

Henrik Wiig

Compensation or restitution of land rights in the Colombian peacemaking process

- Economic efficiency vs. society building?

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Abstract: Land ownership is historically linked to brute power in Colombia. The 3.5 million internally displaced people (IDP) of today have lost about 1 million hectares of land. This paper argues restitution will be very costly, but it might be necessary to avoid impunity to prevent similar land confiscations in future conflicts

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Preface

The purpose of this study was to explore how restitution of land for people who had their land confiscated during civil conflicts entered and affected the peacemaking process. The author has chosen Colombia as an example due to the repeated occurrence of violent conflicts with land confiscation over the last 200 years. The analysis presented in this paper demonstrates how control over land constitutes an integral part of violent conflict in Colombia. The study was finalized but not published in May 2007. Due to the high relevance of the topic it is now being published in NIBR's working paper series.

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Oslo, November 2009

Marit Haug
Research Director

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Summary

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Elections and civil wars have been intertwined faces of Colombian democracy and politics since independence in 1810. Each violent episode has led to evictions and land confiscation. Around 3.5 million internally displaced people (IDP) have lost about 1 million hectares of land in the conflict among communist guerrillas, paramilitary forces and the army during the last three decades. As peace returns the demand for restitution of land property to the original owners emerges. This article argues brute power has always been linked to property rights in this decentralized semi-feudal country where the rule of law is only visible in the capital, and hence it is difficult to define who the rightful owner is. A plot might have been transferred several times which makes it difficult to confiscate land from a bona fide current owner who might be an IDP him- or herself. The costs to society in land purchases, complicated individual law suits and reduced investment in agriculture, as there is less security of ownership, are enormous. It might still be the only way to prevent history from repeating itself in the future, as new generations of potential guerrilla and paramilitary soldiers expect impunity for their abuse as their forefathers had experienced in previous conflicts.

1 Introduction

“Dentro del espíritu feudal de La Mojana, los señores de la tierra se complacían en estrenar a las vírgenes de sus feudos y después de unas cuantas noches de mal uso las dejaban a merced de su suerte (In the feudal spirit of La Mojana, the men of the land enjoyed to initiate the virgins in their fiefdoms and after a few nights of misuse leave them to their own destiny) ”(Garcia Marques, 2002) pp. 198

Colombia is the longest lasting democracy in Latin America ruled by elected leaders since independence from Spain in 1810. At the same time violence seems to be an integral part of this political system. Civil wars have erupted regularly throughout its bloodstained history. Today the urban educated elite are leaving the country and are being replaced by peasants flocking to the cities. The former group is seldom defined as refugees since the general notion of hopelessness is normally the decisive motive. The latter are normally in real danger if they stay in the countryside. According to the International Displacement Monitoring Centre (IDMC) there are now more than 3.5 million such internally displaced people (IDP) in the country, illustrating the magnitude of the problem as it is approaching 10 per cent of the population (IDMC, 2006). However, the violence seems to be coming under control even if the numbers of IDPs are still increasing.¹ The government has negotiated a peace agreement with the paramilitary forces; the smaller guerrilla group National Liberation Army (ELN) was at the time of writing this article in spring 2007 involved in peace discussions and the stronger Revolutionary Armed Forces of Colombia (FARC) have lost their capability to launch armed strikes in densely populated areas.

The state is hence slowly gaining control over the country, but this does not necessarily mean the peasants can return to their original lands as these now might be occupied by others, who previously were paramilitary soldiers and leaders or other peasants. Such contested property rights to land represent both a hindrance to finding a peaceful solution to the current conflict and a seed for new conflicts to break out in the future. Finding a durable solution to the land issue should optimally be an integral part of the ongoing peacemaking process. However, Colombian politicians seem to follow their traditional way out of a violent conflict by letting the warring factions go unpunished for their war atrocities and furthermore keeping their looted property as long as they give up their guns. Each time they start anew, without correcting past injustices and leaving the victims to fend for themselves.

¹ Since 2005, the International Red Cross registered a gradual increase in the number for IDPs they have given assistance (IRC, 2007)

Property rights to land are in this conflict as important as ever in Colombia. The guerrillas do, despite the shrinking economic importance of land, still demand the old-fashioned comprehensive land reform where the large estates are divided and handed out to the peasants that actually work the land. Especially the urban part of the Colombian society would gladly give in if this were the path to obtain peace², but such claims are still not politically acceptable in a capitalist society and will probably not be possible to enforce. The violent conflict has rather led to a more unequal land distribution. An estimated 1 million hectares of land (Flórez, 2005) has been confiscated in the process that is now denominated the “Colombian counter land reform”

Smallholders’ land has often been confiscated by the paramilitary leaders and the traditional landowning class, either by brute force or by offering a pity to farmers who do not dare to stay in the countryside any longer. To further complicate the picture, some abandoned land is now occupied by other IDPs that previously had to flee from other regions. The parties in the future peace negotiations must hence consider how to deal with the problem of land ownership. Shall they try to restore pre-war ownership by restitution of the individual rights or will it actually make more sense only to compensate the individuals who lost their property? Another possibility is to seek collective solutions. Or will impunity once again rule as has happened after all previous periods of violence in the Colombian history, where the new occupiers keep the land without any compensation for the previous owners? The last is normally defined as unjust, but might turn out to be a solution that brings most benefits to the country as a whole. It is less costly for the state and possibly the most efficient land distribution structure in the otherwise modern market economy of Colombia.

On the other hand, the experience of losing the property might cause such grievance that the individuals might become less willing to lay down their arms or more prone to start the conflict again at a later stage. More important though, full restitution of individual property might be the only way to prevent the expectation that perpetrators might walk away with war loot, hence tempting people to both initiate a conflict and join such extra-legal forces in the future.³ The argument is that the long and bloody path of impunity in Colombia has to be broken, once and for all, no matter whether the immediate cost in economic terms is high or not.

There are few signs that any actor in the conflict will emphasize the loss of individual land rights in both the ongoing and potentially future peace negotiations. When the paramilitary forces started peace talks in year 2002, they were given a time limit of 1 July 2005. Those who surrendered before this date would be treated under the new “Law of Peace and Justice” which introduces a rather simple concept: Armed conflict perpetrators who state their abuses and declare properties illegally acquired

² “If land is what they want, let them have it as long as they leave us in peace! The attention on land is something of the past, as agriculture now constitutes less than 10 per cent of our economy” is a popular urban perception of land inequality as the fundamental cause of violence articulated by *El Tiempo* columnist Claudia López Hernández (personal communication).

³ About 10 per cent of the demobilizing paramilitary forces under the Law of Peace and Justice accord has actually picked up their weapons again by joining second generation paramilitary forces (The Economist, 2007)

during the conflict shall receive a favoured treatment in the criminal proceedings. However, the original owner must raise a demand to get back confiscated property within two months of the perpetrator's surrender, otherwise the claim becomes outdated. For an IDP with few resources living in a different part of the country, the practical obstacles to make such claims are nearly insurmountable. Furthermore, the victims seldom dare to claim their rightful belongings since the paramilitary forces are still free to move around and threaten their perceived adversaries (who is anyone questioning their actions). So, it seems like the government does not really intend to construct a peace process where individual claims are taken seriously, and the respect for individual property is of course not in the interest of the paramilitary forces that have enriched themselves through the conflict. The paramilitaries' expectation of impunity and ability to keep the loot obtained during the years of conflict is illustrated by the fact that the amount of land confiscation and expulsion of smallholders increased rather than decreased towards the governmental announced amnesty date.

An important, but often disregarded element in the land discussion is that such individual claims are not high on the guerrillas' agenda either. This fact makes perfect sense when taking their communal ideological standpoint into consideration. In their view, all poor people have the right to land independently of their pre-conflict ownership. The ones actually fighting for individual property rights are ironically the more urban elite, represented by civil society organisations and the judiciary system, who have succeeded to invalidate the parts of the Law of Peace and Justice that gave rise to the defacto impunity of the perpetrators. The international society is further behind this push for individual rights through supporting financially both civil society organisations and the judiciary system, both of whom often enter into open confrontations with the elected president.

This paper argues that individual property right to land is a rather new concept in Colombia and is not considered to be an absolute right by neither the influential elite nor the peasants themselves. The result is that people tend to accept the loss of land more easily and be more adaptive to changes than in societies where private property is perceived as an "absolute" right. This fact can support two very different kind of arguments: 1) less emphasis on explicit restitution of former land properties in the peacemaking process, 2) a stronger emphasis on restitution as the population must be taught to respect private property rights in accordance with the principles of truly modern market economies.

The reason is that Colombia is still a decentralized semi-feudal society where local political bosses control most of the activity in a given geographical area. The perception of relative property rights hence tends to be inherent in both sides of what resembles patron-client relationships. The clients, the smallholders, only expect something to be theirs as long as it is in the interest of the local political boss. Loosing land is surprisingly not mentioned as a major source of grievance among the expelled smallholders, and the local political bosses confiscate land with surprising ease. There seems to be a commonly accepted relationship between physical power and property rights, which might be a more important explanation of why smallholders are expelled rather than the military's need to prevent local support for the guerrilla. A more important push factor is probably that the local political bosses do not need as many smallholders on "their" property anymore. Improved

technology and more advanced product markets facilitate a more capital intensive agriculture, with less need for manual labour as a result. Furthermore, the recent introduction of truly secret elections prevents the “sale” of smallholders’ votes as a tradable good in the hierarchical and clientelistic Colombian society, this way further reduces the value for the local political bosses to keep the smallholders in “their territory”.

The economic efficiency of the land distribution might increase, as it becomes more in line with the needs of a modern market for agricultural products and production technologies. Furthermore, in the extensive and complex work of identifying individual rights, a collective solution will probably give the highest level of welfare for the population at large. However, there is a risk that a non-individual approach will further cement the popular perception of an unjust link between physical power and property rights. So in the end, the less cost-efficient individual restitution approach might be necessary to introduce the institution of undeniable property rights in Colombia.

This report will first go through the theoretical perspectives on compensation and restitution of land property rights and then describe the Colombian historical experience, before ending with pointing at the possible effects on both the individual and society levels given the contemporary Colombian reality.

2 Land and property rights

2.1 What is so special about land?

Destruction and looting of properties are in general common features of wars and armed conflicts. The first might be an unavoidable bi-product of the fighting, e.g. bombing to evict the enemy, and the second, a means to finance the war and/or the aim of the fighting itself according to the “greed and grievance” literature as summarized by Collier et al. (2005). If properties are lost during war, why should there be anything special about the loss of land?

The multi-functionality of agricultural lands in rural areas makes it a special asset, as it represents (i) a source of food and income in general, (ii) the asset of wealth (and hence savings), and (iii) a place of residence and identity. Losing access to land will normally imply the loss of all three functions at the same time, while there is normally only one function attached to other assets. For example, if you are forced to leave your job, then you can use your savings to smooth consumption while you search for another job. If soldiers steal your financial savings, you will still be able to earn your “daily bread”. Being thrown out of your house is only a temporary crisis as long as your salary will make you able to rent a new house somewhere else. But losing all three at the same time leaves you vulnerable with a reduced capacity to restore your former way of life.

2.2 The sliding scale of property rights

Property rights are only a meaningful concept as long as they are enforceable. The state is the ultimate guarantor of individuals’ property rights in modern societies. If contested by other individuals, the owner might call upon the juridical system and police to fight the challenge. However, this presupposes (i) a strong state that is able to organise such protection and (ii) a state that promotes individual property rights.

The latter is actually the main feature of capitalism, but is not necessarily a virtue in other societies, e.g. communist countries. However, property rights are not always absolute rights in capitalist societies. The state can expropriate individual property with the aim of making a public good. Road construction is an excellent example, but property might also be expropriated on behalf of private interests if such is defined to be in the public interest, e.g. land for industrial construction which creates general employment. There is a bundle of rights connected to a piece of land where only some of them are private. The farmer might be the only one with the right to harvest crops, but he can’t deny others to cross his land plot out of season. This second

distinction illustrates the point that property rights are more correctly seen as a “bundle of rights” comprised of, for example the rights to possess, to use and to transfer. This suggests that individual property rights can thus seldom be defined as an absolute right.

More important however is that some states lack the power to protect such rights. Many developing countries have central states which are weak or nearly absent. Even when the state is strong, the inherent will to protect the individual property rights of normal citizens who have little influence might be sacrificed in large scale power struggles, as an example when politicians in power depend on the support of the local political bosses in other matters. In short, property rights then only exist for those who are able to defend them, either personally, in union with others or by building alliances with more powerful people. In seemingly developed modern states in Latin America, this is a common reality. The cattle rangers in Brazil hire gunmen to fight off the land-claiming poor, who on their side unite in large numbers to occupy specific pieces of land through, among others, The Landless Movement (MST).

Weak central governments and states are supposed to be the origins of civil wars in general, and this is especially true in the Latin American conflicts during the last 100 years. Local and regional political bosses have looked upon the central states as illegitimate actors transferring tax income from the districts to the parasitic elite in the capital.⁴ This would do/cause no harm, if a state-like structure existed at the district level. In the absence of the state, local political bosses represent and act as the true societal powers in an often non-democratic fashion, either alone or dividing the territory between them resembling the patchwork of medieval kingdoms in Europe. However, in a feudal system where the patron maximizes his income he might actually prefer to hand out parts of his property to the individuals. A hacienda owner who needs many workers might give a part of his land to each household so they can grow their own food, rather than the alternative which is to make use of all the land himself and then feed the employees. This way he bypasses the information problem of securing work efforts, the information and coordination problems of small-scale production. Furthermore the owner increases labour efforts by involving household members like housewives and children who are not possible to employ in large-scale production. The “trick” is to make sure that the farmers do not have enough land to be self-sufficient regarding food in order to prevent them from becoming independent of the large landowner and thus set the wage rate themselves.

The idea behind such a tenure system is that each farmer has ownership to a property in the sense that it might not be contested by other individuals. However, the landed property belongs to the individual only as long as it benefits the feudal lord. If he finds a better use of the land, the feudal lord might withdraw the property from the individual. The modern state protects property rights’ systems developed

⁴ This scepticism towards the central state seems to be common feature also in European countries. For example Spain’s regions have a long history in questioning the Madrid-based centralism. A recent evidence of this is the discussion that has been on how to divide the tax income from the autonomous region Catalonia with the central government.

within this context: The same piece of land is transferred through generations⁵ and the individuals start to take the property right for granted and hence increase their willingness to fight for it. Reciprocal arrangements of defence of landed properties between the individual smallholders can to a certain degree prevent the feudal lord from interfering in property matters, and thus a new modern property rights system is born. The introduction of institutions protecting property rights in England annihilated the king's ability to confiscate and distribute land according to his own will and represents a fundamental change in history.⁶

The Marxist literature emphasizes this class conflict, and the early capitalist literature like Ricardo had as a main focus that the protection of the rights to property, from random abuses by the powerful institutions, was important. Such rights are however not taken for granted in much of the developing countries and traditional societies. The customary laws governing common property rights, followed by many indigenous cultures often make it possible for the majority or a strong local leader to actually confiscate the land of the individual members -- an option that might be used as a sanction, possibility towards community members who do not behave according to the norms and expectations of the other members.⁷

2.3 Restitution, compensation or nothing?

“Transitional justice” is the generic term for finding ways to deal with abuse committed during armed conflicts or authoritarian regimes. The main approach is either to go for a judiciary process where individuals are made directly responsible for certain actions, e.g. prison terms for abuses or confiscation of properties, and courts might thus instruct the perpetrators (or the state as a legal subject) to give the victims a form of reparation. The alternative, called “truth commissions” are non-judiciary processes where the main purpose is to disclose what actually happened during the conflict in order to promote the reconciliation and thus facilitate a new start for all parties. The idea is that it will be easier to disclose the truth in a non-penal process, as the perpetrators will be more willing to admit their wrongdoings as long as a guarantee is given that they will not be made juridically responsible at a later

⁵ In principle the landlord could withdraw, and for example rotate between households, but this increases the immediate cost.

⁶ This historical process is however not linear. Sudden changes in markets and technology might disturb the existing power balance in different directions. One example is the increase in wheat prices in Europe resulting from increased demand as gold and silver poured into Spain from the New World. Income rose for small-scale farmers in France and made them even more independent from the political and military leaders, while the effect was the opposite in the Baltic countries. There the feudal lords were strong enough to reintroduce serfdom in order to capture the increased resource rent from land (Robinson, 2000).

⁷ The king or village headmen can also withdraw the property rights if they find a more productive way of making use of it. This mismatch between modern and traditional tenure systems might lay behind the many conflicts of land in Africa. Local leaders might easily give away land and also withdraw the right if the arrangement is not as beneficial to him or his society. The modern (or white) population has rather seen the transaction as a final decision with unlimited powers to decide on how to use the land and to further alienate it from others.

stage. The state might still choose to compensate the victims, since such compensations might be regarded as part of an insurance scheme.⁸

Judicial prosecution will of course alleviate most personal grievance if the result of the processes is actually impartial, but the cost might be prohibitive for the state. The same applies to restitution of properties. Compensation is an even broader term and more difficult to measure. The idea is that someone in the society has suffered more than others, independent of their own effort. These persons should hence be supported by the wealthier, making it a scheme resembling an insurance system administered/administrated by the welfare state.

Setting up truth commissions is an approach that might relieve some of the pain and grievance from personal experiences in conflicts. The inherent openness might reduce the level of conflict. This process might lead to other elements as judicial processes, but is normally actually used as a substitute rather than a starting point. If the latter was the intention, the person involved would be more cautious/restrictive in giving out information or trying to manipulate the truth as they know it is just part of a larger judicial process.

What does this imply for the peacemaking processes in Colombia? It is surprising to see how easily the rural Colombian population seems to adapt to the new masters in the war zone. Furthermore, it also seems like they are willing to exchange land for security by fleeing the scene. The reason might be that they really do not perceive land as their private property, but rather a loan as long as the masters allow. In case the war brings new masters, they accept the changes.

The success of the Marxist guerrilla *Shining Path* (SL) in Peru from the early 1980s is often explained by the power vacuum created by the land reform in the 1960s. The old feudal lords migrated to the cities when their hacienda properties were broken into pieces and distributed to the peasants. The guerrilla leaders were easily accepted as their new political bosses. In Colombia a surprisingly high share, only 11.42 per cent, of the IDPs do not want to go back to their original places even if the war ended according to Deininger et al. (2004). This seemingly relaxed relation to their agricultural land is understandable if it is not really perceived as individual property, but rather a user right.

This perception of “weak” property rights to land for the smallholders will probably influence how a specific peace accord actually will work out in both ending the war, and secondly, in preventing a new eruption in a violent conflict. The better armed the sides in the peacemaking process are, the less they will actually be willing to accept and be made responsible for their individual actions during the war. Keeping looted property is often part of such “take-it-or-leave-it” offers by undefeated aggressive partners, which a peace-hungry population at large is normally willing to accept.

However, even though an “Amnesty and Pardon” offer for war criminals and property confiscation makes it easier for the parties involved to accept a proposed

⁸ State compensation implies that non-responsible individuals pay for the action of the responsible through the tax bill. Only the state will be able to take such insurance responsibility, when the victims cannot be regarded as responsible for the results. A parallel is the state compensation for natural disasters if people are hit purely at random, while such compensation becomes more dubious if the victims have settled in known risk areas, e.g. steep hills known for mudslide.

peace agreement, it might not be desirable for other reasons: (i) if one of the sides becomes weaker due to the peace accord, the agreement might not be respected by the other side. Foreseeing such development might induce the parties to keep their weapons and organization. The resulting high tension level will easily make the conflict erupt again, (ii) deals where some individuals are left to pay the price, on behalf of the larger society, might create personal grievances which more easily induce the affected individuals to initiate a conflict at a later stage, (iii) later generations might think it is possible to get away with looting and atrocities since impunity is the historical experience -- a perception that lowers the threshold for initiating a conflict later, (iv) if the resulting distribution of goods and productive assets are perceived as unfairly distributed in the society at large, the “losing” segments of the population might take to arms at a later stage, (v) the longer term economic development might suffer due to a “quick and dirty” peace agreement since it is often necessary to “clean the air” in order to re-build the necessary trust between individuals that is needed to re-establish economic interaction. Punishment of perpetrators and restitution of property hence play important roles, even if the victims will not start another war if such punishment and restitution does not take place. The latter might be of such vital importance that cutting through with only a symbolic act of repentance is enough to keep on with business as usual.

On the other side, there are considerable resources to be saved in an “Amnesty and Pardon” agreement. First, the labour used to investigate the matter could be used for more productive purposes; secondly, the affected perpetrators would in the new state of affairs be most useful as they often possess valuable knowledge nobody else has; thirdly, productive assets will be optimally used as long as ownership status is not settled; and fourth, the possible creation of a new grievance as bona fide third parties might be adversely affected.

2.4 Pre-war vs. modern structures

The restitution of landed property rights implies a return to the pre-conflict structure of the rural society. This implies a risk of recreating an outdated society not fitted to the needs and preferences of a modern society, a risk that increases with the length of the conflict. The armed conflict might actually have speeded up a natural process of migration and property transfers that would have taken place anyway, and the current structure might have a higher potential for economic prosperity and wellbeing than the counterfactual situation without conflict. The cruelty of the armed conflict does not necessarily imply that the end result is bad. Furthermore, the destruction brought on by war forces the population to invest more than they otherwise would have done (at the cost of current consumption) and facilitates the coordinated change to modern technologies. The destruction of war hence represents a window of opportunity to break with the path dependence and thus build a new society.⁹ To illustrate: one does not reconstruct a bombed telegraph, one builds a broadband Internet connection instead. Without the war, the telegraph

⁹ Path dependence implies people take the given resource allocation and infrastructure into account when they invest. If these are destroyed by a war, and it is possible to start all over again, will it often be better to start somewhere else which is more in line with a new society, e.g. a community would resettle closer to a road with public transport rather than rebuilding on a more isolated spot.

would probably be the only medium of communication as it does not pay off to use e-mail if communication partners do not see a need to invest in a computer since the telegraph still satisfies their needs. The same applies to property restitution, as small-scale farmers have become less competitive with large-scale industrial farming in Colombia during the last 30 years. However, this does not mean that the victims should not be compensated in one way or another.¹⁰

¹⁰ An interesting thought experiment would be to give the victims the possibility of choosing between getting the same property back and a lump-sum compensation equal to the total cost for society for making this happen, i.e. including the cost of the judiciary system, the created macroeconomic inefficiencies, the possible implications for non-responsible third parties, etc. It is questionable whether the “sentimental” value is high enough to make people prefer the first option.

3 Historical overview

3.1 Semi-feudal class society

Colombia was the first country in Latin America to introduce elections and representative democracy. However, voting at the ballot box has rather been regarded as just a means to achieve power, both at the state and local levels, and throughout history the alternative of launching a war has equally been regarded as a legitimate tool. The specific feature of Colombia is the split in the population according to partisan politics, rather than class struggles and sector business interests. The first division was between Bolivarinos and the Santanderianos, the former wanting a central strong state and the latter a more decentralized weak state, a political division within the elite where business interests played a minor role. However, this partition later developed into the two political parties of the Conservatives and the Liberals where economic and class differences still played a minor role.

The political fight was not just about how to design the institutions of the country; it was also a fight for the spoils of the state. Using “greed” through appropriation of the state as an explanation seems to fit well in Colombia. A semi-feudal system in the countryside is the fundamental system. The powerful landlords had access to large numbers of peasants to fight for their cause, either as soldiers in war or through voting according to their will in the elections. These clientelistic connections also applied upward in the system. The landlords struck political agreements where support was given to political representatives against promises of future spoils. Furthermore, the fact that elections were not really secret made it easy for the landlord to control his employees or people who depended on his support or acceptance in one way or another. According to Baland & Robinson (2006) the ballot in Colombia made it possible to identify the individual’s vote as late as in the 1980s. Such pressure is one of the explanations of why local voting tends to be tilted either one way or another. One can still find voting patterns where nearly everyone in a village votes for the conservatives and in an otherwise identical neighbouring community the votes go to the liberals. The political affiliation of the elite is internalized by the population at large.

3.2 Land in democracy – linking politics and brute force

The control of land hence also implied control of votes, with the political rents to be harvested for the owner. However, what is the role of property rights in a country that lacks a strong central state able to defend the rights? Mainly it implies that an individual is only the owner as long as she/he can defend such rights against encroachment.

It became increasingly legitimate to expropriate land as spoils of war. The partisan political division implied that one had to rely on fellow landlords to protect one’s property, something which also legitimized the attack on property belonging to the

other side. President Rafael Núñez later said “In the 1876-1877 civil war there was already apparent a tendency to convert the upheavals into opportunities to dispossess the property of the defeated for the benefit of the victors” as cited in Bergquist (2004). Such “expropriation” has been common in the civil wars of Colombia as there has been a change in proprietors for an enormous amount of land each time. An estimated 400,000 parcels of land changed hands during “The violence” (civil war between 1948-58),¹¹ while the problem is nearly tenfold in the current conflicts since the official estimate is about 4 million hectares (assuming an average parcel is 1 hectare).

Notwithstanding, class struggles have become more important as the peasants started to accrue land themselves. A possible interpretation of the historical development can be as follows. When a feudal landowner completely dominates the population in a given area, it might be technically optimal to let each peasant family control a piece of land for home production of food just enough for family subsistence, and rather pay a radically low wage for what is done for him due to the moral hazard problem, i.e. the cost of controlling efforts in contract labour.¹² These rights became inheritable, and then perceived as private property independent of the large land owner. The radical land movement in the 1930s further fuelled the perspective of property rights for the ones who actually worked on the land, further making the traditional “land for work” approach to labour a risky approach for the landowners. They would rather change for “hired labour” or “low-labour intensive” technologies like cattle ranging and palm oil production in order to avoid the risk of losing the land. Changing relative prices on production inputs, e.g. reduced transportation costs of migrant labour and products, higher profits from land, capital and input intensive production, has probably made it less important to keep the workers on the farms. Additional elements are the reduced political rents from controlling the peasants who work on the land as voting has become truly anonymous, as Baland & Robinson (2006) have been able to demonstrate econometrically in Chile. From the viewpoint of the large landowners in a semi-feudal world, each war constitutes a window of opportunity to expel peasants that make claims on “his” property. A war is hence just a perfect smokescreen to evict surplus labour, or such eviction might be the purpose of the war itself.¹³

¹¹ Estimates/Estimations by Dr. Carlos Lamoine at Statistics Colombia on the basis of a large-scale sampling household survey with recall information in 1973.

¹² One variant is the often implicit deal made between the property owners and the peasants at the agricultural “frontier”. The peasants are left in peace to farm new land and enjoy the fruits of the soil for a given period of time, before the land is transferred to the landlord and the farmers have to move even further into the jungle. Such “deals” are not necessarily articulated, but are rather expected by both sides. It is possible to influence the deals with violence, something which seldom makes such handovers particularly pacific.

¹³ Such straightforward interpretation of land evictions narrowly misses the target in a semi-feudal world, since such an approach would also imply the bankruptcy of the labour-needing landlords. Furthermore, the FARC guerrilla is able to operate over large distances with minimal local support, a fact that undermines this popular perception of evictions of farmers (Gutiérrez Sanín and Barón, 2005).

3.3 A history of wars

3.3.1 Chronology

The Colombian society is characterized by a constant conflict, regularly erupting throughout the history into fully fledged wars and violence. This conflict follows two main dimensions which are often difficult to separate. One is the bi-partisan conflict between two sides where their political content is in fact rather close, but still gives rise to bitter competition, and the other is a more traditional class conflict between the landowners and the dependent peasants who actually work the land found especially in rural areas. Five periods in Colombian history stand out as particularly violent.¹⁴

1810-1814: The liberation wars from the Spanish colony, where various areas of Nueva Granada started to govern themselves, not only breaking away from the central authority in Bogota, but also smaller districts breaking apart from their regional capitals.

1839-1841: Immediately after independence from Spain at the Battle of 7. Boyaca August 1819, a conflict between the main leaders, Simon Bolivar and Francisco de Paula Santander, started to unfold with the “War of the Supremes”. Bolivar wanted a strong central state in alliance with the Roman Catholic church, while Santander later wanted a decentralized government, state control of education and civil matters and broadened suffrage (Wikipedia, 2006). The war ended with the construction of the two parties that has maintained/preserved the dominance of the Colombian politics until now, respectively the Conservative and the Liberal party.

1851-1871: The two parties fought a low-intensity conflict that broke into outright war several times. According to Sanchez et al. (2005) the historians count 54 incidences of civil war in this period.

1899-1902: The “War of a Thousand Days” started out as war between two organized armies, the liberal and the conservatives. However, after the Battle of Palonegro in May 1900, the war changed direction. Defeated liberals took to the mountains to fight a guerrilla war in central departments. With no control by the privileged party leadership, the peasants soon started to settle their (own) grievances against the landed aristocracy, burning and plundering the large estates. The conservatives on the other side organized citizens’ militias to defend the capital against the guerrilla attack on the capital. This decentralization of the armies led to horrible atrocities on both sides, and the total death toll is estimated at 100,000 people. The war ended when the main liberal army negotiated a surrender, and the guerrilla groups gave in “thanks to pragmatic doses of money, a pardon, and promises of government protection” as Bergquist (2004) states.

¹⁴ However, it is difficult to draw an absolute line between Peace and Violence in Colombia as illustrated by the following quote. ”There were 13 important periods of violent political conflict in Colombia during the first century of independence: 1810-1814, 1827-1832, 1839-1841, 1851, 1854, 1858-1863, 1876-1877, 1885, 1895, 1899-1902, 1905, 1922 and 1929. These conflicts were generally associated with intraclass contradictions with a few highly significant exceptions” from (Oquist, 1980). Working Paper 2009:119

1948-1958: “The violence” started with the murder of the Liberal presidential candidate Jorge Eliécer Gaitán, a champion of the poor who sprung up from the agrarian movements of the 1920-30 where small-scale farmers claimed land and invaded large estates on the agricultural frontier. Liberal and communist groups immediately took to the mountains to start a guerrilla war, while the conservatives responded by creating paramilitary groups, labelled “pájaros” (birds), to control the uprising. The bi-partisan situation, where each party had nearly full control in neighbouring districts led to reciprocal killings. The suppression kept on after the military coup d’état in 1953, before peace was settled with the formation of the National Front, a power-sharing agreement between the liberals and conservatives that lasted for the following 16 years. This peace agreement was based on several rounds where different groups were offered Amnesty and Pardon,¹⁵ with hardly any post-war investigation into the more than 200,000 deaths and unprecedented cruelty.¹⁶ The expulsion from land was a common part of the conflict in the countryside, and an estimated number of 400,000 plots changed owners during this period according to Strouss de Samper (2005). A committee appointed by the president was later nominated in order to work with the returning of the land to the original owners. However, its impact on the ground was limited.

1965-today: A few “independent farmer republics” did not surrender, but neither did these small communities in remote places actually cause any harm to the larger society. However, the military launched a major attack, and the escaping guerrillas reorganized and formed the Revolutionary Forces of Colombia (FARC) in 1965 based on the Colombian Communist Party. Other revolutionary groups joined in from different origins, e.g. the Cuban-inspired The National Liberation Army (ELN), in the mid 1960s, The Army of Popular Liberation (ELP) in the 1970s and the March 19 Movement (M-19) in 1979 as the most important. The conflict level was still rather low, until there was a sudden conflict escalation in the beginning of the 1980s when FARC and M-19 turned to illicit financing through taxation of the cocaine trade, extortions and kidnapping to increase revolutionary activity. The military, large landowners, commercial interests and cocaine mafia responded by creating paramilitary forces to fight back as the regular army was unable to quell the uprising. The spiral of violence has ever since been impossible to break. The FARC supported the launching of the “independent” political party Popular Union (UP) to take part in elections,¹⁷ but this party was dissolved in the mid-1980s when more than 3000 of their representatives had been killed, mostly by paramilitary forces. A similar fate happened to M-19. Their leader Pizarro survived 15 years in the jungle, but only a few months as a candidate for the presidency after laying down their arms.

¹⁵ In 1953 the armed forces were pardoned; in 1954, the liberal guerrillas in the eastern plains and finally liberal guerrillas and conservative paramilitary groups in the *central region* in 1958 were also pardoned according to Chernick (2003)

¹⁶ The bands often mutilated the dead bodies in specific ways to indicate who was behind the killings (Sanchez and Meertens, 2001)]

¹⁷ A parallel, though with an independent position, is the political wing Sinn Fein of the IRA in Northern Ireland.

3.3.2 Impunity as reward for the private war effort

The data from the survey on “The Violence” gives an interesting indication of a modernization process. The analysis of the data shows a high correlation between “losing parcel” and “migrating”, while there is no correlation between “fatalities” and “migration”. If interpreted as causal mechanisms, losing property and probably also the most important source of income, makes people migrate to the cities. On the other hand the loss of household members does not induce the rest to flee. This author has not been able to find similar quantitative studies from the ongoing violence and migration processes.

In a world with a strong commitment to protect a land tenure system, the judiciary system would settle conflicts and decide who the rightful owner is. In the weak central state of Colombia that lacks both a good property rights register and a military ability to enforce it, local political bosses decide the reality on the ground. The large landowners must hence possess their own military forces to protect their landed property. In times when the state itself is threatened, it also allows and encourages the creation of more aggressive private military armies. During “The Violence” such armies of so-called “pájaros” terrorized the zones where the liberal guerrillas operated. Today the regional para-military groups have delivered a fatal blow to the opposing guerrillas. The large landowners are considered the creators and financiers of such private armies. The dominant hypothesis is that this was done to fight back the immediate threat and extortions by the increasingly strong guerrilla in the 1980s. Nevertheless, such an approach is not contradictory to applying this armed force to evict small-scale farmers from the landowner’s own territory. There are some stories about how this has backfired for the landed aristocracy through ever-increasing demands for support and even land confiscation by the same para-military leaders themselves. However, this seems rather to be the exception than the rule.¹⁸

The evidence of state acceptance and state collaboration with the para-military forces is paramount for many conflicts during the last 100 years. The basic problem seems to be the strong regional opposition to a strong central state, which is in accordance with a typical semi-feudal society where local power lords actually make most of the decisions. The implication is a ridiculously small army compared to other Latin American countries, something which implies that the country has to rely on creating military forces needed to fight back challengers to the official power and society order in an ad hoc manner when needed. Land confiscations, drug smuggling and other abuses can hence be seen as an implicit remuneration for the services to the state; the implicit deal is that wealth accrued through such activity will not be withdrawn when the war ends.

¹⁸ A case study of the Medio Magdalena region finds little evidence of the para-military forces taking over land from their own initiators (Gutiérrez Sanín and Barón, 2005). However, there is little evidence on how and what land is actually confiscated, since the affected are afraid of retaliation if they take their case to the courts.

3.3.3 Impunity is the rule

The historical experience in Colombia seems to show that people walk away with all the property they garner/accumulate during wartime. Peace has actually never been accomplished by a unilateral surrender due to military weakness, but is normally negotiated with impunity as the major building block in the peace agreement. The seeming ease with which such expropriation of lands by the government is accepted, even by the people worst affected, is surprising to this author. My interpretation is that property rights to land are regarded as a right that has to be defended through physical power. The consequence of this tradition for the smallholders depends largely on the outcome of partisan politics and the economic strategy of the regional semi-feudal political bosses.

Furthermore, the fact is that land confiscated during previous violent episodes in Colombia has seldom been returned to the original owner after the peace accord. Such expectations of impunity for war crimes and land grabbing as spoils of war seem to have fuelled the current violent conflict too. When President Uribe launched the idea of demobilization of the paramilitary soldiers through the “Law of Justice and Peace” a specific deadline date for voluntary surrender was given. This offer immediately led to more land confiscations and an increase in the flow of IDPs to the cities as a result. It looks like the paramilitary forces were positioning themselves to get as much land as possible before the state could/would crack down on their activity. The initial design of the peace accord was such that the paramilitary leaders had to declare their stolen goods and property themselves. The public could protest against such declarations within three months, otherwise there would be no further persecution of the perpetrators. The latter would be impossible in practice, as the paramilitary still had the force to threaten anyone making such claims.

However, the law was found unconstitutional by the Constitutional court and stopped. As is common in Colombia, the judiciary system is bypassed by the political government and the reality is that none of the paramilitary leaders or soldiers has been forced to give back their confiscated land until now.

4 The difficult road ahead

The sheer magnitude of the land confiscation problem, an estimated 4 million hectares of land left behind by an estimated 3.5 million IDPs in Colombia over the last four decades, indicates that restitution of pre-war property rights is nearly an insurmountable endeavour. However, there is considerable pressure, both nationally and internationally, to embark on such a complicated process.

The IDPs are spread over the whole country, often with few links to their original lands. According to Deininger et al. (2004) only 11 per cent of them actually plan to return if the violence ceases. For the remaining 87 per cent, a similar monetary compensation would be more useful. This might still be possible to achieve through property restitution since the beneficiaries could choose to sell their properties immediately. Such transfers have been quite normal in Bosnia, where the allied forces used considerable time and money to re-establish the property rights to the original owners even though new ethnic/state lines were drawn after the war. A Muslim might get his property in a new Serbian-dominated area back, but might prefer to sell it since the reestablishment of the mixed area seems unlikely, and vice versa for a Serbian in a now Muslim-dominated area. This was probably only achievable because the allied forces had the financial resources to embark on such a process and furthermore the physical power to implement it on the ground. However, the same tangible result might have been accomplished through compensation, probably at a much lower cost for the allied forces. This approach was probably chosen in order to establish the “rule-of-law” and respect private property rights as the basic principle in the developing Bosnian society. The property rights restitution in the former East Germany was a similar scheme, where restitution of pre-communist properties became a symbol of the defeat of communism as a political system and hence changed the very mindset of the population in order to prepare them to become productive partners in the capitalistically united Germany. Secondary motives of changing mindsets might hence be just as important as the practical implications for those involved.

4.1 The economic and personal costs of moving back

In a restitution scheme finding the correct proprietor will probably be problematic. The country lacks a comprehensive property rights register, and especially the small-scale landowners have never had any property document to verify he or she is the owner. Several individuals might hence make rightful claims to a piece of land. Within the family, several individuals might claim the land, especially if there has been considerable time since they left the property. Nor were the property rights between families within a community/village clear-cut, since land might have been commonly owned or rotated using slash-and-burn technology to alleviate the decline in the natural soil fertility that results from continuous cultivation. Even in cases where there is no uncertainty about who was the owner before the violence started, the present occupier might not be the one responsible for the initial eviction. There has been a considerable rotation of IDPs within Colombia, where some IDPs might

have settled in the abandoned house and land of others. One might possibly think of restitutions as reversing this rotation of properties, not necessarily making anyone better off by returning to their old properties, but rather staying in the new ones. A special variant of this is the land taken by IDPs on the outskirts of the large cities in land occupations; would those have to be returned when they get back their original land in rural areas? The state property registries and juridical system has further issued title deeds on confiscated land, either unaware of the violent history behind the property claim or simply by corruption or being forced to do so. The property might have been sold to a third party who has obtained all the necessary papers. What rights do such bona fide land purchasers have, and in case they lose their rights, how will they be compensated since the original aggressor is seldom able to refund the money?¹⁹

With millions of Colombian IDPs fleeing mainly from the countryside, leaving an estimated 4 million hectares of farm land over the last four decades, the sheer magnitude illustrates the potential problems in the process of restitution in Colombia. First of all one must make the IDPs file their claims. These claims should then be recorded and thus judged. In the case of choosing a restitution scheme conflicts might arise when claims are made as there will probably be current users of the land that might claim the right. In a worst case scenario owners from previous tenure regimes will appear and claim their rights as explained by Fitzpatrick in the East Timor case (Fitzpatrick, 2000). How feasible a restitution scheme is when the new owners are paramilitary is uncertain. Some claim the historical baggage of the country does not provide evidence that this is possible.

Socially, moving back might be very complicated. Restitution often means moving back to nothing or to a village with deep psychological wounds in the people. In many cases one's old neighbours will not be there anymore. Some have found better livelihoods in the cities; others have ended up in another village, nearby or far away. In the aftermath of the armed conflict in Peru many of the IDPs who returned to their home villages also found that they had to build up more than their house. The social networks crumbled during the conflict. Often one has to live side by side with the aggressors, and one's closest relatives and friends might be far away. Besides building up the economic activity that feeds one's family, one must also contribute to building up new social structures. This is a slow and often painful process. In many cases people prefer to stay in the place they had fled to in order to save themselves from the high personal costs of moving back.

A compensation scheme implies larger flexibility as the IDPs often will be able to choose where to continue to live their lives. The resources needed to either (i) eventually go back and try to buy back lands that used to be theirs, (ii) move to another place to start all over again, or (iii) chose to stay where they, are differs among the IDPs. A compensation scheme allows for the possibility that one as an

¹⁹ The existence of several legal claims to the same property is especially prominent in countries with shifting political regimes, each issuing their own legal titles, like countries with a colonial past. East Timor is a typical example, where one plot of land might exist with different legal claims based on the four previous regimes and administrations, i.e. (i) pre-colonial times, (ii) Portuguese colony, (iii) Japanese WWII occupation, and (iv) Indonesian supremacy. What rights should be followed has become an issue of political parties in East Timor according to Fitzpatrick (2000)

IDP can freely choose where one wants to continue living and how one wants to spend the compensation package offered by the government.

4.1.1 Internal conflicts when moving back

A scenario where the IDPs move back to live side by side with old aggressors is traumatic and difficult and will in many cases erupt into some kind of conflict. However, one can also think of scenarios where a restitution scheme might create intergenerational conflicts. The old generations are given restitution while the young might be left out as they probably were not adults at the time of eviction.

Conflict might however also arise due to the nature of compensation schemes. Unequal and differentiated compensation could cause grievances as people will dispute who has a stronger case to receive compensation, and in cases where their physical losses shall be the determinant of the size of the compensation, whose loss is worth more.

4.1.2 The societal costs

It is impossible to imagine the counterfactual situation in Colombia without decades of conflict. A common trend in developing countries is the slow but steady change in the composition of the economy. The agricultural sector becomes less important in terms of employment due to the introduction of modern technologies. This gradual phasing out of the agricultural sector will lead to rural urban migration and a reduction in the rural population.

In Colombia years of violence have caused similar migration patterns even though the reasons for leaving the countryside are very different. However, returning to the more traditional small- and medium-scale agricultural sectors might act against a process that would have taken place anyhow at some point in history. Using the existing situation to allow for a modernization of agriculture might favour Colombia as a whole, even though it means that the state must take an active role in finding a place for the not-so-new rural inhabitants in the urban areas. This is costly, but the costs of maintaining a traditional agricultural sector might be even larger in the long run.

However, building “pro-poor “ institutions and securing a large population’s livelihood might be easier done in the cities than in rural areas though, due to the economies of scale in building schools, workplaces and stimulating markets through clusters. This might work as an incentive for the state to consider keeping some of the rural IDPs in the more dynamic urban areas.

5 Conclusions

Colombia's long tradition of giving aggressors impunity and the succeeding resurgence of violent conflicts is a (good) reason to question whether such a procedure is the right one to use in order to repair a society after years of conflict and division. Based on the historical background of the country it seems correct to claim that it is time to try a different strategy in order to prevent repetition. However, when such a large part of the population is hit, it is inefficient to use the state in order to collect taxpayer's money and thus pay out the same person's money as compensation.

Restitution on the one hand is a very costly affair as it is difficult to find the right owner of each land parcel. The outcomes of such a process should be dealt with cautiously due to the non-secure nature of property rights in Colombia in general as well as the often various changes of owners during the actual conflict. Having said that, at some point the state should make a statement to show that one cannot steal and plunder and get away with such actions during a civil war. On the other hand, there are some historical approaches that might be fruitful to hold on to.

In many cases it will be difficult to decide the question of guilt as well as who the real victims are. In such a setting it may be easier to seek collective solutions rather than individual disbursement of funds. On the other hand Colombian society has become more and more individualistically oriented, something that impedes the citizens from looking at collective solutions as a good substitute for individual disbursements. Because of this the Colombian state might opt for an individual scheme as the Norwegian state did for the Jews after the Second World War by giving them a standardized disbursement of funds, even to people who immigrated to the country after the war. This type of scheme reduces the transaction costs as one saves time on processes of estimating the extent of damage in each and every case – something which is both very costly and can possibly last several years.

It is also a paradox that despite 200 years of violent conflict in a decentralized semi-feudal country, Colombia is one of the most advanced economies and societies in Latin America. This contrast to the stable but stagnant development in the highly centralized Peru where the homogenous "white" elite in Lima in practice has quelled local development initiatives. A feudal power lord needs to create economic progress to be able to fight potential internal and external rivals, while a monolithic elite can agree on how to share the natural resources in peace. In the former, ordinary people die a violent death in public; in the latter, they die the anonymous death of malnutrition. What is worst is difficult to say.

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