

Solutions for Colombia's Displaced: The Constitutional Court, Commercial Activity and the Internal Displacement Crisis

Monday 10 March 2008, 2:00 – 4:30 pm
The Brookings Institution, Falk Auditorium,
1775 Massachusetts Ave, NW, Washington, DC

Summary Note

Moderator: Gimena Sancha-Garzoli

Panel One – Efforts to Have IDP Voices Heard and the Constitutional Court
Speakers: Geiler Romaña, Marco Romero, and Anne-Sophie Lois

Panel Two – Palm Oil Cultivation as a Solution for Colombia's IDP Crisis
Speakers: Danilo Rueda and Arild Birkenes

The Brookings-Bern Project on Internal Displacement organized two panel sessions on Colombia's internal displacement. The first focused on the IDP voice and progress on implementing national IDP legislation and the second addressed the cultivation of African palm oil and its link to the displacement crisis.

Panel I - Efforts to Have IDP Voices Heard and the Constitutional Court

Background on the Conflict and Colombia's Displaced

Over the past two decades, Colombia has generated over 4 million conflict-induced IDPs, and more people continue to flee their homes. UN High Commissioner for Refugees Antonio Guterres stated that there are already 5,000 new IDPs in Colombia so far this year. In terms of the conflict, structural problems remain and the impact of violence on rural communities is tremendous. Colombians are displaced by paramilitary forces, government forces, the Fuerzas Armadas Revolucionarias de Colombia (FARC), and other guerrilla fighters. However, no one takes responsibility for those displaced by these different conflicts. For example, in 2007, 8,000 people were displaced due to fighting between government forces and guerillas. Palm oil cultivation, presented by the government as a fix for the poverty afflicting many of the displaced, also contributes to new displacements. The impact of these policies hits rural communities the most, and much of the country's displacement continues to be from the countryside into urban centers.

The Constitutional Court and Rights of IDPs

While Colombia's legislation regarding the rights of IDPs is substantial, it has yet to be effectively implemented. The adoption of the 1991 Constitution and the establishment of the Constitutional Court heralded a new era of reform and protection for human rights in

Colombia. The Constitution articulated support for social, cultural, and economic rights, and advocated special protections for the country's most vulnerable and marginalized citizens. Accordingly, the Constitutional Court was created to ensure that new reforms would be implemented effectively for the average citizen.

However, several years later a significant gap remained between the pro-human rights legislation and experiences on the ground. In 1997 the Parliament introduced Law 387, and in an effort to confront the specific violations of displaced persons' rights, it laid down a framework for the National System for Integrated Assistance to IDPs. Then, in 2004, the Constitutional Court declared, as per T-025/04, an "unconstitutional state of affairs." The continued violations of IDPs' rights, it said, and the lack of protection from state and local authorities demanded immediate redress. Silva noted that despite the severity of this ruling, there was very little follow-through due to a lack of available funds and the absence of political will.

Around this time, the Red Cross noted that the situation of IDPs in cities was worsening. In addition to their social marginalization, urban IDPs live in extreme poverty. According to UNHCR, 30% of Colombia's IDPs were receiving support from the international community through 2004, but there were no long-term development projects and very limited access to health and education. The Constitutional Court demanded that the government provide a basket of good to IDPs to meet basic needs. Court hearings were scheduled to evaluate the governmental response, and the state was asked to produce reports outlining how activity in this area was benefiting IDPs. By 2005, there was no change at the federal level. The government had produced 20,000 pages of reports, but had still failed to demonstrate that IDPs could effectively access basic human rights.

Particular Needs of Colombian IDPs

The Consultancy on Human Rights and Displacement (CODHES) created a monitoring group consisting of human rights advocates, legal specialists, and economic experts. The group proposed that the Constitutional Court create benchmarks to track progress in addressing the human rights of IDPs. After six months of exchange, the Court adopted two indicators – health and education. These indicators became objective tools through which public policy could be evaluated, and they have begun to have an impact on the ground. The CODHES issued its first report, analyzing the situation of the following groups of IDPs exhibiting specific needs:

- Children
- Women
- Afro-Colombians
- Indigenous communities

While most IDPs have received some assistance, very few have access to all their basic rights as guaranteed in the constitution.

Part of the problem is the country's overall lack of quality education and healthcare. However, there is also a serious socio-economic gap: IDPs are a much poorer community. As noted earlier, certain areas – such as Chocó- have been particularly

affected by the violence and displacement. A recent UN report for Chocó estimates that it is about 28 years behind the capital in terms of living standards. The stark socio-economic marginalization of municipalities in the coastal area is also attributed to structural racism and a lack of political will to enforce the laws created to protect especially vulnerable groups. Instead, some 75 percent of IDPs today are below the poverty line. They face discrimination, higher rates of unemployment, and lower salaries. The educational institutions for children are inadequate and only eight percent of displaced children have received the assistance they need. IDPs also have problems receiving needed information; for example, many families are not aware of their rights to compensation for lost property.

Causes of Displacement

1. Generalized Violence

There is mass generalized violence in some of the conflict-affected areas and as a result, community members' individual and collective rights are violated. There is currently a debate over how widespread the violence is, but it is clearly a driver of displacement. Hundreds of lives have been lost due to the various conflicts involving the state, the FARC, the Ejército de Liberación Nacional (ELN), and others. In the Pacific coast area, particularly Chocó, there are reports of genocide. Civilians residing in the area have been caught in the middle of this violence, leading to death and displacement. In high-poverty areas, and particularly port municipalities, the murder rate is extremely high.

2. Resurgence of Paramilitary Forces

Much of the fighting is between paramilitary forces - which, contrary to government claims, still exist - and the FARC. There are "new generation" groups, such as the Black Eagles and Red Eagles. For more on this, one can look at the OAS (Organization of American States) report on the re-activation of paramilitary groups.

3. State Palm Oil Policies

Government policies are threatening Afro-Colombian land rights. Increasingly, palm oil is being grown on Afro-Colombian land, and locals are struggling to reclaim their homes. This policy is occurring throughout the coastal area, and thousands have fled their ancestral lands. "Regressive" laws have facilitated much of the current conditions - for example, by dismantling the forest law and allowing increased privatization. A report from the Inter-American Human Rights Commission outlining this legislative backpedaling is particularly noteworthy. Its analysis of 50 municipalities showed that the proportion of IDPs in palm oil areas is growing. Some 79 percent of those who had lived on collectively-owned lands are now displaced.

4. Racism and Entrenched Marginalization of Rural Areas

As noted previously, indigenous and Afro-Colombian communities are disproportionately affected by the conflict. In fact 30 percent of IDPs are Afro-Colombian. Many Afro-Colombians feel that their region's ports, agricultural lands, and tourism fuel the state's programs of violence and expulsion there. Meanwhile, rural areas, especially in the Amazonian region, are the hardest-hit by conflict and poverty, Romaña explained. And yet they receive very little assistance from the state. His organization, the Association of Displaced Afro-Colombians, has told the international community that Colombia needs help building institutions, not acquiring more weapons.

5. Fumigation

The state's militarized fumigation policy is also a major problem. Linked to the state's counter-drug programs, this policy violates the human rights guarantees outlined in the Constitution and has caused serious injury to indigenous and Afro-Colombian communities. Meanwhile, its impact on reducing coca cultivation has been minimal.

Consultation with Colombia's IDPs

Panelists emphasized the importance of consulting with IDPs. Although guaranteed in the Constitution, Silva notes, there was no consultation with the local communities prior to the establishment of the palm oil project. The government unilaterally issued licenses through the ministries, resulting in programs which threaten the Afro-Colombian community's cultural identity. Despite the existence of advanced legislation on the topic, little is being done to protect this vulnerable group. Current legislation contains important tools, but it does not adequately take the Afro-Colombian community into consideration. Future public policy must better account for the specific vulnerabilities facing this group.

Lois described her work with IDMC's Voices project. Colombia was selected as a case study in this project because of the complexity of displacements there and the need for wider recognition of the issues. While the main goal of the IDP Voices project has been advocacy and transmitting the messages of IDPs to a wide audience, it could also be used to improve programming. In the research, IDMC asked only open-ended questions and focused on individual coping mechanisms as well as IDP "life cycles." Lois stressed the importance of knowing about the former lives of IDPs in order to understand what they lost in their displacements. IDMC found that many of the displaced Colombians were experiencing high degrees of pain, trauma, and fear. There are limited options available to the IDPs living in isolated areas, as they are cut off from their social networks.

Panel II - Palm Oil Cultivation as a Solution for Colombia's IDP Crisis

Palm Oil Production and Internal Displacement

The second panel presented a closer examination of one of the major causes of displacement - the country's growing number of palm oil projects. Rueda explained that one of the main reasons for the state's marginalization of rural communities is the economic payoff. Coastal areas have a rich supply of arable land which is very suitable for growing African palm, a commodity that is in increasing demand on the world markets.

Paradoxically, the demand for bio-fuels in the US and European countries is based on environmental concerns. The idea is that bio- or "agro"-fuels are better for the planet. Yet, to achieve this in Colombia, the project has led to the destruction of forests, a loss of biodiversity, and human rights violations on local communities.

Birkenes noted that the follow-up mission to Colombia by the Norwegian Refugee Council (NRC) and the Washington Office on Latin America (WOLA) revealed 2.6 – 6

million hectares of land had been confiscated from IDPs. Of that, paramilitary groups control at least 40 percent. Rueda added that illegal growing of palm and the expansion of the cattle population in Colombia coincide with incidences of displacement. Communities are losing their ancestral land, and the high level of biodiversity in the area is quickly diminishing.

Government's Justifications

Despite the negative effects on the local communities and environment, the state continues to expand palm production. The panelists explained the government's justifications of this policy as follows:

- 1) It is environmentally sound. Agro-fuels are better for the air, and Colombia has the climatic conditions to provide for this market.
- 2) It combats drug production by replacing an illegal crop (coca) with a legal crop.
- 3) It contributes to demilitarization and demobilization by creating new jobs working on palm plantations and removing income of armed groups.
- 4) It will create a durable solution for IDPs as the displaced can work on the palm plantations.

Deconstructing the Impact of Palm Production

However, panelists challenged the government's reasoning. As Rueda noted earlier, the destruction of local communities and of biodiversity in Colombia's coastal area is not justified by the world's demand for bio-fuels. Long-term, it is important to realize that cultivation of palm strips the soil of needed nutrients, making it impossible to return to traditional crops. The negative effects of this on large-scale palm producers – for example Malaysia and Indonesia – are already evident. As for the link between coca and violence, so far there has been no evidence to support this. While the state claims that coca eradication will hinder the activities of armed groups, there has been a higher incidence of assassinations and forced displacements further north, in areas where palm production is being introduced. As for palm plantations creating a durable solution for the families they displaced, Birkenes asserted that this is "bizarre" compensation.

Furthermore, the panel noted that none of the justifications could override Law 70 (1993), a decree meant to preserve the identity of Afro-Colombians by removing their land from the market, by making it illegal to buy or sell. In spite of this law, Afro-Colombians today are striving to reclaim prime agricultural land that has been confiscated. This is in part because the government has since adopted three laws contrary to Law 70 regarding water, forests, and rural development, each of which promotes land privatization. Birkenes notes that it would still be impossible to reconcile current palm policies with the existing 1993 law. Displaced Afro-Colombians are denied restitution at the same time that survival is becoming more difficult as many rivers are now polluted by plant chemicals.

Dislocations from and repopulation of prime agricultural land are also linked to palm production. There are currently 13 palm businesses in operation in this area. In two cases, Rueda's organization found a link between the extradition of local community leaders

and the import of government or palm company-related settlers. This strategy of repopulation is linked to both Uribe's demilitarization project and the expansion of palm plantations and timber companies. Through these population transfers, the government is able to exert social control over strategic areas, as the new inhabitants receive resources from the state and international humanitarian organizations, often diverted from the funds for the Afro-Colombian community.

The Consequences for the Displaced

In the ministry of Bogota, palm companies are under investigation for driving displacement. However, the government of Colombia does not intend to return land to the displaced. As the land has already been converted into plantations, the investment has been too great to allow this. Returning IDPs are assigned land under palm oil development, and are expected to work for the company.

Strategic alliances between the private companies and local communities have begun to emerge as well. While they are supposedly created to protect biodiversity and Afro-Colombian identity, this is not happening. Communities entering into these contracts are not making enough money to repay loans, in part because African palm oil takes four years to harvest a crop. In a pilot project in Guapé, one out of 80 community councils accepted a proposal for just such an alliance with a private palm oil company. None of the community members were consulted prior to the agreement though, and it has not benefited locals. In many cases, the presence of palm oil companies has meant the presence of military groups associated with them. And, as noted earlier, returning IDPs have little choice but to work on the plantations. Overall, the consequences of these agreements, and of palm production generally, have been devastating for the local communities.