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Lina Forero-Nino

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COLOMBIA'S HISTORIC VICTIMS AND LAND RESTITUTION LAW

*Lina Forero-Niño**

I. INTRODUCTION

AN estimated four million Colombians have been victims¹ of the ongoing civil conflict between the guerrillas, paramilitary groups, and the Colombian military.² The conflict, which began in the 1960s,³ reached a climax in the 1980s and 1990s.⁴ The 1985 siege of the Palace of Justice marked the beginning of one of the most violent chapters in Colombia's conflict.⁵ In 1985, members of the M-19 guerrilla group seized the Palace of Justice and caused a standoff where 100 people died, including eleven Colombian Supreme Court Justices.⁶ Because Colombian military operations have weakened guerrilla groups, including the Revolutionary Armed Forces of Colombia (FARC), most of the guerrilla "attacks and kidnappings now occur only in the rural southern region, while major cities are mostly free from violence related to the conflict."⁷

Over the past twenty-five years, Colombian land-owners "lost nearly seven million hectares (17m acres) of land" as a result of the conflict.⁸ The guerrillas, paramilitary groups, and drug traffickers use "violence and

* "With God's power working in us, God can do much, much more than anything we can ask or imagine." *Ephesians* 3:20. Lina Forero-Niño received her B.A. in Communication from the University of Texas at San Antonio. She is currently a J.D. Candidate at Southern Methodist University Dedman School of Law and will be graduating in May 2012.

1. "Since the 1960s, most of the victims of Colombia's internal conflict have been civilians . . ." Associated Press, *Colombia's President Signs Measures to Compensate Victims of Nation's Civil Conflict*, WASH. POST, Dec. 20, 2011, available at http://www.washingtonpost.com/world/americas/colombias-president-signs-measures-to-compensate-victims-of-nations-civil-conflict/2011/12/20/g1QAqR6q7O_story.html.
2. Jim Wyss, *Colombia Hopes to Heal Wounds With Victims' Law*, MIAMI HERALD, June 10, 2011, available at <http://www.miamiherald.com/2011/06/10/v-print/2261220/colombia-hopes-to-heal-wounds.html#ixzz1VKXWOJNx>.
3. See Dan Molinski, *Colombia Victims Law Could Incite More Violence*, WALL ST. J., June 10, 2011, <http://online.wsj.com/article/SB10001424052702304392704576377590602002746.html>.
4. See Wyss, *supra* note 2.
5. Associated Press, *supra* note 1.
6. *Id.*
7. Molinski, *supra* note 3.
8. 'Historic' Colombian Victims' Compensation Law Signed, BBC NEWS, June 10, 2011, <http://www.bbc.co.uk/news/world-latin-america-13736523>.

fraud to take control of land.”⁹ Currently, government officials estimate that 3.4 million people have been forced out of their lands as a result of the conflict.¹⁰ In the first four months of 2011, 20,000 people were forced to leave their lands.¹¹ While armed groups continue to occupy stolen land,¹² some of the rightful owners walk the streets of Bogotá selling trinkets to make a living or even beg for money from strangers.¹³ For example, one Colombian resident, Larino Nengrade, was forced to flee his farm in the western province of Risaralda ten years ago.¹⁴ The FARC, paramilitary groups, and criminal gangs terrorized his village for years.¹⁵ Now, he sells beaded necklaces in downtown Bogota to make a living.¹⁶

But beginning on January 1, 2012, victims like Nengrade and relatives of victims are entitled to damages and land restitution pursuant to the new Victims and Land Restitution Law (the law).¹⁷ On June 10, 2011, Colombian President Juan Manuel Santos signed the plan implementing the law.¹⁸ The law is one of the main initiatives of the Santos administration, and according to Santos, is the means to end the cycle of violence in Colombia.¹⁹ The United Nations Secretary General Ban Ki-moon “described the law as an ‘important advance’ for Colombia”²⁰ and confirmed that the United Nations fully supports the law.²¹ The law is historic because it is one of the first in South America to indemnify victims of an ongoing conflict.²² Santos said that this law shows the world that Colombia “is willing to pay a moral debt, a long overdue debt, to victims of the violence that must end.”²³

This report intends to accomplish several objectives. First, I will give an overview of the law. Second, I will explain major provisions of the law. Third, I will discuss the government’s expectations regarding the law.

II. OVERVIEW

The objective of the law is to establish a system of judicial, administra-

9. *Id.*

10. Wyss, *supra* note 2.

11. *Id.*

12. BBC NEWS, *supra* note 8.

13. Author’s eyewitness account.

14. Wyss, *supra* note 2.

15. *Id.*

16. *Id.*

17. *Id.*; BBC NEWS, *supra* note 8.

18. Associated Press, *supra* note 1; Wyss, *supra* note 2.

19. Santos said “If I accomplish nothing else, this will have made my presidency worthwhile” Wyss, *supra* note 2.

20. BBC NEWS, *supra* note 8.

21. Molinski, *supra* note 3.

22. *Santos Firma Decretos Sobre Ley de Víctimas* [Santos Signs Decree About Victim’s Law], UNIVISION.COM, Dec. 20, 2011, <http://www.colombiaenaccion.gov.co/victimas/?p=3813>.

23. Molinski, *supra* note 3.

tive, social, and economic remedies to benefit victims of armed conflict.²⁴ The law recognizes that the victims of armed conflict have suffered human rights violations and thus, are entitled to restoration.²⁵ Remedies by which the government seeks to restore victims include land restitution, indemnification, rehabilitation, satisfaction, and guarantees against repetition.²⁶ The goals of these remedies are to restore the victim's ability to exercise his or her rights, provide victims with a dignified life, and ensure that victims play a role in the country's social, economic, and political realms.²⁷ The government will offer special protection to certain groups within society at greater risk of being victimized.²⁸ Those groups include women, youth, children, senior citizens, disabled individuals, farmers, social leaders, union members, defenders of human rights, and victims of forced displacement.²⁹

III. MAJOR PROVISIONS

A. DEFINITION OF VICTIMS

The law defines victims as persons who individually or collectively suffered harm as a result of acts, occurring after January 1, 1985, which violate the Law of International Human Rights or are grave violations of international rules of human rights.³⁰ The law recognizes the victims of acts by guerrillas, paramilitary groups, and the armed forces.³¹ Such acts must have occurred in the setting of armed conflict.³² The law also defines as victims the victim's spouse, permanent partner, or same-sex partner, and a relative within the first degree of consanguinity³³ or first degree of affinity when the victim who suffered the harm is deceased or missing.³⁴ If there are none of the above-mentioned relatives, then the definition of victim extends to ascendant relatives of the second degree of

24. Ley de Víctimas y Restitución de Tierras [Victims and Land Restitution Law], Law No. 1448, June 10, 2011, DIARIO OFICIAL [D.O.] art. 1, available at <http://www.colombiaenaccion.gov.co/victimas/?cat=37>, (Colom.) [hereinafter Victims and Land Restitution Law].

25. Departamento Para La Prosperidad Social, *Resumen General de la Ley* [General Summary of the Law] (2011), <http://www.colombiaenaccion.gov.co/victimas/?cat=24>, [hereinafter *General Summary of the Law*].

26. *Id.*

27. *General Summary of the Law*, *supra* note 25.

28. *Id.* art. 13.

29. *Id.*

30. *Id.* art. 3.

31. Wyss, *supra* note 2.

32. Victims and Land Restitution Law, art. 3 (Colom.).

33. *Id.*; Defined as parents and children of the victim (including adoptive parents and children of the victim). Departamento Para La Prosperidad Social, *El ABC de Ley de Víctimas* [The ABCs of the Victims and Land Restitution Law] 1 (2011), available at <http://www.colombiaenaccion.gov.co/victimas/?cat=24>, [hereinafter *The ABCs of the Victims and Land Restitution Law*].

34. Victims and Land Restitution Law, art. 3 (Colom.).

consanguinity.³⁵ Further, the law also includes as victims those persons who suffered harm while assisting a victim in danger or who intervened to prevent the victimization.³⁶ Members of guerrilla and paramilitary groups do not qualify as victims.³⁷

To be entitled to relief, a person who qualifies as a victim must first submit an application to a regional office of certain government entities.³⁸ The victim must also give a declaration regarding the facts of the victimization.³⁹ Through this procedure, the victim will be included in the official record of victims.⁴⁰

B. REMEDIES

1. Restitution

Restitution is defined as a remedy that seeks to return the victim to the state in which he or she was in prior to being victimized.⁴¹ The law allows the government to offer restitution to persons who were forced off their property after January 1, 1991.⁴² In cases where victims lost real property as a result of the conflict, the government will recover the property and return the property to the victims.⁴³ If the government is not able to recover the victim's property, then the victim is entitled to monetary compensation for the property.⁴⁴ Persons who hold legal title to property, possessed property but did not hold legal title, or occupied vacant property assignable by the government are entitled to recover property in restitution.⁴⁵ Victims who lost their homestead as a result of being forced off their property will be given priority access to subsidized government housing programs.⁴⁶

A newly created governmental entity⁴⁷ (the Unit) is charged with organizing and maintaining a record of stolen or abandoned property, receiving applications for restitution, and representing victims in property restitution proceedings before judges.⁴⁸ Property recorded in the Unit's

35. *Id.*; Ascendant relatives of the second degree of consanguinity are the victim's grandparents. *The ABCs of the Victims and Land Restitution Law*, *supra* note 33, at 1.

36. *Victims and Land Restitution Law*, art. 3 (Colom.).

37. *Id.* art. 3, ¶ 2 (Colom.).

38. The government entities accepting applications are the Procuraduría, the Defensoría del Pueblo, and the Personerías Municipales. *The ABCs of the Victims and Land Restitution Law*, *supra* note 33, at 1.

39. *Id.*

40. *Id.*

41. *Victims and Land Restitution Law*, art. 71 (Colom.).

42. *General Summary of the Law*, *supra* note 25, at 5; *The ABCs of the Victims and Land Restitution Law*, *supra* note 33, at 2.

43. *General Summary of the Law*, *supra* note 25, at 5.

44. *Id.*

45. *The ABCs of the Victims and Land Restitution Law*, *supra* note 33, at 2.

46. *General Summary of the Law*, *supra* note 25, at 5.

47. La Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas.

48. *The ABCs of the Victims and Land Restitution Law*, *supra* note 33, at 2.

records is presumed to be stolen or abandoned property.⁴⁹ The law provides that judges of the civil circuit courts, specializing in property restitution, will hear restitution claims.⁵⁰ Because of the presumption of stolen or abandoned property, the burden of proof shifts from the claimant to the presumed confiscator of the property or to the objecting party.⁵¹

2. *Indemnification*

The law supersedes a previous law that governed an administrative process entitling victims to submit applications to receive compensation for damages.⁵² The law is intended to be more comprehensive than the previous law⁵³ and allows, among other things, for victims to receive “one-time payments of up to 40 monthly minimum-wage salaries, which next year will add up to the equivalent of \$11,900.”⁵⁴

3. *Rehabilitation*

The law establishes a new government program⁵⁵ to assist victims who suffered physical and psychological harm as a result of the victimization.⁵⁶ The main services offered through the program include psychiatric and counseling services for individuals, families, and communities.⁵⁷ Because the program adopts an interdisciplinary approach to rehabilitation, victims are also entitled to support from social workers, physicians, nurses, and other professionals as the case may require.⁵⁸ Victims do not have to pay to use the program's services, and victims may also receive medications at no cost.⁵⁹

4. *Satisfaction*

The satisfaction remedies are government acts that seek to improve victims' quality of life and diminish the victims' pain.⁶⁰ Some of the satisfaction remedies include: public recognition of the person as a victim before the community and perpetrator; the granting of awards to victims; the public dissemination of the facts related to the victimization, provided that the dissemination will not place the victim in danger; the search of lost victims; the identification of cadavers; and the investigation, judg-

49. See Victims and Land Restitution Law, art. 77 (Colom.).

50. *Id.* art. 79.

51. *Id.* art. 78.

52. *Id.* art. 132, ¶ 1.

53. *Colombia Entrega Indemnizaciones por USD 84 Millones a Víctimas de Conflicto* [Colombia Gives Compensation of 84 Million U.S. Dollars to Victims of Conflict], AFP, Aug. 17, 2011, <http://www.colombiaenaccion.gov.co/victimas/?p=3300>.

54. Associated Press, *supra* note 1; see Victims and Land Restitution Law, art. 132 (Colom.).

55. Victims and Land Restitution Law, art. 137 (Colom.).

56. See generally *id.* arts. 135-38.

57. *Id.* art. 137.

58. *Id.*

59. *Id.*

60. *Id.* art. 139.

ment, and sanction of perpetrators.⁶¹ Victims are exempt from military service for a period of five years after the law is enacted, or for a period of five years after the victimization occurred.⁶²

The law establishes April ninth of each year as a national holiday⁶³ to honor victims and remember the circumstances leading to their victimization.⁶⁴ The law also creates a memorial center to collect documentation, oral testimonies, and any other material related to the violations.⁶⁵ Information collected for the memorial center will be available to the public through the center's museum and education functions.⁶⁶

C. OTHER PROVISIONS

Victims have priority access to government funded educational and technical training programs.⁶⁷ The law gives the government power to create programs to generate jobs for victims.⁶⁸ Because Colombia's conflict is ongoing, the law allows victims to recover through 2021.⁶⁹ Victims neither have to pay for nor have an attorney to enforce their rights under the law.⁷⁰ Victims residing outside of Colombia can recover under the law by filing an application upon returning to Colombia.⁷¹ Persons who fraudulently obtain victim status will be subject to five to eight years in prison.⁷² Similarly, government employees who give a person victim status with knowledge that the person is claiming the status fraudulently will also be subject to five to eight years in prison.⁷³

IV. THE GOVERNMENT'S EXPECTATIONS

The government expects to pay more than \$26 billion dollars in compensation to victims during the next ten years.⁷⁴ For 2012, the government expects to pay about \$3.2 billion in compensation and benefits to approximately 130,000 victims.⁷⁵ With regard to land restitution claims, the government predicts judges will decide about 2,000 land restitution claims in 2012.⁷⁶ The goal is for judges to decide about 80,000 land resti-

61. *Id.*

62. *Id.* art. 140.

63. Día Nacional de La Memoria y Solidaridad con las Víctimas [National Day of Memory and Solidarity with the Victims]. *Id.* art. 142.

64. Victims and Land Restitution Law, art. 142 (Colom.).

65. *Id.* art. 147.

66. *Id.*

67. *Id.* art. 130.

68. *Id.*

69. Wyss, *supra* note 2.

70. *The ABCs of the Victims and Land Restitution Law*, *supra* note 33, at 2.

71. *Id.*

72. Victims and Land Restitution Law, art. 199, (Colom.).

73. *Id.*

74. Associated Press, *supra* note 1.

75. *Id.*

76. *Colombia Ya Tiene Ley de Víctimas* [Colombia Already Has a Victim Law], EL MEDITERRANEO DE CÓRDOBA, Dec. 26, 2011, <http://www.colombiaenaccion.gov.co/victimas/?p=3845>.

tution claims by the end of the Santos administration.⁷⁷ By 2014, the government hopes to return 4.9 million acres of stolen property to their rightful owners.⁷⁸ Santos's ultimate expectation is that "paying reparations to victims of the ongoing conflict will help create a path toward eventual peace."⁷⁹ Santos predicts the conflict will end within a few years.⁸⁰

77. *Id.*

78. Associated Press, *supra* note 1.

79. Molinski, *supra* note 3.

80. *Id.*

