

Between conflict & consensus: resolving Guatemalan land disputes to prevent internal displacement

by Cecilia Bailliet

As internal displacement is often an indicator of state failure, Guatemala's ongoing displacement crisis cannot be analysed without regard to the country's legal system and the political and economic context in which it functions.

To what extent are displaced Guatemalans able to access justice, pursue the right to remedy and receive legal aid and translation facilities to do so. Is the Guatemalan legal system responsive or repressive to IDPs? Does it seek to emancipate them from marginalisation or does it maintain an inequitable political and economic structure?

Guatemala's penal code serves the landowning élite by providing them with a framework to pursue a policy of forced eviction of indigenous people and other campesinos who try to assert customary claims to land. The Constitutional Court misinterprets indigenous practices thereby dispossessing indigenous people of their landholdings. Data relating to interpersonal trust, respect for the law, equality before the law, cognisance of rights and confidence in the judiciary and other institutions shows that most Guatemalans consider that their state and its legal institutions primarily uphold economic equality rather than promote social justice.

The government of Guatemala created a conciliation mechanism (CONTIERRA) to address property disputes and to foster social capital by promoting linkages within displaced communities and with state agencies. However, it has faced serious difficulties fulfilling either function as a result of the lack of a substantive land redistribution programme or property

restitution legislation. My review of conciliation cases has demonstrated that CONTIERRA was limited in its ability to stimulate trust between rural inhabitants and the state due to the lack of land reform, limited mandate of state-led land agencies, inefficiency, lack of coordination and insufficient resources.

The Guatemalan government's elaboration of alternative dispute resolution in the land arena coincided with an increase in the number of claims for property restitution and compensation made by IDPs, landless campesinos and rural workers. The state became inundated with claims which it was unable or unwilling to redress. Remedial legal or quasi-legal mechanisms require reforms within the economic and political systems if they are to succeed. Prosecution of those who have grossly violated human rights via scorched earth tactics during the war and by illegitimate



takeovers of land is essential if the rule of law is to be restored and justice to prevail in Guatemala.

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See also the author's article 'Unfinished business: the IDP land question in Guatemala', FMR7, pp16-19.