

Property restitution in Colombia

Eduardo Medina

Fragility of land tenure and property rights has both caused and exacerbated displacement in Colombia. In response, the government has established a legal framework to address the problem and, ultimately, to prevent further displacement. The rebuilding of community relationships and institutional trust are central to the success of this approach.

The history of land dispossession and displacement in Colombia is rooted in various causes and has resulted in one of the largest displaced populations in the world. First, landowners' rights have been weakened by the sale of land whereby peasants and rural communities are put under duress – by force, misconduct or misinformation – to sell property titles and vacate their land. Land sales conducted in this manner rarely correspond to real market value. A second, recurrent form of land dispossession has been the abandonment of land by landowners as a result of conflict and its subsequent occupation. A third form of land dispossession has arisen through illegal forced transfers of property titles, with individuals using their government positions, and acting in complicity with local non-state armed forces, to subvert the protection offered by local government bodies. Some of these corrupt transfers have occurred through judicial or procedural fraud.¹

The effects of land grabbing, occupation and forced displacement have been significant. The Colombian National Planning Department estimates that forced displacement has affected 700,000 households (more than three million people). More than 3,200,000 hectares – 5% of Colombia's agricultural land – have been taken by land grabbing or abandonment by persons forced out of the area.²

Government measures to prevent dispossession and displacement

The Colombian government has developed a set of policies to facilitate land restitution and strengthen landowners' rights, and thereby to prevent further displacement and enable the return of those who have been forced to leave their homes. Since 2003, the government has implemented the Land Protection and Displaced Population Legacy Project, aimed at helping to diminish the risk of impoverishment of displaced populations.³ The Project has worked in 21 regions of Colombia to guarantee the full exercise of property rights, establishing asset protection measures. It has also promoted the formalisation of land rights, including the formal recognition of rights for indigenous and Afro-Colombian communities, and has implemented management processes for land restitution, both in situations of dispossession of land and where people have been forced by violence to abandon their land. The Project has supported land-titling processes in nine regions of the country, producing over one thousand titles giving formal rights to occupant farmers, some of whom had already been displaced while others were at a high risk of displacement.

The current government, under President Santos, has included a land restitution policy in its 2010-14 National Development Plan. This policy reasserts the rights of displaced populations, focuses on access to justice for

those who have lost their property due to armed violence, and lays the groundwork for addressing other issues of human rights violations and transitional justice.

Under Colombia's Victims and Land Restitution Law 1448 of 2011, land restitution has been integral to the strategy to proactively prevent mass forced displacement. The Santos government hopes to settle 160,000 claims for restitution in the period of 2011-14 by: 1) promoting landowner rights and resolving land disputes; 2) discouraging land grabbing and occupation in Colombian rural society; and 3) providing a mechanism of redress for persons forcibly displaced and dispossessed of their land. Some of the steps taken to achieve this include:

- no longer placing the burden of proving previous ownership on the dispossessed person but placing the burden of proof instead on the new 'owner'
- establishing a registry to investigate and declare which land was dispossessed and abandoned as a result of force
- introducing a new two-part procedure to provide restitution of dispossessed land, consisting of a special administrative unit dedicated to land restitution and a judicial body comprising specialists in land issues
- establishing a compensation programme, providing in-kind restitution of land when applicable and monetary compensation when land is not directly available (drawing on a fund also established by this law)
- gradually and progressively implementing the law's programmes, with each of 364 municipalities prioritised according to the extent of land dispossession.

Various donors including USAID, the UN and agencies such as IOM have been involved in supporting the implementation of the land restitution policy by providing technical and financial support; IOM has structured pilot projects and helped strengthen capacity within those institutions implementing the Policy.

Ultimately, the Victims and Land Restitution Law provides a judicial framework for stabilising land ownership and preventing further displacement. Beyond the obvious benefits of identifying and assisting where land dispossession has occurred and providing the basis for restitution, these programmes have reinvigorated a sense of community trust and sent out – across the country – the message that the government will not tolerate displacement caused by land dispossession and occupation. Implemented through a community-based approach, these programmes have gone beyond administrative and judicial assistance to cultural healing.



Beneficiary signs an agreement allowing him to receive materials in order to establish a cocoa and plantain productive unit, as part of a project addressed towards forced displacement prevention in Currillo, Caquetá.

The Law was the result of a national consensus among various stakeholders such as the government, Congress, political parties, human rights organisations and victims' organisations. It promotes a model that aims to break the cycle of victimisation and start a process of empowerment instead. The solutions envisioned under the law include promoting the active participation of victims in the design and implementation of the law, accompanying and assisting victims in establishing livelihoods, and supporting victim networks and initiatives. According to the law, respect for the dignity of the victims, their aspirations and stories should prevail in the process of participation – which in turn contributes to empowerment and confidence building. While the process is still

unfolding, the willingness to allow wide and equal participation of community members is a good platform for re-building community trust. Reconciliation among community members and public faith in the process will require continued engagement of all stakeholders.

A significant challenge for the implementation of this project is the sheer volume of claims. As of November 2012, the government has witnessed more than 25,000 claims for a total of over two million hectares of land. There is little doubt that this process will require a significant amount of dedicated resources over a long period of time. Nevertheless, progress is slowly visible. In the community of Manpujan, for example, people are beginning to feel empowered to act on their claims of ownership and are contesting more than 2,000 prior judicial decisions against their land ownership claims; this has led so far to the restitution of fourteen properties. These outcomes are small but significant victories for people dispossessed of their land.

Eduardo Medina emedina@iom.int is Migration and Rural Development Program Coordinator, IOM Colombia
www.iom.int

1. Ministry of Agriculture and Rural Development. Consultation Program in Land Reparations (CONRET). Bogotá DC, December 2008.
2. National Department of Planning, Ministry of Agriculture and Rural Development, Ministry of the Interior and Justice, Presidential Agency for Social Action and International Cooperation. Policy of Land and Territory for the Victim Population of Forced Displacement, at risk of Forced Displacement and Dispossession. Bogotá, 30 October 2009.
3. The Project is sponsored by the World Bank, the Colombian Department for Social Prosperity (Social Action), the Colombian Ministry of Agriculture and Rural Development, the European Commission, UNHCR and USAID, with technical and administrative assistance from IOM.