



Destroyed houses in northern Central African Republic. (Photo: Mpako Fোলeng, IDMC)

## HOUSING, LAND AND PROPERTY

Control of and access to land has been a source of conflict and displacement in numerous countries such as Colombia, Guatemala, the DRC, Kenya, the Philippines, Rwanda and Zimbabwe. Restitution of land and property upon return is therefore a central element of post-conflict reconciliation. But it is particularly challenging in countries with less formalised legal systems, where it can be hard for displaced people to prove their ownership rights.

Access to housing and land is a concern lasting from the beginning to the end of the displacement cycle. Once displaced people are forced from their place of origin, they can face difficulties in finding adequate shelter and land to ensure minimum food security and self-reliance. If they are not provided with alternative solutions, IDPs tend to encroach on the land of populations living in the areas to which they have fled, which can then create further tensions (as has been the case in Kenya). When the security situation improves or a peace treaty is signed, property disputes associated with the return phase are another potential source of tension. Returning IDPs often find their houses and land destroyed or occupied by other people, as

in Peru, Guatemala, the Balkans and in Sudan's Darfur region. For this reason, it is crucial that peace agreements include provisions for the resolution of property and land problems. Such provisions currently exist in 17 countries affected by internal displacement, including in Nepal where a peace agreement was signed in November 2006. This accord stated the commitment of both the government and the Maoist rebels to return land and other property seized. At the regional level in Africa, a protocol on the property rights of returnees was adopted in December 2006 in the framework of the Great Lakes Conference process, and model legislation was drawn up in September 2006 with the objective of protecting the property rights of IDPs in countries such as Burundi, the DRC, Rwanda and Uganda.

In many post-conflict situations, institutions have been set up to process property claims and resolve disputes. In 2006, new restitution or compensation mechanisms were created in Iraq, Georgia, Lebanon and in northern Cyprus. Obstacles in the way of these mechanisms range from the authorities' lack of will to the weak role of the international community to the fragility of the rule of law and state authority inherent in post-conflict situations.

The tension between customary and statutory law that exists in most countries in Africa, Asia and Latin America, as well as the very low level of formal land registration, is another factor complicating the restitution/compensation process. It is estimated that in Africa only 1 per cent of land and property are registered under the cadastral system, mostly in urban South Africa<sup>80</sup>. In the absence of reliable property registration and cadastre, displaced persons do not have the possibility of presenting ownership titles to prove their possession of land or property. In addition, informal ownership is usually based on customary law and linked to the right of use, and this right becomes limited in case of displacement and may favour those who have been using the land.

Land titling has been presented by many states and some international organisations as a way to increase security of tenure and better protect property rights. However, there have been several cases where land titling had adverse consequences.

In countries such as Indonesia, Sudan and the Philippines, natural resources and unoccupied land, including some land held under customary law, have been declared state-owned and later sold into private ownership. In Sudan and Colombia, the state used this process to grant concessions to oil and mining com-

panies, which resulted in the forced displacement of the resident population. In countries such as Uganda and the DRC, political and economic elites, with the collaboration of certain traditional chiefs, have taken advantage of land titling programmes to obtain private ownership over customarily owned land. In Uganda, land held under customary ownership was privatised during displacement, leaving IDPs without land to which to return.

A similar process is occurring in Asia. In the Philippines, Christians, benefiting from better access to information about land titling programmes, obtained titles over land owned under customary law by indigenous Lumads and Muslims. This led to widespread displacement of the latter groups. Now that the majority of lands in conflict-affected areas are titled, it is difficult for ancestral land claims to be adjudicated. Despite government attempts to recognise the right of indigenous people to hold lands under their ancestral claims or ownership through the adoption of an Indigenous People's Rights Act (IPRA), there has been little result. The Muslim population in particular refuses to be considered as indigenous people, and the IPRA is not, in practice, applied in the Autonomous Region in Muslim Mindanao. In India, property rights violations are a constant source of displacement in tribal areas, where customary law has been the rule until the government decided to use the land. Large development projects led by the state have provoked several waves of displacement. In the absence of alternative solutions, people displaced by those projects have often occupied others' land, thereby creating a new source of tension and displacement; this has been the case in numerous instances in northeast India.

In the context of a poorly functioning formal state system for land transfers and purchase, and with the breakdown of the customary system as the result of displacement, land titling initiatives can thus have a negative effect, in particular on vulnerable individuals, such as displaced people, women (particularly widows) and children. Members of these groups are usually considered to have tenancy rights only, not ownership rights. Land titling usually benefits those in power and men. Given inequitable laws and practices denying wives joint ownership of family land, women often lose out in this process. In cases where land titling contributed to violations of rights and was one of the causes of displacement, a return to the status quo ante will not necessarily lead to a fair outcome. Restitution in such situations should be replaced by some form of land redistribution.



New houses have been built for resettled IDPs in Azerbaijan. (Photo: Nadine Walicki, IDMC)

In Africa, access to land has remained a pressing concern for IDPs in Sudan, Somalia, Chad, Burundi or Kenya. Evictions in Zimbabwe and Kenya continued during 2006. In Kenya, ethnic tensions have been exacerbated by government-initiated evictions based on recommendations from a government commission investigating illegal allocation of public land. The recommendations included the creation of a land title tribunal to review irregular titles and suggested that where environmental and water catchment areas were at stake, the landless should be resettled on alternative land. As of December 2006, the land tribunal had not yet been appointed. The only tangible government reaction has been to carry out violent evictions of displaced persons who had previously taken refuge in forest land.

In Sudan, the government has actively fuelled local grievances between pastoralists and farmers over access to land and water. Land disputes, particularly in urban or semi-urban areas in the south are also likely to rise as IDPs from Khartoum return within the framework of the Comprehensive Peace Agreement of January 2005.

In Somalia, UN-Habitat developed a pilot resettlement project for urban IDPs to facilitate their access to land. The project will adopt a phased approach according to which IDPs will receive successively: a plot of land, a tent, assistance in construction of housing, and final-



A displaced Liberian woman builds a new house. (Photo: Jacob Silberberg, Panos)

ly connection to utilities such as electricity, sewage and water. The project combines the interest of the land owners currently renting to IDPs with the overall urban development plan of the town where IDPs are living. Landowners give some of their land to IDPs in exchange for the connection of the development area to town services and infrastructure, which in turn increases the value of the landowners' property.

In Asia, Burma remains the country most affected by conflict-related forced evictions and confiscation of property: 323 villages have been destroyed, forcibly relocated or otherwise abandoned between October 2005 and October 2006. Altogether more than 3,000 villages have been emptied since 1996, displacing more than 1 million people<sup>81</sup>. Weak private property rights and poor land ownership records facilitate involuntary relocations by the government. In this context, access to land and food security is a major issue for IDPs in Burma. Similarly, in Indonesia, poor official land registration policy contributes to communal conflicts, and land rights disputes are addressed only reluctantly by authorities. In Nepal, the restitution process has been affected by political considerations: According to some NGOs, Maoists have reportedly given fair land restitution only to those returnees who were not considered to be "feudal/exploiters". One returnee member of a political party disliked by the Maoists was placed into the feudal category and received only one-third of his land upon return<sup>82</sup>.

In Latin America, extremely unequal land and wealth distribution, which fueled many of the uprisings and the civil wars in the 1970s and 1980s, have not been rectified in the post-war period. Peace agreements in Guatemala, Mexico and Peru contained provisions aimed at resolving land issues for IDPs and other war-affected people, but these agreements remain largely unfulfilled. In Guatemala, key commitments, such as the resettlement of the displaced, redistribution of land and compensation for uprooted people and other victims of the conflict, have only been implemented to a very limited degree. In response to the slow implementation, landless people invaded and occupied large landholdings, which were met with violent evictions by the state in 2006.

In Colombia, the only country in the region with an ongoing armed conflict of significant scale, mechanisms have been put in place for IDPs and uprooted people to repossess land and assets illegally seized by members of paramilitary groups. However, these mechanisms have proved cumbersome and generally inefficient. In Peru, more than three years after the Truth and Reconciliation Commission recommended compensation for IDPs who lost their land, competition for control over land still lies at the heart of fierce animosity between white settlers and indigenous populations. Most of the land belonging to indigenous

people held under customary tenure was privatised by settlers through land titling. As a result, many indigenous IDPs have been unable to return or regain their ancestral property.

Internal displacement in Europe is characterised by protracted situations with no massive conflict-related evictions currently taking place; long-term solutions are being envisaged through allocation of land, resettlement, or restitution and compensation schemes. To date, the government of Azerbaijan has allocated some 60,000 hectares of land from state and municipal land funds to IDPs and created 760 farms providing livelihoods for about 47,000 IDPs<sup>83</sup>. The government also continued its project of resettling IDPs close to their original place of residence. IDPs do not own the houses built for them and are expected to hand them over to the government when they return to their original places of residence. This solution improves IDPs' living conditions while maintaining an incentive for them to return.

In Russia, the government is allocating land for returnees but has not resumed its compensation programme, as it waits for additional federal funds. Restitution/compensation legislation and mechanisms also exist in the Balkans, Cyprus, Turkey and Georgia with varying rates of success. While only residual problems remain in Bosnia and Herzegovina, Croatia still does not allow for restitution or compensation for pre-war holders of occupancy rights. In April 2006, a new property agency was created in Kosovo. This institution succeeded the Housing and Property Directorate and will deal with remaining caseloads of residential property. The new agency will also consider claims for repossession of agricultural land and business premises which, until recently, had to go through a lengthy court process.

In northern Cyprus, a property commission was set up in March 2006 as it had been requested by the European Court of Human Rights (ECHR). In Turkey, an ECHR decision issued in January 2006 ruled that the country's 2004 compensation law provides an effective legal remedy, which applicants must exhaust before filing a case with the European Court. Consequently, 1,500 property-related cases that were pending before the Court will now be referred to the various compensation commissions, with the risk of overburdening them. While the compensation law is a significant step, IDPs have not yet benefited widely from it because of the lack of uniformity in its implementation due to wide discretionary powers of compensation commissions,

lack of awareness of procedures on the part of officials and claimants, and the absence of a clear government directive on implementation.

In Georgia, the Parliament passed in 2006 a law on property restitution in areas of origin including Abkhazia and South Ossetia, but this law has been rejected by South Ossetian authorities, and it seems difficult to see how it can be applied without first finding a political solution to the conflict.

In the Middle East several compensation and reconstruction schemes have been designed in response to the massive destruction and forced displacement caused by the conflicts in the region in 2006. In Lebanon, two compensation mechanisms have been established to address damage to private property, one dealing with southern Beirut alone while the other covers the rest of the country. The multiplicity of actors involved in reconstruction resulted in competing compensation schemes and confusion among potential beneficiaries. The absence of coordination between the government, Jihad Al Bina (Hizbollah's reconstruction arm) and international donors resulted in either duplication of effort or gaps in assistance. For instance, the "adopt a village" approach, whereby donors, for the most part Arab countries, assist specific villages by distributing reconstruction assistance payments to owners of damaged property, has created situations where assistance is not distributed evenly throughout the country. In the south, reconstruction efforts as well as access to land is seriously limited by the presence of an estimated 1 million cluster bombs.

In December 2006, the UN General Assembly approved a plan for a UN registry to handle Palestinian claims for compensation for property damage resulting from the construction of the West Bank Wall. However, the exclusion of non-material damage (including forced displacement), the lack of clarity concerning the eligibility criteria for compensation, and the means of assessment and validation of damage claims raise concerns as to its effectiveness. In Iraq, a new law came into force in March 2006, replacing the previous property commission with a new one and improving conditions for compensation.