CHAPTER 9

Between war and peace: Land and humanitarian action in Colombia

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This chapter provides a historical perspective on the relationship between land and conflict in Colombia, in which land is identified as both a source and resource of conflict. This relationship is central to understanding forced displacement in Colombia and this study argues that in light of significant shortfalls in translating state policy on land and IDPs into practice, humanitarian agencies in both the provision of assistance and wider transitional programming need to fully integrate an understanding of land issues into their programming. Furthermore, any prospects for supporting a transition from war to peace will require a resolution of land disputes, substantial reparation and wider reform.

Introduction

A highly complex relationship exists between land and conflict in Colombia, where land is tied to multiple social, economic, political and symbolic power structures and processes. These structures and processes have manifested themselves violently when the existing institutional framework has failed to resolve disputes (Richani, 2002; Clover and Huggins, 2005). This has posed enormous challenges for humanitarian organizations operating in Colombia, and the failure to understand and address this complexity can often lead to policies and programmes that are ineffective or that perpetuate violence and civilian insecurity. This case study argues that attempts by humanitarian organizations to alleviate 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 (OECD, 2005).

Land and conflict in historical perspective

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

that antagonists use to pursue their diverse interests (Richani, 2002). 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 colonization 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 (LeGrand, 1992). The landowning elite sought to benefit from this land colonization 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 that aimed at modernizing 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 the municipal level 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 colonization.

Subsequent attempts at agrarian reform failed to resolve the conflicts between landowners and the increasingly displaced and marginalized *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 per cent of the land that was subject to expropriation (Richani, 2002). 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 (Pearce, 1990).

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

Colombia's natural resources. In response to growing guerrilla influence, self-defence groups or paramilitaries emerged, and later united under the umbrella organization the United Self-Defence Forces of Colombia (AUC).

Land colonization, resistance and territorial expansion

Agrarian conflicts have led to various waves of peasant colonization linked to the peasantry's struggle against the expansion of capitalist agriculture, 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 (Sanchez, 2001; Richani, 2002).

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 colonization. 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 legalized 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 organization and professionalization 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 (Cubides, 2001). This further exacerbated agrarian conflicts as they invested their drug money in large agricultural estates. It is estimated that, from the early 1980s until 2000, paramilitaries acquired 4.5 million ha, representing around 50 per cent of Colombia's most fertile and valuable land (Inspector General's Office, cited in Valencia, 2006). Some commentators, in interviews with the author, believe this figure to be currently around 6.8 million ha.

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 a humanitarian crisis of dramatic proportions, with an estimated 2–4 million IDPs and over 500,000 refugees.[1] 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 (Fajardo, 2006). 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 per cent of IDPs in Colombia came from areas predominantly composed of cattle ranches; according to the miners' union SINTRAMINERCOL, an estimated 68 per cent of IDPs between 1999 and 2001 came from mining zones (cited in CCJ, 2007).

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 (interview, Bogota, June 2007). Fraudulent methods are also used, in which documents and signatures are falsified; occasionally, deceased people are named as landholders (interview with Comisión Intereclesial de Justicia y Paz, Bogota, June 2007). 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 per cent of abandoned land has legal titles (CCJ, 2007).

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 (IDMC, 2006). 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 'urbanization pirates', middlemen who sell 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 (Fagen et al, 2003).

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 (Acción Social, 2005). This does not necessarily entail the expropriation of land in the long term (interview, Bogota, June 2007). It is estimated that guerrillas are responsible for 12–13 per cent of displacement, whilst the paramilitaries are responsible for an estimated 46–63 per cent, the state for 1 per cent, and the remainder not attributed to a specific agent (UNHCR figures in Fagen et al, 2003).

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 recognizing the rights of the displaced and refugees,[2] 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 demobilized combatants as they negotiated a peace process with the paramilitaries. However, the implementation of these laws and the capacity of some of them to address issues of justice and peace, including return and access to expropriated land, have been weak and have faced severe criticism, particularly from human rights organizations 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 (PGN and NRC, 2006). 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 quantity (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) (Fagen et al, 2003). 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. Although there have been some signs of improvement, particularly the allocation of US$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 (interview with Constitutional Court, Bogota, July 2007).

A lack of political will within government institutions is often identified as one of the major impediments to the effective implementation of 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 to certain elements of the government's 'democratic security' policy. This policy ultimately seeks to defeat the guerrillas militarily and negotiate a settlement with the paramilitaries; although it has improved security in much of the country it has not succeeded in ending displacement and in some instances has perpetuated it (through military excursions and the fumigation of illicit crops). 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.

In 2003, the government carried out various reforms with regards to the main institutions responsible for redistributing and protecting land. INCORA was replaced with INCODER, now responsible for all rural development policies, including land distribution and reparation. Regarding the effectiveness of these reforms, a study by the Inspector-General's Office, supported by the NRC, found they have been ineffective. In fact, INCODER (the Colombian Institute for Rural Development) represents 22.06 per cent 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 9 (PGN, 2006b). 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) (Salinas, 2006).

INCODER gave a mere 0.3 per cent of the displaced population a parcel of land in 2006 (*El Tiempo*, 2007). This failure can in part be attributed to corruption within the institute and infiltration by paramilitary groups, which has resulted in hundreds of hectares of land being handed out to paramilitaries instead. Since 2002, 10 directors have lost their positions on corruption charges, and INCODER has often bought non-cultivatable land at excessive prices or with inherited debts, often from front-men linked to paramilitaries and/or drug-traffickers (*El Tiempo, 2007*). 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 to paramilitary groups. These events show the extent to which the paramilitaries have 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 demobilization of 30,000 paramilitaries, plus

around 12,000 individual demobilizations. However, it also involves civilians in counter-insurgency measures through informant networks. Meanwhile, demobilized paramilitaries are rearming into criminal gangs, their political power remains intact and there have been no 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 (IDMC, 2006).

The demobilization of paramilitaries has been particularly controversial, especially with regards to reparation for the victims. Demobilization 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 demobilized 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 illegal wealth (such as land) and legitimize the paramilitaries' political control (Human Rights Watch, 2005a).

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 per cent of paramilitaries gain an amnesty. This has particular consequences for the displaced population, as many paramilitaries will not be penalized for their role in forced displacement, and much of the land that has been illegally expropriated will not be returned (CCJ, 2007). 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, in some sectors, has implicitly become part of the mainstream development process (Fajardo, 2007). 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 per cent 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 ha (Balch and Carroll, 2007).

A number of laws are being passed to promote this development model, including a free trade agreement with the US (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 10 years and possibly to 5 years) in order to claim legal ownership. Although this process could potentially benefit peasants who have colonized land and lived with informal land tenure arrangements for years, it also provides a means for paramilitaries to legalize the vast amounts of land 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 is registered and the number of IDPs is disputed (interview Comisión Intereclesial de Justicia y Paz, Bogota, June 2007).

Transitional programming: Land-related challenges

The main challenges humanitarian agencies face in Colombia consist in 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 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 have meant that some development organizations incorporate humanitarian work into their programming, while many humanitarian organizations see providing rapid temporary relief as unsustainable over long periods of time, and seek medium-term solutions or stabilization measures.

On issues of return, the current administration has sought to emphasize 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 (Human Rights Watch, 2005b). However, this approach has been criticized by some organizations, 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 per cent of government returns do not fully meet principles of voluntariness, dignity and security (ECHO, 2006). This view is echoed by an estimated 65 per cent of IDPs, who say that they are unable to return in either the short or the medium term (Fagen et al, 2003).

In fact, there have been cases where returnees have suffered renewed displacement due to persistent high levels of insecurity (Human Rights Watch,

2005b). 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 (UNHCR, 2004). 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 (interview with aid agency, Bogota, June 2007).

For humanitarian organizations, it is important that their involvement in return processes is cautious and adheres to the Deng Principles,[3] and that they ensure that land tenure disputes are resolved before returning IDPs or refugees, particularly as there are flaws in the paramilitary demobilization 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 be taken into account as it seems increasingly evident that there will be at least symbolic returns to areas historically controlled by the 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 (Fagen et al, 2003).

There have, however, 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 families' links to their land, possibly preventing further displacement (telephone interview with FUPAD, July 2007).

Since the demobilization process began, many donors and agencies have been engaging in recovery programmes that seek to secure livelihoods for vulnerable groups (i.e. IDPs and ex-combatants) in what are often called productive projects. USAID and the IOM, for example, have financed and executed 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 (telephone interview with USAID, July 2007). 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 per cent or more of the beneficiaries (CCJ, 2007). The projects have also been criticized for supporting a mode of development that promotes certain types of commercial agriculture, such as African palm, with often detrimental effects (Fajardo, 2006). The Colombian Commission of Jurists has claimed that the process is sometimes used as a mechanism for agribusiness owners, often with links to paramilitaries, to legitimize the illegal occupation of land, whilst at the same time receiving government subsidies and international aid (CCJ, 2007). In such highly conflictive 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 constrained by continued conflict and the limitations of the peace process. Although government efforts to improve security and demobilize 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.

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 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 organizations seem to follow three main strategies, either alone or in combination. These consist of: 1) strengthening and supporting relevant government institutions to comply with their legal obligations in the protection of land abandoned by the displaced; 2) 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 3) 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.

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 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 Acción 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) Acción 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 recognizes 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) is a major impediment to its restitution (Palau Trias, 2007). In 2003, only 150,267 ha had been registered, as against estimates that over 3 million ha were abandoned between 1996 and 1999 alone (Acción Social, 2005).

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 project claims to have made some advances in furthering links between key institutions, influencing public policies on the protection of IDPs and in the design of methodologies (Acción Social, 2005). However, the project has been criticised for offering too little too late. It has registered only 281,530 ha, in limited areas of the country, often excluding areas with the highest levels of displacement, such as Chocó, Uraba Antioqueño, Cesar, Atlántico and Nariño

(CCJ, 2007). 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 mentioned 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 (interview with CNRR, Bogota, June 2007).

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, (Fagen et al., 2003: 53, original emphasis) 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.

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 organizations 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.

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 per cent of households in 2004 to 24.2 per cent in 2006 (PGN, 2006a). 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 1.5 million ha, whilst only 22,000 ha have been given back – less than 1.5 per cent. It calls on the government to respond to such failures and provide answers as to who is controlling and using those lands (PGN, 2006a). Although investigations by these 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 organizing 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 aim is to inform key figures that 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 (interview with NRC, Bogota, June 2007).

Direct support to communities

Some organizations 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 Comisión Intereclesial de Justicia y Paz are supporting afro-Colombian communities in Jiguamiando and Curvarado (Chocó) that have been displaced by the militarization 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 organized 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 organizations 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 recognized the efforts of these communities in trying to recover their land and have their human rights respected.

UNDP, via its Reconciliation and Development programme (REDES), has also supported communities directly through socio-economic programmes in conflict-affected rural areas. The project provides social, technical and managerial assistance in order to identify, formulate and carry out work that can create alternative livelihoods to illicit activities. Under the initiative, farmers are not forced to eradicate 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 (interview with UNDP REDES Programme, Bogota,

June 2007). These alternative livelihoods and the consequent social cohesion that arises from these projects are seen as powerful mechanizms 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. 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 risks of the programme failing are also high as the insecurity in these areas often means that the pressure to forcibly migrate is too great 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 Victimas del Estado*) has sought to create an alternative cadastre to quantify and register levels of illegal appropriation of land. 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 affected, the properties that existed, the value lost, the tenure situation and 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 (MOVICE, no date). There is scope for international humanitarian organizations 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 organizations, are a useful mechanism to bring state institutions to account, both through judicial processes and 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. FUPAD, with USAID resources, has implemented several projects to improve housing for the displaced, though this does not include housing without official titles (telephone interview with FUPAD, July 2007). Yet 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. The IOM has attempted to secure titles and improve housing in peri-urban and urban areas 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 Acción

Social, the Agrarian Bank and other institutions. The NRC, in collaboration with the IOM, has also set up Guidance and Assistance Units, where IDPs can go to claim their rights, including housing. If municipalities fail to provide these services, the NRC provides legal assistance so that IDPs can make a formal claim, either through the Public Prosecutor's Office or through state oversight bodies (telephone interview with NRC, July 2007).

Some humanitarian organizations, particularly UN agencies, have been criticized by NGOs for focusing the majority of their efforts on supporting government institutions rather than increasing their engagement with communities and the displaced. 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 per cent of Acción Social's) do not always make it feasible for these organizations to fully engage in providing direct assistance – possibly with the exception of the 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 middle-income country and is therefore not a key priority.

Humanitarian organizations also face the dilemma that strengthening and supporting IDP leaders and organizations to become more effective can increase the likelihood of their persecution by the illegal armed groups and gangs that operate in urban IDP settlements (Fagen et al, 2006). 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.

Conclusions

This case study has outlined the complex nature of land disputes as they relate to the wider dynamics of 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. Second, land in Colombia has become a *resource of conflict*, 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 characterized by forced displacement and an increase in systemic inequities. Tenure security, the resolution of land disputes and wider reform will therefore play a 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 organizations 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 demobilized combatants. Where humanitarian agencies decide to support these processes it is extremely important that land tenure issues are understood and incorporated in their programming. 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 land rights.

A recent report (DFID, 2007: 18) on land access and tenure security for poor people remarks 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.

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.

Notes

1. For displacement, the Consultancy on Human Rights and Displacement (CODHES) places the number at almost 4 million between 1985 and 2007. The government estimates the number be at 2 million, although they only started counting from 2000 and do not recognize CODHES figures from 1985 to 2000 (interview with CODHES, Bogota, June 2007). The refugee figure is from UNHCR.
2. 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. the Permanent Consultation on Displacement in the Americas) helped put internal displacement at the centre of human rights concerns.
3. The Guiding Principles on Internal Displacement (Deng Principles), developed in 1998 under the aegis of Dr Francis Deng, provide a rights-based approach to the problem of displacement and emphasize the necessity of preventing displacement and offering durable solutions.

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