

Challenges and opportunities in land restitution processes: putting Colombia in perspective

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issues

Overview of presentation

Background: Linkages between land, conflict and displacement

Land restitution and compensation

- I. Why and what for?
- II. How to design and implement HLP restitution? Guidance and challenges (normative, institutional, political, social, eco)
- III. Compensation

Beyond restitution : land titling, land grabbing, land reform, durable solutions for urban displacement)

Opportunities

Linkages between land conflict and displacement

- Land as a cause of conflict and displacement
- Housing, land and property issues as a result of displacement
- Land dispossession as an obstacle to durable solutions to displacement, peace and reconciliation

Why land restitution? Objective

I. A means to an aim:

- Supporting DS to displacement: the return bias (Bosnia)
- Framework for DS to displacement: relevance of HLP to DS, free choice of DS
- Supporting peace-building and reconciliation (peace agreements)

II. A right per se: a remedy and element of transitional justice

- Peace based on justice and rule of law: principled approach
- Acknowledgement of violations, accountability
- Remedy for dispossession and displacement

Why restitution? Legal basis

- ✓ Basic principles and guidelines on right to a remedy (2006)
- ✓ Civil and political rights (ICCPR), economic social and cultural rights (ICESCR), ILO Conv 169, CEDAW, CRC
- ✓ Guiding principles on internal displacement (1998)
- ✓ Guiding principles on property restitution for refugees and displaced persons (Pinheiro principles) 2005

Housing, land and property: Pinheiro principles

- **Same concept as GPID:** do not create new rights but bring together relevant principles pertaining to housing, land and property rights of displaced persons and refugees.
- **Difference :** add principles based on good practices from various property restitution programmes.
- **New: HLP rights broadens scope of restitution to non owners (informal land rights holders and tenants)**
 - Right to adequate housing, including security of tenure
 - Right to privacy and respect for the home
 - Right to the peaceful enjoyment of possessions
- **Restitution as preferred remedy**
 - Leave all options of durable solutions open
 - Redress the wrongs done/restorative justice

Designing and implementing restitution: guidance and challenges

- Normative and legal aspects:
 - Define purpose and scope
 - Informal and customary land rights/vulnerable groups
 - Rights of occupants
 - Complementary supportive measures
- Institutional aspects: administrative, judicial, ad hoc
- Local political obstruction and ongoing violence
- Protracted displacement: practical obstacles and limited interest in return

Addressing secondary occupation

Pinheiro principle 17:

- Protection from forced eviction
- Right to alternative accommodation or land: socio-eco criteria
- Compensation of bona fide 3rd party
- Compensation of occupant should not limit restitution rights

Practical measures:

- Compensation for investment made on land: financial, in kind (land allocation as part of land fund), sharing land, harvest?
- Consider alternative dispute resolution mechanisms: balance strict justice (integral restitution) with social cohesion and sustainability of solution

Compensation

- ✓ when restitution impossible
- ✓ when injured party accepts compensation in lieu of restitution
- ✓ Can be complementary to restitution
- ✓ Can address different losses (destruction, loss of income)
- ✓ Cash or kind
- ✓ Individual or lump sum

Beyond restitution

Limits of restitution

- Difficult to apply in absence of property registration
- When state and local institutions do not have the capacity to carry out a restitution programme
- When unequal access to land was one of the causes to the conflict and corrective measures not undertaken
- In context of insecure tenure (need for wider reform)
- Does not address the needs of IDPs who were homeless or landless
- Protracted displacement: restitution is impractical for security or political reasons

Beyond restitution: land grabbing

- ✓ Widespread global phenomenon threatening holders of customary land rights (IP, small farmers) and leading to land concentration
- ✓ Adapt legal framework to ensure conformity with international standards and guidance and coherence with land restitution and land allocation legislation.
 - ✓ UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)
 - ✓ FAO voluntary guidelines on responsible governance of tenure(2012)
 - ✓ Principle for responsible tenure in agriculture and food systems (2014)
 - ✓ Basic principles on business and HR (2011)

Thematic focus: indigenous people

- ✓ Group at high risk of dispossession: informal land rights and living in areas with rich natural resources
- ✓ Inconsistencies between legislation protecting land rights and environmental or conservation laws and other legislation related to mining, exploitation of natural resources
- ✓ Rights protected by: ILO Convention 169, 2007 Declaration, American Court for Human Right
- ✓ Recognition of their customary land rights and dispute resolution mechanism
- ✓ Right to control and use resources (forest, minerals)
- ✓ FPIC before initiating project in their areas

Beyond restitution: land titling

Land titling

- ✓ Aims at securing rights but can actually compromise rights of informal holders and vulnerable groups and result in elite capture.
- ✓ Collective titling vs. individual one
- ✓ Use participatory and fit for purpose methods: community mapping
- ✓ Risk to secondary land rights: access to resources (water, wood, forest)

Land reform and redistributive justice

Provision of peace agreement on land:

- land fund, distribution of land to landless
- Socio-economic measure in rural areas to support improved living conditions and small scale farming
- At the forefront of land rights: UN draft decl on rights of peasants

Excellent to complement restitution and address root causes of conflict: land inequalities

Challenge is coordination between land restitution and land reform measure: provision of land to occupant for instance, or support to returnees

Urban displacement and adequate housing

- ✓ Adequate housing is a right and a state obligation
- ✓ Adapted to situation of protracted and urban displacement when return to rural areas not desired
- ✓ No need for ownership but rather secure tenure
- ✓ Good practices: social housing scheme, regularisation of slums, graduation approach

Lessons learned

- ✓ Very difficult to implement land restitution with ongoing violence.
- ✓ Focus on obtaining support of local power breakers obstructing the process
- ✓ HLP restitution should be complemented by measures addressing structural land issues such as land inequality which are the root causes of the conflict. Peace agreement offers great opportunity to address root causes of the conflict
- ✓ Choice of HLP reparations (restitution, compensation or others) should be informed by need to redress the past and prepare the future
- ✓ Balance what is fair and what is feasible, pragmatism.

Opportunities

- Great legislation
- Great peace agreement
- Cross-road period:
 - hope linked to the peace agreement
 - choice of democratic and economic model, new Colombian society
 - Don't waste time and put required resources so that people see result and keep the hope alive
 - Need for authorities to demonstrate strong political will
 - Vote well and good luck!

THE END

THANK YOU!