

Between war and peace: Land and humanitarian action in Colombia

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Contents

1. Introduction	2
2. Land and conflict in historical perspective	4
2.1 Agrarian conflicts, institutional failure and modes of accumulation	4
2.2 Land colonisation, resistance and territorial expansion	4
2.3 Territorial control, forced displacement and the humanitarian crisis	5
3. State response: theory and practice	8
4. Transitional programming: land-related challenges	12
5. Humanitarian action on land issues	16
5.1 Supporting government institutions	16
5.2 Supporting state oversight bodies	17
5.3 Direct support to communities	18
6. Conclusion	22

Acronyms

AUC	Self-Defence Forces of Colombia
CCJ	Colombian Commission of Jurists
CNRR	National Reparation and Reconciliation Commission
CODHES	Consultancy on Human Rights and Displacement
ELN	National Liberation Army
FARC	Armed Revolutionary Forces of Colombia
FUPAD	Pan-American Foundation for Development
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
INCODER	Colombian Institute for Rural Development
INCORA	Colombian Institute for Agrarian Reform
IOM	International Organisation for Migration
JPL	Justice and Peace Law
NRC	Norwegian Refugee Council
OCHA	Office for the Coordination of Humanitarian Affairs
REDES	Reconciliation and Development Programme
SIDA	Swedish International Development Agency
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

A highly complex relationship exists between land and violent conflict, where land is often tied to multiple social, economic, political and symbolic power structures and processes. These structures and processes often manifest themselves violently when the existing institutional framework fails to resolve disputes over land.¹ This complexity is increased in protracted conflict-related emergencies, such as in Colombia, where violence is characterised by its multiplicity and interdependence over both time and space. Neat categorisations, such as legal/illegal, failed/strong state or conflict/post-conflict, become increasingly difficult to make, and this fluidity often poses enormous challenges for humanitarian organisations. A failure to understand and address this complexity can often lead to policies and programmes that can perpetuate violence and civilian insecurity.

This HPG Working Paper highlights some of the main land tenure issues in Colombia. It demonstrates that attempts by humanitarian organisations at alleviating the crisis must incorporate a comprehensive understanding of land issues in their policies and address them in

their programming as part of a context-specific, integrated and inter-disciplinary approach.² This case study forms part of a wider HPG research project looking at the role land tenure issues play in conflict and post-conflict situations. It is based on fieldwork in Colombia in June 2007, and on research in secondary sources.

The study is divided into four parts. First, it analyses the relationship between land and conflict in Colombia, and how this is linked to the current humanitarian crisis; second, it assesses the legislation that has been put in place to resolve land issues, and how this legislation has played out in practice; third, it outlines the land-related challenges facing humanitarian agencies; and lastly, it looks at how humanitarian agencies are attempting to tackle land issues. It is beyond the scope of this study to cover all humanitarian programmes and actors in Colombia, or to provide an evaluation of their work; the aim is to highlight how some of these organisations are responding to the humanitarian crisis in the country, outline the challenges they confront and assess the importance of understanding and addressing land tenure issues in humanitarian response.

¹ Richani, N. (2002), *Systems of Violence: The political economy of war and peace in Colombia*, (SYNU Press; New York). Also Clover, J. & Huggins, C. (eds) (2005), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*, (Nairobi; ACTS).

² OECD (2005), *Land and Conflict*, OECD Issues Brief.

2. Land and conflict in historical perspective

2.1 Agrarian conflicts, institutional failure and modes of accumulation

Agrarian conflicts have been a continuous theme throughout Colombia's history, and the institutional failure to resolve these disputes has led to the emergence of violent systems and actors, namely the illegal armed groups antagonists use to pursue their diverse interests.³ These conflicts surfaced from the contradictory modes of production that emerged after independence: the *hacienda* system, consisting of large concentrations of land (*latifundios*) and requiring an ample supply of inexpensive labour; and the traditional peasant subsistence economy of smallholdings (*minifundios*). The former started to predominate over the latter as the large landowning elite sought to further concentrate land, thereby ensuring that a sufficient supply of landless peasants could be assured as labourers. This transition in the agricultural economy led to the growing conversion of peasants into wage-labourers on the *latifundios*, and to a process of land colonisation whereby peasants (*colonos*) avoided the *latifundios* by migrating from the central highlands to the peripheries, where they cut down vegetation on public lands to prepare new land for cultivation.⁴ The landowning elite sought to benefit from this land colonisation by either acquiring these lands or forcing the *colonos* to abandon them, effectively leaving many of these now landless peasants with no choice but to become wage-labourers or sharecroppers on the *latifundios*.

The Colombian government attempted to resolve these conflicts with a series of land reform bills, such as law 200 of 1936 which aimed at modernising the agrarian sector by redistributing non-productive land in the *latifundios* and compensating *colonos* for any improvements they had made to the land they had occupied. The implementation of these reform measures was fiercely resisted by landowners, who used their power at municipal levels to adjudicate land disputes in their favour. Meanwhile, large areas of agricultural land were converted to pasture for less

labour-intensive cattle-grazing in order to avoid land claims by tenants and sharecroppers. The effects of these changes were aggravated by confrontation between the Liberal and Conservative parties in a period known as *La Violencia* (1945–58), when displacement led to further land concentration and colonisation.

Subsequent attempts at agrarian reform failed to resolve the conflicts between landowners and the increasingly displaced and marginalised *colonos*. Law 135 of 1961 is a case in point. It was designed to assist the *minifundios* and increase food productivity after *La Violencia*, for which the Colombian Institute for Agrarian Reform (INCORA) was created. However, INCORA failed to achieve its objectives, distributing less than 1% of the land that was subject to expropriation.⁵ At the same time, Law 1a of 1968 helped convert *latifundia*, through the expulsion of tenants and sharecroppers, into large commercial agribusinesses, aimed at meeting the food needs of the growing urban population and generating surplus for industrial expansion.⁶

As noted, the persistent failure of state institutions to resolve land conflicts led to the emergence of violent actors. These mainly took the form of guerrilla insurgencies, most notably the Armed Revolutionary Forces of Colombia (FARC), which had a strong land reform agenda, and the National Liberation Army (ELN), which opposed foreign investment and the exploitation of natural resources. In response to growing guerrilla influence, self-defence groups or paramilitaries emerged, and later united under the umbrella organisation the United Self-Defence Forces of Colombia (AUC).

2.2 Land colonisation, resistance and territorial expansion

Agrarian conflicts have led to two main waves of peasant colonisation in the twentieth century.⁷ In the first half of the twentieth century, Colombia's initial wave of land colonisation was linked to the peasantry's struggle against the expansion of

³ Richani, N. (2002), *Ibid*, Chapter 2..

⁴ LeGrand, C. (1992), "Agrarian Antecedents of the Violence" in Bergquist, C., Penaranda, R. & Sanchez, G. (eds), *Violence in Colombia: the Contemporary Crisis in Historical Perspective*, (Wilmington; Scholarly Resources).

⁵ Richani, N. (2002), *op. cit.*, p. 28.

⁶ Pearce, J (1990), *Colombia: Inside the Labyrinth*, (London; Latin America Bureau), p. 92.

⁷ Sanchez, G. (2001), "Introduction: Problems of Violence, Prospects for Peace" in Bergquist, C., Penaranda, R. & Sanchez, G. (eds.), *Violence in Colombia 1990 -2000: Waging War and Negotiating Peace*, (Wilmington; Scholarly Resources), p.3.

capitalist agriculture, which consolidated important sectors of the economy such as coffee, and consequently drove the country's early industrialisation. The second wave of colonisation emerged in the 1970s, and continues today. While consistent with the earlier phase, it is also linked to the rise of the illegal drug economy, the development of the extractive industry and an export-led rural development model based on large agribusiness. The nature of the conflict differs by region: in regions where property rights are defined, conflicts tend to revolve around wages and working conditions; where property rights are still disputed, conflicts tend to revolve around land ownership.⁸

Guerrilla groups were used by the peasantry to protect their interests against the large landowners, cattle ranchers and drug-traffickers. They consolidated their presence across large areas of the country due to weak state presence, particularly in areas of land colonisation. Furthermore, guerrillas were able to secure steady sources of income through extortion from the affluent. Landowners, particularly cattle ranchers, and drug-traffickers responded to this extortion by forming self-defence groups. These groups, initially legalised by the government and supported by the armed forces, aimed to counter guerrilla influence, protect economic interests and ensure security. This often involved attacking the local population and members of the political establishment who were deemed supportive of the guerrillas. These self-defence groups became progressively more influential across the country as drug-traffickers increasingly supported their organisation and professionalisation by using their financial clout to provide training and better armament.

As the influence and power of self-defence groups increased, they began actively to expand their control of territory. In the words of one commentator, the 'struggle for territorial dominion ... replaced social conflicts over land' and the paramilitaries moved 'from being defenders of newly acquired and threatened agricultural property ... [to] controllers of territory'.⁹ This further exacerbated agrarian conflicts as they invested their drug money in large agricultural estates. It is

⁸ Richani, N. (2002), op. cit., Chapter 2.

⁹ Cubides, F. (2001), "From Private to Public Violence: the paramilitaries" in Bergquist, C, Penaranda, R. & Sanchez, G. (eds.), *Violence in Colombia 1990-2000: Waging War and Negotiating Peace*, (Wilmington; Scholarly Resources), p. 132.

estimated that, from the early 1980s until 2000, paramilitaries acquired 4.5 million hectares, representing around 50% of Colombia's most fertile and valuable land.¹⁰ Some commentators believe this figure to be currently around 6.8 million hectares.¹¹ This has exacerbated land inequality, with a World Bank study estimating in 2004 a Gini coefficient of 0.85 for land inequity.¹²

2.3 Territorial control, forced displacement and the humanitarian crisis

Territorial control by paramilitary groups is often directly linked to the expulsion of peasants from their land. This has created an ongoing humanitarian crisis of dramatic proportions, with an estimated two to four million internally displaced persons (IDPs) and over 500,000 refugees.¹³ This makes Colombia one of the worst displacement crises in the world, alongside Sudan, the DRC and Iraq.

There seems to be a correlation between areas of territorial expansion and land concentration and areas with the highest levels of displacement.¹⁴ Displacement also tends to occur in regions containing important natural resources, such as coal, oil and gold, or because of the viability of developing and expanding cattle-ranching, illicit crops or large scale-agribusinesses. For example, in 2004, it was estimated that 28% of IDPs in Colombia came from areas predominantly composed of cattle ranches; and according to the coal union, SINTRAMINERCOL, an estimated 68% of IDPs between 1999 and 2001 came from mining zones.¹⁵

¹⁰ Figure from the Inspector General's Office, cited in Valencia, L. (2006), *Colombia's Peace Processes: Multiple Negotiations, Multiple Actors*, Woodrow Wilson International Centre for Scholars, LAP Special Report, p. 14.

¹¹ Interviews carried out in Bogota, June 2007.

¹² World Bank (2004), *Colombia: una política de tierras en transición*, (Bogota; CEDE), p. 6.

¹³ For displacement, the Consultancy on Human Rights and Displacement (CODHES) places the number at almost four million between 1985 and 2007. The government estimates the number be at two million, although they only started counting from 2000 and do not recognise CODHES figures from 1985 to 2000 (Interview with CODHES, Bogota, June 2007). The refugee figure is from UNHCR.

¹⁴ Fajardo, D. (2006), "Desplazamiento Forzado: una lectura desde la economía política" in *Territorio, Patrimonio y Desplazamiento*, Seminario Internacional – Tomo 1, (Bogota; PGN & NRC), p. 118..

¹⁵ Comisión Colombiana de Juristas (CCJ) (2007), *Revertir el destierro forzado: Protección y restitución de*

Methods of displacing populations and expropriating their land include intimidation, forced disappearances, death threats, assassinations and massacres, all of which result in peasants being either forced to sell their land, often below its market value, or simply being compelled to leave. Front-men are used to buy the land, which often changes hands several times in order to obscure the identity of the original owner.¹⁶ Fraudulent methods are also used, in which documents and signatures are falsified; occasionally, dead people are named as landholders.¹⁷ Notary or registry offices are sometimes burnt down in order to eliminate any previous registry of the land. The informality of land tenure facilitates its illegal appropriation. It is estimated that only 31% of abandoned land has legal titles.¹⁸

Most of the displaced flee to the nearest urban centres, some returning, if possible, after small periods of time, while others stay or move to the next, often larger, urban centre. In these areas, the displaced mainly live in impoverished conditions on illegally held property without adequate access to education, health care, water and sanitation

facilities, often subsisting below basic nutrition standards.¹⁹ In one town in the district of Bogota, up to half of the displaced population live on non-titled property, where they are targeted by 'urbanisation pirates', middlemen who sell the rights to build houses on land which have no legal value. Without legal titles or official addresses, displaced people are often not entitled to economic support through emergency municipal programmes.²⁰

Displacement has also been caused by guerrillas, who often expel peasants from their land if they refuse to cooperate with them or are deemed to be cooperating with paramilitaries. However, the aim is not to illegally expropriate the land, but rather to occupy it for tactical reasons, establishing a refuge for combatants or seeking to control natural resources or local authorities.²¹ This does not necessarily entail the expropriation of land in the long term.²² It is estimated that guerrillas are responsible for 12–13% of displacement, whilst the paramilitaries are responsible for an estimated 46–63%, the state for 1%, and the remainder not attributed to a specific agent.²³

los territorios usurpados a la población desplazada en Colombia, (Bogota; CCJ), p.18-19.

¹⁶ Interview, Bogota, June 2007.

¹⁷ Interview with Comisión Intereclesial de Justicia y Paz, Bogota, June 2007.

¹⁸ CCJ (2007), op. cit., p.29.

¹⁹ IDMC (2006), *Colombia: Government "peace process" cements injustice for IDPs*, (Geneva; IDMC).

²⁰ Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2003), *Internal Displacement in Colombia: National and International Responses*, Working Paper 03.6, (Copenhagen; IIS), p. 21 -22.

²¹ Acción Social, op. cit., p.11.

²² Interview, Bogota, June 2007.

²³ UNHCR figures, cited in Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2003), op. cit., p. 6.

3. State response: theory and practice

Forced displacement occurred for two decades without recognition by the state of the need to protect and assist the displaced. However, as the international and national environment changed in the 1990s with regard to recognising the rights of the displaced and refugees,²⁴ the Colombian government passed a series of laws to protect people displaced by conflict. The current administration has also developed legislation to facilitate the reintegration of demobilised combatants as they negotiated a peace process with the paramilitaries. However, these attempts at seeking a post-conflict transition have failed to end the conflict, and as a result the implementation of these laws and the capacity of some of them to address issues of justice and peace, including the return and access to expropriated land, have been weak and have faced severe criticism, particularly from human rights organisations as well as from Colombia's state oversight bodies and the Constitutional Court.

In what is often considered the most advanced legislation internationally for the protection of IDPs, Law 387 of 1997 sets out provisions for the prevention of forced displacement and the protection and assistance of those who have been displaced by violence. With regard to land, Article 19 of Law 387 calls on the responsible institutions to protect land abandoned through forced displacement by ensuring its registration, providing land titles or alternative land, facilitating return and relocation and providing socio-economic security through projects and special access to credits.²⁵ In 2001, decree 2007 was passed to regulate some of the land-related articles in Law 387. The decree calls on the responsible institutions to identify the owners, holders, tenants and occupiers in areas of displacement or threatened by displacement and record the amount of time they have been linked to their land. These lands then need to be registered and protected from any transfers in case

of illegal appropriation. Alternative land can be provisionally given to victims of displacement, and in case of relocation they should be compensated for the land they have lost. These obligations were further reiterated in decree 250 of 2005, and included the protection and titling of communal land belonging to indigenous groups and afro-Colombian communities.

In practice, however, the law has not been effectively implemented and the responsible institutions have often failed to carry out their obligations. It is estimated that only one-third of the displaced receive assistance, which is often inadequate both in terms of the quantity (they only receive three months' emergency assistance) and in terms of efficiency (early warning systems often fail due to a lack of political will within the government and the armed forces to intervene).²⁶ The extent of this failure led the Constitutional Court in 2004 to pass ruling T-025, which found that the state was acting unconstitutionally in its policy towards the internally displaced. These have been followed by a series of *autos* that follow government progress in amending state practice. Although there have been some signs of improvement, particularly the allocation of \$2 billion in assistance to IDPs for the 2005–2010 period, the Constitutional Court remains concerned that the government is not fulfilling its legal responsibilities.²⁷

A lack of political will within government institutions is often identified as one of the major impediments to the effective implementation of the legislation protecting the internally displaced and their land. This can be partly attributed to high levels of corruption and infiltration by illegal armed groups within relevant institutions and within the political establishment. Certain elements of the government's 'democratic security' policy also impede the implementation of legislation. The policy is an attempt to defeat the guerrillas by strengthening the armed forces and police and increasing their presence throughout the country. The policy also involves engaging the paramilitaries in a peace process and intensifying illicit crop eradication. Although it has improved security in much of the country, it has not succeeded in ending displacement and in some

²⁴ The work of Francis Deng as UN Special Representative on IDPs, which included a first visit to Colombia in 1994, along with advocacy and pressure from national NGOs, the Church and regional bodies (i.e.: Permanent Consultation on Displacement in the Americas – CPDIA) helped put internal displacement at the centre of human rights concerns.

²⁵ Procuraduría General de la Nación & NRC (eds.) (2006), *Territorio, Patrimonio y Desplazamiento – Tomo 2*, (Bogota; Procuraduría & NRC), p.32.

²⁶ Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2003), op. cit., p. 16-17.

²⁷ Interview with the Constitutional Court, Bogota, June 2007.

instances perpetuated it (through military excursions and fumigation). The problem is compounded by a lack of available resources and effective coordination within and between the relevant bodies (particularly between the central government and municipal and departmental entities) responsible for the protection of the displaced and their property.

Regarding the effectiveness of the relevant institutions, a study by the Inspector General's Office, supported by the Norwegian Refugee Council (NRC), found that the reforms carried out to replace INCORA and other agencies responsible for redistributing and protecting land, leading to the creation of INCODER, were ineffective. In fact, INCODER represents 22.06% of the workforce that had been carrying out these functions under the previous arrangement, and the number of offices across the country declined from 50 to nine.²⁸ A lack of resources and effective coordination has also been identified in other protection bodies and initiatives such as the National Plan for Integral Attention to the Displaced Population, the Interior and Justice Ministry and the National Reparation and Reconciliation Commission (CNRR).²⁹

This lack of effectiveness has seen INCODER give a mere 0.3% of the displaced population a parcel of land in 2006.³⁰ This failure can also be attributed to the levels of corruption within the institute and infiltration by paramilitary groups, which has resulted in hundreds of hectares of land handed out to paramilitaries instead. Since 2002, ten directors have lost their positions on corruption charges, and INCODER has often bought non-cultivable land at excessive prices or with inherited debts, often from front-men linked to paramilitaries and/or drug-traffickers.³¹ Since 2006, over 40 politicians including congressmen, governors and the former chief of intelligence have been charged, detained or are being investigated by the Supreme Court and the Prosecutor's Office for links with paramilitary groups. These events show the extent to which the paramilitaries have

²⁸ Procuraduría General de la Nación (2006), *Análisis a la Ejecución de la Reforma Social Agraria y a la Gestión del Instituto Colombiano de Desarrollo Rural – INCODER*, (Bogotá; Procuraduría & NRC), p. 16.

²⁹ Salinas, Y. (2006), "Tierras" in Comisión de Seguimiento a la Política Pública Sobre Desplazamiento Forzado (eds), *Desplazamiento Forzado y Políticas Públicas*, (Bogotá; UNDP, CODHES & British Embassy), p. 109 and Interview with CNRR, Bogotá, June 2007.

³⁰ El Tiempo (2007), "¿Fracasó la política de tierras del gobierno Uribe?", May 26, 2007.

³¹ Ibid.

been able to infiltrate the highest echelons of the political establishment, and the failure of the peace process to dismantle their political power remains one of the major impediments to the protection of the displaced population and the restitution to them of their land and property.

Since 2002, the government's 'democratic security' policy, has achieved considerable results with improvements in levels of security, a weakening of the guerrilla groups and the collective demobilisation of 30,000 paramilitaries, plus around 12,000 individual demobilisations. However, it also involves civilians in counter-insurgency measures through informant networks. Meanwhile, demobilised paramilitaries are rearming into criminal gangs, and their political power remains intact, and there have not been substantial gains in eradicating illicit crop cultivation, with fumigations often causing further displacement and affecting non-illicit crops. In fact, it is estimated that between 160,000 and 300,000 people have been displaced since Alvaro Uribe's administration came to power in 2002.³²

The demobilisation of paramilitaries has been particularly controversial, particularly with regards to reparation of the victims. Demobilisation has been carried out under Law 975 of 2005, better known as the Justice and Peace Law (JPL), which seeks to strike a balance between justice, peace, truth and reparation. Human rights groups claim that the JPL favours perpetrators over victims, a concern also raised by the Constitutional Court, which ordered amendments to the law, to ensure that demobilised paramilitaries return illegally obtained assets and pay reparations with illegally obtained wealth. However, the law has so far proved insufficient to dismantle the paramilitaries' powerful political, economic and social structures. Its fiercest critics claim that the JPL is being used to launder their illegal wealth (such as land) and legitimise their political control.³³

According to decree 128 of 2003, only paramilitaries who had existing judicial processes or non-pardonable crimes against them would face criminal investigation under the JPL. This means that over 90% of the paramilitaries gain an amnesty. This has particular consequences for the displaced population, as many paramilitaries will

³² IDMC (2006), *op. cit.*, p.10. The lower figure is the government estimate whilst the latter is from CODHES.

³³ Human Rights Watch (2005), *Smoke and Mirrors: Colombia's Demobilization of Paramilitary Groups*, (New York: Human Rights Watch).

not be penalised for their role in forced displacement, and much of the land that has been illegally expropriated will not be returned.³⁴ Those investigations that are taking place do not seem to be sufficiently rigorous, and as a result have yet to produce a comprehensive understanding of the crimes committed.

The government's development policies, outlined in the National Development Plan 2006–2010, promote large-scale development through large agribusiness in commodities such as African palm, rubber, sugar cane and bananas, the exploitation of the forest reserve and an increase in mining and hydrocarbon extraction. These policies have implicitly further encouraged the expropriation of land at the expense of the displaced population, as they require an increase in the amount of land dedicated to such resources, hindering any process of restitution for the internally displaced. One analyst argues that these projects in fact benefit from the cheap supply of labour provided by the internally displaced; in other words, displacement has implicitly become part of the mainstream development process.³⁵ Companies with alleged links to paramilitaries have been accused of falsifying land titles and displacing peasants from their land in order to set up agribusinesses. One investigation found that up to 80% of land titles for African palm plantations in some areas were irregular, a problem that could be further exacerbated as the government aims to increase plantations to 400,000 hectares.³⁶

A number of laws are being passed to promote this development model, including a free trade agreement with the United States (yet to be ratified). Some of these laws have been particularly controversial. One, the rural development law, would reduce the amount of time that land needs to be occupied (from 20 to ten years and possibly to five years) in order to claim legal ownership. Although this process could potentially benefit peasants who have colonised land and have lived with informal land tenure arrangements for years, it also provides a means for paramilitaries to legalise the vast amounts of land that have been illegally expropriated in the last decade. Although the government has responded to its critics by amending an article in the law to exclude any abandoned land, little of this land is registered and the number of IDPs is highly disputed.³⁷

The inability of the government to secure a successful post-conflict transition has thwarted efforts to adequately protect IDPs and their land and ensure their right to return and restitution. Corruption and continued infiltration by illegal armed groups have impeded the implementation of adequate legislation and supported the development of policies that fail to resolve the humanitarian crisis, and at times even seem to perpetuate it. This context of simultaneous conflict and post-conflict processes has important implications for the ability of humanitarian agencies to assist displaced civilians.

³⁴ CCJ (2007), *op. cit.*, p. 39-40.

³⁵ Interview with Dario Fajardo, FAO, Bogota, June 2007. Also see Fajardo, D. (2007), *La Ecuación del Desplazamiento: Usurpar Tierras, Controlar a los Desterrados*, paper presented on 12th February 2007, Universidad Nacional, Bogota, p.1

³⁶ Balch, O. & Carroll, R., *Massacres and paramilitary land seizures behind the biofuel revolution*, The Guardian, Tuesday June 5, 2007

³⁷ Interview with the Comisión Intereclesial de Justicia y Paz, Bogota, June 2007.

4. Transitional programming: land-related challenges

The main challenges humanitarian agencies face in Colombia consist of protecting the lives of civilians and their property, providing relief and securing livelihoods, preparing for return or relocation, facilitating the reintegration of ex-combatants and advocating/supporting the government's crisis response. These tasks are made increasingly difficult in a context where protection, restitution, peace processes and return occur alongside insecurity, destitution, armed violence and displacement. These contradictory processes and the protracted nature of the crisis has meant that some development organisations incorporate humanitarian work into their programming, while many humanitarian organisations see providing rapid temporary relief unsustainable over long periods of time, and seek medium-term solutions or stabilisation measures. These changing roles seem to be a response to an inability to alleviate the humanitarian crisis that arises from the prevalence of the conditions that create it and perpetuate it. However, despite the difficulties these agencies face, it is important for them to understand how the main land tenure issues are linked to the humanitarian crisis when designing and implementing their programmes. This understanding has the potential to improve the efficacy of programmes, to the extent the context allows, and to avoid perpetuating the crisis further.

On issues of return, the current administration has sought to emphasise the security gains obtained through the 'democratic security' policy and to promote the return of some of the internally displaced in Colombia. The government claims returns are carried out in agreement with the displaced and that their security is guaranteed by the presence of the armed forces. Furthermore, their socio-economic recovery is supported through micro-credit and productive projects.³⁸ However, this approach has been criticised by some organisations, including UNHCR, as the conditions for return set out in the *Guiding Principles on Internal Displacement* (the Deng Principles), such as sufficient levels of security and voluntary nature of return, do not always exist. UNHCR estimates that 90% of government returns do not fully meet principles of voluntariness,

³⁸ HRW (2005), *Colombia: Displaced and Discarded: The Plight of Internally Displaced Persons in Bogotá and Cartagena*, Vol. 17, No. 4, (NY; HRW), p. 24-25.

dignity and security.³⁹ This view is echoed by an estimated 65% of IDPs, who say that they are unable to return in either the short or the medium term.⁴⁰

In fact, there have been cases where returnees have suffered renewed displacement due to persistent high levels of insecurity.⁴¹ The subsidies that promote economic security are sometimes only given to returnees, thereby discriminating against those who do not want to return. This has led some to accept the subsidy despite security concerns upon return, raising questions about whether return is really voluntary.⁴² These subsidies sometimes include land and assistance, but on the condition that the beneficiary produces certain types of crops (often African palm) for a minimum of five years. These projects can be detrimental to food security, self-reliance and independence, to the environment and to the peasant subsistence economy – key grievances for many of the displaced.⁴³

For humanitarian organisations, it is important that their involvement in return processes is cautious and adheres to the Deng Principles, and that they ensure that land tenure disputes are resolved before returning IDPs or refugees, particularly as there are flaws in the paramilitary demobilisation process and the paramilitaries are still being used to control land, often through 'legal' titles. Abandoned land may have also been occupied by other peasants who have moved to the region; this can cause further conflicts with returnees, and possibly create further displacement if the occupiers are expelled. As the peace negotiations between the government and the ELN advance, these are points that will need to

³⁹ Cited in ECHO Humanitarian Aid Committee (2006), "Humanitarian Aid for Conflict affected people and refugees in Colombia and Neighbouring Countries - GLOBAL PLAN 2006 accessed at http://ec.europa.eu/echo/pdf_files/decisions/2006/d_ec_gp_colombia_en.pdf

⁴⁰ Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2003), *op. cit.*, p.32.

⁴¹ HRW (2005), *Colombia: Displaced and Discarded: The Plight of Internally Displaced Persons in Bogotá and Cartagena*, Vol. 17, No. 4, (NY; HRW), p. 25.

⁴² UNHCR (2004), *Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia agosto 2002 - agosto 2004*, (Bogota; UNHCR), p. 37.

⁴³ Interview with aid agency, Bogota, June 2007.

be taken into account as it seems increasingly evident that there will be at least symbolic returns to areas historically controlled by ELN.

Resettlement is often considered the most viable option for the displaced. Here, however, the above-mentioned problems with INCODER have impeded any effective allocation of alternative land. There have been reports that, when resettlement has occurred, it has often failed, because the land given is unproductive, or because rental agreements do not offer sufficient security to IDPs as they sometimes have to pay rent before they produce anything. There have been cases where owners have sought to reclaim their land once the first production cycle is over.⁴⁴ Beneficiaries are also offered little help in marketing their products. It is important for humanitarian organisations to be wary of supporting resettlement initiatives that are insufficiently planned, based on unviable or unsustainable rental agreements or are threatened by continuing conflict.

There have been some instances where local municipalities offer land on a temporary basis (usually for three years) for IDP families to secure their livelihoods in the short to medium term. The Pan-American Foundation for Development (FUPAD) has supported some of these families in establishing effective agricultural projects on these lands, with a combination of commercial and subsistence farming. These projects have helped secure livelihoods, and can serve as a mechanism to ensure land tenure security as the municipality can offer permanent land titles if the project is economically viable and sustainable; such projects also tend to strengthen the families' link to their land, possibly preventing further displacement.⁴⁵

Since the demobilisation process began, many donors and agencies have been engaging in recovery programmes that seek to secure economic livelihoods for vulnerable groups (i.e. IDPs and ex-combatants) in what are often called productive projects. USAID and the IOM, for example, finance and execute a series of these projects as part of their efforts to reintegrate ex-combatants. Projects are often carried out in partnership with the private sector, which provides resources and technical assistance and often

guarantees to buy the products made. Beneficiaries may own the land, rent the land, use the land as part of a cooperative or work as wage labourers on land belonging to others. Some of these projects have also sought to boost reconciliation efforts by offering IDPs and peasants from the region the opportunity to participate.

The land for these projects is provided from a variety of sources, such as INCODER, local municipalities and the private sector. USAID claims that the variety of sources is an outcome of its screening process, which aims to ensure that the land used is not in dispute. The process includes a range of mechanisms that go beyond just looking at the tenure situation (due to the fraudulent methods often used to obtain legal titles), and includes discussions with regional committees, communities and the relevant institutional bodies.⁴⁶ However, despite the intent to ensure that the land used is not disputed, using land provided by INCODER is controversial as some critics argue that it should be used to benefit the victims of the conflict rather than ex-combatants, who usually represent 50% or more of the beneficiaries.⁴⁷ The projects have also been criticised for supporting a mode of development that promotes certain types of commercial agriculture, such as African palm, with often detrimental effects as described above.⁴⁸ The Colombian Commission of Jurists has claimed that the process is sometimes used as a mechanism for agri-business owners, often with links to paramilitaries, to legitimise the illegal occupation of land, whilst at the same time receiving government subsidies and international aid.⁴⁹ If this is the case, the humanitarian organisations involved in the projects need to ensure that they are not supporting initiatives that could renew conflicts over land or legitimise the illegal occupation of land. Agencies must also take into account that, in such highly conflictual situations, sometimes merely the perception of corruption and mismanagement can heighten tensions.

The ability of humanitarian agencies to support transitional processes of return, resettlement and recovery that protect the displaced and their property and ensure their rights are respected is extremely constrained by continued conflict and the limitations of the peace process. Although

⁴⁴ Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2003), *op. cit.*, p. 33 and telephone interview with FUPAD, July 2007.

⁴⁵ Telephone interview with FUPAD, July 2007.

⁴⁶ Telephone interview with USAID, July 2007.

⁴⁷ CCJ (2007), *op. cit.*, p.46.

⁴⁸ Fajardo, D. (2006), *op. cit.*, p. 128-129.

⁴⁹ CCJ (2007), *op. cit.*, p.89.

government efforts to improve security and demobilise paramilitaries have created pockets of security where return is being promoted and efforts are being made to compensate the displaced, the spaces these processes are creating for humanitarian action need

to be approached with extreme caution, with particular care not to renew or create tensions over land and property rights or strengthen development processes based on the illegal appropriation of land and structural inequity.

5. Humanitarian action on land issues

Due to the importance of land issues to the Colombian crisis, a host of humanitarian agencies have sought to directly address land tenure problems as an important component of their crisis response. The following section briefly highlights some of these initiatives. This is not meant as a detailed evaluation of these projects, but rather to illustrate some of the main strategies and challenges that emerge for these agencies when tackling land tenure in this context.

In directly tackling land tenure issues, most organisations seem to follow three main strategies, either alone or in combination. These consist of: a) strengthening and supporting relevant government institutions to comply with their legal obligations in the protection of land abandoned by the displaced; b) supporting the state's constitutional oversight bodies, such as the Inspector-General's Office and the Ombudsman, in investigating the government's compliance with its constitutional obligations with regards to land protection and restitution; and c) supporting communities in directly protecting their land and resisting expropriation, as well as assisting IDPs in understanding and claiming their rights with regards to housing and land.

5.1 Supporting government institutions

Most humanitarian agencies share the view that government institutions ultimately bear the responsibility for protecting IDPs and their property, and through enhanced capacity-building, accountability and responsiveness, they will be the most effective bodies in ensuring protection in the long term. Colombia is considered to be a relatively rich middle-income country and therefore able to respond to the crisis; as one OCHA official put it, 'Colombia is not a failed state such as in other humanitarian emergencies'.⁵⁰ As a result, many agencies focus their efforts on strengthening and supporting state institutions to improve their capacity to meet the needs of the displaced and safeguard their property

The main national humanitarian coordination body in Colombia is Accion Social, a government institution that channels both national and international resources to social programmes for the displaced population and those affected by

drug-trafficking and violence. In response to the lack of implementation of decree 2007 (see above) Accion Social set up a pilot project that seeks to protect land abandoned by the displaced by developing a mechanism for registering land both with and without formal titles. The project is supported by the World Bank's Post-conflict Reconstruction Unit, IOM, USAID, UNHCR and SIDA. The project recognises the links between territorial control by illegal armed groups and forced displacement, and acknowledges that the lack of effective registration of land abandoned by IDPs (of which over half are deemed to be property holders)⁵¹ is a major impediment to its restitution. In 2003, only 150,267 hectares had been registered, as against estimates that over three million hectares were abandoned between 1996 and 1999 alone.⁵²

The project was also set up in response to inefficient coordination between relevant institutions, a lack of knowledge of the relevant laws and processes among victims, the difficulties of collecting data in conflict-affected areas, deficiencies in registry and cadastral information and the predominantly informal nature of land tenure among holders, occupiers and tenants. The registry is designed to serve as a mechanism to mitigate displacement and facilitate return by guaranteeing the population their property rights. In the project's first phase, the main objective is to design and validate methodologies, procedures and technical, legal, institutional and community instruments. The aim is that these will help prevent the illegal appropriation of property and serve as a way to prevent displacement and/or facilitate return by guaranteeing IDPs their property rights, which in turn can serve as a means to facilitate their socio-economic recovery.⁵³ There are protection, social, monitoring, evaluation and communication components in the project. The protection component seeks to identify, register and protect the land and property of the displaced, according to the legislation contained in decree 2007. The social component aims to ensure that the process is participatory, and that IDPs are

⁵¹ Ibáñez, A. M & Querubín, P (2004), *Acceso a Tierras y desplazamiento Forzado en Colombia*, Documento Cede cited in Palou Trias, J.C. (2007), "Siguiendo el conflicto: hecho y análisis", Numero 52, Fundacion Ideas para la Paz, p. 7.

⁵² Acción Social (2005), *Protección de Tierras y Patrimonio de la población Desplazada*, (Bogota; Acción Social), p.14.

⁵³ Ibid., p.21.

⁵⁰ Telephone interview with OCHA official, July 2007.

directly involved in collecting the information and evidence needed to demonstrate certain rights. The monitoring and evaluation component has indicators that will feed into the evaluation of the overall pilot, and the communication component aims to disseminate the lessons learned to relevant institutions so that they can ensure they play their role according to their judicial obligations.⁵⁴

Accion Social and its partners claim that they have succeeded in creating links between key institutions to resolve some of the issues relating to the protection of abandoned land, particularly a lack of capacity and widespread disinformation.⁵⁵ The project also claims to have influenced public policies on the protection of IDPs and has designed methodologies and instruments that can effectively protect abandoned land (both individual and collective).⁵⁶ However, the project has been criticised for offering too little too late, registering only 281,530 hectares, in limited areas of the country, often excluding areas with the highest levels of displacement, such as Chocó, Uraba Antioqueño, Cesar, Atlántico and Nariño.⁵⁷ There is also a need to strengthen the gender component of the project, as many displaced families are female-headed households (25% in rural areas and 49% in urban areas), which often lack documentation for their land or are not aware of the tenure arrangements of their husbands.⁵⁸ Although the project can be seen as a step in the right direction, the benefits gained seemed to be undermined by the new rural legislation and reforms described above. One member of the CNRR claimed that ‘an impasse’ exists between the effective reparation of land to the victims of the conflict and the government’s rural development policies.⁵⁹

This impasse limits the efforts of humanitarian agencies to support the state in the protection of IDP land and property rights, and further highlights the difficulties they face in operating in a complex emergency, where the state is both strong *and* fragile. On the one hand, an intricate set of institutions is in place to respond to the

humanitarian crisis; on the other, legislation is being developed that sets in place processes that undermine these efforts. The situation is thus one, adequately described by a report on displacement, whereby, whilst the ‘government fulfils its obligations through legislation, legal recourse, and institutional venues for services, it *denies* its obligations at the same time by narrowly defining the eligible beneficiary group, limiting the attention available, and placing obstacles in the way of claiming rights and services [emphasis in original]’.⁶⁰

These challenges mean that the international humanitarian response cannot merely depend on the government’s relief efforts; agencies are faced with the need to find mechanisms that increase the accountability and effectiveness of the state response and provide direct relief outside of state channels. The following two sections show how some organisations have complemented their support to state institutions by providing support to the state’s oversight bodies and directly supporting communities and the displaced to protect their land and property rights.

5.2 Supporting state oversight bodies

UNHCR has financially supported and provided information to the Inspector-General’s Office in its investigations into the government’s compliance with the legal framework that protects the displaced population. This has led to a series of publications assessing the government’s response in protecting the rights of those who have been forcibly displaced, including the protection of their property. One particularly critical report shows how INCODER has regressed in the number of displaced households it has been supporting with land distribution, with the number falling from 36% of households in 2004 to 24.2% in 2006.⁶¹ The report condemns the fact that legislation such as decree 2007 of 2001 is merely symbolic, and states that IDPs have been forced to abandon more than 1,500,000 hectares, whilst only 22,000 have been given back – less than 1.5%. It calls on the government to respond to such failures and provide answers as to who is controlling and using those lands.⁶² Although investigations by these

⁵⁴ Ibid., p. 22-23.

⁵⁵ Ibid., p.25.

⁵⁶ Interview with IOM, Bogota, June 2007 and Accion Social (2005), *op. cit.*, p. 33-34.

⁵⁷ CCJ (2007), *op. cit.*, p. 66-67.

⁵⁸ Interview with IOM, Bogota, June 2007 and stats from UN agencies cited in Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2003), *op. cit.*, p. 28.

⁵⁹ Interview with CNRR, Bogota, June 2007.

⁶⁰ Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2003), *op. cit.*, p.53.

⁶¹ Procuraduría General de la Nación (2006), *La prevalencia de los derechos de las víctimas del delito de desplazamiento forzado*, (Bogota; Procuraduría & ACNUR), p. 77.

⁶² Ibid., p. 78.

oversight bodies often lead to favourable legal decisions, these are rarely translated into effective action.

The NRC has also followed this approach, supporting studies by the Inspector-General's Office on the efficiency of INCODER and organising roundtables between key experts, government institutions and civil society to initiate reflections on the weakness of state institutions, the disconnects between them and how they can be improved to effectively resolve land issues related to displacement. The information from these roundtables was published in two volumes outlining existing legislation, key themes and viewpoints. The aim is to inform key figures who can influence government policy and legislation that affects the return and restitution of land within the processes of agrarian reform, transitional justice and the establishment of local development plans. The NRC believes it has been influential, and although results are often difficult to quantify they suggest the roundtables played a role in the amendments to the rural development law described above.⁶³

5.3 Direct support to communities

Some organisations have supported communities in protecting their land from illegal expropriation by aiming to strengthen their social capital and ties to the land, thereby increasing their ability to prevent forced displacement. For example, Christian Aid and various national NGOs such as the Church-affiliated Comision Intereclesial de Justicia y Paz are supporting afro-Colombian communities in Jiguamiando and Curvarado (Chocó) which have been displaced by the militarisation of their territory and the arrival of African palm and coca growers (allegedly with the consent of the armed forces), despite these communities possessing communal land titles. These communities organised themselves during their displacement and returned to parts of their land where they set up 'humanitarian and biodiversity zones', areas in which they reject the presence of armed groups, promote the peasant economy, reclaim the biodiversity lost to plantations such as African palm and call for the respect of their human rights and of international humanitarian law. The support given to these communities by humanitarian and human rights organisations is both financial and political: pressing their case nationally and internationally and providing international human rights

observers such as Peace Brigades International. The Inter-American Human Rights Commission, the Ombudsman and several UN agencies have all recognised the efforts of these communities in trying to recover their land and have their human rights respected.

The UNDP, through its Reconciliation and Development programme (REDES), has also supported communities directly through socio-economic development programmes in conflict-affected rural areas that seek to prevent displacement. The programme was created in response to the UNDP's 2003 Human Development Report on Colombia, *Solution to Escape the Conflict's Impasse*, which outlined some of the main themes of Colombia's conflict, with land and rural development playing predominant roles. In the department of Meta, an area with substantial illicit crop cultivation, UNDP runs a programme that helps peasant associations create alternative livelihoods to illicit activities. The UNDP provides social, technical and managerial assistance in order to identify, formulate and carry out social and productive development projects. The assistance helps provide the peasants with alternative crops and the ability to link these with markets. Under the initiative, farmers are not forced to eradicate the illicit crops, but the alternatives provided are seen as an incentive to stop their involvement in illicit activities, a choice they generally accept as it enables them to avoid the many problems that arise from working in illegal areas.⁶⁴ These alternative livelihoods and the consequent social cohesion that arise from these projects are seen as powerful mechanisms to strengthen these communities' social capital and association with their land, increasing their ability to manage risk and reduce political isolation, thereby preventing further displacement. It is also hoped that, if they change from illicit to licit crops, they are also less susceptible to fumigation-led displacement. The UNDP programme is also an alternative to government programmes that force the eradication of the illicit crops and advise peasants to seek loans to switch to alternatives. However, as they do not have formal land titles and the land is often in areas where illegal armed groups are present, banks are often reluctant to provide finance. The REDES programme is designed to facilitate protection of their land and the vulnerability that arises from their informal land tenure

⁶³ Interview with NRC, Bogota, June 2007.

⁶⁴ Interview with UNDP, REDES Programme, Bogota, June 2007.

arrangements.⁶⁵ However, the risks of the programme failing are high as the insecurity in these areas often means that the pressure to forcibly migrate is too much for communities to resist.

A network of local NGOs and social movements linked to the Movement for the Victims of State Crimes (*Movimiento de las Víctimas del Estado*) has sought to create an alternative cadastre that seeks to quantify and register the levels of land that have been illegally appropriated. The initiative arises in response to the inadequate information that exists on the issue, and as a means to monitor and document the land that is appropriated. The registry has been carried out through approximately 3,000 surveys in regions including Sincelejo, Quibdo, Cartagena, Barranquilla and Bucaramanga. The objective is to provide a sample that can improve information on the levels of land that have been appropriated, the kind of agricultural products that were grown, the number of livestock contained, the properties that existed, the value lost, the tenure situation and its current use. This information can then be used to support judicial processes that seek to restore land to the displaced, to advocate for the government to adhere to its legal obligations and highlight strategies used to illegally appropriate land.⁶⁶ There is scope for international humanitarian organisations to support this initiative, particularly in developing and improving the methodologies used to collect data, supplying information and facilitating advocacy to government institutions on protection and restitution efforts. These alternative monitoring projects, particularly when carried out with rigorous methodologies and with the support of legitimate organisations, are a useful mechanism to bring state institutions to account, both through judicial processes and through advocacy.

As noted above, many of the internally displaced settle in peri-urban or urban areas for many years, and are unlikely to return in the foreseeable future, if at all. Living conditions in these areas are often poor, marked by criminality, lack of services and insecure tenure. In response to some of these issues, FUPAD, with USAID resources, has implemented various projects that improve housing for the displaced; however, in order to

ensure sustainability in their efforts and due to limited resources it does not improve houses that do not have official titles, claiming that the risks in engaging in improving such homes are too high, especially as they may be confiscated or destroyed.⁶⁷ Yet despite these risks, these are often the houses most in need of improvement. Supporting these families to secure land tenure is also a means of improving their access to services, often dependent on the presentation of a title, and can be used as collateral against loans, fostering opportunities for investment and accumulation.

There have been some attempts at securing titles and improving housing in these areas by the IOM, which has sought to improve housing in the first peri-urban and urban areas where IDPs arrive in order to prevent further displacement; IOM sees the lack of capacity and political will at municipal levels as a major impediment to assisting IDPs. It has provided housing subsidies in partnership with Accion Social, the Agrarian Bank and other institutions. The NRC, in collaboration with the IOM, has also set up Guidance and Assistance Units in these areas, where IDPs can go to claim their rights, including housing. If the municipalities fail to provide these services, the NRC provides legal assistance to the IDPs so that they can make a formal claim, either through the Public Prosecutor's Office or through the state oversight bodies.⁶⁸

Some humanitarian organisations, particularly UN agencies, have received criticism from NGOs for focusing the majority of their efforts on supporting government institutions rather than increasing their engagement with communities and the displaced in the face of government failure to effectively respond to land tenure issues. Although these agencies often support government oversight bodies and help victims claim their rights, critics argue that, in an environment of insecurity, fear (where victims often do not denounce or claim their rights in response to threats) and impunity (where the justice system is weak and often unreliable), these policies are not sufficient, and direct support to communities and IDPs is required, and stronger criticism directed at the government is necessary. However, resource constraints, particularly for UN agencies (UNHCR's budget represents around 1.5% of Accion Social's) do not always make it feasible for these organisations to fully engage in providing direct assistance – possibly with the exception of the

⁶⁵ Ibid.

⁶⁶ MOVICE, "Catastro Alternativo, Estrategia Contra La Impunidad y Herramienta Para La Reparación Integral", accessed at <http://www.movimientodevictimas.org/node/455>

⁶⁷ Telephone interview with FUPAD, July 2007.

⁶⁸ Telephone interview with NRC, July 2007.

ICRC and the IOM, with the latter being able to engage in these activities as they receive a large amount of financial support from USAID. It does not seem that the current situation will change, with most donor governments reducing support to Colombia on the basis that it is a democratic middle-income country and is therefore not a key priority.

Humanitarian organisations also face the dilemma that strengthening and supporting IDP leaders and organisations to become more effective in implementing programmes and defending rights can actually increase the likelihood

of their persecution by the illegal armed groups and gangs that operate in urban IDP settlements.⁶⁹ These challenges, however, are all part of the larger concern of seeking to promote transitional processes that aim to address the consequences of forced displacement when the conditions that cause and perpetuate displacement prevail. As long as forced displacement is part of a policy to illegally appropriate land, and the structures and processes behind this phenomenon are not dismantled, the ability of humanitarian agencies to restore and protect the rights of the displaced, including their land and property rights, will always be restricted.

⁶⁹ Fagen, P.W., Fernandez, J. A., Stepputat, F. & Lopez, R. V. (2006), "Protracted Displacement in Colombia" in Van Hear, N. & McDowell, C. (eds), *Catching Fire: Containing Forced Migration in a Volatile World*, (Oxford; Rowan & Littlefield Publishers), p. 93.

6. Conclusion

This case study has outlined the complex nature of land disputes as they relate to the wider dynamics of violent conflict and humanitarian crisis in Colombia. First, conflicts over land rights within the context of contradictory modes of production and accumulation and the institutional failure to resolve these disputes can be seen as a *structural cause of conflict*, leading to the rise of illegal armed groups to defend antagonistic group interests. Second, land in Colombia has become a *resource of conflict*, where changing conflict dynamics have made territorial control a lucrative resource, tied to the accumulation of economic and political power. The violent struggle for territorial control has shaped the country's development processes, and has been characterised by forced displacement and an increase in systemic inequities. Tenure security and the resolution of land disputes will therefore play an equally critical role in resolving the humanitarian crisis and supporting an effective transition to peace.

In response to the humanitarian crisis, the state has passed an array of legislation that sets the framework of response and seeks to address issues of justice and peace in the reparation of illegally expropriated land. However, the case study has shown that, despite the advanced nature of some legislation and the vast network of institutions for its implementation, particularly as regards the displaced population, these have been undermined by corruption, a lack of resources and coordination within and between the relevant institutions and ultimately a lack of political will. This poses huge challenges for humanitarian organisations as they must adapt their response to a context where the state is concurrently strong and weak, the distinction between legality and illegality is often blurred and 'conflict' and 'post-conflict' states exist simultaneously.

This has undermined the effectiveness and sustainability of transitional programming, where

returns, resettlement, recovery and reintegration initiatives are hindered by continued displacement and insecurity, illegal appropriation of land and the re-arming of demobilised combatants. Where humanitarian agencies decide to support these processes it is extremely important that land tenure issues are understood and incorporated in their programming in order to avoid reinforcing inequitable transitional processes of development that are founded upon displacement and suffering. This is particularly the case for recovery and reintegration projects that support the development of certain types of crops on illegally acquired land.

The complex nature of the conflict also means that humanitarian agencies that directly seek to tackle land tenure issues need to ensure that their response is multifaceted: engaging with the state to build institutional capacity to respond, yet at the same time tackling the lack of political will through advocating for change and action, both through support to government oversight bodies and NGOs and by directly supporting communities in preventing displacement and assisting IDPs to claim their property and land restitution rights.

A recent report on land access and tenure security for poor people remarked that:

If countries emerging from conflict are to begin the process of economic recovery, resettle refugees and displaced people, and prevent land grabbing by the powerful, they will have to deal with land rights. And they have to do this while avoiding further social tensions, injustice or secondary conflicts.⁷⁰

The same applies for humanitarian agencies; however, the context and conditions for a transition to peace will be a major factor in their ability to address these issues.

⁷⁰ DFID (2007), *Land: better access and secure rights for poor people*, (London; DFID), p. 18.



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