

Land reform and distributive justice in the settlement of internal armed conflicts

An international seminar organised under the umbrella of the

Forum for International Criminal and Humanitarian Law (PRIO)¹

by the **International Peace Research Institute, Oslo (PRIO)** and the **Program for Global Justice and Human Rights of the University of Los Andes (Bogotá)**.

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In transitions from armed conflict to peace, the international community tends to prioritize peace-consolidation and peace-building higher than most other interests. Increasing emphasis has been put on corrective justice ever since the early 1990s. This trend seeks to reduce the age old practice of impunity for those responsible for war crimes, crimes against humanity and genocide. Transitional justice's foremost mechanisms are correspondingly retributive justice against perpetrators, truth-telling processes and reparations to victims. The practice of transitional justice has necessarily focused on individual conduct during the past conflict and the specific and direct effects of atrocities. As a result, its discourse has been less concerned with distributive justice and considerations of economic efficiency. This lacuna in the transitional justice discourse was emphatically referred to as problematic during the seminar *Law in peace negotiations* held in Bogotá on 15 and 16 June 2007.²

There are clear reasons why we should care about distributive justice in the aftermath of armed conflict, in particular land reform. Land reform can be an instrument of transitional justice. Those who lost their land during an internal armed conflict, through confiscation or displacement, are entitled to restitution. Others who suffered as victims of the armed conflict may receive land as compensation. The confiscation of land illegally acquired by paramilitary leaders may be part of a scheme for punishing individuals in this category. Conversely, transitional settlements may include the granting of land to rank-and-file members of regular or pa-

¹ This Forum, previously known as the *Forum for International Criminal Justice and Conflict* (FICJC), started as an informal initiative under the Ethics, Norms and Identities Programme of PRIO by its Senior Researcher Morten Bergsmo in consultation with Dr. Jo Stigen and Torunn Salomonsen, Department of Public and International Law, University of Oslo. Now with Morten Bergsmo and Nobuo Hayashi, PRIO Researcher, as Co-Conveners, the Forum aims to identify and facilitate discourses on key issues in international criminal and humanitarian law. Matters of interest to the Forum also encompass humanitarian affairs, criminal justice, truth and reconciliation and other questions surrounding the two fields of law and related disciplines. Through its seminars, workshops and publications, the Forum brings together legal academics and practitioners, government officials, NGO representatives, philosophers, political scientists and others. Information about the Forum can be found at www.prio.no/ficjc/.

² For more information about this seminar, see <http://www.prio.no/FICJC/Forum-activities/Law-in-peace-negotiations/>. The seminar papers were published as an eBook in the FICHL Publication Series: <http://www.prio.no/FICJC/Publications/>.

ramilitary forces. Although this measure is not part of transitional justice as traditionally conceived, it may stabilize the transition. Traditional measures, too, are sometimes justified by this criterion, in addition to justifications based on the intrinsic justice of restitution or compensation.

Land reform can also be a tool of distributive justice. To the extent that rural poverty was among the root causes of the armed conflict, land reform may be needed to prevent resurgence of the conflict. Moreover, land grants may also be used to alleviate poverty that is an effect of the armed conflict. Some individuals who were not direct victims of the conflict may nevertheless have suffered from the general chaos and deprivation caused by the conflict.

Finally, land reform can be an instrument of economic efficiency. In many countries a robust negative relationship between farm size and productivity justifies the break-up of large properties. Land used for livestock grazing can sometimes be more efficiently employed for crop production. Efficiency argument can justify the compensation of former owners by cash payments or by purchase vouchers rather than by physical restitution of plots.

When considerations of distributive justice and economic efficiency are factored in, a wider perspective on transitions opens up, and new and difficult questions emerge. Armed conflicts often bring about devastating effects on political communities, massive destruction of physical and social capital, leaving large groups in serious poverty and others in positions of economic power. By including the distributive justice perspective, we raise the importance of the fundamental interests of social and economic justice, alongside such key interests as public order and accountability for atrocities. If we do not, the social and economic needs of victims of armed conflict are in effect not recognized in the same way during the transition. In sum, when claims of reparation are raised in the aftermath of armed conflict, considerations of transitional justice, distributive justice, and efficiency may conflict and need to be balanced against each other.

The seminar is a part of the 50th anniversary activities of the International Peace Research Institute, Oslo (PRIO).

Registration:

To register, it is important that you send an e-mail message to ficjc@prio.no (with “Seminar 090605-06” in the subject field) by *29 May 2009*, indicating your wish to register as a seminar participant. Remember to include your name and, for the purpose of the list of participants, your functional title (for example, “student” or “Legal Adviser (MFA)”) and e-mail address. Seminar participation is free.

Programme³

Friday 5 June 2009

09:00 *Opening of the conference:*

- César Rodríguez⁴ (Director, Program for Global Justice and Human Rights, University of Los Andes);
- Eduardo Cifuentes⁵ (Dean, Law School, University of Los Andes);
- Morten Bergsmo⁶ (Senior Researcher, PRIO).

09:15⁷ Jon Elster⁸: *Land reform in the settlement of civil wars: a conceptual analysis with historical illustrations*

09:55 Elisabeth Wood⁹: *Agrarian reform during and after El Salvador's civil war*

³ The programme is subject to change. The latest version of the programme will be posted at <http://www.prio.no/FICJC/Forum-activities/>.

⁴ **César Rodríguez-Garavito** is Assistant Professor of Sociology and Law at Universidad de los Andes (Bogota, Colombia) and Fellow of the Institute for Legal Studies, University of Wisconsin, Madison. He is the Director of the Program for Global Justice and Human Rights at Los Andes, and a founding member of the Center for Law, Justice, and Society (Dejusticia). He holds a Ph.D. and an M.S. (Sociology) from the University of Wisconsin-Madison, an M.A. from NYU's Institute for Law and Society, an M.A. (Philosophy) from Universidad Nacional de Colombia, and a J.D. from the Universidad de los Andes. He has published books and scholarly articles on law and society, political sociology, labor, development, and globalization. His recent publications include *Law and Globalization from Below* (Cambridge Univ. Press, with B. Santos, co-ed.), *Globalization, Governance, and Labor Rights* (Anthropos), and *The New Latin American Left* (Pluto Press, with P. Barrett and D. Chavez, co-ed.).

⁵ **Eduardo Cifuentes Muñoz**, Dean of the Law School since 1 March 2005. He is a lawyer from Los Andes University and finished his postgraduate studies at the Parker School of Foreign and Comparative Law in Columbia University. He has worked as a lawyer for the banking superintendent's office of Colombia, and he was the director of the law division at the securities superintendent's office. He was also the legal and trusts vice-president at the Bank of Colombia, and judge at the Colombian Constitutional Court. He held the position of national ombudsman, and was the director of the Human Rights Division at the UNESCO.

⁶ **Morten Bergsmo**, Senior Researcher, International Peace Research Institute, Oslo (PRIO) (2006-); formerly Senior Legal Adviser and Chief of the Legal Advisory Section, Office of the Prosecutor, ICC (2002-05); Legal Adviser, ICTY (1994-2002); Legal Adviser, UN Commission of Experts for the Former Yugoslavia established pursuant to UNSC resolution 780 (1992) (1993-94); represented the ICTY to the UN negotiation process to establish the ICC (1996-2002). He has advised on core international crimes investigation and prosecution processes in several countries, including Bosnia and Herzegovina, Cambodia, Canada, Denmark, Indonesia, Macedonia, the Netherlands and Serbia, and has had several international consultancies in international criminal justice. He has published extensively in international criminal law. He is the Co-Convener of the *Forum for International Criminal and Humanitarian Law*.

⁷ The programme indicates 40 minutes for each lecture. This includes 10-15 minutes for discussion. The lectures should in other words not exceed 30 minutes.

⁸ **Jon Elster** is Robert K. Merton Professor of Social Science at Columbia University and holder of the *Chaire de Rationalité et Sciences Sociales* at the Collège de France. He has published numerous books, among the most recent of which are *Ulysses Unbound: Studies in Rationality, Precommitment, and Constraints* (Cambridge, 2002), *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, 2004), *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences* (Cambridge, 2007), and *Reason and Rationality* (Princeton, 2008).

⁹ **Elisabeth Wood** is professor of political science at Yale University. Her current research focuses on sexual violence during war. She is the author of *Insurgent Collective Action and Civil War in El Salvador* (Cambridge, 2003) and *Forging Democracy from Below: Insurgent Transitions in South Africa and El Salvador* (Cambridge, 2000), as well as many scholarly articles. She has been a visiting scholar at the University of Cape Town and the Universidad Centroamericana José Simeón Cañas (San Salvador), and a scholar at the Harvard Academy for International and Area Studies (1995-1997). She is also a Research Professor at the Santa Fe Institute.

10:35 Break

10:50 Albert Berry¹⁰: *Economics of land reform*

11:30 Luis Jorge Garay¹¹: *Quantification and assessment of land abandoned and relinquished by the forcedly displaced in Colombia*

12:10 Ana Maria Ibáñez¹²: *Do conflicts create poverty traps? Asset losses and recovery for displaced households in Colombia*

12:50 Lunch

14:00 Alejandro Reyes¹³: *Organized violence and land concentration in Colombia*

14:40 César Rodríguez and Tatiana Alfonso¹⁴: *From restitution to redistribution? Lessons from case studies of land conflict in Colombia*

¹⁰ **Albert Berry** is Professor of Economics and Research Director of the Program on Latin America and the Caribbean at the University of Toronto's Center for International Studies. He holds a Ph.D. from Princeton University. His main research interests, with focus on Latin America, are labour markets and income distribution, agrarian structure, the economics of small and medium enterprise, and the impacts of international economic integration. Apart from his academic positions at Yale University, the University of Western Ontario and the University of Toronto, he has worked with the Ford Foundation, the Colombian Planning Commission and the World Bank. He is currently working as part of a team addressing the employment challenge in South Africa. Recent or forthcoming publications include: *Taking off into Sustained, Equitable Growth*, Johannesburg: Human Sciences Research Centre, 2009; *Losing Ground in the Employment Challenge*, Transaction Press, 2009; *Critical Issues in International Financial Reform* (with Gustavo Indart), Transactions Press, 2003; and *Poverty, Economic Reforms, and Income Distribution in Latin America*, Lynne Rienner Publishers, 1998. He teaches undergraduate courses on "The Political Economy of Development" and "The Economics of Small Enterprises in Developing Countries" and a graduate course on "Economic Development".

¹¹ **Luis Jorge Garay** is Director of the Commission for the Monitoring of the Public Policy on Forced Displacement (CSPPDF). He is an Associate Research Fellow at the Comparative Regional Integration Studies Programme of the United Nations University (UNU-CRIS) in Bruges since 2005, and an international consultant. He obtained a Master in Industrial Engineering and a Master in Economics from Universidad de los Andes (Colombia) and a Ph.D. in Economics from the Massachusetts Institute of Technology. He was visiting scholar at the Inter-American Development Bank (1994), the University of Cambridge (1981-1982), and Oxford University (1979-1980). He has been a lecturer at Universidad de Los Andes and at Universidad Nacional de Colombia. His areas of interest include: international trade and economic integration, foreign debt management, industrial development and international competitiveness, globalization, and social exclusion.

¹² **Ana María Ibáñez** is associate professor of economics at the Universidad de los Andes in Bogotá. She holds a Ph.D. in agriculture and resource economics from the University of Maryland at College Park. Aside from teaching, she has worked as consultant for the World Bank and the *Fundación para la Educación Superior y el Desarrollo* (Fedesarrollo) in Colombia. She has published several articles on quantitative aspects of internal displacement in Colombia, and more generally on post-conflict economics. In 2008 her book *El desplazamiento forzoso en Colombia: Un camino sin retorno hacia la pobreza* [Forced Displacement in Colombia: A road to poverty with no return] was published by the Universidad de los Andes.

¹³ **Alejandro Reyes** has a law degree from the Universidad Pontificia Javeriana in Bogotá, and an MA in Sociology from the University of California, Berkeley. He is an expert on the Colombian conflict, in particular on issues related to land. Among his edited books are *Guerra en Colombia: Democracia y Conflicto Agrario* [War in Colombia: Democracy and Agrarian Conflict] (Universidad Nacional de Colombia, 2004), and *Pacificar La Paz: Lo que no se ha negociado en los acuerdos de paz* [To pacify peace: What has not been negotiated in the peace agreements] (Comisión para la Superación de la Violencia, 1992). He was researcher and professor at the National University in Bogotá until 2000 and has been consultant for the UNDP on several occasions.

¹⁴ **Tatiana Alfonso** is researcher of the Center for Socio-Legal research (CIJUS) of Universidad de los Andes. Psychologist and lawyer of the same institution. She is a member of the research group on law and social change IDEAS and she is also part of the working group "Law and social emancipation" of the Latin American Council of Social Sciences (CLACSO). Her research topics are minority rights and ethnic groups; law, change and social movements; and law and globalization. She has worked on projects on the right to prior consultation to ethnic groups and natural resources, labor rights and globalization, legal mobilization in the abortion law in Colombia, racial discrimination against Afro-Colombians and the right to land of rural communities and ethnic groups. She has published the books "Mujeres, Cortes y Medios: la reforma judicial del aborto" (Siglo del Hombre, 2008 with Isabel C. Jaramillo) and "El derecho a no ser discriminado: Primer informe sobre discriminación racial y derechos de la población afrocolombiana" (Ediciones Uniandes, 2008, with César Rodríguez and Isabel Cavalier).

15:20 Break

15:40 Maria Paula Saffon¹⁵ and Rodrigo Uprimny¹⁶: *The transformative potential of reparations of lost land in Colombia*

16:20 Stephen Holmes¹⁷: *Concluding remarks*

Saturday 6 June 2009

09:00 Yamile Salinas¹⁸: *The role of the law in land usurpation*

09:40 Monika Nalepa¹⁹: *The origins of competing claims to land in East Central Europe. In-kind restitution as a problem of fair division*

10:20 Francisco Gutiérrez²⁰: *Extreme inequality: a political consideration*

11:00 Break

11:15 Pablo Kalmanovitz²¹: *Corrective justice vs. social justice in post-war land allocation programs*

¹⁵ **Maria Paula Saffon**, Faculty Fellow in the Department of Political Science at Columbia University, she holds a bachelor (Magna Cum Laude) in law and an LL.M. degree of Universidad de Los Andes (Bogota, Colombia). She is an associate researcher of the Colombian Center for the Study of Law, Justice and Society (DeJuSticia). For several years, she was a law lecturer at Universidad de Los Andes and Universidad Nacional de Colombia. She does research on transitional justice, the rights of victims of atrocities, internal forced displacement, and international human rights, among others. She has published several articles on the subjects, as well as a co-authored book in Spanish titled *Transitional Justice without transition? Truth, Justice and Reparations for Colombia*.

¹⁶ **Rodrigo Uprimny** is director of the Colombian Center for the Study of Law, Justice and Society (DeJuSticia), and director of the LL.M. program of the Universidad Nacional de Colombia. He is a Colombian lawyer, who holds a Ph.D. in Political Economy of the Université Amiens Picardie. Between 1994 and 2004 he worked as assistant Jury and occasionally as Jury in charge of the Colombian Constitutional Court. Since 1993, he is a law professor at the National University of Colombia. He has published many books and articles on constitutional law, democracy, the judiciary, conflict resolution and human rights. His most recent publications include the following co-authored books in Spanish: *Transitional Justice without transition? Truth, Justice and Reparations for Colombia*, *Justice for all? Social rights, the judicial system and democracy in Colombia*, *Freedom of information and fundamental rights in Colombia*.

¹⁷ **Stephen Holmes**: after receiving his Ph.D. from Yale in 1976, he taught briefly at Yale and Wesleyan Universities before becoming a member of the Institute for Advanced Study in Princeton in 1978. He next moved to Harvard University's Department of Government, where he stayed until 1985, the year he joined the faculty at the University of Chicago where he taught, in both the Political Science Department and the Law School, until 1997. From 1997-2000, Holmes was Professor of Politics at Princeton University. In 2000, he moved to New York University School of Law where he is currently Walter E. Meyer Professor of Law and faculty co-director of the Center on Law and Security. At the University of Chicago, Holmes was Director of the Center for the Study of Constitutionalism in Eastern Europe. At Chicago and NYU he also served and as editor-in-chief of the *East European Constitutional Review* (1993-2003). In addition, he has also been the Director of the Soros Foundation program for promoting legal reform in Russia and Eastern Europe (1994-96).

¹⁸ **Yamile Salinas** is a Colombian lawyer, with wide experience in land and environmental issues and human rights. She is an independent consultant.

¹⁹ **Monika Nalepa** is assistant professor at the University of Notre Dame. She got her Ph.D. from Columbia in 2005 and is currently a scholar at the Harvard Academy for International and Area Studies. Her research focus is on the empirical and strategic dimensions of transitional justice mechanisms, particularly as they have been applied in Eastern European countries. She has published several scholarly articles and her first book, *Skeletons in the Closet*, is forthcoming with Cambridge University Press.

²⁰ **Francisco Gutiérrez Sanín** is researcher and professor at the *Instituto de Estudios Políticos y Relaciones Internacionales*, Universidad Nacional de Colombia. He holds a bachelors degree in anthropology from the Universidad de los Andes, a master's in political science from the Instituto de Altos Estudios para el desarrollo, an ABD master's in mathematics from the Universidad Nacional de Colombia and a Ph.D. in Political Science from the University of Warsaw. His recent books include: *Lo que el viento se llevo -partidos y democracia en Colombia*, *La ciudad representada*, *Curso y discurso del movimiento plebeyo*.

11:55 Morten Bergsmo: *The power of possession and the limits of the law: much apology and little utopia*

12:35 Jon Elster: *Concluding remarks*