manager of a lumber company about the company's activities.²²⁸ The company was cutting off the *campesinos's* access to the road that leads to the market where the *campesinos* sell their produce.²²⁹ "More threats are coming from the lumber company directly than from the illegal groups, though the two are linked," he explained.²³⁰

Threats against the victims are a growing concern as well as an interference with the implementation of the Law.²³¹ The government is not providing the victims with adequate protection,²³² as promised by the Law.²³³ And without the necessary protection, "even the very institutions intended to return land to victims . . . [could] become generators of new dangers and new displacements."²³⁴ In the municipality of Montería, some victims have received threats after filing a claim for land restitution.²³⁵ Perpetrators approached victims immediately after filing their claims, threatening them, and demanding they desist from proceeding with the

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *See id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *See id.*

²³⁰ *Id.*

²³¹ Argemiro Piñeros Moreno, *Ley de Víctimas, un Año Después [Law of Victims, a Year Later]*, EL UNIVERSAL (June 11, 2012), <http://www.eluniversal.com.co/cartagena/politica/ley-de-victimas-un-ano-despues-79691>; HAUGAARD ET AL., *supra* note 15, at 2-3; "La Ley de Restitución de Tierras se Debe Cumplir a Pesar de sus Enemigos": *Minagricultura* ["The Land Restitution Law Should Be Enforced Despite Its Enemies"], EL UNIVERSAL (Jan. 9, 2012), <http://www.eluniversal.com.co/monteria-y-sincelejo/economica/%E2%80%99Cla-ley-de-restitucion-de-tierras-se-debe-cumplir-pesar-de-sus-enemig>; *see also* Gobierno, *Ofrecen Recompensas ante Amenazas Contra Reclamantes de Tierras [Rewards Offered as a Result of Threats Against Land Claimants]*, SEMANA (Sept. 29, 2012), <http://www.semana.com/nacion/articulo/ofrecen-recompensa-ante-amenazas-contr-reclamantes-tierras/265582-3>.

²³² HAUGAARD ET AL., *supra* note 15, at 2.

²³³ *See* L. 1448/11, junio 10, 2011, DIARIO OFICIAL [D.O.] arts. 31-32 (Colom.).

²³⁴ HAUGAARD ET AL., *supra* note 15, at 2-3.

²³⁵ Gobierno, *Rewards Offered as a Result of Threats Against Land Claimants*, *supra* note 231.

claims.²³⁶ They pressured the victims into signing documents and offered them about \$1,200 to dismiss the claims.²³⁷ If the victims declined, the perpetrators threatened the victims, telling them that their refusal would result in “serious consequences.”²³⁸

Illegally armed groups, and those who oppose land restitution, have also made threats to members of non-governmental organizations (“NGOs”) and leaders of land claimants, with the purpose of interfering with the implementation of the Law of Victims.²³⁹ Between 2010 and 2012, members of illegally armed groups have killed over twenty-five leaders who campaigned for the return of displaced victims to their lands.²⁴⁰ Jairo Mejia Martinez, a former member of the FARC and a land restitution leader, was brutally murdered in his backyard in June 2012.²⁴¹ The death threats against leaders increased after this attack.²⁴² On October 2, 2012, members of the Anti-Restitution Army sent an email to several NGOs that read: “[d]eath to all members of associations, like the snitches who work in the restitution of lands.”²⁴³ The same day, they sent yet another death threat via text message to land restitution leaders in Bolivar.²⁴⁴

Colombia’s internal conflict is far from over.²⁴⁵ The existing insurgent groups, and the emergence of the new Anti-Restitution armies, impede the success of the warranty of no repetition, as well as the implementation of

²³⁶ *Id.*

²³⁷ *See id.*

²³⁸ *Id.*

²³⁹ Amnesty International, *Amenazas de Muerte Contra Defensores Reclamantes de Restitución de Tierras [Death Threats Against Advocates Claiming Land Restitution]*, COLECTIVO DE ABOGADOS (Oct. 17, 2012), <http://www.colectivodeabogados.org/Amenaza-de-muerte-contra>; *Denuncian 15 Amenazas en el Último Mes Contra Líderes de Restitución de Tierras [Fifteen Threats Denounced Against Leaders of Land Restitution in the Last Month]*, ADN (Nov. 29, 2012), <http://diarioadn.co/actualidad/colombia/denuncian-15-amenazas-en-el-ultimo-mes-contra-1%C3%ADderes-de-tierras-1.35712>; David Bonilla, *Denunciación Amenazas Contra Líderes de Restitución de Tierras [Denounced Threats Against Land Restitution Leaders]*, SEMANA (Oct. 3, 2012), <http://www.semana.com/nacion/articulo/denuncian-amenazas-contra-lideres-restitucion-tierras/265769-3>.

²⁴⁰ HAUGAARD ET AL., *supra* note 15, at 2.

²⁴¹ *Presidente Santos Lamenta la Muerte de Líder de Restitución de Tierras [President Santos Laments the Death of Land Restitution Leader]*, EL UNIVERSAL (June 17, 2012), <http://www.eluniversal.com.co/cartagena/nacional/presidente-santos-lamenta-muerte-de-lider-de-restitucion-de-tierras-80539>.

²⁴² *See Death Threats Against Advocates Claiming Land Restitution*, *supra* note 239.

²⁴³ *Id.*

²⁴⁴ *Id.*; Bonilla, *supra* note 239.

²⁴⁵ HAUGAARD ET AL., *supra* note 15, at 1, 11; Rodríguez, *supra* note 14; Summers, *supra* note 158, at 219; *see also* HUMAN RIGHTS WATCH, VICTIMS LAW A HISTORIC OPPORTUNITY, *supra* note 203; LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203; Quiñones, *supra* note 148.

the Law of Victims itself.²⁴⁶ The Law of Victims has created a new wave of violence, resulting in killings and death threats against the victims and land restitution leaders.²⁴⁷ So long as the internal conflict and violence persists in Colombia, the warranty of no repetition will achieve nothing more than symbolic efficacy. Such warranty is ideal for a post-conflict environment, but the eradication of the internal conflict is currently unforeseeable in Colombia.

C. The Landmine Problem

By October 2012, thirty-seven percent of reported victims who filed a claim for land restitution were displaced by the FARC.²⁴⁸ The Minister of Agriculture and Rural Development, Juan Camilo Restrepo, revealed that at least seventy percent of the lands that were once under FARC control are infected with antipersonnel mines.²⁴⁹ The presence of landmines presents a

²⁴⁶ Santos Is Called for Concrete Measures Against Anti-Restitution Armies, *supra* note 204; Summers, *supra* note 158, at 219.

²⁴⁷ HAUGAARD ET AL., *supra* note 15, at 2-3; *see also* Colombia: Victims Face Reprisal for Reclaiming Land, HUMAN RIGHTS WATCH (Sept. 17, 2013), <http://www.hrw.org/news/2013/09/17/colombia-victims-face-reprisals-reclaiming-land>.

²⁴⁸ 70% of Lands Abandoned by the Guerrillas may be Infected with Landmines, *supra* note 159.

²⁴⁹ *Id.*; Paula Delgado-Kling, *Talking About Colombia: Stolen Land to be Returned to Original Owners is Planted with Landmines* (Oct. 16, 2012), <http://talkingaboutcolombia.com/2012/10/16/stolen-land-to-be-returned-to-original-owners-is-planted-with-landmines/>; *see also* Valero, *supra* note 206.

Colombia is the only country in Latin America where landmines are still planted. Moloney, *supra* note 17, at 2013; *see* HUMAN RIGHTS WATCH, *Landmine Treaty: More Members, but Use Persists* (Nov. 23, 2011), <http://www.hrw.org/news/2011/11/22/landmine-treaty-more-members-use-persists> [hereinafter HUMAN RIGHTS WATCH, *Landmine Treaty*]. Landmines are amongst the indiscriminate weapons illegal armed groups have used and continue to use in Colombia. Valero, *supra* note 206; HUMAN RIGHTS WATCH, *WORLD REPORT 2012*, *supra* note 17. Illegal armed groups have used landmines since the mid-1990s with the purpose of decimating their targets, instill terror in civilian populations, protect fields of illicit plant cultivation, and attack offensive groups. CODHES, *CODHES INFORMS*, *supra* note 95; *see also* Moloney, *supra* note 17. Landmines remain the guerrilla's weapon of choice because they are easily attainable and cheap. Moloney, *supra* note 17; *see also* Yilberto Lahuerta Percipiano, *Impactos Económicos Generados por el Uso de Minas Antipersonal en Colombia [Economic Impacts Generated by the Use of Antipersonnel Landmines in Colombia]*, ARCHIVOS DE ECONOMIA 1 (2003), available at https://www.dnp.gov.co/Portals/0/archivos/documentos/DEE/Archivos_Economia/235.pdf. The so-called "foot breakers" cost about five dollars to make. Moloney, *supra* note 17. They are assembled in homes and virtually undetectable by trained sniffer dogs. *Id.*; *see also* Lahuerta, *supra* note 249, at 1. Colombia has one of the highest numbers of landmine victims in the world. Moloney, *supra* note 17. It has the highest number of new casualties reported every year. *Id.* By the end of 2012, a total of 10,001 individuals had fallen victim to landmines in Colombia. Delgado-Kling, *supra* note 249. Of these, 2,098 have lost their lives. *Id.* An average of three people fall victim to landmines every day in Colombia. Moloney, *supra* note 17. Between 1990 and 2002, the government spent \$3.4 million dollars on medical attention for the victims. Lahuerta, *supra* note 249, at 9. The number of landmine casualties declined in 2007 for the first time in five years. Moloney, *supra* note 17. The annual casualty rate dropped again by forty-four percent during the first three months of 2009. *Id.* By June 2009, over 220 new landmine casualties were reported. *Id.* The decreasing trend continued in 2011, with 120 new casualties reported during the first seven months. *See* HUMAN RIGHTS WATCH, *WORLD REPORT 2012*,

substantial impediment to the implementation of the Law for the following reasons: it prevents restitution of the identified contaminated lands; it threatens the safety of the victims, devalues their lands, and decreases agricultural productivity; and it imposes a severe burden upon the government to clear out the minefields.²⁵⁰

Restitution is not possible until the lands are cleared of landmines and declared safe.²⁵¹ In 2012, the government had not surveyed all areas it suspected to be contaminated, thus ignoring the extent of landmine contamination.²⁵² Clearing landmines to ensure their suitability for habitation will delay the victims's return to their lands.²⁵³ Assuming that the government restitutes unsurveyed lands, victims will likely refuse to return after discovering that their lands may be infected, or may have been infected with landmines.²⁵⁴

Milciades Garcia, for example, is a *campesino* who was forced to sell a large tract of productive land for less than \$6,000 dollars in the midst of violent attacks.²⁵⁵ His previously owned 19.5 hectares of land in Montes de María became attractive to the FARC for its varied elevations and close proximity to bodies of water.²⁵⁶ The FARC committed multiple atrocities on his land.²⁵⁷ They kidnapped and killed two of Milciades's brothers and several of his friends, including a close friend who Milciades found dead.²⁵⁸ The FARC also planted landmines in a portion of Milciades's land that was abandoned due to the violence.²⁵⁹ The landmines were planted strategically to prevent the Colombian Army from entering into Milciades's lands.²⁶⁰ Milciades witnessed a horse "exploding" and a soldier "reduced to pieces"

supra note 17. However, the number of casualties increased in 2012, with 328 new casualties reported by October. Delgado-Kling, *supra* note 249.

In Colombia, people associate landmine victims with membership or participation with the armed groups. Moloney, *supra* note 17. They assume the injuries occurred as a result of planting landmines. *Id.* As a result, many casualties remain unreported due to ineffective databases and due to the fact that victims rather remain silent than gain an ill fame.

²⁵⁰ See generally Lahuerta, *supra* note 249.

²⁵¹ Delgado-Kling, *supra* note 249.

²⁵² LANDMINE AND CLUSTER MUNITION MONITOR, LANDMINE MONITOR 2012, at 25-26 (2012), available at http://www.the-monitor.org/lm/2012/resources/Landmine_Monitor_2012.pdf (hereinafter LANDMINE AND CLUSTER MUNITION MONITOR, LANDMINE MONITOR 2012); see also Moloney, *supra* note 17, at 2014.

²⁵³ See, e.g., Lahuerta, *supra* note 249, at 19-20, 25.

²⁵⁴ See, e.g., Díaz, *supra* note 184.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ See *id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ See *id.*

on his land after stepping on landmines.²⁶¹ He affirms that he will not return to his former land under any circumstances.²⁶²

The presence of landmines further prevents adequate restitution of the victims by decreasing the value of the victims's lands. Like Milciades, many victims refuse to return to lands once in control of the FARC after they learn about the presence of landmines.²⁶³ Similarly, the presence of landmines will disinterest potential land buyers once the Law of Victims allows the sale of the lands. The total value of lands abandoned by forced displacement was approximately \$3.7 million dollars in 2009.²⁶⁴ This value will dramatically decrease, as the decrease in demand for lands results in a decrease in their value.

Landmines not only affect the land value, but also the productivity of the lands, which ultimately has a detrimental effect on the reparation of the victims.²⁶⁵ The Law of Victims aims for the transformation of the land market and the improvement of rural areas,²⁶⁶ which will generate a source of income for the victims. Nonetheless, the existence of landmines hinders such development.²⁶⁷ Land cannot be cultivated where landmines are planted.²⁶⁸ Mine fields can obstruct agricultural areas of economic activity.²⁶⁹ They can also block other areas that are crucial to the support or furtherance of any economic activity.²⁷⁰ For instance, landmines can block roads and highways, cattle and agricultural fields, and water sources regularly used for agricultural purposes, or by the cattle industry.²⁷¹ The loss of land productivity, which results from landmines, accounts for ten to eighteen percent of the total expenditure that the country bears in connection with the insurgency's use of landmines.²⁷² Thus, even if the victim opts to return to her land, the presence of landmines within her territory, or in nearby areas, will interfere with the productivity of the land

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *See, e.g., id.*

²⁶⁴ ACNUR, ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS REFUGIADOS (ACNUR), LAS TIERRAS DE LA POBLACIÓN DESPLAZADA [LANDS OF THE DISPLACED POPULATION] (2009) (Colom.), *available at* http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/Las_tierras_de_la_poblacion_desplazada.pdf?view=1.

²⁶⁵ *See* Lahuerta, *supra* note 249, at 27-32.

²⁶⁶ Uprimmy-Yepes, *supra* note 183, at 308.

²⁶⁷ *See generally* Lahuerta, *supra* note 249.

²⁶⁸ ACNUR, LANDMINE AND CLUSTER MUNITION MONITOR, LANDMINE MONITOR 2012, *supra* note 252, at iii.

²⁶⁹ Lahuerta, *supra* note 249, at 27.

²⁷⁰ *Id.*

²⁷¹ *See id.*

²⁷² *Id.* at 38.

and obstruct the economic advancement of the victim.

More importantly, those who opt for returning to unknowingly contaminated lands are exposed to great danger. Individuals can easily fall victim to landmines. Injuries caused by landmines range from mild injuries to death.²⁷³ Landmine casualties occur in high rates in Colombia.²⁷⁴ Landmine injuries result in devastating effects to the victims, who often lose limbs. It also increases the government's cost in health care and victims's assistance. Further, landmine injuries result in costs related to the loss of productivity of human capital.²⁷⁵ Such injuries cause the diminution or loss of productive capacity of landmine victims who are physically impaired and prevented from having a normal working life.²⁷⁶

Last, the presence of landmines obstructs the implementation of the Law of Victims because the government faces the burden of demining the victims's lands. It drastically increases government expenses aimed at efforts to clear out minefields. In some departments, the local governments have already complained about the lack of funds to properly execute the restitution plan.²⁷⁷ With the presence of landmines, the government will incur additional costs that range between \$200 and \$1,000 for the removal of a single landmine.²⁷⁸

The guerrillas continue to plant landmines on a regular basis in areas where they retain control.²⁷⁹ In September 2011, the Colombian Army found 1,961 mines in the department of Putumayo, which had been planted by the FARC.²⁸⁰ In February 2012, the Army seized forty-eight "fan mines" from the FARC in the department of Caquetá.²⁸¹

The FARC continues its use of landmines for the purposes of instilling

²⁷³ *Id.* at 33.

²⁷⁴ *See supra* note 249 and accompanying text.

²⁷⁵ *See* Lahuerta, *supra* note 249, at 33.

²⁷⁶ *See id.*

²⁷⁷ *See, e.g.,* Gómez Polo, *supra* note 137.

²⁷⁸ *See* Lahuerta, *supra* note 249, at 27. The cost of removal per landmine is 2.5 times greater in Colombia than the international average. *Id.* The higher cost is due to the unique characteristics of most homemade landmines planted in Colombia, which make them harder to detect. *Id.* These homemade landmines are not made out of metal; thus, a metal detector would not locate them. *Id.* Also, the explosives are covered with coffee or other products to make it extremely difficult for dogs to find. *Id.* Last, these homemade landmines use different types of activation devices such as heat, light, and movement. *Id.* This variation hinders the deminers's performance since the method of deactivation changes depending on the device. *Id.*

²⁷⁹ Moloney, *supra* note 17, at 2013; *see also* HUMAN RIGHTS WATCH, WORLD REPORT 2012, *supra* note 17; LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203.

²⁸⁰ LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203.

²⁸¹ *Id.*

terror and threatening communities.²⁸² In 2011, for example, the explosion of mines on the only road that leads to Samaniego, Nariño cut off the access to the town.²⁸³ About a year later, in August 2012, the FARC distributed pamphlets in the Putumayo town of San Miguel, informing the community of the presence of landmines around the area.²⁸⁴ The threat resulted in the confinement of the community.²⁸⁵

Approximately 328 people fell victim to landmines in 2012.²⁸⁶ Out of these, fifty-four were killed, including eleven children.²⁸⁷ By the end of the year, the Army had confiscated 3,882 kilograms of explosives in Putumayo, an amount sufficient to assemble over 10,000 explosive devices.²⁸⁸ The armed groups's continued use of landmines obstructs the land restitution process and the integral reparation of the victims.²⁸⁹

The government initiated its efforts of demining fields after it ratified the Ottawa Treaty.²⁹⁰ Efforts to remove landmines in areas planted by the military have proved somewhat successful.²⁹¹ Twenty-two out of thirty-three military bases were demined by 2009.²⁹² However, efforts in clearing out mines remain in their early stages.²⁹³ Trained deminers are scarce in Colombia.²⁹⁴ Also, the government still ignores the extent of the territory that is contaminated with landmines.²⁹⁵ Only few maps indicating the contaminated areas exist.²⁹⁶ The government possesses information indicating that thirty-one of the thirty-two departments are contaminated,²⁹⁷ and it estimates that 660 municipalities are affected.²⁹⁸ However, all suspected areas have yet to be surveyed.²⁹⁹ This lack of information on the

282 *See id.*

283 *Id.*

284 *Id.*

285 *Id.*

286 Delgado-Kling, *supra* note 249.

287 *Id.*

288 *See* LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203.

289 *See infra* Part V (C).

290 Moloney, *supra* note 17, at 2014.

291 *See id.*

292 *Id.*

293 *Id.*

294 Moloney, *supra* note 17, at 2014.

295 *Id.*; LANDMINE AND CLUSTER MUNITION MONITOR, LANDMINE MONITOR 2012, *supra* note 252, at 24.

296 Moloney, *supra* note 17, at 2014.

297 LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203.

298 LANDMINE AND CLUSTER MUNITION MONITOR, LANDMINE MONITOR 2012, *supra* note 252, at 25.

299 *See id.*; *see also* Moloney, *supra* note 17, at 2014.

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extent of contaminated areas hinders the government's ability to create an operational demining plan.³⁰⁰ Pursuant to its obligations under Article Five of the Mine Ban Treaty, the government did not meet its 2011 deadline to demine all contaminated areas in the country.³⁰¹ It requested a ten-year extension to meet its deadline, and anticipates that all areas will be cleared out by then.³⁰² Colombia created a 2011-2013 operational plan, which was the central component of the request for extension.³⁰³ But, given the slow progress of the current operational plan, meeting the extended deadline is unlikely.³⁰⁴

So long as landmines are still present in the lands of the victims, restitution of these lands is impossible. The government may proceed with the restitution process in unsurveyed areas, but many victims will likely refuse to return once they are aware of the possibility of landmine contamination. Even if victims agree to return, the landmines diminish the productivity of their lands, making it difficult for them to thrive financially upon their return.

VI. RECOMMENDATIONS

In the interest of the victims of Colombia's internal conflict, the Law of Victims must be implemented in spite of its substantial challenges. The internal conflict in Colombia originated from the economic and social inequalities that resulted from the unequal distribution of land, and the *campesinos* fought, and continue to fight, for land reform. Fifty years later, the *campesinos* remain the most affected group as a result of the ongoing conflict. Thus, it is imperative that the government adopt effective measures to overcome challenges to the implementation of the Law of Victims in order to achieve the "integral reparation" of the *campesinos*. The proposed measures include: (1) effective implementation of programs for the socioeconomic stabilization of the victims; (2) greater protection to those involved in the process of land restitution and to communities at risk of displacement; and (3) the improvement of demining efforts in areas intended for restitution.

First, overcoming the challenge of granting victims integral reparation by means of ensuring their socioeconomic stabilization upon return poses a tremendous difficulty. The Law does not change the unequal distribution of

³⁰⁰ *Id.*

³⁰¹ LANDMINE AND CLUSTER MUNITION MONITOR, LANDMINE MONITOR 2012, *supra* note 252, at 25.

³⁰² *Id.* at 24.

³⁰³ LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203.

³⁰⁴ *Id.*

lands.³⁰⁵ Implementing a program that does nothing to cure such inequality will altogether fail.³⁰⁶ Although the enactment of the Law of Victims strives for progressive change, it serves as the government's shield to continue to reject land reform. A land restitution program that does nothing to modify the unequal distribution of land tenure is less satisfactory than land reform.³⁰⁷ But, given the current political situation in Colombia, a program for land restitution is probably the only approach the government will adopt in relation to land repatriation.³⁰⁸

To alleviate the problem of inequality arising from the current distribution of land tenure, the government can complement restitution with land grants that will positively affect the current pattern of land distribution.³⁰⁹ The effectiveness of this plan depends upon the government's ability to acquire the lands to be distributed, through grants.³¹⁰ In order to ensure that the victims make the most of their lands, the government must effectively oversee its programs. The Law of Victims, along with its supplementing decrees, creates training programs, grants, and credits aimed at the socioeconomic stabilization of the victims upon return to their lands.³¹¹ Crucial to the success in achieving socioeconomic stabilization of the victims is the effective implementation and monitoring of these programs.

It is important that the victims's return is incentivized, and not forced.³¹² If the victims are forced to return, the government will achieve the exact opposite of integral reparation. For example, in the event that a bona fide owner occupies land intended for restitution, the Law of Victims requires that the owner be paid the value of his land.³¹³ The government must then return the land to the victim.³¹⁴ Yet the victim might prefer to receive payment for the value of the land rather than take possession of the

³⁰⁵ See Attanasio et al., *supra* note 14, at 46.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *See id.*

³⁰⁹ *Id.* at 47.

³¹⁰ *Id.* at 48.

³¹¹ See L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], arts. 51, 130-31; L. 4800/11, diciembre 20, 2011, DIARIO OFICIAL [D.O.], Title IV, Chp. I.

³¹² See Paula Jaramillo Vidales, *Siendo Justos Mientras se Está Impartiendo Justicia: Ley de Reparación de Tierras [Being unjust While Justice is Served: Law of Land Restitution]*, LA SILLA VACÍA (May 12, 2011), <http://www.lasillavacia.com/elblogueo/blogoeconomia/24271/siendo-injusto-mientras-se-esta-impartiendo-justicia-ley-de-reparacion> [hereinafter Jaramillo, *Law of Land Restitution*].

³¹³ Paula Jaramillo Vidales, *Nobel en Economía: Asignación Bilateral y Estabilidad Aplicada [Nobel in Economy: Bilateral Assignment and Applied Stability]*, EL ESPECTADOR (Colom.), Oct. 21, 2012, available at <http://www.elespectador.com/noticias/economia/articulo-382455-nobel-economia-asignacion-bilateral-y-estabilidad-aplicada> [hereinafter Jaramillo, *Nobel in Economy*].

³¹⁴ *Id.*

land.³¹⁵

In a survey conducted in 2004, only ten percent of victims expressed a desire to return to their lands.³¹⁶ However, the Law of Victims does not provide victims with this alternative.³¹⁷ It grants monetary compensation only in the event that the government cannot acquire the victim's land and there are no alternative lands with similar characteristics that can be conveyed to the victim.³¹⁸ In like manner, the Law of Victims precludes victims from selling the land within two years after restitution.³¹⁹ In such event, the implementation of the Law of Victims is not achieving justice or integral reparation, for it is subjecting the victim to return to her land against her will.³²⁰

Integral reparation requires the government to take into consideration the victims's desires in implementing the restitution program, which is viable without bearing additional execution costs.³²¹ The solution entails offering the victims an alternative option.³²² For instance, the government can put the victim on notice that her land is under the possession of an owner who obtained the land through legal means.³²³ Once the government assesses the cost of the land and determines that the current possessor is a bona fide owner, it can offer the victim the option to choose payment over possession of the land.³²⁴ This way, the victim's desires are taken into account, while bearing no additional expenses for land restitution.³²⁵

Second, the Law of Victims provides a warranty of no repetition, which guarantees to the victims that they will not be subjects of a second instance of forced displacement. However, making such a utopian warranty deviated from the reality in Colombia, where the internal conflict persists. So long as the internal conflict persists in Colombia, achieving such warranty is not feasible. The warranty of no repetition is ideal for a post-conflict environment and, since the conflict is far from over, it achieves pure symbolic significance on its face.

³¹⁵ *Id.*

³¹⁶ Jaramillo, *Law of Land Restitution*, *supra* note 312.

³¹⁷ *See* Jaramillo, *Nobel in Economy*, *supra* note 313.

³¹⁸ *See* L. 1448/11, junio 10, 2011, 40.096 DIARIO OFICIAL [D.O.], art. 72 (providing that the government must first attempt to recover the victim's land; if this is not possible, the government will give the victim a land with similar characteristics to her original land; and, if none of the foregoing are possible, it will give monetary compensation to the victim as a last resource).

³¹⁹ *Id.*, art. 101.

³²⁰ Jaramillo, *Nobel in Economy*, *supra* note 313.

³²¹ *Id.*

³²² *Id.*

³²³ *See id.*

³²⁴ *Id.*

³²⁵ *Id.*

While the government cannot guarantee the non-recurrence of forced displacement, it can nonetheless adopt measures to better protect the victims, land restitution leaders, and communities at risk of displacement from violence. Further, it can afford greater protection to victims initiating their land claims. Land claimants are being threatened and intimidated. As a result, many of them refrain from proceeding with their claims. Thus, the government must provide individualized protection to the victims receiving threats in connection with their claims for lands.

For example, the government can establish protection plans and consult with returning communities, or communities at risk of displacement, to incorporate their specific needs into the plan.³²⁶ In the case of returning or returned communities, the Ministry of Interior should create an emergency reaction protocol to be implemented by local authorities.³²⁷ In requiring local authorities to provide twenty-four hour protection to returning or returned communities, local authorities are engaged in the restitution process.³²⁸

As to communities at risk of displacement, the protection plan that is specially formulated to address their particular needs should include investigations of threats and abuses.³²⁹ In addition, the protection plan should establish an army patrol along the boundaries of the community.³³⁰ The plan should also include measures for investing in rural development projects that are community-based, and measures to ensure adequate access to the community through roads or bridges.³³¹ The government must also (properly and rapidly) recognize and legalize land title.³³²

Twenty-four hour protection is also necessary for land restitution leaders who are often the subjects of death threats and victims of murder.³³³ The murders of sixty-seven land restitution leaders remain unpunished.³³⁴ The threats, attacks, and murders must be promptly investigated and prosecuted.³³⁵ Only prompt investigations and prosecutions can deter subsequent attacks.³³⁶

Lastly, the government should improve its demining efforts in areas

³²⁶ HAUGAARD ET AL., *supra* note 15, at 19.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *See id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *See id.*

³³³ *See id.*

³³⁴ *President Santos Laments the Death of Land Restitution Leader*, *supra* note 241.

³³⁵ HAUGAARD ET AL., *supra* note 15, at 19.

³³⁶ *Id.*

intended for restitution. It should survey these areas to determine whether they are contaminated with landmines in order to establish an operational plan.³³⁷ Once the affected areas are properly identified, the government should prioritize these areas in its operational plan and conduct the survey. Demining platoons should mark and fence the zones planted with landmines in the interim between identification and demining, in order to ensure the exclusion of potential victims, as soon as the affected areas are properly identified.³³⁸

Such efforts should also be aimed at areas where communities are at risk of displacement. Injuries resulting from landmines force victims to flee their homes.³³⁹ Thus, preventive measures are essential to avoid further displacement. Upon surveying and fencing contaminated areas, the government should inform civilians in nearby communities of the presence of landmines.³⁴⁰

The burden of overcoming the landmine problem is substantial, since demining programs are expensive.³⁴¹ Also, these efforts are being conducted while the armed groups continue to plant landmines.³⁴² Demining efforts across the entire country may be moving slowly, and the set deadlines are unlikely to be met.³⁴³ Nevertheless, implementing an effective operational plan that *prioritizes* the areas intended for restitution or at risk of displacement is feasible.

In 2011, Colombia declared the mine clearance of seventy-four areas covering 329,950 m² where the Army is not actively engaged in operations against armed groups.³⁴⁴ Nine municipalities, which comprised these areas, were cleared and declared safe in one year. Also, the government counts on the aid of international and non-governmental organizations, as well as the

³³⁷ Demining efforts have been hindered by the lack of information regarding the affected mine areas. Moloney, *supra* note 17, at 2014; LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203; LANDMINE AND CLUSTER MUNITION MONITOR, LANDMINE MONITOR 2012, *supra* note 252, at 25. The government, aided by international and non-governmental organizations, has yet to survey all suspected areas. *Id.*

³³⁸ See HUMAN RIGHTS WATCH, MAIMING THE PEOPLE: GUERRILLA USE OF ANTIPERSONNEL LANDMINES AND OTHER INDISCRIMINATE WEAPONS IN COLOMBIA 3 (2007), available at <http://www.hrw.org/sites/default/files/reports/colombia0707webwcover.pdf>.

³³⁹ See, e.g., *id.* at 12.

³⁴⁰ See *id.* at 3.

³⁴¹ See Ana María Arango Domínguez, *Colombia's Landmine Crisis*, HUMANITARIAN PRACTICE NETWORK (HPN) (2009), available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-45/colombias-landmine-crisis>.

³⁴² See *id.*

³⁴³ See LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203.

³⁴⁴ See *id.*

support from foreign governments, in ongoing demining efforts.³⁴⁵ The United States, for example, granted \$1.9 million for the funding of the demining plan.³⁴⁶ Canada provided additional funding in the amount of \$1.6 million for projects including integral humanitarian mine action.³⁴⁷

VII. CONCLUSION

The Law of Victims and Land Restitution faces significant challenges. Despite its substantial obstacles, the implementation of the Law of Victims is crucial to the adequate reparation for the victims, who have been, and continue to be, the most affected by the conflict. Certainly, eradicating the internal conflict is nearly impossible. Nonetheless, the government can adopt measures to initiate a change in the pattern of socioeconomic inequalities, which can eventually end the vicious cycle of the internal conflict. By reducing the socioeconomic inequalities and ensuring the victims's socioeconomic stabilization upon return, the government will eliminate the conditions of inequality that originated the internal conflict in the first place. Also, it achieves the integral reparation of the victims by ensuring their economic stabilization. The government could do so if the program for land restitution is properly supplemented with a program for land grants. That way, the government engages in active measures to change the unequal distribution of land ownership, a distribution that creates an environment of inequality, allowing for the economic advancement of the victims.

Since it is not feasible to eradicate the internal conflict in Colombia, the government should, at the very least, offer more protection to the victims seeking restitution. In addition, it should establish effective plans to protect returned communities, as well as communities at risk of displacement. The government must promptly investigate and prosecute threats and attacks against the victims, innocent communities, and land restitution leaders for future deterrence of such threats and attacks. Last, the government cannot realistically prevent the continued use of landmines by illegally armed groups, but it can prioritize its demining programs in areas intended for restitution. That way, the safety of the returning victim is ensured, and land production and rural development are not hindered by the presence of landmines.

³⁴⁵ See *id.*; *Canada Announces More Support for Land Restitution in Colombia*, FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA (Nov. 14, 2012), <http://www.international.gc.ca/media/state-etat/news-communiqués/2012/11/14a.aspx?lang=eng&view=d>.

³⁴⁶ LANDMINE AND CLUSTER MUNITION MONITOR, COLOMBIA: MINE BAN POLICY, *supra* note 203.

³⁴⁷ *Canada Announces More Support for Land Restitution in Colombia*, *supra* note 345.