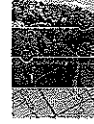


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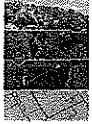
Land and Conflict: Improved Governance of Tenure to Build Peace and Sustainable Development

By

Javier Molina Cruz, Ph.D.
Senior Land Tenure Officer, FAO
Javier.MolinaCruz@fao.org

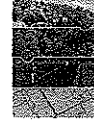
**Paper prepared for presentation at the
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I. Introduction

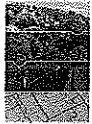
“The governance of tenure is a crucial element in determining if and how people, communities and others are able to acquire rights, and associated duties, to use and control land, fisheries and forests. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. Weak governance adversely affects social stability, sustainable use of the environment, investment and economic growth. People can be condemned to a life of hunger and poverty if they lose their tenure rights to their homes, land, fisheries and forests and their livelihoods because of corrupt tenure practices or if implementing agencies fail to protect their tenure rights. People may even lose their lives when weak tenure governance leads to violent conflict. Responsible governance of tenure conversely promotes sustainable social and economic development that can help eradicate poverty and food insecurity, and encourages responsible investment.”¹

Conflicts over access, use and ownership of land remain a major cause of social instability, food insecurity, and increased vulnerability of large segments of the population in many countries. In some cases, those conflicts have even led to civil war. While the roots of those conflicts are complex, several land-related factors are considered to contribute directly to them. In general, those factors may be as diverse as insecure tenure rights, “legal pluralism”², poorly defined boundaries, conflicts between human use and natural use (e.g. national parks, reserve areas for wildlife and forests), increased human density on scarce land and, more generally, poor land governance (including both legislation and institutions).

Moreover, changes in land use associated with economic activities/development, climate-related events (i.e. recurrent droughts, changes in rain patterns), urbanization and the growth of demand for food, increase the pressure on land and consequently on the need to have in place an effective, efficient land administration and the overall land governance system. The need for

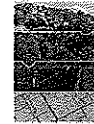
¹ CFS – FAO, “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security” (11 May 2012) Rome.

² This term refers to the existence of multiple sources of land legislation whereby overlapping policies and laws lead to poor formalization of land rights and persisting land tenure insecurity and conflicts. For instance in some African countries land rights are inherited from pre-Islamic (*Orf*) and Islamic (*Shariya*) rules as well as colonial and post-colonial legislation (French civil law). Land rights are therefore complex and include registered lands, *melk* lands (private lands), *habous* lands (or *waqf*) and pre-Islamic collective tribal lands.



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II. Addressing the root causes of land conflicts: a need for improved governance of tenure and the VGGTs

Responsible land governance (including forests and fisheries) based on a sound land administration system is key for society and is essential for good governance in general because it delivers detailed information and reliable administration of land from the basic foundational level of communal and individual land parcels to the national level of policy implementation (Enemark 2009). This system includes all rights, restrictions and responsibilities. Sound land management requires operational processes to implement land policies in comprehensive and sustainable ways and is a central factor in creating resilient societies and in contributing to the prevention of conflicts over tenure right, access and use of land and land-related resources (Ibid). Many land issues arise in times of emergency and an improved governance framework may help address them to avoid that crises become protracted.

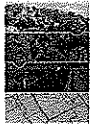
In general terms a land conflict may be defined as a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land. These could be the right to use the land, manage it, generate an income from it, exclude others from it, and transfer it and the right to compensation for it (Wehrmann 2008). Thus a land conflict may be understood as dispute over the access, use and property rights. The dispute may be aggravated if the social positions of the parties involved differ greatly.

In order to successfully resolve land conflicts, it is important to understand their causes and the actors involved (some of them may have a legal base to act in the way they do, others not). The type and nature of conflict may be related to the type of land itself, whether the conflicts occur on state, private or communally owned land. Thus understanding the specific nature of the land conflict under consideration is a vital step in its eventual resolution (Ibid).

For instance in some countries, land conflicts arise from a variety of factors which include: a) the changing nature of land use patterns stemming from farming expansion and the promotion of commercial development (including resource speculation)⁵, as well as a rising population and conservation and wildlife interests; b) poor land information⁶ and thus unplanned, un-surveyed and un-serviced land parcels which may lead to challenges for government authorities to meet demand for formal land plots; and c) inefficiencies and a lack of capacity to properly carry out land use planning at local and district levels (Ibid).

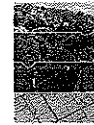
⁵ USAID Country Profile Land Tenure and Property Rights: Tanzania. Available at <https://www.land-links.org/country-profile/tanzania/>

⁶ Karol Boudreaux, Darryl Vhugen, Nicole Walter, "Community Land Conflicts: How Local Land Disputes Affect Private Sector Investments and Development Projects," 2017.



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also use the VGGTs when developing their own strategies, policies, legislation, programs and activities.

Ultimately, implementing the VGGTs will create an environment of trust which allows for space to build peaceful and mutually respectful relationships among all stakeholders, which subsequently provides the context for the prevention or resolution of land conflicts through negotiations. How the VGGTs may be implemented to address land conflicts and improve governance of tenure in Colombia is discussed in the following section.

III. Learning from the experience of Colombia dealing with land conflicts: the relevance of the Voluntary Guidelines on the Responsible Governance of Tenure

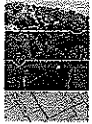
Land tenure relations shift as societies move through various stages of democratization, economic growth, and in some cases from war to peace. These shifts require tenure regimes that will lead to further economic growth, sustainable resource management, and political stability. After more than 50 years of war the Government and the *Fuerzas Armadas Revolucionarias de Colombia* (hereafter FARC) signed the peace agreements which ended the armed conflict and set the basis for a long lasting peace.

The signing of the Peace Accords (*Acuerdo para la Terminación Definitiva del Conflicto*) in Bogotá on 24 November 2016, marked the end of the conflict in Colombia and opened a new era in which a new rurality or agrarian transformation will take place. These accords call for a major transformation of the agricultural sector, particularly in land tenure governance including land policy and institutions. The commitment to pursue this transformation is reflected in the Peace Accord Section 1 (“Hacia un nuevo campo colombiano: Reforma Rural Integral”), which calls for a comprehensive rural reform as the basis upon which to build peace, economic growth and social stability in the long term.¹⁰

This new rurality (*Reforma Rural Integral*) is to be built upon a property right system that is legitimate, transparent and will address how to deal with conflicts over land, landlessness and inequitable land distribution.¹¹ It is also to undertake institutional or legal reforms to promote the sustainable management of natural resources as well as the proper functioning of land markets.

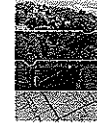
¹⁰ See *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*. Noviembre 2016

¹¹ This notion is reflected in the concept *Reforma Rural Integral*, included in the section 1 of the Peace Accords. See “*Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*”. Acuerdo Final, Noviembre 2016



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land distribution, despite of the land reform efforts in 1936, 1961, 1968 and 1994 (Ocampo 2014). And although urbanization has gained pace in the last decades, 60% of municipalities are considered rural and 30% of the population live in rural areas of which only 36% has access to land and 89% is poor and vulnerable (Ocampo 2014).

A. Designing the land policy: reframing the policy dialogue.

The new rurality calls for a new approach to territories and rural communities by which land policy and relevant tenure arrangements are to be formulated in a participatory and inclusive manner, a bottom-up approach to addressing land issues which departs from the top-down way in which land policies were formulated in the past.¹⁴

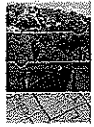
However, the complexity of addressing the land question and consequently, of building the new rurality was on display when the Ministry of Agriculture and the ANT put forward for discussion and approval, the draft of the Land Law in October 2017. The proposed law was intended to create the legal and institutional framework to implement the agreements laid out in Section 1 of the Peace Accords (“Hacia un nuevo campo colombiano: Reforma Rural Integral”). However, some of those who have historically benefitted from the existing tenure structure immediately opposed it on the grounds that it would allow for expropriations (or extinguishing tenure rights) via declaring land of public interest. In contrast, stakeholders who have suffered from the status quo, saw this draft law as being too lenient to the traditional landed interests. As a result, the draft proposal was caught in an ideological dispute and its approval was postponed.¹⁵

The dispute may be related to the different approaches to the issue of land in Colombia in general, and to the issue of restitution in particular. According to Saffon (2010), there are three different approaches to this matter. From an economic perspective, land concentration is justified because it improves agricultural productivity and allows for economies of scale in production units. Increased agricultural productivity and output have the potential to generate more resources and to improve the standard of living for everyone involved. In this view, IDPs could be given monetary compensation for the loss of their land, enabling them to invest in new land or in other productive activities better adjusted to their current situation.

From a distributive justice perspective, the value of restitution is based upon its contribution to achieving a more just and less uneven distribution of land ownership in Colombia. From this

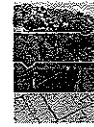
¹⁴ “La Construcción de la Paz Territorial en Colombia”. Land Portal, 2016. See Jaramillo, Sergio. *La paz territorial*. Alto Comisionado para la Paz en Colombia, 2015. <https://landportal.org/pt/library/resources/ipdrs-di%C3%A1logos-168/la-construcci%C3%B3n-de-paz-territorial-en-colombia>

¹⁵ See “Los Obstáculos a la Ley de Tierras”. *Revista Semana*. <http://www.semana.com/economia/articulo/obstaculos-para-el-proyecto-de-tierras-en-colombia/524990>



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have a good understanding of the full implications of the proposed law (of the *ordenamiento social de la propiedad*) and its protocols and procedures for implementation.

As noted by Peña and Parada (2017), a main problem of land policies and programs in the past is that they required extensive resources (i.e. lawyers and economic leverage) for users to take advantage of them. Consequently only those who could hire lawyers and had political connections were able to benefit from such policies and programs. Therefore, it is relevant to ensure that the proposed land law avoids the same problem; otherwise it may unintentionally facilitate a competition over land, in which those with political leverage and economic resources will most likely have an advantage at the expense of the traditionally excluded population (small farmers, rural women, indigenous peoples and IDPs).

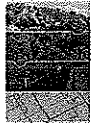
However, the current context opens up an opportunity for civil society organizations (CSOs) representing those who had been excluded previously, to engage meaningfully in the policy making process and ensure that the new land law is different in this regard. The VGGTs, under their fundamental principles and the section on legal recognition and allocation of tenure rights and duties (Part 3 of the VGGT), provide guidance as to the issues to be addressed when drafting the new land policy. Specific technical advice can be found in the various VGGT technical guides produced so far by FAO (see list of technical guides in the References section). The incorporation of the VGGTs into the new land law may contribute to being better able to solve conflicts over land, help build the new rurality, and ensure peace and stability in the long term.

In this regards, capacity development of those CSOs is key to help them engage in policy dialogue and formulation in an effective and proactive manner. Capacity development of CSOs is a fundamental issue that will help level the playing field in the policy negotiation process. This is an area in which development partners can contribute to building the new rurality in the country.

B. Improving land administration: the multipurpose cadaster

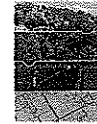
In addition to devising a new land policy, the Point 1.1.9 of the *Acuerdo Final para la terminación del conflicto y la construcción de una Paz estable y duradera* of the Peace Accords¹⁹ established the creation and updating of the cadaster and the rural property tax. A major objective is to promote the sustainable use of land for which a land information system will be put in place. The land information system would provide the basis to promote the new rurality,

¹⁹ See "Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera". Acuerdo Final, Noviembre 2016



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Fortunately, the momentum created by the signing of the Peace Accords allows for the inclusion and participation of key actors who can help establish a new land administration system, beginning with the multipurpose cadaster. These are primarily CSOs which are already involved and committed to the implementation of the Peace Accords. From a technical point a view, the VGGTs provide the tool to help build the new land administration system which is participatory and inclusive.²⁴

Again, capacity development of those CSOs is fundamental for them to have the ability to be effective partners. Needless to say, this is a specific area in which the international community and development partners can directly contribute to building the new rurality in the country.

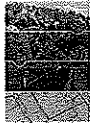
IV. Final remarks

As Colombia makes progress in the adoption of policy and institutional reforms, it becomes clear that the VGGTs can provide a framework that enables the Government and other major stakeholders to engage in a dialogue on how to formulate relevant policy and legislation (such as the proposed land law) as well as land administration institutions (such as the multipurpose cadaster). Moreover, the VGGTs may have an empowering effect on different stakeholders working on governance at different levels (national, regional and municipal), resulting in the broadening of the land governance debate and policy dialogue in an inclusive and participatory manner. This is fundamental to build the new rurality (*Reforma Rural Integral*) which will be the basis for solving land conflicts, achieving peace, investing in agriculture, and promoting sustainable development in the long run.

More broadly, the VGGTs are important in conflict-affected contexts because they propose principles of legitimate tenure rights and the peaceful (in some cases complementary coexistence) of formal and customary tenure systems. They also recognize and reinforce the principle of responsible restitution with appropriate compensation which is quite relevant to IDPs and more broadly to the vulnerable and marginalized in many countries.

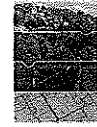
As the experience in Colombia shows, policy and institutional reforms involve a multi stakeholder process that should be inclusive, participatory and consensus-based, for which the VGGTs provide a framework. This is fundamental to achieve policy and institutional outcomes that are sustainable and conducive to peace and economic development in the long term.

²⁴ See for instance, the VGGT technical guide No. 10 and the one land valuation soon to be published by FAO.



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Le Meur, Pierre-Yves, P. Hochet, M. Shem and O. Touré. Conflict over Access to Land & Water Resources within Sub-Saharan Dry Lands. Underlying factors, conflict dynamics and settlement Processes. GRET – FAO LEAD Report, September 2006

LEY 160 DE 1994, Diario Oficial No. 41.479, de 5 de agosto de 1994.
http://www.secretariassenado.gov.co/senado/basedoc/ley_0160_1994.html

Ministerio de Agricultura y Desarrollo Rural. Decreto Número 2363, Creación de la Agencia Nacional de Tierras. Bogotá, Diciembre 2015

Naciones Unidas. “Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas”. Resolución aprobada por la Asamblea General de Naciones Unidas. New York 2007

Ocampo, José Antonio – Jefe de Misión. Misión para la Transformación del Campo. SALDAR LA DEUDA HISTÓRICA CON EL CAMPO. Marco conceptual de la Misión para la Transformación del Campo, Departamento Nacional de Planeación. Bogotá, Octubre de 2014

Ostrom, E. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.

Peña H., Rocío del Pilar; Mónica Parada H. “Lupa del Proyecto de Ley”. Observatorio de Restitución y Regularización de Derechos de Propiedad Agraria. Observatorio de Tierras.
<https://www.elespectador.com/economia/lupa-al-proyecto-de-ley-de-tierras-articulo-691848>

Presidencia de la República de Colombia. “Estrategia Para el Postconflicto”. Mínimo Vital Para los Colombianos Afectados por el Conflicto. Bogotá, Octubre de 2016

Revista Semana. “Los Obstáculos a la Ley de Tierras”.
<http://www.semana.com/economia/articulo/obstaculos-para-el-proyecto-de-tierras-en-colombia/524990>

Salamon, Sonya. “Cultural Dimensions of Land Tenure in the United States”. *Land and Natural Resource Tenure Issues in a Changing Environment Conference* hosted by the Land Tenure Center at the University of Wisconsin-Madison, 1995.

Schlee, G. 2004. “Taking Side and Constructing Identities: Reflections on Conflict Theory”. *The Journal of Royal Anthropological Institute* (N.S.) 10: 135-156.

Saffon, M.P. (2010). “The project of land restitution in Colombia: An illustration of the civilizing force of hypocrisy”. *Estudios Socio-juridicos*, 12 (2): 109–194.

USAID Country Profile Land Tenure and Property Rights: Tanzania. Available at
<https://www.land-links.org/country-profile/tanzania/>