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# Closer to Home

## A Critical Analysis of Colombia's Proposed Land Law



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“Yes, I am afraid. But the least I can do is plant on the land he gave his life for...I ask that they allow me this, the chance to work and harvest.”

—Cristina Delgado, daughter of slain farmer on Colombia's northern coast<sup>1</sup>.

With more than 4 million internally displaced people (IDPs), Colombia is living the hemisphere's greatest humanitarian crisis. At the heart of this crisis is land—ownership of and access to—and the results include a combination of human suffering and stunted rural development for the country's poorest regions. Despite investments reaching more than \$6 billion, U.S. policy toward Colombia has failed to mitigate this crisis and subsequently advance rural development.

The U.S. has a historic opportunity to work with Colombia's recently elected president, Juan Manuel Santos, to advance proposed land policy (a component of the “Victims Law” currently under consideration in Colombia) and address the grievances of millions of internally displaced persons (IDPs) while also spurring meaningful development. To achieve these gains, U.S. policy-makers must first understand the gaps in President Santos' proposed land policy, then advance a series of recommendations to ensure such policy fulfills the rights of those displaced from their lands.

### FORCED DISPLACEMENT AND LAND HOLDINGS

Colombia's 4 million internally displaced people represent almost 10 percent of the country's population, and 98 percent of IDPs come from rural areas<sup>2</sup>. More than 80 percent of this population

was displaced after 2000, the first year of Plan Colombia<sup>3</sup>. Displacement in Colombia is the result of direct violence or combat between armed groups, including guerrillas, paramilitaries and state forces. Intimidation, threats of violence, aerial fumigations and the fight over control of land and territory represent other significant causes of displacement.

For the vast majority, return to the countryside and the pursuit of rural livelihoods is out of the question<sup>4</sup>. Reasons include continued combat in the countryside (fighting between armed groups), targeted violence against community leaders and farming families, intimidation or death threats, and fear of forced recruitment by armed actors. When conditions do exist for return (including a lull or absence of violence and the economic means to manage return) complications around land titling often make return impossible. The majority of Colombia's IDPs have no official title to the lands they once held or the titles they maintain are informal. In fact, only 40 percent of rural land in Colombia corresponds to official titles and of these only half have updated value assessments<sup>5</sup>.

Displacement in Colombia has resulted in concentrated land holdings. As families are pushed off the small plots they once farmed, land falls under control of fewer individuals and / or armed groups. In Colombia, the rate of rural land concentration

1. Name has been changed. *In the province on Sucre, Cristina rides her bicycle nearly five hours each day to work the land her father was murdered on in 2000 by paramilitary forces led by Rodrigo Mercado Pelfufo, alias “La Cadena.” The farmers she shares this land with face threats of violence and the possibility of losing their land due to debt accumulated during their displacement from 2000 to date.*

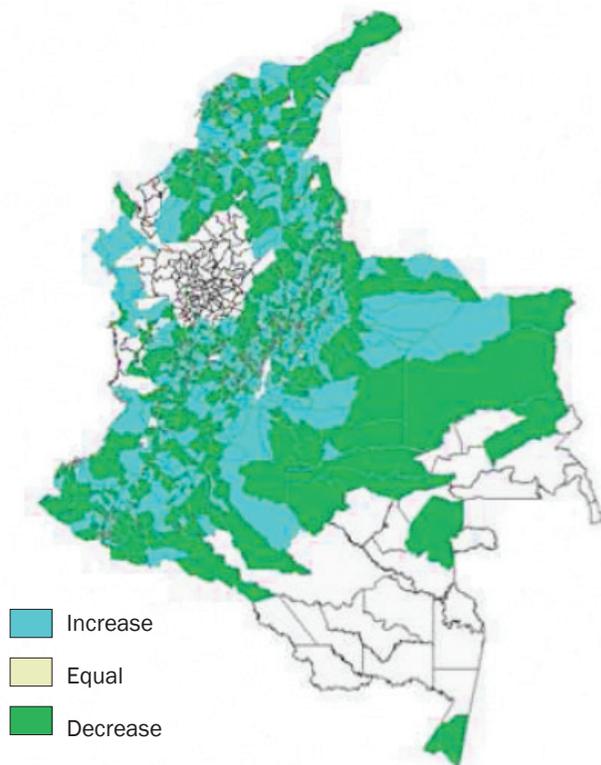
2. Departamento Nacional de Estadística (DANE) 2008. Department of National Statistics, 2008.

3. Comisión de Seguimiento a la Política Pública sobre desplazamiento forzado, Tercera Encuesta de Verificación de los Derechos de la población Desplazada, Bogotá 2010

4. Comisión de Seguimiento, El Reto ante la Tragedia Humanitaria del Desplazamiento Forzado. April 2009 (According to the commission, 97.1% of IDPs have received no type of restitution).

5. <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/c4aa7002792d2596c1256a8e004b300b> Sibylla Brodzinsky, “How Colombia's President Santos aims to tackle decades of violent land disputes” Christian Science Monitor October 4, 2010

Map 1. Land Concentration



## CHANGES TO GINI: 2000 TO 2009

	Number of Municipalities	Percentage
Increase	543	56.56
Equal	1	0.1
Decrease	416	43.33

Source: Ibáñez and Muñoz. Based on *Atlas of the Distribution of Land* (in preparation). Agreement IGAC-CEDE (2009).

is the highest in the Americas. From 2000 to 2009, the Gini coefficient\* rose by 2.5 percent and land concentration increased by 56.6 percent in municipalities that experienced high rates of displacement (Map1). Land concentration reached its peak in 2005. This trend has left small-scale farmers, and entire rural communities, without access to land.

Official statistics show that approximately 5.5 million hectares\*\* of abandoned land are registered in the Registry of Abandoned Land and Territories. However, a recent survey conducted by the Monitoring Commission for Public Policy on Forced Displacement concludes that between 1980 and July 2010, 6.6 million hectares of land were abandoned or usurped<sup>6\*\*\*</sup>. This figure does not include Afro-Colombian and indigenous collective territories or land holdings bigger than 98 hectares. This amount represents 12.9 percent of Colombia's total agricultural land in Colombia, and is greater than the size of El Salvador.<sup>7</sup>

**LAND RESTITUTION WITHIN THE VICTIMS LAW:**

Colombian president Juan Manuel Santos recently submitted a bill to the Colombian Congress that seeks to provide reparation to victims of violence. Known as the Victims Law, the proposed bill contains a specific chapter on victims of forced displacement. With this bill, the Santos administration seeks to restitute 2 million hectares of land to Colombia's IDP population<sup>8</sup>. The bill indicates that 1.2 million hectares of "returnable land" will come from usurped lands that are now in the hands of third parties<sup>9</sup>. The remaining lands consist of land once owned by drug lords whose property is in the process of confiscation by the state. In cases where restitution is not possible, the bill establishes compensation for IDPs.

\* The Gini coefficient is a measure of the inequality of a distribution, a value of 0 expressing total equality and a value of 1 maximal inequality. It has been used as a measure of inequity of income, wealth or in this particular case land holdings.

\*\* 1 hectare equals approximately 2.4 acres

\*\*\* Seized and controlled without authority. In this context, the use of force or intimidation is prevalent.

6. Comisión de Seguimiento, III Encuesta Nacional de Verificación.

7. Comisión de Seguimiento, III Encuesta Nacional de Verificación

8. Santos, Juan Manuel, *LE LLEGÓ LA HORA A COLOMBIA!* Discurso de posesión, agosto 7 de 2007. [http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807\\_15.aspx](http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807_15.aspx) consulta del 10 de agosto de 2010. Colombia's Time has Arrived. Presidential Inauguration Speech, August 7, 2007.

9. Santos, Juan Manuel, *LE LLEGÓ LA HORA A COLOMBIA* Colombia's Time has Arrived. Presidential Inauguration Speech, August 7, 2007.

The law also includes the creation of a new department within the Ministry of Agriculture: the Department for Restitution of Abandoned Land. This new department has the following functions:

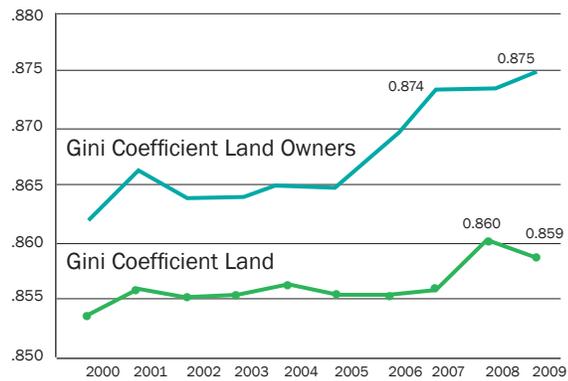
- Establish and administer the Registry of Abandoned Lands
- Expedite the restitution processes
- Pay compensations when land restitution is not possible
- Pay compensations to land holders able to demonstrate that they acquired the land of IDPs in good faith.

The proposed bill charges the executive branch with deciding what cases to bring to Agrarian Judges\* and the geographic regions to prioritize for restitution. Areas chosen for pilot projects of restitution are those areas where the Integrated Action Policy is under implementation. The Integrated Action Policy, which the U.S. government has supported and heavily financed, seeks to recuperate territory from guerrilla forces and consolidate the State's presence by combining military actions with social investment.

**GAPS IN PROPOSED POLICY**

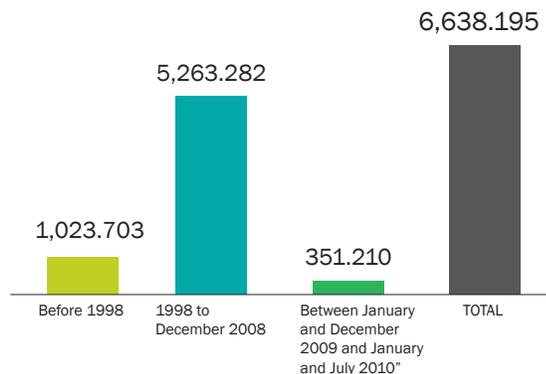
**Victims:** The proposed bill only contemplates restitution or reparations for victims of displacement between 1991 and January of 2010. This limited time frame leaves out thousands of victims of displacement. Notably, the proposed time frame makes it impossible for victims of displacement during the 1980s—a critical point of paramilitary expansion and consolidation in Colombia—to seek land restitution through the law's proposed mechanisms. And despite Colombia's continued conflict resulting in displacement at staggering rates, victims after January 2011 will be unable to seek reparations.

**Graphic 1. Evolution of Land Concentration 2000 -2010**



Source: Ibáñez, 2010.

**Graphic 2. Surface of Abandoned and Taken Over Lands (Hectares)**



Source: Comisión de Seguimiento, 2010

**Afro-Colombian and Indigenous Communities:**

Afro-Colombian and indigenous communities have experienced disproportionately high rates of displacement in Colombia<sup>10</sup>. Nonetheless, the proposed bill excludes these communities, as it lacks a mechanism to guarantee the right of previous consultation<sup>11</sup>. By excluding Afro-Colombian and indigenous populations from the universe of victims

\*Agrarian judges are judges with an expertise in laws related to land and agriculture in Colombia. In Colombia, each judicial district has an Agrarian Tribunal. It is these tribunals and judges that will be charged with overseeing cases under the new "land law."

10. According to the Internal Displacement Monitoring Center, 23.7 percent of all Colombian IDPs belong to an ethnic group—primarily Afro-Colombian or indigenous.

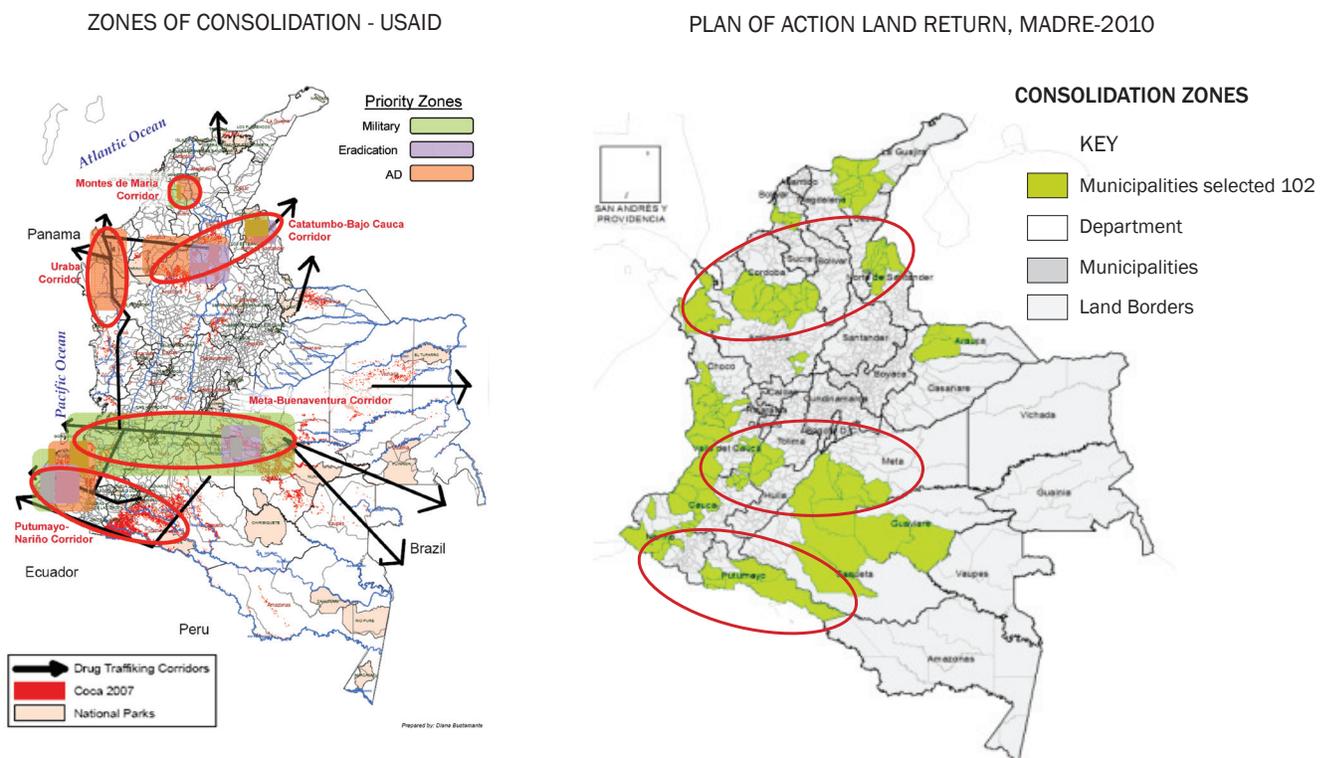
11. Previous Consultation is the right that Indigenous and Afro-Colombian communities have over decision-making regarding policy measures, development projects, infrastructure development or any activities to be carried out within their territories. It seeks to guarantee and protect their cultural, social and economic identity and guarantee their right to participation. (International Labor Organization, Convention 169). The right of previous consultation was declared a fundamental and constitutional right by the Colombian Constitutional Court in 1994.

covered by the new policy, the bill fails to recognize grave human rights violations committed against these groups and the effects of forced displacement from ancestral lands on their livelihoods.

The Colombian Congress has given the president extraordinary powers to advance debate of the Victims Law while also drafting a separate decree seeking to repair the rights of the indigenous and Afro-Colombian populations. A six month time limit was provided for the Executive branch to draft the decree. The primary risk of considering the bill in its current form is that Afro-Colombian and indigenous populations may ultimately be excluded from reparation.

**Protection Measures:** The proposed bill does not articulate protection measures for families returning to land restituted under the law. Approximately 40 leaders of displaced populations working for land restitution have been killed since 2002, and many more IDP leaders are under threat<sup>12</sup>. In January 2011, for example, the bodies of three members of the Land Consultation Working Group in Colombia's Tolima Department were found in a mass grave. In September 2010, after the Minister of Agriculture restituted 34 farms to displaced families, Hernando Pérez, an IDP leader in this return process, was assassinated<sup>13</sup>. In March of 2010, Rogelio Martinez was murdered on the farm he and his family had recently returned to after initial displacement in 2000.

## Map 2. Restitution Areas



Sources: US Agency for International Development, 2009 and Minister of Agriculture and Rural Development 2010.

12. CODHES, (Consultoría para los Derechos Humanos y el Desplazamiento) shows that 37 IDPs were murdered between March 1, 2002 and July 17, 2010. The National Commission for Reparation puts the number at 45 since the initiation of the Peace and Justice process through 2009.

13. Semana, "No cesan crímenes contra líderes de desplazados" y "Tierra de sangre". En: No cesan crímenes contra líderes de desplazados, Article On Line <http://www.semana.com/noticias-nacion/tierra-sangre/145045.aspx>. Semana, "Crimes Against Displaced Leaders do not Cease" and "Land of Fire" On Line.

His murder came on the heels of multiple threats and appeals to the Colombian authorities for protection. Improved protection for rural communities, and affiliate budgets must be designed before any land reparations advance.

**Integral Reparation:** The bill does not contemplate special measures to guarantee integral reparation, meaning not only the restitution of land but also compensation for losses in property, livestock, crops and other assets that the displaced population possessed prior to displacement. Colombia's Constitutional Court, in a series of orders to the Colombian government, has provided a comprehensive set of measures and policies on this topic that must be taken into account. Failure to follow these orders means the Colombian government will remain in a state of "Unconstitutional Affairs" as declared in 2004 by the Constitutional Court in response to government inability to comply with the national and international laws establishing the rights of displaced people. In addition, integral reparations are critical for successful and sustainable returns to rural livelihoods. Without such reparation, farming families are left with few resources to resume production in a rural setting.

**Resources for Reparation:** The law proposes creation of a Special Fund for the Restitution of Land. However, the bill does not establish an amount from the national budget that will be designated to compensate victims recognized in the law. The bill also establishes that the perpetrators of crimes are responsible for providing reparation to their victims, particularly to return stolen assets. The Justice and Peace Law of 2005 aimed, in part, to facilitate the return of assets to victims of paramilitary violence, has shown little progress in this area. To date only 25,000 hectares of land have been returned to the Reparations Fund of the Justice and Peace Law. The newly proposed law fails to provide realistic mechanisms for facilitating the return of property to victims or indicate how flaws in the 2005 law will be remedied.

**Rural Development:** While discussion of the proposed law points to emphasis on programs for rural development in areas of restitution under the law, no articles in the actual law provide for such programs. Increased rural programming is essential if the formalization of land titles and the subsequent return of IDPs to rural lands are to create sustainable economies and viable living situations for rural citizens. To facilitate the return of IDPs to rural regions without support for farming or related economic endeavors will result in a repeat abandonment of lands and frustrated economic ambitions of Colombia's rural citizens.

#### RECOMMENDATIONS FOR U.S. POLICY-MAKERS

With the above concerns in mind, our organizations urge policy-makers in the United States to take the following actions.

- Encourage and provide support for victims' organizations and the Colombian government to revise the proposed land law and together develop changes that respond to Colombia's Constitutional Court rulings on internal displacement, land rights and reparations. Revisions should be informed by guidelines already developed by the National Commission for Reparations and Restitution.
- Encourage the Colombian government to create a national land registry that goes beyond registry for land in the law's currently identified restitution areas. USAID can inform this process as it has developed pilot projects that may serve as an initial model for this endeavor. In addition, victims' organizations, Afro-Colombian councils and indigenous organizations must be intimately involved in the creation of such a registry.
- Support programs to facilitate IDPs' safe and sustainable returns to their lands. These programs should be designed with input from families and individuals returning, and should include protection mechanisms to safeguard against threats, intimidation and violence.

- Support victims, especially ethnic groups and women, in the participation of consultations with the government to help ensure integral reparation for crimes committed against them, particularly those that have resulted in displacement. U.S.-funded programming should also target these groups and serve as additional support to state-led initiatives aimed at full reparation.
- Facilitate truth and justice by developing mechanisms for victims and their legal representatives to access paramilitaries extradited to the U. S. for information about the processes and individuals behind displacement in Colombia.
- Urge the Colombian government to formulate new (and expand existing) rural development programs that go beyond agro-industrial projects. Ensure these programs will support the agriculture and economic activities of IDPs, and consult returning communities in the program design. These programs must include access to credit for small farmers, bolster agriculture extension services for returnees, and support regional and provincial sustainable development plans. These plans must serve to generate not only income, but strong and vibrant rural communities in which smallholder farmers maintain not only title, but control over their lands and forms of production. USAID has a critical role to play in this process and could provide support to government-led initiatives of this nature.
- Support the Attorney General's Office in the creation of a unit in charge of investigating and prosecuting forced displacement and land usurpation.

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