

ICTJ | 10 years

**B** | BROOKINGS-LSE  
Project on Internal Displacement

Case Studies on Transitional Justice and Displacement

# Criminal Justice and Forced Displacement in Colombia

Federico Andreu-Guzmán  
July 2012

### **Transitional Justice and Displacement Project**

From 2010–2012, the International Center for Transitional Justice (ICTJ) and the Brookings-LSE Project on Internal Displacement collaborated on a research project to examine the relationship between transitional justice and displacement. The project examined the capacity of transitional justice measures to respond to the issue of displacement, to engage the justice claims of displaced persons, and to contribute to durable solutions. It also analyzed the links between transitional justice and other policy interventions, including those of humanitarian, development, and peacebuilding actors. Please see: [www.ictj.org/our-work/research/transitional-justice-and-displacement](http://www.ictj.org/our-work/research/transitional-justice-and-displacement) and [www.brookings.edu/idp](http://www.brookings.edu/idp).

### **About the Author**

Federico Andreu-Guzmán is Deputy Director of Litigation and Legal Protection at the Colombian Commission of Jurists. His previous positions have included General Counsel of the International Commission of Jurists (2000–2009), Legal Adviser for Americas and Asian Regions Programs of the International Secretariat of Amnesty International (1997–2000), and Deputy Secretary General for Latin America of the Federation International Human Rights (FIDH). He has been, on several occasions, a consultant for the UN High Commissioner for Human Rights and a member of the UN Human Rights Mission in Rwanda and the International Civilian Mission Observation of Human Rights in Haiti.

### **Acknowledgements**

ICTJ and the Brookings-LSE Project on Internal Displacement wish to thank the Swiss Federal Department of Foreign Affairs (FDFA) and the Canadian Department of Foreign Affairs and International Trade (DFAIT), which provided the funding that made this project possible.

### **About ICTJ**

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice measures, including criminal prosecutions, reparations initiatives, truth seeking, memorialization efforts, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org).

### **About the Brookings-LSE Project on Internal Displacement**

The Brookings-LSE Project on Internal Displacement was created to promote a more effective response to the global problem of internal displacement and supports the work of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons. It conducts research, promotes the dissemination and application of the Guiding Principles on Internal Displacement, and works with governments, regional bodies, international organizations and civil society to create more effective policies and institutional arrangements for IDPs. For more information, visit: [www.brookings.edu/idp](http://www.brookings.edu/idp).

---

The views expressed in this paper are the author's own and do not necessarily reflect the views of the International Center for Transitional Justice or the Brookings-LSE Project on Internal Displacement.

## Table of Contents

<b>1. Introduction</b>	<b>4</b>
<b>2. The Crime of Internal Displacement in Colombia</b>	<b>4</b>
<b>3. The National Legal Framework</b>	<b>8</b>
The Definition of the Crime of Forced Displacement	8
The Retroactive Application of National Law	9
<b>4. Judicial Fora and Criminal Proceedings</b>	<b>10</b>
The Ordinary Judicial System	10
The “Justice and Peace” System	10
<b>5. Investigating the Crime of Internal Displacement</b>	<b>14</b>
<b>6. The Issue of Reparation</b>	<b>15</b>
<b>7. Conclusion</b>	<b>16</b>
<b>8. Notes</b>	<b>17</b>

## Boxes

<b>Box 1:</b> Displacement in Colombia: Expulsions of Civilians During the First Half of 2008	7
<b>Box 2:</b> Paramilitary Presence in Colombia (by Province), 2001–2008	12

## Introduction

This paper examines how the criminal justice system in Colombia addresses the forced internal displacement of civilians. In order to do so, it is necessary to take a broad view of this crime: its nature, characteristics, and magnitude; the perpetrators and other actors that are implicated in the crime; the relationship between the crime and the dispossession of land; the context of an ongoing internal armed conflict; and the potential to provide reparation to victims. These issues simultaneously set the context and constitute key challenges for the treatment of the crime of internal displacement by the criminal justice system. The first section of the paper provides an overview of the crime of displacement in Colombia, which has been a constant feature of the country's internal armed conflict for decades. The next two sections explain the legal framework within which crimes of displacement can be prosecuted, including both the ordinary criminal jurisdiction and the "Justice and Peace" jurisdiction. The following section considers the difficulties faced in pursuing criminal justice for displacement in Colombia, and argues that too often displacement is considered as an indirect consequence of the armed conflict or only in connection with other crimes, and not as an autonomous crime. The final section introduces the issue of reparation for victims of displacement, pointing out that measures of redress are also constrained by the lack of judicial investigations into the relevant crimes.

## The Crime of Internal Displacement in Colombia

The crime of forced internal displacement is not a new phenomenon in Colombia. It has been a widespread practice in the country's internal armed conflict for several decades. However, forced internal displacement cannot be reduced to an inherent or unintended effect of the conflict. The armed actors in the Colombian armed conflict—the army and its paramilitary groups, on one hand, and the guerrilla groups, on the other—have used the practice of forced displacement of civilian populations as part of their military strategies to take control of or maintain a presence in certain territories. The practice involves expelling people considered to be an actual or potential part of the social base of the enemy, in order to ensure control of territories and populations. Several of the Colombian army's manuals on counterinsurgency operations classify the "internal enemy" or "subversive forces"

as “armed groups” and “insurgent civilian populations.”<sup>1</sup> These manuals order the creation of paramilitary groups to combat the “internal enemy,”<sup>2</sup> as well as threatening the “insurgent civilian population” with expulsion from their regions.<sup>3</sup> Along these lines, the army has used displacement as a tactic of war within a military strategy of “draining the water to catch the fish”: removing populations from regions it considers to be the social base of the guerrilla groups. The displacement of civilians has also been part of the paramilitary strategy of dispossession and usurpation of land. And the military operations of the different guerrilla groups have generated internal displacement as well; in certain cases, there are clear indications that some of these groups have used displacement as a tactic of war within a strategy of controlling regions with military or economic value.

Armed actors with military objectives are not the only ones who employ tactics of forced displacement in Colombia’s conflict. Indeed, dispossession of land has been a strategic objective of many actors for a variety of reasons, including economic and political motives. Much of the violence that has affected millions of peasants across the country over the past three decades has been committed in the interest of seizing land for economic, military, and political purposes. The accumulation of land by paramilitaries as well as legal and economic actors—by licit actors, such as domestic and international agribusiness and mining companies, and illicit actors, such as drug traffickers—underlies the Colombian conflict. The accumulation of land is intimately related to the phenomenon of forced displacement. In several cases, actors of the “legal” economy and the illegal economy have provided support to paramilitary groups in their efforts to seize land. This has been denounced by the UN special representative of the secretary-general on the human rights of internally displaced persons in the following terms:

There is a widespread perception among displaced persons that there is no willingness to return land and other property to them and, in some regions of the country, they suspect that while displacement may originally have been caused by armed conflict, the taking over of their lands by large corporations is at least a side effect, if not part of a policy of forced displacement. The Representative heard allegations of lands occupied illegally, either through transfer of titles under duress and for minimal financial compensation or through forgery of land titles. Also, there were numerous allegations that indigenous land and Afro-Colombian collective property were acquired in violation of article 60 of the Colombian Constitution and of Law No. 70.<sup>4</sup>

There is a clear connection, then, between internal displacement and the dispossession of land, which paramilitary groups have perpetrated in order to facilitate the accumulation of land by economic actors. As was revealed in criminal investigations in several cases, the pattern of displacement and dispossession is not a mere coincidence, and it explains alliances between paramilitary groups and economic actors. Again, the findings of the UN special representative are illustrative:

Economic interests underlying the violence and conflict also are factors inducing displacement. As part of a process of so-called “counter-agrarian reform” (which at the time of the Representative’s first mission in 1994 had resulted in an estimated 3 per cent of landowners controlling more than 70 percent of the arable land in the country), displacement is often a tool for acquiring land for the benefit of large landowners, narco-traffickers, as well as private enterprises planning large-scale projects for the exploitation of natural resources. The fact that most peasants do not possess legal title to the land makes them easy targets for this process, described by the *Defensor del Pueblo* [Ombudsman] as “land-reform taking place at gunpoint.” OHCHR [Office of the UN High Commissioner for Human Rights] reports having received testimony from a number

of small and medium-scale farmers “who have been robbed of their land by paramilitaries in the service of drug traffickers or local landowners, or who have had to sell their land cheaply before leaving the region under death threats” (E/CN.4/1998/16, para. 98). A similar pattern of displacement has also appeared in relation to the exploration and exploitation of natural resources and the implementation of large-scale development projects, in some cases concerning not strictly domestic economic interests but also the objectives of multinational corporations. It is thus not without coincidence that the areas where guerrilla and paramilitary activity is most intense tend to be rich in natural resources.<sup>5</sup>

Political actors have also been connected to crimes of internal displacement. As was pointed out by the Supreme Court of Justice in several cases regarding links between politicians and paramilitary groups (called *parapolítica*), parliamentarians, provincial governors, and mayors have been implicated in displacement. In 2009 and 2010, for example, the Supreme Court of Justice ordered the opening of criminal investigations into crimes of displacement involving a governor of the department of Sucre (on the Atlantic Coast) and a senator who was convicted of homicides, forced disappearances, and criminal conspiracy with paramilitary groups (*concierto para delinquir*).<sup>6</sup> Behind these alliances between paramilitaries and politicians lie concrete economic interests and political strategies to control an electorate and modify the political landscape. Examples of this are the destruction in the 1980s and 1990s of the left-wing political party *Unión Patriótica*<sup>7</sup> and, since 2000, the so-called “*parapolítica*” phenomena.

Internal displacement and dispossession of land, especially of peasants and indigenous and Afro-descended communities, has been a constant feature of the internal armed conflict in the country. These crimes affect an estimated 4,900,000 people, which makes Colombia home to the second largest number of displaced people in the world.<sup>8</sup> Dispossession and displacement are not uniform throughout Colombia. In 1999, the Inter-American Commission on Human Rights (IACHR) observed that “displacement is significantly more pronounced in areas where political violence coincides with violence associated with land ownership (Atlantic Coast, Chocó and the Urabá region of Antioquia) than in areas where, despite the level of political violence, the incidence of land disputes is less (Northeast, Central Andean Region, Southwest).”<sup>9</sup>

The magnitude of land dispossession over the last three decades, especially that committed by paramilitary groups, is unclear, with estimates varying. Nevertheless, the different estimates are frightening. According to the Follow-up Committee on Public Policy on Forced Displacement (*Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado*), between 1998 and 2008 the land stripped or abandoned as a result of internal displacement was around 5.5 million hectares, or 10.8 percent of all agricultural land in the country.<sup>10</sup> According to the Office of the Prosecutor General of the Nation (*Procuraduría General de la Nación*), in 2010 more than 6.6 million hectares had been forcibly abandoned or stripped.<sup>11</sup> The Presidential Agency for Social Action and International Cooperation (*Agencia Presidencial para la Acción Social y la Cooperación Internacional*—called “*Acción Social*”) calculates the land stripped between 1996 and 2006 at more than 6 million hectares.<sup>12</sup> In 2003, *Acción Social*’s “project on protection of land and patrimony of displaced population” estimated that the area abandoned by the displaced population comprised 6.8 million hectares.<sup>13</sup> The National Movement of Victims of the State (*Movimiento Nacional de Víctimas de*



*Estado*—MOVICE) has estimated the total land stripped by paramilitary groups at 10 million hectares.<sup>14</sup> And in the late 1980s, the comptroller general of the republic (*Contraloría General de la República*) claimed that 2 to 3 million hectares of land had been obtained illegally or violently by drug traffickers and paramilitaries, as part of the so-called “counter-agrarian reform.”<sup>15</sup> These estimates do not take into account the land abandoned by peasants and ethnic communities displaced by the purely military operations of the army and guerrilla groups.

The persistence of the armed conflict and the continuing operation of paramilitary groups—which the government now calls “emerging criminal gangs” (*bandas criminales emergentes*, or “Bacrim”)—not only translate into more crimes of internal displacement, but also constitute an additional serious risk factor for displaced people, in particular for those who are reclaiming their despoiled lands. Indeed, according to the National System for Integral Assistance to the Displaced Population (SNAIPD), 1,499 homicides of displaced persons were committed between 2007 and March 2010.<sup>16</sup> In the past three years, more than 47 peasants leading processes of claims for restitution of land despoiled by paramilitary groups have been killed.<sup>17</sup>

One of the critical issues facing the justice system is that of reparation for the victims of the crime of displacement and their relatives, in particular the restitution of stolen land. The properties received by the Fund for the Reparation to Victims (*Fondo de Reparaciones para las Víctimas*)<sup>18</sup> represent a value of 36,000 million pesos (equivalent to US \$2 million).<sup>19</sup> In the case of the massacre of Manupuján (in which homicides and internal displacement were committed), with 1,994 victims accredited in the proceedings of the Justice and Peace Jurisdiction, the Chamber of Justice and Peace of the Superior Tribunal of the Judicial District of Bogotá pointed out that the financial reparation reaches 133,000 million pesos (equivalent to US \$7.4 million) in this case alone.<sup>20</sup> The chamber observed that the Manupuján case represents around 0.39 percent of the cases registered by the National Unit for Justice and Peace of the Office of the Attorney General (*Unidad Nacional de Justicia y Paz de la Fiscalía General de la Nación*) and 0.49 percent of the victims accredited in the “Justice and Peace” proceedings.<sup>21</sup>

## The National Legal Framework

While internal displacement has been widespread for several decades in Colombia, it was only in 1994 that the country ratified the *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts* (Protocol II),<sup>22</sup> which bans illegal forced internal displacement,<sup>23</sup> and it was not until 2000 that the crime of illegal forced displacement was incorporated into national legislation.

### The Definition of the Crime of Forced Displacement

The crime of forced displacement was incorporated into Colombia’s national legislation through Law 589 on July 6, 2000,<sup>24</sup> along with the crimes of torture, enforced disappearance, and genocide, as well as rules governing criminal responsibility for these crimes. The new Criminal Code was then adopted by Law 599 on July 24. In article 180, the new Criminal Code incorporated the definition of the crime of Law 589—under the name of “forced displacement” (*Desplazamiento forzado*)<sup>25</sup>—and,



in addition, established in article 159 a new crime: “Deportation, expulsion, transfer or displacement of civilians” (*Deportación, expulsión, traslado o desplazamiento forzado de población civil*).<sup>26</sup> While the crime identified in article 159 is integrated into Section II of the Criminal Code on “crimes against persons and objects by the International Humanitarian Law,” the crime of “forced displacement” of article 180 is part of Section III on “crimes against individual liberty and other guarantees.”

The Colombian Supreme Court of Justice has characterized the crime of internal displacement as a continuing or permanent crime.<sup>27</sup> The court has considered displacement committed by paramilitary groups to be a crime against humanity in some cases<sup>28</sup> and a war crime in others. In a recent judgment against a demobilized paramilitary commander, the Chamber of Justice and Peace of the Superior Tribunal of the Judicial District of Bogotá, taking into account the links between several crimes committed by the paramilitary group and the internal armed conflict, considered the crime of internal displacement to qualify as a war crime.<sup>29</sup> In a few cases, the Supreme Court of Justice has considered the crime of internal displacement to be part of the offense of criminal conspiracy with paramilitary groups (*concierto para delinquir*).<sup>30</sup>

Both articles of the new Criminal Code—159 and 180—embrace the criminal phenomenon of internal displacement and incorporate the elements of this crime stipulated by international law.<sup>31</sup> However, several Colombian rules governing the legal regime of this crime are not in conformity with international law and standards. Indeed, unlike the regulation on the crimes of torture, enforced disappearances, and genocide,<sup>32</sup> and in contradiction of international law,<sup>33</sup> Colombian legislation does not exclude the defense of due obedience as grounds for exoneration of criminal responsibility or as justification for the crime of illegal forced internal displacement.<sup>34</sup> Also, unlike the rule in international law regarding the non-applicability of statutory limitation to war crimes and crimes against humanity, Colombian legislation stipulates a 30-year term before the statutory limitation can be applied to the crime of forced displacement.<sup>35</sup> Another gap in Colombian criminal legislation is the absence of rules regarding the criminal liability of hierarchical superiors, in application of the well-recognized principle of the responsibility of negligent commanders, which is in turn an application of the principle of responsibility of the chain of command or responsible authority.<sup>36</sup>

### The Retroactive Application of National Law

Given the fact that the majority of crimes of internal displacement were committed before 2000, when criminal legislation on forced displacement was first adopted, the potential retroactive application of Law 589 and the new Criminal Code was subject to debate in the country’s judicial fora. This debate is not restricted to the crime of internal displacement, as it also concerns the crimes of torture and forced disappearance, as well as crimes against humanity and war crimes more broadly. In line with international law,<sup>37</sup> the Supreme Court of Justice has determined that the absence of national legislation defining the crime of internal displacement at the moment of its commission is not a legal obstacle to retroactively applying the law. The court reasoned that this crime was covered by the international law that was incorporated into national law through article 93 of the Colombian Constitution.<sup>38</sup> The Chamber of Justice and Peace of the Superior Tribunal of the Judicial District of Bogotá has adopted the same position, making reference to Protocol II of the Geneva Convention and the Rome Statute.<sup>39</sup>

## Judicial Fora and Criminal Proceedings

### The Ordinary Judicial System

Since Law 589 was passed in 2000, competence for the crime of forced displacement has lain with the ordinary criminal jurisdiction,<sup>40</sup> and investigation of the crime is the responsibility of the National Unit on Human Rights and International Humanitarian Law (*Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario*) of the Office of the Attorney General (*Fiscalía General de la Nación*). Regarding criminal proceedings, two different Codes of Criminal Proceedings (*Código de Procedimiento Penal*) may be applied, depending on the date of the commission of the crime. Indeed, since January 1, 2005, two bodies of legal dispositions apply: the “old” Code of Criminal Proceedings (Law 600 of 2000) for crimes committed before January 1, 2005, and the “new” Code of Criminal Proceedings (Law 906 of 2004) for crimes committed after that date.<sup>41</sup> The adoption of the new code was a result of a modification of the Colombian Constitution in 2002,<sup>42</sup> which introduced the accusatory criminal system. The two codes have several differences, especially regarding the legal procedural status of the victims and their relatives in criminal proceedings. Indeed, the “new” code suppressed the procedural figure of “parte civil,” providing standing for the victims and their relatives in the criminal proceedings, and established the figure of “representation of the victims,” whose participation in the criminal proceedings is limited to obtaining financial compensation.<sup>43</sup> The existence of two sets of rules governing the criminal proceedings, and in particular their variation regarding the participation of victims and their relatives, has created a discriminatory regime concerning the right to an effective remedy, which is incompatible with the right to equal protection under the law and the courts.<sup>44</sup>

Ten years after the incorporation of the crime of illegal forced internal displacement, a National Unit of Prosecutors for Crimes of Forced Disappearance and Forced Displacement (*Unidad Nacional de Desaparición Forzada y Desplazamiento Forzado*) was created by the Office of the Attorney General under Resolution 2596 on November 3, 2010. Resolution 2982, on December 16, 2010, then transferred more than 66,000 criminal investigations for cases of enforced disappearances and illegal forced internal displacement from regional offices and special units of the national Office of the Attorney General—such as the National Unit of Justice and Peace and the National Unit of Human Rights and International Humanitarian Law—to this new, specialized national unit of public prosecutors. Set up in the first months of 2011, the unit is composed of 23 public prosecutors and has jurisdiction to investigate crimes of both forced disappearance and forced displacement throughout the country. Four of the prosecutors of this special unit—including the head prosecutor—are based in Bogotá. The other 19 are located in 12 cities<sup>45</sup> in 11 of Colombia’s 32 provinces. To conduct investigations throughout the country, the unit receives support from investigators of the Technical Body for Criminal Investigations of the Attorney General’s Office (*Cuerpo Técnico de Investigaciones*), with seven investigators per public prosecutor, as well as 160 police officers of the Intelligence and Investigations Services of the National Police.

### The “Justice and Peace” System

In 2005, as a result of negotiations with the paramilitary groups of the United Self-Defence Forces of Colombia (*Autodefensas Unidas de Colombia*—AUC), as part of the Agreement of Santa Fe de

Ralito<sup>46</sup> (signed by the paramilitary leaders and the government on July 15, 2003), and at the initiative of the executive power, the Colombian Congress passed Law 975, also known as the “Justice and Peace Law.” The law was presented as a “transitional justice system” by the government, in a country where internal conflict persists and where none of the typical measures of transitional justice, such as vetting processes, had been adopted.

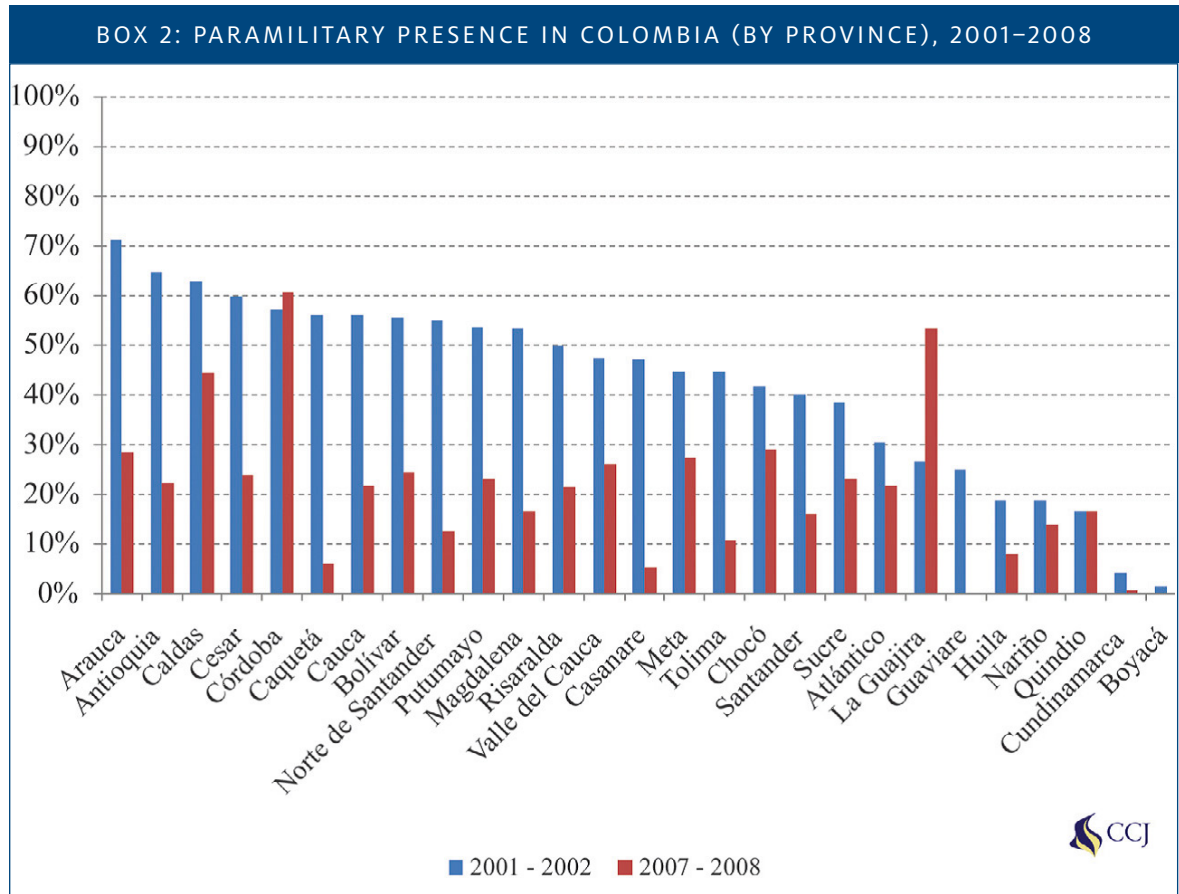
### *Precedents*

Prior to the adoption of the Justice and Peace Law and the signing of the Agreement of Santa Fe de Ralito, the government had promulgated Decree 128 on January 22, 2003, granting legal and economic benefits to members of armed groups who had demobilized<sup>47</sup> and immunity for those who had not previously been indicted for or convicted of gross human rights violations (such as massacres, homicides, forced disappearances, or torture), crimes against humanity, and war crimes.<sup>48</sup> Indeed, article 21 excludes from these benefits those “who are being processed or have been condemned for crimes which according to the Constitution, the law or international treaties signed and ratified by Colombia cannot receive such benefits.” Three laws exclude certain crimes from amnesty: kidnapping (Law 14 of 1993); torture, forced disappearance, internal displacement, and genocide (Law 589 of 2000); and “atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, and murder committed outside combat” (Law 782 of 2002).

Article 21 of Decree 128 implies, *contrario sensu*, that those who had not previously been indicted or convicted have a right to these legal benefits, even though they may have committed or participated in gross human rights violations, crimes against humanity, or war crimes. In fact, the majority of the members of paramilitary groups have never been identified and investigated—and few have been indicted or convicted—by the Office of the Attorney General and the judicial authorities. Moreover, the restrictive clause of article 21 has not been correctly applied by the Attorney General’s Office. Thus, for example, in December 2004, the prosecutor general challenged 163 decisions to proceed, which had been ordered by the attorney general under Decree 128, where members of the paramilitary group “Bloque Cacique Nutibara” were clearly involved in serious crimes, such as massacres, forced disappearance, and internal displacement.<sup>49</sup>

According to the Colombian Ministry of Defense, on April 1, 2005, 6,409 paramilitaries were demobilized and received legal benefits under Decree 128.<sup>50</sup> However, a member of the Office of the President of the Republic referred to 12,000 members of paramilitary groups demobilized as of January 2005, of whom 1,500 had records with the Justice Department and 11,500 had benefited from the measures of Decree 128.<sup>51</sup> According to the Colombian Commission of Jurists, out of the 31,671 demobilized paramilitaries reported by the national government at the end of 2009, only 3,635 were prosecuted under the “Justice and Peace Jurisdiction,” and the remaining 28,036 benefited from the de facto amnesty granted by Decree 128.<sup>52</sup>

Not only were the announced official objectives of Decree 128—demobilization of the paramilitary groups—not adequately recorded, but paramilitary groups have continued their criminal actions against civilian population. According to the Colombian Commission of Jurists, “more than one million persons were displaced between July 2002 and December 2005”<sup>53</sup> in incidents occurring throughout 87 percent of the national territory.



The above chart shows the territorial presence of paramilitary groups in the departments of Colombia, from 2001–2002 and 2007–2008. Source: Colombian Commission of Jurists, *Colombia: La metáfora del desmantelamiento de los grupos paramilitares: Segundo informe sobre la aplicación de la ley 975 de 2005*, Bogotá, 2010, 36.

### The “Justice and Peace Law”

The “Justice and Peace Law” establishes judicial benefits and special proceedings, as well as a specialized jurisdiction—called the “Justice and Peace Jurisdiction”—for members of the paramilitary or guerrilla groups who, individually or collectively, demobilize and confess their committed crimes. These judicial benefits also apply to those demobilized armed actors who were previously convicted. The benefits consist of the suspension of the penalties of imprisonment established by the Criminal Code and its substitution by an “alternative penalty” of imprisonment between five and eight years,<sup>54</sup> independent of the kind and number of crimes committed. In contrast with this alternative penalty, criminal legislation establishes a penalty of imprisonment of 10 to 20 years for the crime of “deportation, expulsion, transfer or displacement of civilians” (article 159 of the Criminal Code) and six to 12 years for the crime of internal displacement (article 180 of the Criminal Code).<sup>55</sup> Following completion of the alternative penalty, the offender is on “probation” for a period equal to half of the alternative penalty and must appear before the judicial authorities.

The “Justice and Peace Jurisdiction” was integrated into the Chamber of Justice and Peace of the Superior Tribunal of the Judicial District of Bogotá—called the “Justice and Peace Tribunal” and

composed of three judges—and the National Unit of Justice and Peace of the Office of the Attorney General, which is in charge of investigations. In 2011, three more Justice and Peace Chambers were set up in the tribunals of the judicial districts of Medellín (province of Antioquia), Barranquilla (province of Atlántico), and Bucaramanga (province of Santander).

The “Justice and Peace Law” applies only to demobilized members of paramilitary and guerrilla groups. Active members of paramilitary or guerrilla groups as well as members of the army, police, and other state agents and private individuals are excluded from the application of this law and the scope of competence of the “Justice and Peace Jurisdiction.” When such individuals appear to be involved in crimes within their competence, public prosecutors of the National Unit of Justice and Peace and the “Justice and Peace Tribunal” have the duty to refer these to the ordinary criminal jurisdiction. However, in practice, in the last five years, a very limited number of cases of state agents and private individuals have been sent by the “Justice and Peace Jurisdiction” to the ordinary criminal jurisdiction,<sup>56</sup> despite evidence against and confessions from a significant number of members of the army and national police. It is important to note here that, even if the “Justice and Peace Jurisdiction” has attracted immense financial resources both from the national public treasury and international cooperation (to the detriment of the ordinary criminal jurisdiction), it is estimated that Law 975 is applied only “residually to 6.4 % of the ‘demobilized’ (those who are not beneficiaries of the Decree 128/2003).”<sup>57</sup>

The “Justice and Peace proceedings” established by Law 975 have undergone several modifications as a result of rulings of the Constitutional Court,<sup>58</sup> interpretations by the Supreme Court of Justice, and prolific regulation by the executive power.<sup>59</sup> As was pointed out by the Supreme Court of Justice, the proceedings have two stages: administrative and judicial. At the administrative stage, the government prepares lists of the demobilized paramilitaries and guerrillas who have applied for the benefits of Law 975 and are called “applicants” (*postulados*). These lists of applicants are sent to the Office of the Attorney General, which initiates the judicial proceedings. The National Unit of Justice and Peace proceeds to verify if each applicant meets the conditions established by Law 975 to be “eligible” (*elegible*), and then to receive his or her “voluntary statement” (*versión libre*), which must be a confession of his or her crimes as well as other crimes committed of which he or she has knowledge. To receive voluntary statements, the public prosecutors of the Office of the Attorney General have initially used a model questionnaire. The IACHR has stated its view that “given the characteristics and the formats used in the questionnaire, the taking of statements was a purely formal procedure.”<sup>60</sup>

Following this procedure, the public prosecutors bring an indictment or charges (*imputación*) in a hearing before a judge (*audiencia de formulación de imputación*), in which the provisional detention of the applicant can be ordered as well as the adoption of provisional seizures of assets (*bienes*) in order to provide reparation. After this first hearing and basic investigative activities to verify the commission of the crimes confessed, a second hearing of indictment or formalization of criminal charges (*audiencia de formalización de cargos*) takes place. During this hearing, the applicant can accept the criminal charges, or, if they do not, the case is sent to the ordinary criminal jurisdiction. Finally, a hearing of judgment takes place. In the hearing of indictment or formalization of criminal charges, at the request of either the public prosecutor (*Procuraduría General de la Nación*) or the victim, an incident of reparation can be opened by decision of the Justice and Peace Tribunal. Whether there is a settlement or not, compensation is decided by the tribunal’s judgment.

The participation of victims and their relatives in the Justice and Peace proceedings is more limited than in ordinary criminal proceedings, and is focused on reparation.<sup>61</sup> Victims have the right to have access, personally or through their attorneys, to the taking of statements, the formulation of indictments and charges, and other procedural steps, in the context of Law 975, relating to the events that caused the harm.<sup>62</sup> However, victims and their relatives do not have the opportunity to ask questions at the first stage of the voluntary statement. This is available only in the second hearing, and through an indirect mechanism: the public prosecutor, who has discretionary power to transmit to the applicant questions from the victims that he or she deems pertinent. In this regard, as has been pointed out by the IACHR: “the victims and their representatives have no possibility to raise new questions, to seek clarifications for further details, or to cross-examine. This indirect mechanism severely restricts the possibility of the victim to use questioning as a suitable means of obtaining the truth of the facts.”<sup>63</sup>

In theory, the judicial proceedings of Justice and Peace law should take less than a few months. But, in reality, they last for several years. Indeed, since this jurisdiction was created, only three judgments have been delivered. The Office in Colombia of the UN High Commissioner for Human Rights (OC-HCHR) has pointed out that, “despite the fact that Act No. 975 refers to the right to truth, justice and reparation for victims, its provisions do not expressly stipulate that non-observance of these principles precludes the granting of benefits. The absence of incentives to confess and to establish the truth raises serious problems. For this reason, the prospects for victims are uncertain. If the truth is not established, justice cannot be done and adequate reparation cannot be provided; nor can the paramilitary groups be effectively dismantled.”<sup>64</sup>

## Investigating the Crime of Internal Displacement

The Office of the Attorney General, with its different national units and public prosecutors, has not developed a special methodology for investigating the crime of internal displacement. Because displacement is generally committed jointly or in connection with other crimes—such as massacres, extrajudicial executions, enforced disappearances, and so on—the investigating authorities and prosecutors tend to focus their efforts on those other crimes. Too frequently, displacement is assumed simply to be a consequence of them. Under the “Justice and Peace Jurisdiction,” investigations are oriented more toward verifying whether the crimes confessed by the applicant have in fact taken place and whether the demobilized applicant has participated in them than toward establishing all aspects of the commission of the crime, which include, among other things, the motivations of the perpetrators and the other participants and accomplices.

As a result, authorities do not investigate the criminal responsibility of those who, from a military command position, have actively participated in or ordered these crimes as part of a military strategy. Nor do they investigate all those involved in the crimes, including the economic actors who are behind them when committed for the purpose of stripping land. The lack of investigation of the crime of internal displacement (as an autonomous crime) has been underlined by the Supreme Court of Justice,<sup>65</sup> the Constitutional Court,<sup>66</sup> and the OC-HCHR.<sup>67</sup> In its 2008 report on Colombia, the OC-HCHR pointed out that “cases of forced displacement . . . have not been properly investigated, and very few perpetrators have been convicted and reparation has been granted in very few cases.”<sup>68</sup>

Since 2000, the Constitutional Court has repeatedly requested that the Office of the Attorney General design and adopt a methodology for investigation of the crime of internal displacement, independent of any other crimes it was committed in connection with.<sup>69</sup> However, in 2009, the Office of the Attorney General declared that it was indeed working on the design of a variety of such methodologies.<sup>70</sup> The same year, the Office of the Attorney General announced, as a fulfillment of the Constitutional Court's requests,<sup>71</sup> the adoption of Memorandum 35 of April 28, 2009, which laid out the elements of such a methodology. However, in August 2010, in response to the right of petition presented by the Colombian Commission of Jurists, the Office of the Attorney General did not submit this memorandum, nor did it explain the status of its implementation or any results achieved through this investigative strategy.<sup>72</sup>

The difficulties of investigating the crime of internal displacement are exacerbated by the interventions of multiple investigating authorities and two criminal jurisdictions (the ordinary jurisdiction and the “Justice and Peace Jurisdiction”). Indeed, in practice, a crime of displacement could be investigated simultaneously by the National Unit on Human Rights and International Humanitarian Law, the National Unit of Justice and Peace, and, now, the National Unit of Prosecutors against Crimes of Forced Disappearance and Forced Displacement. This fragmentation of criminal investigation undermines the possibility of comprehensively investigating the crime (including all of its circumstances, reasons, and motivations, as well as all perpetrators and accomplices)—and therefore opens new legal avenues to impunity.

In addition, the persistence of the internal armed conflict and the continued operation of paramilitary groups constitute tremendous obstacles to effective investigations. As noted above, internally displaced people have been killed, and many have been displaced again for reclaiming their stolen lands or for testifying in judicial proceedings against paramilitary members, military actors, and private individuals involved in crimes of displacement. The protection of witnesses and victims by the Office of the Attorney General provides a temporary solution in the form of temporary relocation to other regions of the country. However, several relocated people have been found in their new places of refuge and killed, as with the recent cases of Oscar Maussa Bolívar (killed on November 24, 2010) and David de Jesús Goetz (killed on March 23, 2011).

## The Issue of Reparation

The issue of reparation for victims of the crime of internal displacement—particularly in terms of the restitution of stolen land—is closely linked to the issue of investigation. In addition to the limited resources available for reparation, the absence of a criminal policy to investigate the crime of displacement has created tremendous obstacles to the restitution of land to victims. It has, in this way, facilitated the legalization of the dispossessions.

In the majority of cases of land dispossession, the perpetrators have used legal mechanisms to cover up their crimes and to obstruct restitution.<sup>73</sup> One mechanism frequently used is successive purchase—the sale of land in order to hide the links between those who physically stole it and those who appear

to end up with it. Another legal mechanism, when peasants have received public lands from the state (*Tierras baldías*) through land reform legislation, has been the revocation of the allocation of land because of its abandonment (due to displacement) and its allocation to third parties. In several cases, victims' lawyers have discovered that the current landowners were closely linked with the paramilitary groups that displaced the peasants from their lands. They have also found the current landowners to be "figureheads" or "straw men" (*testaferros*) working for the perpetrators. This is not a new phenomenon, and national legislation provides some legal avenues to invalidate the domain (*extinción de dominio*) of landowners in cases of illicit enrichment (*enriquecimiento ilícito*).<sup>74</sup> Both the "Justice and Peace Law"<sup>75</sup> and ordinary criminal proceedings allow for the invalidation of domain by judges at the moment that they deliver their judgments. However, these proceedings are judicial, requiring judicial investigations into the origins of the acquisition of the land.

Past experience reveals the legal and investigative difficulties faced in establishing the illegal provenance of the acquisition of lands and objects in judicial proceedings of extinction of domain. In 2005, in the context of dispossession of land by paramilitary groups in conjunction with drug traffickers (called "counteragrarian reform"), the comptroller general of the republic (*Contraloría General de la República*) highlighted that extinction of domain was only declared for 5 percent of dispossessed land, in particular because of difficulties related to dummy operations through figureheads.<sup>76</sup> Certainly, over the last several years, amendments have been introduced to these proceedings to make them more effective. Nevertheless, the issue of investigations remains critical.

## Conclusion

The record of convictions of the Colombian criminal justice system in cases of displacement is very poor. Indeed, the Superior Council of the Judicature (*Consejo Superior de la Judicatura*) has registered 41 criminal proceedings concerning the crime of forced displacement in the ordinary judicial system. Thirteen of these had judgments: nine individuals were convicted and three were absolved.<sup>77</sup> All of these cases involved members of paramilitary groups. According to the Office of the Attorney General, the National Unit of Justice and Peace had opened 64,844 investigations for the crime of collective forced displacement of communities by December 2010.<sup>78</sup> And according to the National Unit of Justice and Peace, by April 2011 only three applicants (demobilized paramilitaries) had been sentenced by the "Justice and Peace Jurisdiction."<sup>79</sup>

This paper has provided an overview of the crime of displacement in Colombia and attempted to explain some of the obstacles to prosecuting that crime. It examined the legal framework within which crimes of displacement can be prosecuted, including both the ordinary criminal jurisdiction and the "Justice and Peace Jurisdiction," and considered the challenges faced by such efforts. Too often, I have argued, displacement is considered an indirect consequence of armed conflict or only in connection with other crimes, and not as an autonomous crime. The effects of the lack of effective judicial investigations into crimes of displacement extend beyond the impunity for the various actors implicated in these crimes, hindering efforts to provide reparation to victims as well.



## Notes

- <sup>1</sup> See, for example, General Commander of the Military Forces (*Comando General de las Fuerzas Militares*), *Reglamento de combate de contraguerrilla* [Rules of counter guerrilla combat], EJC-3-10, 1987, 19.
- <sup>2</sup> See, inter alia: General Commander of the Military Forces, Resolution No. 005 (1969), *Reglamento de combate de contraguerrillas* [Rules of counter guerrilla combat], EJC 3-10, 1969, creating “self-defence committees” (“*juntas de autodefensa*”); General Commander of the Military Forces, *Instrucciones generales para operaciones de contra-guerrillas* [General instructions for counter guerrilla operations], 1979, creating “Civil-Military Committees” (“*Comités cívicos-militares*”); General Commander of the Army (*Comando General de Ejército*), Manual ECJ-3-101, June 25, 1982, ordering the establishment of “self-defence committees” (“*juntas de autodefensa*”); and General Commander of the Military Forces, *Rules of counter guerrilla combat*, 1987.
- <sup>3</sup> See, for example, General Commander of the Military Forces, *General instructions for counter guerrilla operations*, 188.
- <sup>4</sup> UN Human Rights Council, *Report of the Representative of the Secretary-General on the human rights of internally displaced persons*, Walter Kälin, U.N. Doc. A/HRC/4/38/Add.3, January 24, 2007, para. 53.
- <sup>5</sup> UN Commission on Human Rights, *Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47—Addendum: Profiles in displacement: follow-up mission to Colombia*, U.N. Doc. E/CN.4/2000/83/Add.1, January 11, 2000, para. 23.
- <sup>6</sup> Supreme Court of Justice of Colombia, Case No. 32672, *Case against the former governor of Sucre Salvador Arana*, Judgment of December 3, 2009; and Case No. 32805, *Case against the former Senator Álvaro García Romero*, Judgment of February 23, 2010. See also, Case No. 26.585, *Case against the former Senator Humberto de Jesús Builles Correa*, Decision adopted by Act No. 260 of August 17, 2010.
- <sup>7</sup> More than 3,500 members and supporters of the *Unión Patriótica* were massacred, killed, or disappeared in the period of 1985–1998, and thousands of them, along with local people in regions under their influence, were displaced.
- <sup>8</sup> Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2009* (Geneva: IDMC, May 2010), 13.
- <sup>9</sup> Inter-American Commission on Human Rights, *Third Report on the Human Rights Situation in Colombia*, Doc. No. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter 6, “Internal displacement,” para. 22.
- <sup>10</sup> Cited in Área de Memoria Histórica, Comisión Nacional de Reparación y Reconciliación, and Línea de Investigación Tierra y Conflicto, *El Despojo de Tierras y Territorios: Aproximación Conceptual*, (Bogotá, D.C.: Editorial Kimpres Ltda., July 2009), 23.
- <sup>11</sup> Procuraduría General de la Nación, “Víctimas del despojo, iniciativas para saldar la deuda, Seminario

Internacional en Bogotá el 24 y 25 de noviembre,” November 23, 2010, [http://www.procuraduria.gov.co/html/noticias\\_2010/noticias\\_831.htm](http://www.procuraduria.gov.co/html/noticias_2010/noticias_831.htm).

- <sup>12</sup> UN Human Rights Council, *Informe presentado por el Representante del Secretario General sobre los derechos humanos de los desplazados internos*, Sr. Walter Kälin, *Adición Misión a Colombia*, U.N. Doc. A/HRC/4/38/Add.3, January 24, 2007, para. 53.
- <sup>13</sup> Cited in Área de Memoria Histórica et al., *El Despojo de Tierras y Territorios*, 21.
- <sup>14</sup> Ibid.
- <sup>15</sup> See, inter alia, Contraloría General de la República, *La Gestión de la reforma Agraria y el Proceso de Incautación y Extinción de Bienes Rurales*, Bogotá, 2005; and Roberto Steiner and Alejandra Corchuelo, *Repercusiones económicas e institucionales del narcotráfico en Colombia* (CEDE–Universidad de los Andes, Bogotá, December 1999).
- <sup>16</sup> Republic of Colombia, Defensoría del Pueblo, “Informe del Gobierno a la Corte Constitucional en seguimiento a la Sentencia T-025 (2004),” July 2010, cited in UN High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, U.N. Doc. A/HRC/16/22, February 3, 2011, para. 95.
- <sup>17</sup> Colombian Commission of Jurists and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, *Despojo de tierras campesinas y vulneración de los territorios ancestrales* (Bogotá: Colombian Commission of Jurists, 2011), 16.
- <sup>18</sup> This was set up by the Law No. 975 of 2005 (known as the “Justice and Peace Law”), which created a special criminal jurisdiction and proceedings for demobilized members of paramilitary or guerrilla groups.
- <sup>19</sup> Superior Tribunal of the Judicial District of Bogotá, Chamber of Justice and Peace, *Case of the Massacre of Manpuján*, Judgment of June 29, 2010, Magistrate Rapporteur Uldi Teresa Jiménez López, File No. 1100160002532006. The assets comprising the value of 36,000 million pesos include, among others, 93 rural properties, 31 urban properties, 39 cars, two helicopters, two boats, 5,530 cows, 17 horses and four billion pesos (US \$2.2 million).
- <sup>20</sup> Ibid.
- <sup>21</sup> Ibid.
- <sup>22</sup> Republic of Colombia, Law No. 171 of December 16, 1994.
- <sup>23</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), June 8, 1977, *entered into force* July 12, 1978, art. 17.
- <sup>24</sup> Republic of Colombia, Law No. 589, art. 1, incorporating a new art. 284A into the Criminal Code.
- <sup>25</sup> Republic of Colombia, Criminal Code art. 180 (Law 599), which defines the crime in the following terms: “An act that in an arbitrary manner, by violence or other coercive acts directed against a segment of the population, causes one or more of its members to change their place of residence, shall be punishable. . . . Forced displacement is not understood to occur in movements of populations carried out by the state security forces when they have as their object the security of the population, or developing urgent military reasons, in accordance with international law.” (“*El que de manera arbitraria, mediante violencia u otros actos coactivos dirigidos contra un sector de la población, ocasione que uno o varios de sus miembros cambie el lugar de su residencia, incurrirá en prisión. . . . No se entenderá por desplazamiento forzado, el movimiento de población que realice la fuerza pública cuando tenga por objeto la seguridad de la población, o en desarrollo de imperiosas razones militares, de acuerdo con el derecho internacional.*”)
- <sup>26</sup> Republic of Colombia, New Criminal Code art. 159 (Law 599), which defines the crime in the following terms: “Whoever, in the course and conduct of armed conflict and without a military rationale, deported, expelled, relocated or forcibly displaced from the site of their settlement the civilian population, will be liable to imprisonment.” (“*Deportación, expulsión, traslado o desplazamiento forzado de población civil: El que, con ocasión y en desarrollo de conflicto armado y sin que medie justificación militar, deporte, expulse, traslade o desplace forzosamente de su sitio de asentamiento a la población civil, incurrirá en prisión.*”)

- <sup>27</sup> See, inter alia, Supreme Court of Justice, Case No. 31582, Decision of May 22, 2009, Magistrate Rapporteur María del Rosario González de Lemos.
- <sup>28</sup> See, inter alia, Supreme Court of Justice, Case No. 32022, Decision of September 21, 2009, Magistrate Rapporteur Sigifredo Espinosa Pérez; and Case No. 29472, Decision of April 10, 2008, Magistrate Rapporteur Yesid Ramírez Bastidas.
- <sup>29</sup> Superior Tribunal of the Judicial District of Bogotá, Chamber of Justice and Peace, Case No. 2006 80201, *Case of Jorge Iván Laverde Zapata alias "El Iguano,"* Judgment of December 2, 2010, Magistrate Rapporteur Uldi Teresa Jiménez López, para. 197.
- <sup>30</sup> Supreme Court of Justice, Case No. 26.585, *Case against the former Senator Humberto de Jesús Builles Correa*, Decision adopted by Act No. 260 of August 17, 2010.
- <sup>31</sup> See inter alia: Additional Protocol II, art. 17; and UN General Assembly, Rome Statute of the International Criminal Court, July 17, 1998, *entered into force* July 1, 2002, U.N. Doc. A/CONF.183/9, arts. 7(2)(d) and 8(2)(e)(viii).
- <sup>32</sup> See Republic of Colombia, Criminal Code art. 2 (Law 589, reforming article 29 of the old Criminal Code); and New Criminal Code art. 32(4) (Law 599 of 2000).
- <sup>33</sup> See, inter alia: the Charters and Judgments of the Nuremberg and Tokyo Tribunals; UN International Law Commission, "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950" U.N. Doc. A/1316 (1950), Principle IV; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, December 10, 1984), 1465 U.N.T.S. 85, *entered into force* June 26, 1986, art. 2(3); UN General Assembly, Resolution 34/169, "Code of Conduct for Law Enforcement Officials," U.N. Doc. A/RES/34/169, February 5, 1980, art. 5; UN Economic and Social Council, Resolution 1989/65, "Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions," U.N. Doc. E/RES/1989/65, May 24, 1989, Principle 19; UN Security Council, "Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 191," [Statute of the ICTY]. U.N. Doc. S/RES/827, May 25, 1993, art. 7(4); UN Security Council, Resolution 955, "Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994," [Statute of the ICTR], U.N. Doc. S/RES/955, November 8, 1994, art. 6(4); Rome Statute of the International Criminal Court, art. 33; and UN General Assembly, Resolution 61/177, "International Convention for the Protection of All Persons from Enforced Disappearance," U.N. Doc. A/RES/61/177, December 20, 2006, art. 6.
- <sup>34</sup> Republic of Colombia, Law 589, art. 2 (reforming article 29 of the old Criminal Code); and New Criminal Code art. 32(4) (Law 599 of 2000).
- <sup>35</sup> Republic of Colombia, New Criminal Code, art. 83 (Law 599 of 2000).
- <sup>36</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, *entered into force* July 12, 1978, art. 86, para. 2; Statute of the ICTY, art. 7(3); the Statute of the ICTR, art. 6(3); the Rome Statute of the International Criminal Court, art. 28; "Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions," Principle 19; "International Convention for the Protection of All Persons from Enforced Disappearance," art. 6; and "Code of Conduct for Law Enforcement Officials," art. 5. Likewise, the International Criminal Tribunal for the Former Yugoslavia has reiterated this principle in: *Prosecutor v. Z Delalic and others*, Judgment, IT-96-21-T, Trial Chamber, November 16, 1998, para. 734; *Prosecutor v. Blaskic – "Lasva Valley,"* Judgment, IT-95-14-T, Trial Chamber, March 3, 2000, paras. 289 ff.; *Prosecutor v. Delalic – "Celibici Camp,"* Judgment, IT-96-21-T, Trial Chamber, November 16, 1998; *Prosecutor v. Dario Kordic & Mario Cerkez – "Lasva Valley,"* Judgment, IT-95-14/2, Trial Chamber, February

- 26, 2001, paras. 366 to 371, 401 ff. See, also, the work of the UN International Law Commission on the Draft Code of Crimes against the Peace and Security of Mankind, in United Nations documents A/46/10, Supplement No. 10 (1991), 262, and A/51/10, Supplement No. 10 (1996), 22–30.
- <sup>37</sup> See, inter alia, International Covenant on Civil and Political Rights, art. 9; American Convention on Human Rights, New York, December 16, 1996, 993 U.N.T.S. 171, *entered into force* March 23, 1976, art. 15(2); and UN International Law Commission, “Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal,” Principle II.
- <sup>38</sup> See inter alia, Supreme Court of Justice, Case No. 32022, Judgment of September 21 2009, Magistrate Rapporteur Sigifredo Espinosa Pérez. In the same line, but related to others crimes (crimes against humanity), see: Supreme Court of Justice, Criminal Cassation Chamber, Case No. 33.118, against *Cesar Pérez García*, Decision of May 13, 2010, Case No. 33.118; and Case No. 28.476, against *Cesar Emilio Camargo Cuchía and others*, Decision of December 16, 2008.
- <sup>39</sup> Superior Tribunal of the Judicial District of Bogotá, Chamber of Justice and Peace, Case No. 2006 80281, *Case of Jorge Iván Laverde Zapata alias “El Iguano,”* Judgement of December 2, 2010, Magistrate Rapporteur Uldi Teresa Jiménez López, para. 197.
- <sup>40</sup> Republic of Colombia, Law 589 of 2000, art. 15, assigning the competence of this crime to the specialized criminal judges of the judicial district.
- <sup>41</sup> New Criminal Code, art. 533 (Law 906 of 2004).
- <sup>42</sup> Republic of Colombia, Legislative Act No. 3 of December 17, 2002, modifying article 250 of the Constitution concerning the functions of the attorney general of the nation.
- <sup>43</sup> On these issues see: Colombian Commission of Jurists and Colectivo de Abogados “José Alvear Restrepo,” *Denegación de justicia y proceso penal: Los derechos de las víctimas de violaciones de derechos humanos y el Código de Procedimiento Penal (Ley 906 de 2004)*, Bogotá, 2011.
- <sup>44</sup> International Covenant on Civil and Political Rights, arts. 14, 26; and American Convention on Human Rights, San José, Costa Rica, November 22, 1969, 9 I.L.M. 673 (1970), *entered into force* July 18, 1978, art. 24.
- <sup>45</sup> Bucaramanga, Cartagena, Cúcuta, Ibagué, Medellín, Montería, Pasto, Pereira, Quibdó, Santa Marta, Santa Rosa de Viterbo, and Villavicencio.
- <sup>46</sup> See the text of the agreement at: <http://www.c-r.org/our-work/accord/colombia/spanish/acuerdo-santafederalito.php>.
- <sup>47</sup> Article 13 of Decree 128 includes “pardons, conditional suspension of the execution of a sentence, a cessation of procedure, a resolution of preclusion of the investigation or a resolution of dismissal.”
- <sup>48</sup> For more information, see inter alia: Colombian Commission of Jurists, “Without Peace and Without Justice: Last Minute Modifications to the Law Failed to Overcome its Gravest Problems,” Bulletin Number 6, Bogotá, June 29, 2005; Colombian Commission of Jurists, *Colombia: La metáfora del desmantelamiento de los grupos paramilitares: Segundo informe sobre la aplicación de la ley 975 de 2005*, Bogotá, 2010, 121–122; and International Commission of Jurists, *Colombia: socavando el Estado de derecho y consolidando la impunidad*, Geneva, 2005, 64 ff.
- <sup>49</sup> International Commission of Jurists, *Colombia: socavando el Estado de derecho y consolidando la impunidad*, 66.
- <sup>50</sup> Ibid.
- <sup>51</sup> Ibid.
- <sup>52</sup> Colombian Commission of Jurists, *Colombia: La metáfora del desmantelamiento de los grupos paramilitares*, 121.
- <sup>53</sup> Colombian Commission of Jurists, *Colombia 2002–2006: Situation Regarding Human Rights and Humanitarian Law*, Bogotá, September 2006, 5.
- <sup>54</sup> Republic of Colombia, Law No. 975, arts. 3, 29.
- <sup>55</sup> In the Colombian criminal legislation, the crime of torture was punishable with 8–15 years of imprisonment; forced disappearance, with 20–30 years; homicide, with 13–25 years; terrorist homicide, with 25–40 years; and sexual slavery or forced prostitution, with 10–18 years.

- <sup>56</sup> According to information of the National Unit of Justice and Peace of the Office of the Attorney General (January 2011), cases involving 395 members of the army have been sent to the ordinary criminal jurisdiction over the last 5 years (see: <http://www.fiscalia.gov.co/justiciapaz/Index.htm>). In contrast, in only one case—the massacres of El Salado—more than 100 marines (*Infantería de Marina*), including two generals and several colonels, are directly involved, and a huge amount of evidence and proof has been collected in the judicial investigations. However, the National Unit of Justice and Peace only sent a case against one captain to the ordinary jurisdiction.
- <sup>57</sup> Colombian Commission of Jurists, *Colombia 2002-2006*, 10.
- <sup>58</sup> See the Judgments of the Constitutional Court: C-370/06; C-575/06; C-319/06; C-531/06; C-650/06; C-719/06; C-127/06; C-400/06; C-455/06; C-650/06; C-080/07; T-355/07; T-049/08; C-1199/08; and C-936/10. In particular, Judgment C-370 of 2006, declaring unconstitutional several provisions of Law No. 975.
- <sup>59</sup> Republic of Colombia, Executive Decrees Nos. 4760/2005, 2898/2006, 3391/2006, 4417/2006, 315/2007, 423/2007, 3570/2007, 122/2008, 176/2008, 880/2008, 1290/2008, 1364/2008, 4719/2008, and 614/2009.
- <sup>60</sup> Inter-American Commission on Human Rights, “Report of the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings (October 2, 2007),” in *Inter-American Commission on Human Rights Follow-Up on the Demobilization Process of the AUC in Colombia: Digest of Published Documents (2004-2007)*, U.N. Doc. OEA/Ser.L/V/II CIDH/INF.2/07, 2007.
- <sup>61</sup> The regulation of victims’ participation is established by Ministry of the Interior of Justice, Decree No. 315 of February 7, 2007.
- <sup>62</sup> *Ibid.*, art. 1.
- <sup>63</sup> Inter-American Commission on Human Rights, “Report of the Implementation of the Justice and Peace Law,” para. 82.
- <sup>64</sup> UN Economic and Social Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, U.N. Doc. E/CN.4/2006/9, May 16, 2006, para. 73.
- <sup>65</sup> See, inter alia, Supreme Court of Justice, Case No. 301201, Decision of July 23, 2008, Magistrate Rapporteur Rapporteur Alfredo Gómez Quintero.
- <sup>66</sup> See, for example, Constitutional Court of Colombia, Decision No. 008 of 2009, Magistrate Rapporteur Manuel José Cepeda Espinosa.
- <sup>67</sup> UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, U.N. Doc. A/HRC/7/39, February 29, 2008, para. 54.
- <sup>68</sup> *Ibid.*
- <sup>69</sup> See, for example, Constitutional Court of Colombia, Decision No. 008 of 2009, Magistrate Rapporteur Manuel José Cepeda Espinosa.
- <sup>70</sup> Fiscalía General de la Nación, *Informe de Rendición de Cuentas 2008–2009*, 77–78.
- <sup>71</sup> See, for example, Constitutional Court of Colombia, Decision No. 008 of 2009, Magistrate Rapporteur Manuel José Cepeda Espinosa.
- <sup>72</sup> Colombian Commission of Jurists, *Informe sobre el derecho de acceso a la justicia de las víctimas del desplazamiento forzado*, Bogotá, September 2010.
- <sup>73</sup> For further information see: Área de Memoria Histórica et al., *El Despojo de Tierras y Territorios*; Ministerio de Agricultura y Desarrollo Rural, Programa de Consultas en Recuperación de Tierras (CONRET), Documento Diagnóstico 2008, December 2008, [http://www.minagricultura.gov.co/archivos/diagnostico\\_conret\\_2008.pdf](http://www.minagricultura.gov.co/archivos/diagnostico_conret_2008.pdf); and UN High Commissioner for Refugees, *Balance de la Política Pública para la Atención Integral del Desplazamiento Forzado en Colombia Enero 2004 – abril 2007*, Bogotá, August 2007.
- <sup>74</sup> Constitution of Colombia, art. 34, and, for cases of despoliation, Law No. 733 of 2002; Law No. 1017 of 2006; and Laws No. 1330, 1336, and 1395 of 2009.
- <sup>75</sup> Republic of Colombia, Law No. 975, art. 24.

- <sup>76</sup> Contraloría General de la República, *En los últimos 20 años: narcotraficantes realizaron gigantesca contrarreforma agraria*, Bogotá, June 9, 2005.
- <sup>77</sup> Colombian Commission of Jurists, *Informe sobre el derecho de acceso a la justicia de las víctimas del desplazamiento forzado*, Bogotá, September 2010.
- <sup>78</sup> Fiscalía General de la Nación, in *Revista Huellas*, Bogotá, August 2010, 42; and Superior Tribunal of the Judicial District of Bogotá, Chamber of Justice and Peace, Case No. 2006 80281, *Case of Jorge Iván Laverde Zapata alias "El Iguano,"* Judgement of December 2, 2010, Magistrate Rapporteur Uldi Teresa Jiménez López, para. 140.
- <sup>79</sup> See the website of the National Unit of Justice and Peace of the Office of the Attorney General: <http://www.fiscalia.gov.co/justiciapaz/Index.htm>.