

LAND RESTITUTION IN THE CONTEXT OF PEACE BUILDING

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1. INTRODUCTION AND CONTEXT

Conflict territories are often characterized by massive displacement, in 2014, the number of internally displaced persons (IDPs) by armed conflict and violence reached 38.2 million persons worldwide. Internally displaced persons refer to those individuals who had to abandon their land and properties because of conflict but did not cross the border of their home country. This figure of IDPs represented an increase of 15% compared to 2013 and it is the largest number of displaced population since World War II. The vast majority of the world's IDPs (77%) live in just 10 of the 60 countries monitored for forced displacement (Syria, Colombia, Iraq, Sudan, Democratic Republic of Congo, Pakistan, South Sudan, Somalia, Nigeria, and Turkey)¹.

At the end of 2013, women and children accounted for 70% of IDPs worldwide². People that have been forced to leave their homes and communities become even more vulnerable due to a lack of access to their land, which leads to the privation of resources for economic sustain. Families disrupted and without access to their source of income become more dependent on humanitarian aid and subsidies to subsist. The livelihoods of nearly 70% of the world's rural population depend on agriculture and the use of land³ and it is estimated that between 60% to 80% of livelihoods in post-conflict countries depend on agriculture and natural resources⁴.

In addition, displacement by armed conflict and violence can have negative effects on social cohesion by disrupting home communities while creating tensions by adding new members to hosting communities. Thus, in post-conflict situations sound economic growth will be insufficient to prevent the return of violence and instability. Significant social challenges must be addressed, thus the need to further support Governments in its efforts toward peace consolidation, economic recovery, rebuilding communities' ties and social cohesion.

¹ The Norwegian Refugee Council's Internal Displacement Monitoring Center (2015): Global Overview 2015: People Internally Displaced by Conflict and Violence.

² The Norwegian Refugee Council's Internal Displacement Monitoring Center (2014): Briefing Paper: Girl Updated <http://www.internal-displacement.org/assets/publications/2014/201403-global-girl-disrupted-pic-brief-en.pdf>

³ The World Bank Data as of the end of 2014. Accessed on 10/08/2015 at <http://data.worldbank.org/topic/agriculture-and-rural-development>

⁴ United States Agency for International Development (USAID) (2009): A Guide to Economic Growth in Post-Conflict Countries. Accessed on 10/07/2015 at http://pdf.usaid.gov/pdf_docs/Pnado408.pdf

Land and conflict are closely related through political economy issues, vested interests of different groups and stakeholders looking to secure land, combined with weak government capacity can lead to violence and conflicts. Access to land has been a fundamental element in the cause of conflicts and violence because land represents a valuable asset, an important source of income for rural populations, and it is also closely linked to the history and culture of communities. Land access is a critical factor for development, both at the beginning of a conflict when people is forced to leave their home and properties, and for those returning once the conflict ends and are looking to assure a sustainable return by restoring their livelihoods in a peace building process. Despite the interventions that many countries are adopting to improve the living conditions of Internally Displaced Persons, the number of IDPs has been increasing over last years. Conflicts over land are causing social disruption in hosting and home communities, as well as economic deprivation and human rights violations.

Land restitution is an instrument for recovering land, including housing and other valuable assets that were lost during a conflict and nowadays, it is internationally recognized as the preferred mechanism for offering reparation to victims of land and property right violations in post-conflict situations. The reason for this preference is because it can serve as a foundation for peacebuilding consolidation, strengthen social cohesion by reintegrating community members, and foster economy recovery. For instance, sale, exchange, or lease of restituted properties can generate a source of income that can contribute to sustainable local integration or resettlement of displaced populations. Restitution is often seen by practitioners and beneficiaries as a necessary condition for return because it facilitates reintegration by increasing access to housing and land for agriculture or other economic activities⁵. However, several challenges can create difficult scenarios for the implementation of land restitution policy, such as competing claims over land between parties, current occupants without alternative housing who acquired and exploited the land during the conflict, and changes in land access and settlement patterns where IDPs might be resettled into urban areas for long periods of time and may not want to return⁶.

The roots of conflict differ by country; thus, the process of restoring land rights must take into account the contexts of land dispossession, in order to avoid both generating new injustices and validating past right violations. Until recently, restitution was only implemented after a peace-building processes took place. However, in Colombia, the government has been conducting a land restitution policy in the midst of conflict, which makes Colombia a unique case to analyze and extract valuable lessons and contributions for policymaking.

⁵ Brookings Institution and London School of Economics. ICTJ Research Unit. 2012. Project on Internal Displacement: Transitional Justice and Displacement.

⁶ The European Union and the United Nations. 2012. Land and Conflict: Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict.

2. CHARACTERISTICS OF LAND RESTITUTION MEASURES

Land restitution measures involves a process in which individuals or groups who lost their property, request a claim to a government institution aiming to recover the seized land, after a decision is made by the state through: i) administrative processes, ii) land courts, or iii) impartial tribunals. However, several challenges can create difficult scenarios for the implementation of land restitution policy, such as competing claims between parties, including secondary occupants who acquired and exploited the land during the conflict, without alternative housing or compensation; changes in land use and settlement patterns; and re-settlements into urban areas for long periods of time and victims are not willing to return⁷. To address these issues the following key operational and procedural questions should be analyzed, during the policy design and implementation:

Should restitution be centralized or decentralized?

- As decentralized as possible according with the financial and technical capacity of local or subnational governments. This will facilitate the victims' access to the reparation program. The analysis should consider whether further tensions or harm actions might rise, due to the discrimination against certain communities during the conflict time.
- Weakness of institutions at local level: conflict usually results in a disruption of the functioning of institutions because their staff has been displaced, because administrative buildings or public infrastructure are damaged, or certain areas of the country are difficult to access. This situation can affect formal institutions at local level. Moreover, the conflict may have affected the legitimacy of pre-war authorities, as they may have lost credibility due to their attitude during the conflict. In parallel, new forms of authorities may have emerged at the local level.⁸
- An analysis of the institutional capacity at subnational level and stakeholder analysis should carefully be considered before defining the degree and or regions where decentralization will take place. Decentralization can be also gradual and progressive.

How to have victim's friendly application forms for land restitution claims?

- **It is key to define: How** to access the registration of the land restitution claim, **who** is in charge of the claims' registration process, **where** the information will be stored, what **questions/variables** are needed.
- Different victims will have unique needs, and those needs can change over time and the type of reparation needed can also vary according to the victim's economic or social class, gender, age

⁷ The European Union and the United Nations. 2012. Land and Conflict: Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict.

⁸ International Center for Transitional Justice, ICTJ, Webpage: <https://www.ictj.org/our-work/transitional-justice-issues/reparations>. Date of access: Jan. 2018.

and identity, therefore is important that victims participate in the process of designing the application forms.⁹

- The process of identifying, verifying, and registering land restitution claims should consider language, cultural and history pluralism of the victims.
- Administrative restitution facilitates the victims' access to restitution measures, because normally are less costly and less time consuming than judicial hearings and litigation.
- Having information campaigns on the registration of land claims and restitution measures are key to ensure wide participation and access to registration. This can be done through a wide variety of means: printed pamphlets, newspapers, radio, television, internet, or public meetings. Specific measures should be adopted to reach and support in the application process vulnerable or marginalized groups. In the case of people forcibly displaced, information should be disseminated in displacement areas, camps or collective centres¹⁰.
- Massive registration campaigns of land restitution claims, should have the support of government officials and nongovernment organization staff, in a systematic approach, facilitates reaching out a wider number of victims, even in rural or isolated areas, this is important because the forms often contain a set of questions that might demand assistance. Systematic registration process also has a potential role for building community trust and reconciliation. This massive registration campaigns should be combined with individual family registration.
- In some cases where the conflict was a barrier to access citizen registration and to a get national id, the land restitution claims' campaigns should include such component.
- The registration of a land restitution claims often requires applicants to submit additional documentation or evidence as a proof of eligibility, such as ownership or land possession, therefore it is highly recommended to set up the IT infrastructure, including database, hardware availability, off line / paper base data gathering, and data interoperability with government databases, this in order to avoid the provision of documents or evidence that are already in institutional databases. This should include innovative technologies such as blockchain and the use of declarative and collaborative IT platforms, that might work even with non-smart or non-high-tech cell phones.
- Community members should have access to information regarding the status of their own land restitution claim.
- A well-designed restitution claim should also recognize the resources and capacity of state intuitions to manage both, the information they collect and registering potentially large number of applicants.
- The application form questions / variables should include the core questions/answer needed to apply the restitution measures, anticipating how and for what the form will be use. A pilot should be conducted before rolling out the restitution measures.

⁹ Ibidem.

¹⁰ Ibidem.

Budgeting allocation and goals projections for the restitution measures

- There is a debate over how to balance reparations with the government's obligations to encourage poverty alleviation and foster socioeconomic development.
- The policy design, planning and budgeting should be based on the expected number of claims and the government's capacity to address those claims within a reasonable time-frame. Delays in the implementation of the reparation risks heightening tensions and threaten the fragile post-conflict environment. This demands a country macroeconomic analysis in the short mid a long-term.
- The **universe** of victims
 - Victim's definition: it should include blood relatives until which degree? it should the military?
 - Time and geographic scope: Determine which period is covered by the reparation program.
 - Ensuring that this determination of the universe of land restitution claims is particularly relevant where a country has been affected by several waves of displacement and dispossession some dating back to colonization.
- The **type** of measures
 - It is important to consider restitution and compensation. Compensation requires more financial resources and has less potential to encourage IDPs to return to their home communities than restitution. However, a combination of both mechanisms can be offered to increase coverage of land restitution programs, targeting both IDPs who lost their property and express their desire for compensation; as well as, the current occupants of the dispossessed or forcibly abandoned land, who were not involved in the displacement of the landowners, called secondary occupants.
 - A balance between the measures for ex-combatant and victims should be also carefully analyzed. For instance, providing only symbolic reparation to victims and cash transfers to ex-combatants might send the wrong messages to society, such as: "it is better to harm".
 - Given limited resources and differing victim's need, effective restitution programs should prioritize those areas most affected and most vulnerable, or those who have the most immediate need.

What are the lateral governmental institution that should be involved in restitution?

- The massive number of victims and the magnitude of their need combined with competing demands for development, means that reparations programs in post-conflict developing countries require the support of the international community.
- The good news is that the importance of reparation is often undisputed among donors and multilateral institutions, nonetheless the coordination and harmonization of donors and nongovernment organizations is key, to avoid as possible, unnecessary overlapping and gaps in

topics such as prioritized areas, population or type of measures financed/supported, and the alignment with the government programs, while fostering complementarity.

3. RESTITUTION AS PART OF A BROADER PEACE AGENDA

Land restitution might contribute to consolidate peace building processes when is closely linked with the country's overall peacebuilding objectives and in turn with their development goals because the relationship between people and land is ultimately affected by access to markets, community ties, access to public services, and the prevention of potential conflicts. For example, the Colombian case define the goal of preventing future potential conflicts, by setting up a comprehensive set of policies to guarantee safety and foster rural development, so that political armed groups do not find grievances to support the violence spiral.

A FAO evaluation on the sustainability of the land restitution policy in Colombia in 2016, found that the complementary measures carried out by the government based on income generation activities and productive projects has success in getting the families back on track, improving the economic situation of the restituted families and were essential to restore livelihoods of returnees or resettled families. In addition, found the importance of a comprehensive assistance from the different institutions on topics related to access to health and education, housing, public services and basic infrastructure. From this experience, the lesson learned is the importance of including rural development and economic activities, in a broader framework of land restitution programs towards peace consolidation. In this sense, it is not only dealing with restitution, return or resettlement, but to prevent future conflicts through territorial development.

Land restitution is only a part of peace-building and post-war reparation framework. There are many other war violations that need to be considered in the peacebuilding process, other than just land and property rights, underestimating the different typologies of rights that were violated in the conflict as well as not having a broader or holistic approach to land restitution policy, seriously affect the affects the sustainability of restitution policy and the peacebuilding approach.

Given the importance of land for the urban and rural poor, governments have realized the need to put policies in place that can restore IDPs livelihoods and serve as the foundation for long-lasting peace. According to the Internal Displacement Monitoring Centre (IDMC), in 2014, nearly 90% of the 60 countries they monitored have been hosting people living in displacement for at least 10 years, which makes IDPs return to their home communities a development challenge . Special consideration is being given to land access and tenure security to facilitate IDPs return and allow them to use the land to foster their own development.

4. CONCLUSIONS AND RECOMMENDATIONS

The reparation policy demands a combination of political will, legal framework, institutional and technical capacity, financial resources, large community involvement and streamlined standardized processes and procedures. Land restitution might contribute to consolidate peacebuilding when is closely linked with the country's overall peacebuilding objectives, including durable and sustainable solutions that implies the support to income generating activities and the socioeconomic re-incorporation of the victims.

The recommendations from the political, policy and procedural aspects are the following:

Political Sphere

- **Strong political will** is needed at the highest level, and the support of vary/different stakeholders, including private sector, academia, NGOs and social civil organizations.
- **From the beginning it is important to set up expectations** to handle tensions between technical and political timelines.
- If there is a massive number of land restitution claims, it is important to prioritize **and address key claims** that are important for the society.

Policy design: legal and institutional aspects

- **Eligibility criteria should consider:** timeline, victims' definition, inclusion of formal and customary land rights.
- Before beginning the implementation of the restitution measures, **it is important to conduct an institutional capacity** assessment at national and local level, and to consider **strengthening institutional capacities** all the entities involved.
- **Administrative measures should prevail over** judicial procedures for effective restitution measures.
- **Restitution or compensation?** they complement. The criteria to apply each of them should be define beforehand.
- It is key to design measures **to handle secondary occupation and overlapping claims.**

Policy design: financing

- Baseline for **budgeting, planning and M&E.** This should include restitution and secondary occupation measures.
- Determination of the source of financing.

Procedural considerations

- In cases of lack of evidence regarding land rights, **social cartography to determine who used to owns what, where, is a reliable instrument to gather information regarding informal or customary land tenure rights.**
- Procedures should consider large **community involvement** throughout the process.

- **Land restitution should contemplate the integration of informal land tenure rights** into formal systems.
- **Protecting** and strengthening the land tenure rights of **vulnerable /discriminated groups** prevent new and even intensified tensions.
- **Complementary measures** based on income generation activities get families back on track, improving socioeconomic conditions, while promoting sustainability and durable solutions¹¹, in a context of reconstruction and peace building.

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¹¹ « A durable solution is achieved when internally displaced persons (IDPs) no longer have specific assistance and protection needs that are linked to their displacement, and such persons can enjoy their human rights without discrimination resulting from their displacement», IASC, Framework on Durable Solutions for Internally Displaced Persons, April 2010.

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