HUMAN RIGHTS AND FORCED DISPLACEMENT OF THE POPULATION (A NOTE ABOUT THE DIFFICULTIES IN THE CASE OF COLOMBIA)

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Abstract: With just over three million displaced persons, Colombia has a huge number of internally displaced persons and, without any doubt, is one of the largest in the world, entrenched for decades. The armed conflict raging in their society, especially in rural areas where there is little institutional presence, has resulted in a constant struggle in those territories between the "guerrillas" and paramilitaries. The validity of this conflict helps explain the idea of the dispossession suffered and the consequent abandonment of territories by the population, making this sort of internal *diaspora* called internal displacement. The government response is far from optimal because usually massive displacement of communities has produced a new phenomenology in dispute in reception sites, within the country's own borders: isolation and maladjustment; marginality (and consequent invisibility), confinement, and social conflict. This analysis aims to highlight the humanitarian crisis and human rights conflict that stems from forced displacement and government policies, and the need to establish an efficient database to know the situation of the displaced population. Also it redefines a minimum list of essential rights of conflict victims and the feasibility of a transitional justice process.

Keywords: Human Rights; Forced displacement; International Humanitarian Law; Governance and government policies.

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I. INTRODUCTION

Colombia has suffered a major humanitarian crisis for quite some time. It is the largest crisis that it has faced in its history, and also is one of the countries with the highest number of internally displaced, along with Sudan, Iraq, Afghanistan, and most recently, Syria.

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Faced with this situation, it is obvious that there is a correlation between conflict and displacement, since most contentious areas are the ones with the greatest expulsion of people. Thus, between 1946 and 1966 an estimated two million people were displaced, with the abandonment of approximately 400,000 plots, following the war between liberals and conservatives in the period known as "La Violencia".

However, that period ended with the reconciliation between the two political parties in dispute but neither the land restitution process nor the phenomenon of forced displacement were taken into account.

Since 1980, forced displacement has become effective because of fighting between rebels and government forces, to which is added at the end of the decade, the paramilitaries. Also at that time the problems of the displaced population and the recovery of property were considered.

In this regard, United Nations (2001) has warned of the conflict that has lasted over 40 years and, within it, one of the most crucial aspects is forced internal displacement.

This internal displacement is estimated at just over three million people since 1985, which for a country of about forty-five million people, is an number that cannot be neglected.

Most forced displacements occur in rural areas, where people are forced to leave their homes and the lands which feed them. But also scattered social and cultural ties cause large gaps in the full education of minors. Displacement has also undergone major shifts over time: thus, while the shift in the eighties of the twentieth century occurred in poor and rural areas, in the first decade of the century the movement was generated in areas with rich natural resources for legal or illegal trading (eg, African palm in the Chocó, or coca in the south of the country). This has led many to refer to this aspect of the conflict as the "counter-agrarian reform".

Here are some figures: in recent years Colombia has become one of the countries with the highest figures of displaced population, with 3.6 million people on December 31, 2010, involving approximately 836,000 families (Moro et al., 2011), which have been pushed out of their homes and off their land (Fitzpatrick, 2001).

Accounting for lost land and property has also had its difficulties. Thus, in the 1997-2003 period there is a lack of information, as tax return forms did not include specific items on remaining capital, so that existing information depended on the stories of the victims. Improved forms from 2004 allowed an improvement to see at first hand aspects of abandoned housing, land and property (Moro et al., 2011). And this is a task of the state to be used for the process of care and full compensation of victims (Escobar et al., 2003).

In any case, according to the data that are available from official sources, abandonment of land has the following characteristics (Moro et al., 2011):

1. 39% of the displaced population left abandoned land.
2. 61% left abandoned land.

In relation with this we must add that many ethnic groups have been affected by forced displacement, which means that they have lost the use and the control of their territories, either because they were simply overrun, or worse, because of misuse of natural resources, or because they have been destroyed.

This means, in short, the inability of ethnic groups can stay in their habitat and therefore endangers the survival of their cultures.

One aspect that should be taken into account in this conflict is that there are a variety of ways to the land in Colombia. This shows the great complexity that the government faces to solve internal displacement.

According to Moro et al. (2011),

- There are titled lands to peasants (inheritances, private acquisitions or award, etc.).
- There are no registration properties.
- There are collectively titled territories to indigenous people.
- There are collectively titled territories to Afro-Colombians.
- There are territories in a collective titling process (indigenous or Afro-Colombians).
- There are lands that are held by those who consider themselves owners without deeds.
- There are people or groups who occupy vacant national or public goods.
- There are people or groups who occupy forest reserves, national parks or protected areas at national or local level.
- And, finally, there are people occupying plots under different modalities and recognize that the property belongs to another tenant, sharecropper (*comodatarios*), or other users, called "precarious".

As we can notice, the relationship with the land covers a wide range in which it is necessary to take into account not only the titles (or lack thereof) of property, but also those possessing no owners. That is, the Government should make an effort to achieve a comprehensive understanding of the heritage, which takes into account the diversity in land tenure and therefore, with a broad idea of dispossession, as it affects individuals or groups have a particular relationship to land and other natural resources (Moro et al., 2011).

In the case of indigenous and black communities, the issue is worse which remains largely invisible and unmet (Moro et al., 2011). And so is the case in women.

II. DIFFICULTIES AND VICISSITUDES IN RETURN POLICY

One of the first basics needs to solve internal displacement is immediate humanitarian assistance and emergency. And this has been the institutional response, focused on dealing with the minimum living conditions of displaced victims. However, the answer has always been postponed owing to socioeconomic stabilization.

The experience of recent years has shown that returning to the land is not at all simple. Firstly, because the procedure is not easily accessible to the displaced population, and secondly, because many of the people involved in this process have been seriously affected, or in many cases, have been killed (Moro et al., 2011).

Thus, security must be ensured to enable the distribution of land to the displaced population. In this regard, the Government itself has recognized that there is a serious safety problem in return, particularly if the structural causes remain associated with the armed conflict that has generated the forced displacement of the population.

There are other difficulties in the return of the displaced population. One of these difficulties is that upon returning to the land the population is worse off than where they left off. Basically, the agricultural land belonging to the displaced is quite unfavorable.

Among the main reasons the following can be seen: *a)* mining projects affecting legal or illegal transformation of the territory, *b)* massive purchases of land in abandoned areas, *c)* infrastructure or high-impact projects and activities that transform the natural landscape and produce new interests in the territory, *d)* no public or private re-planning of the abandoned territory *e)* other land is allocated; *f)* armed groups in the territory or settlement under their control; *g)* the destruction or deterioration of housing and abandoned land (Moro et al., 2011).

However, since 2001 preventive tools have been established to protect abandoned land and identify and record the properties and rights over them.

There are a few routes and protocols called individual and collective protection of land: one for the protection of land considered individually, and the second, for the protection of jointly owned land (Moro et al., 2011). There is a further mechanism: the ethnic route, with a low level of efficiency.

Regarding the individual route, originated by the victim's request for the protection of their land, in practice this only worked for the owners because of the limitations of state institutions in identifying and cross-referencing data for the individualization of abandoned land or land stripped from owners or holders.

As for the collective path, this begins through a land report which, once it is endorsed by the "Committee for Assistance to Displaced" of a municipality or

department, constitutes sufficient evidence to establish the displaced person's identity as possessor, holder or occupier.

Also here there have been difficulties due to low levels of institutional information or the obsolescence of rural land registers, among the most important causes that we can mention.

Statistics show that municipalities with higher rates of expulsion lack collective action and have the following features that facilitate theft:

- Failure to identify institutional land abandoned by internally displaced.
- No information is collected relating to memory tenure with communities.
- Maintain open land market, without any control.
- No formal programs are initiated.

But again, experience has shown that socio-economic stabilization of the displaced population also requires public policies and projects for economic and social recovery, such as the reconstruction of the farmers' fields so that they regain their heritage and, consequently, their economic and productive capacity, or in the case of ethnic groups, so they can return to their territories and administer them, so they can perpetuate their own cultures.

In any case, not only these initiatives are required of the Colombian State, but the displaced population is also entitled to full compensation as victims of conflict. Repair, as discussed below, has as its foundation the recognition of liability for damage caused by human rights violations.

In short, everything described can highlight the following:

- The combination of restitution is necessary, especially if one considers the destruction of homes and infrastructure holdings.
- Restoration projects should enable the formalization of titles or land rights, and the issue should be part of institutional projects.
- The return must be safe to enable the socioeconomic conditions of the displaced population.
- The return of indigenous peoples and Afro-Colombians requires special sensitivity, which would protect their values and cultures.

III. FORCED DISPLACEMENT AND RIGHTS

One of the most significant aspects of this conflict, which on occasion has been described as genocide (Ferreira & Fraudatorio, 2012), is the impunity that has existed against the forced abandonment and dispossession of land. However, the passing of Law 387 of 1997 was a first approach to many of these requirements. Input, recognizing a displaced person as a victim of the conflict and applying a series of specific rights that are intended to cover comprehensive care of the displaced population (Jorge Urbina,

2000). A regulation is established in three phases: *a)* prevention, *b)* humanitarian assistance and economic stabilization, and *c)* specific responsibilities of the various institutions.

Furthermore, forced displacement connection enters International Humanitarian Law (Currea-Lugo, 2007), since the Geneva Conventions and their additional protocols established a set of minimum rules, among others, for the protection of wounded and sick people, as well as protection of civilians in the conflict and the protection of their property (Castillo, 2003).

In the legal field, the Colombian government has also introduced criminal provisions (Bohórquez & Centeno Soto, 2007), to define those crimes against protected persons by international humanitarian law (art. 159 PC), or crimes against personal autonomy (arts. 180-181 PC), or even worse other criminal types, such as failure to report (art. 441 PC), conspiracy (art. 340 PC) or favoring the escape of prisoners (arts. 449-450 PC). Also, the right belonging to the displaced in order to obtain financial compensation under a panoply of different procedures (guardianship action, group action, the tort action, repair or direct action).

It has also undergone a need for transitional justice (Bohórquez & Centeno Soto, 2007), that is, the set of processes of prosecution for human rights violations committed during the armed conflict and where, according to experiments carried out in other countries, there must be at least the following parameters:

- Individual responsible procedure.
- Clarification of abuses.
- Repair of victims.
- Channelling reconciliation in communities.

IV. DISPLACEMENT AND THE STRUGGLE FOR EQUALITY (ABOUT FRAGILE SECTORS OF SOCIETY)

The consequences of forced displacement are various: the family and social structure is fragmented, the community disintegrates and, in general, progresses towards poverty (Ibáñez Londoño, 2008).

According to UNHCR, most displaced persons are directed to urban areas, where they finish settling, usually in marginal areas under conditions of poverty and overpopulation. Moreover, this population has a higher unemployment rate than the national average in Colombia (ACNUR, 2008).

Therefore, reaching the city does not mean for the displaced people the end of their problems: socioeconomic stress generates violent behavior, overcrowding, shortage or just a complete lack of resources to meet the payment of leases or buying food to survive.

It is worth examining some of these particular situations.

a) The situation of women is especially important, because there are clear gender dimensions of internal displacement in Colombia. Statistics reveal (Kerr, 2010) that one of the main causes of displacement of women is sexual violence. It is estimated that 48% of the displaced are women, but also many of them are themselves heads of households (an estimated 24% of the displaced population).

Indeed, many women have had to move when their husbands were killed and so they became heads of families. They have also suffered frequent rapes, but more than the embarrassment they may feel, when they decide to report these rapes, in practice they were not investigated (Ochoa, 2010).

Arriving in cities many of the women (60%) work informally (eg, as street vendors), other domestic services (20%), and unfortunately, when they have no resources, as prostitutes (Quiñones, 2010).

In the case of indigenous women the situation is worse because they often do not speak Spanish. This means that Indigenous women suffer triple discrimination: as women, displacement, and due to belonging to certain ethnic groups (Quiñones, 2010). In the case of Afro-Colombians, some have stated they do not rent homes because they have many children, and confirmed cases of girls leaving school owing to discrimination (Quiñones, 2010).

b) Another fragile sector in the Colombian domestic diaspora is the situation presented by those of indigenous and African ascent (Gómez del Prado, 2002).

A report by the United Nations High Commissioner for Refugees (UNHCR) issued in August 2008 indicates that although 10,000 to 20,000 Indians are recorded as displaced each year, many do not register, because they have no information about the process and because they are very far from the place of registration.

Among the causes of displacement of indigenous communities is the introduction of illicit crops in their territory, mainly coca plantations.

When these plantations are sprayed indigenous communities are forced to move to avoid being hit. But fumigation generates a bigger problem: it generates damage to their traditional crops and consequently, there is a serious problem for subsistence food. Other causes of displacement of these communities are the fear that their children may be recruited by armed groups, or being part of state megaprojects, causing the militarization of the area and makes it move indigenous communities (Ochoa, 2010).

Also, when control of the area is taken by the "Guerrillas", they block the area and do not let anybody into it. This means that communities are blocked and people cannot leave, cannot pass through the river or bring food to their communities.

Also, the adaptation of indigenous communities to reach the city has graver problems, since many of its members cannot speak Spanish, especially women, who generally are responsible for maintaining their culture and customs. But also because for them it is a culture shock and institutions have no means of differential attention to these communities, taking into account aspects such as language, culture and food.

The basic pattern of displacement shows that the displaced population does not stray too much from the place of removal, that is, the population tends to move towards the nearest town. If this is not possible, they move to the nearest intermediate cities, and if the security and socio-economic stability are not enough, they seek a bigger city. Cases have been documented of several generations of family displacement, where grandparents moved in the fifties of the twentieth century, children in the sixties, and in the nineties the grandchildren. There have also been cases of people who have been displaced five times in four years.

This reality makes it very difficult to reconstruct families. Professional and social policies which were used in the past were often beyond the current government, and failed to consolidate strategic actions. Moreover, even if today we disarmed all the armed groups and ended the conflict, it would take at least 10 or 15 years to finalize the process that affects all displaced populations.

V. CONCLUSIONS

With just over three million displaced people, Colombia has a huge number of internally displaced and, without any doubt, is one of the largest in the world, entrenched for decades.

The armed conflict raging in their society, especially in rural areas where there is little institutional presence has resulted in a constant struggle in those territories between the "Guerrillas" and the paramilitaries.

The validity of this conflict helps explain the idea of the dispossession suffered and the consequent abandonment of territories by the population, making this sort of internal diaspora known as the internally displaced.

The government response is far from optimal because usually massive displacement of communities has produced a new phenomenon in dispute in reception sites, within their own borders: isolation and maladjustment; marginality (and consequent invisibility), confinement and social conflict.

This poor response from institutions is further compounded when the dispossession and land abandonment affects indigenous communities, not only in terms of the preservation of their culture, but also in the serious difficulties of relocation, or difficulties to return to their ancestral lands.

These conditions of poverty, with little prospect of a secure future, whose origin has already been shown, have finally become a structural conflict situation that needs answers in the field of humanitarian assistance, and social benefits that will generate stable and lasting solutions. Other factors have been explained, which add to the plight of displaced persons to escape segregation and ghettos.

This does not mean that there have not been attempts to fix parts, or at least part of the conflict.

In the latter approach between the Colombian government and the FARC (in press note 2 March 2013) has tried to find a solution to the so-called "agrarian question". This was stated by Humberto de la Calle, chief negotiator of Colombian President Juan Manuel Santos, during the peace talks in Cuba, according to which progress was made in the design of instruments to hold land reclamation and illegal access by peasants who lack them, or who possess them insufficiently. However, the FARC had not nuanced closed agreements yet, but was working on it.

To overcome this crisis, the challenge is to pay attention to the so-called internally displaced and reparations. This is a framework which needs urgent attention. But not only this: Colombia must respond institutionally, within the legal framework, allowing economic stabilization of this particular affected population, repairing the damage done to their heritage through restitution or compensation for their losses. This displacement has been systematic and massive, imposing on the Colombian government the obligation to design a complex strategy, especially considering the cultural and ethnic diversity of the country.

Ultimately, after all that has been stated in the preceding pages may set the following concluding remarks:

1. The humanitarian and human rights crisis caused by displacement represent a reduction of the quality of life indices and human rights standards.

2. Travel to and arrival in another place does not necessarily imply that the conditions of displaced populations better, or that the humanitarian crisis and human rights is overcome.

3. It is absolutely necessary that the return policy be effective and that the security conditions are too, as well as a sustainable and institutional guarantee not to repeat the action of displacement. It is therefore necessary to repair programs and socioeconomic stabilization institutionally coordinated between the various state administrations. Beyond land restitution, land and houses, the process must be comprehensive in nature, which means that it is intended not only territorially in the legal and political rearrangement, but must be accompanied by other processes that contribute to aiding the displaced victims .

4. It is also necessary to establish a database to obtain broad and flexible information about the victims of forced displacement, farms and abandoned territories and characteristics of the possession of land (owners, holders, or the specific indigenous or Afro-Colombian populations, among others).

5. It is worth remembering and refining a list of essential and minimum rights that must be guaranteed to all people who are in situations of forced displacement. In principle, these rights are analogous to those enjoyed by the rest of the population, but the specific causes of the displaced condition has put special emphasis on the safety and security inherent in the situation of victims of armed conflict. This is even more important in indigenous communities, characterized by their ignorance of their rights or how to guarantee them.

6. Transitional justice must meet essential parameters that allow not only the prosecution of those responsible for the violations but also an indispensable process that allows the return of property and rights of victims and repair for injuries received. It is also essential to articulate a process for reconciliation of communities divided by conflict.

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