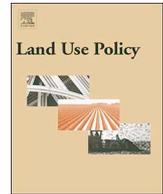




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Bread or justice - Land restitution and investments in Montes de Maria, Colombia

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ABSTRACT

In 2011, Colombia started a legal land restitution process whereby government institutions help internally displaced people (IDPs) reclaim land dispossessed after 1991 through the violent conflict involving the communist guerilla, paramilitaries and the army. The designated land courts normally covers voluntary sales at the going market price at the time of dispossession, presuming buyers took advantage of the IDPs' need for money and their low expectations of returning from their current sites of refuge. We study the rise and fall of a commercial cassava operation that started to buy land from IDPs openly in the Montes de María region on Colombia's Caribbean coast after peace returned in 2007. After losing several land restitution court cases, the company shifted from dairy cattle that required high investments to the less demanding, but also less productive, buffalo to minimize losses in case of future successful restitution claims. The land restitution law will probably be extended beyond the initial 2021 limit due to slow progress, thereby perpetuating the insecure property rights situation that hinders investments in agriculture.

1. Introduction

The rural population in Colombia suffered five decades of conflict between the left-wing guerrilla, paramilitary forces,¹ and the army. Caught in the middle, an estimated 6 million people, or 12 percent of the population, abandoned their homes and lands, becoming Internally Displaced People (IDPs) (CODHES, 2014). After Álvaro Uribe's governments (2002–2010) regained territorial control of the rural regions, the next government of Manuel Santos put assisting the victims of the conflict high on his agenda. Newly elected president launched Law 1448 of 2011, known as the Victims' Law, with land restitution as one of the main mechanisms for assisting and providing reparation to IDPs. The law and design of related institutions was based on the assumption that right-wing paramilitary forces had forced small-scale farmers at gunpoint to hand over their land. It would then be easy to identify perpetrators, confiscate the land, and then return the land to the original owners, thereby re-establishing respect for private property and making it possible for impoverished IDPs to return to the countryside and earn a living from agriculture.

The government created the state agency for land restitution, URT, to administer the process and investigate each case. The judicial system

would then decide, represented by an individual land judge if no other claimants to the land existed, and otherwise through comprehensive court proceedings. However, when IDPs started to claim restitution of their lost land properties, it became apparent that the process would be far more complex than anticipated. First, only a small proportion of the land has formal titles filed in the land registry, which is hence far from comprehensive in Colombia. The victims must hence claim their rights actively. Secondly, it was difficult to identify the perpetrators, as the general insecurity had often forced the rural population to leave the area. Thirdly, many IDPs did not intend to keep their rural land, and sold their rights in apparently voluntary agreements.

Sri Lanka, Bosnia-Herzegovina, Liberia and other conflict-ridden developing countries has similar experiences in defining and restituting land rights when peace return. However, unclear land rights are also a problem in countries with advanced institutions. Post-communist regimes in Central Europe gave limited importance to pre-communist ownership in the distribution of former state owned land and property. Even state expropriation in Western Europe has similar problems at hand, e.g. the military in Norway sell expropriated training fields at current market prices rather than returning the land to former owners.

We use the case study of Agropecuaria El Carmen de Bolívar

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¹ In Colombia, the term "paramilitary forces" refers to private armed groups formed to combat guerrilla groups in the 1980/90ies. Most of these demobilized during the first government of President Alvaro Uribe (2002–2006).

(henceforth: Agropecuaria), an agricultural Company that bought 120 land plots with a total of 6,500 hectares (ha) land in the Montes de María region, between 2008–2010. We investigate how the *de facto* transitional justice mechanism of land restitution, featuring restorative as well as transformative aspects, implied a change in land property rules that affected its business and willingness to invest. The analysis is based on two main sources of information: 14 interviews held with Agropecuaria representatives, state officials and restituted peasants, during our fieldwork in Montes de María (2013–2015); and 16 available restitution rulings that involve Agropecuaria as a part.

We argue that two main factors framed Agropecuaria's land purchases: perception of improved security in the region and the invitation to invest in the region made during Álvaro Uribe's Government; and land regulations that permitted land transactions. Then the government policies shifted from security issues to reparations concerns. Victims Law became an unforeseen risk for Agropecuaria to lose their investment in and on the acquired land. They had seen the rise of a business opportunity when paramilitary groups demobilized and Colombian army had defeated the local guerilla group. Openly, the company undertook massive purchases of land from IDPs and from current farmers, from both registered and unregistered land rights-holders, by offering the going market price, debt coverage, and assistance in finalizing the necessary processes of formalization. Later, the restitution agency challenged many of these transactions in court. Agropecuaria, however, claimed that the former owners had sold the to them voluntarily, although in a post-conflict situation free of undue pressure; further, that they had even been encouraged by the state to buy the land in order to create rural jobs that might induce IDPs to return.

We will now describe the background of Victims and Restitution Law, the conflict that give rise to land dispossessions, and how massive land sales took place in Montes de María Region. Next, we present Agropecuaria's case in tree subsections: project, security perceptions, and legal procedures.

2. Restitution and land rights in Colombia

The Dayton Agreement on Bosnia-Herzegovina restituted individual plots of land with medium success in an UN-led and financed process, whereas a similar process in Guatemala is been deemed unsuccessful (Huggins and Glebeek, 2009). In Rwanda and South Sudan, massive displacement and returns took place within a short period, with people returning to their original land without any subsequent government initiative for land restitution (Newhouse, 2017). Land restitution processes has otherwise taken place in cases of historic displacement or disenfranchisement of one ethnic population group by another, as with the late colonization areas in South Africa and the situation of indigenous groups in North America (Fay and James, 2009). In Sri Lanka, the government's preference for the ethnic Sinhalese majority made post-conflict land restitution for the Tamil minority difficult (Lindberg and Herath, 2014). In the former East Bloc of Europe, land and property rights were not restored after the demise of the Soviet Union in 1990, although some foreign citizens then regained control over property that had never formally been taken from them. Unruh (2014) describes government interventions during conflict that would facilitate land restitution and later return. Colombia has been a pioneer country in providing compensation to IDPs in the form of comprehensive restitution of their former properties, in line with the UN Pinheiro Principles on Housing and Property Restitution for Refugees, otherwise considered "soft law" in international agreements.

The intention of Santos government and the Revolutionary Armed Forces of Colombia (FARC) by signing their peace agreement was to end a social conflict that has been ongoing for some 50 years. Land conflict has long been a part of rural life in Colombia, as the state has seldom been able to register and defend land property rights (Oquist, 1980; Wiig, 2009; LeGrand, 1986). Through violence and conflict, people have lost and gained rights to land by defending themselves or opposing

others.

The increasing in conflict intensity and displacement in 1990 decade, led the Congress to pass Law 387/1997. Measures to protect abandoned land were first regulated and implemented in 2001. In the "individual route.." IDPs informed the authorities about their abandoned land. In the "collective route" a Local Committee for Transitional Justice (LCTJ) would define areas as at risk of future dispossession. Both types of protected plots were then included in the Unique Registry of Abandoned Farms and Territories (RUPTA) database and no transactions were allowed without specific permission from LCTJ, to prevent others from stealing the land.

Land abandonment and dispossession increased as consequence of displacement in the 1990ies. It became clear that the government was unable to protect the rights of the rural population. The constitution of 1991, popularly called the "Constitution of the Human Rights," only indirectly stated property rights to be one of the specified 41 fundamental rights (the right to life, not to be displaced, equality before the law, etc.). The constitution had defined a legal mechanism of *Tutela*, whereby those claiming to have been deprived of fundamental rights were to be given a speedy judicial process. Many IDPs filed *Tutela* claims for the protection for their fundamental rights, as associated with the guaranteed right to land and shelter. In 2004, the Constitutional Court (CC) reviewed the *Tutela* cases, and declared the situation of IDPs to be unconstitutional. They ordered the government to implement a list of measures, as per Judgment T025/2004 (CC, 2004). The response from President Uribe was slow and unwilling. In 2009, at the end of his government, the CC ordered the executive to provide better protection of IDP property (CC, 2009). In the same year, the Liberal Party presented a bill project aimed to give victims of the internal armed conflict comprehensive repair. Uribe's Government opposed to the project because of budgetary concerns, but also because recognized victims of State agents (Céspedes-Báez, 2012).

In 2010, newly elected President Santos, who had been Minister of Defense during Uribe's Government, challenged his legacy, and launched a legal project on land restitution as a direct response to the instruction of the Constitutional Court. At the same time, the Liberal party law project on victims' rights, was again presented to the parliament. The two initiatives were merged into one and were passed by the Congress as Law 1448 (the "Victims' Law") in 2011. Responsibility for land restitution was allotted to the Specialized Administrative Unit for Land Restitution (UAEGRTD, known as URT).² The focus of the Victims' Law is on the restoration of individual rights. In reality, the government faced a dilemma. The ponderation was between economic efficiency through monetary compensations and the satisfaction of punishing perpetrators, and restoring the self-respect of the victims through restitution of the exact same plot of land (Author1, 2009). The government chose the latter approach.

There are two possible explanations for this focus on judicial rights. The general perception at the time was that paramilitary commanders had coerced IDPs into abandoning and selling their land at gunpoint. Restoring property has not only been seen as a way to counter the injustice done to the original owners, but also as a way of punishing the wrongdoers (see Elster, 2004). Further, it prevents opportunistic war-mongering in the future by sending a clear signal to potential wrongdoers that they could not expect to keep their war booty (Author1, 2009).

The overarching argument for the law has been the victims' right to reparation. When presenting the project on land restitution to the Congress in 2010, the ministers in charge of the bill stated that the International Bill of Human Rights (which Colombia signed in 1966 and ratified in 1969) and the Constitutional Court prescribed land restitution as the form of reparation and compensation for wrongdoings

² The role of URT is defined in Articles 103–113 in the Victims' Law, with further details settled in government regulation.

committed against the victims (GoC, 2010). The ministers stated that the needs of the IDPs should outweigh any possible side effects of the policy. They noted explicitly that most IDPs would probably not return. They were also apparently aware of that many had abandoned their land without being threatened directly, that innocent secondary occupants, who themselves were IDPs, may live on and farm abandoned lands; that land rights could be sold voluntarily by the IDPs to neighbors as well as to agribusiness. Nevertheless, the law proposal saw all such transactions as being “contrary to the principle of good faith exempt of fault” when it concerned “buying land cheaply from a population escaping from the impact of terror” (GoC, 2010, p. 4).

The direct consequence of focusing on judicial reparations was that Victims and Restitution Law established that all past land transactions in zones affected by armed conflict are dubious. It presumed absence of consent or licit cause in all contracts entered after 1991 (art. 77 Victims and Restitution Law). Such seems obvious in contracts made between people representing the paramilitaries and IDPs, but less so in contracts with agribusiness entrepreneurs, neighbors and IDPs.

The Victims’ Law differentiates between property, possession, occupation, and tenure rights to land. The first refers to title deed in the name of the current owner filed in the public land registry; in the second a title deed is registered in another person’s name; and in the third case, the land-ownership has never been formalized even if the government’s requirements have been fulfilled. However, property rights cannot be said to be secure even in land in the first category, due to imprecise registration, forgery and improper processing on the part of the titling agencies.³ If such historic wrongdoing for a given property is uncovered, even a unknowing current owner not to blame can have his land confiscated by the state. The fourth category of land tenancy provides no rights to the IDP as the land actually belongs to someone else and the IDP has accepted this fact by not being the claiming to “*señor y dueño*” (lord and master).

The process involves three stages, as described in Unrelated Author and Author1 (2018). First, the URT makes an administrative investigation of the claim: pre-history and identification of the plot of land in question, claimants, dispossession, and opposition. Second, there is a judicial process, which is settled by an individual land judge if no opposition exists and by specially trained ordinary judges in formal court cases if there is opposition. Third comes the act of restitution, where the institutions hand over the land to the IDPs, accompanied by various types of assistance like production support, infrastructure construction, psychological help, etc., as specified in the court ruling.⁴

In its long-term 2010–2014 development plan, the government defined agriculture as an important source of economic growth (GoC, 2010). The plan predicts that increased demand for food worldwide will turn the underutilized lands of Colombia into an engine of economic growth (GoC, 2014a). The development plan 2014–2018 states that a durable and stable peace will require a transformation of the countryside. This includes guaranteeing land rights to rural producers; promoting social mobility, reducing poverty, and adjusting institutions. Further, the restitution process is conceived as a tool to promote access to land for the rural population (GoC, 2014a).

The government expected the process to be swift: quick combined redistribution and formalization of land rights would be possible, as identifying the perpetrators and IDPs would be simple; thereafter the beneficiaries could either start farming or sell their land to the most efficient farmers, with absolute tenure security. It is generally assumed

³ A large-scale rural survey undertaken by the Colombian Administrative Office of Statistics (DANE) in 2011 showed that only 21.5% of 1,123,162 farm-related households reported having formal rights to the land. An overwhelming 59.1% said they had informal rights, and the remaining 19.5% said they were tenants who rented land from others. (UPRA, 2012).

⁴ The parallel study of 205 restitution convictions in Montes de Maria has shown that the process of restitution has gone reasonably well, and that production support is being rolled out, but that hardly any work has been done on infrastructure (García-Reyes and Pardo-Herrero, 2016)

to be 6.5 million hectares abandoned land and thereby open for restitution claims, whereas the more conservative figure of 3 million ha was applied when the law proposal was presented. Nevertheless, the current figure of 80,000 restitution claimants is considerably lower than the estimated 460,000 households that have abandoned their lands (GoC, 2010). Up to December 2018, only 330,856 ha were restituted (URT, 2019). According to Thomson (2017), the low demand for restitution is due to fear of retaliation from the current occupants; moreover, potential claimants are hesitant about re-opening bad memories and past experiences that are often directly related to the land. If the program ends as planned in 2021, there will have been no tangible impact; if it continues indefinitely, tenure insecurity could be the result, because land rights will be permanently insecure (Gutiérrez, 2013).

The lack of secure property rights, to property as well as to intangibles (intellectual property rights), has long been recognized as a major obstacle to economic growth in developing countries (Acemoglu and Robinson, 2012). People do not dare to invest today, as they are not sure of reaping the benefits of the related increase in productivity tomorrow. Why sow if you might not be the one to harvest? Land rights are notoriously insecure in Colombia, as government institutions do not work properly, especially not in the countryside (Robinson, 2016). The government is aware of land underutilization, as the law proposal stated that only an estimated 4.3 of the 22.1 million hectares of high-quality agricultural land is being farmed properly, with the remainder either lying fallow or being used for low-productive extensive cattle farming (GoC, 2010).

3. Investments in Montes de Maria region

The region of Montes de María consists of 15 municipalities near the Atlantic coast of Colombia. There is a huge agricultural potential, thanks to fertile land and access to ports for export. However, the region has been severely affected by the armed conflict. It became central in Alvaro Uribe’s Democratic Security Policy (2002–2010) and a benchmark of the army’s triumphs against the FARC. This area turned into an emblematic area of reparation policies for later victims. Colombia’s first land restitution ruling was handed down in this region in 2012, and the delivery ceremony was presided over by President Santos, accompanied by the Minister of Agriculture and representatives of the international community (El Universal, 2012).

However, the pendulum has swung back and forth over centuries, with peasants acquiring access to their own land, and then losing it again. During the colonial period and the first years of the republic, relatively autonomous indigenous and Afro-Colombians groups populated the Montes de María region. At the beginning of the twentieth century, with the expansion of farming, many of them started to work as paid laborers or sharecroppers. Then the agrarian reform of 1968 that modified the 1961 land law changed the production relations associated with these farmers, opening for a “return to the land” for the peasants, along with active social mobilization (Fals Borda, 2002). By the end of the 1970s, some 70% of the families in the region had land of their own. However, the weakening of government support to peasant organizations led to a reversal in adjudications and a return to wage employment for larger units. By 1985, only 214 of the 780 community enterprises that had benefited from the reform were still operating: “The great majority of the coastal farmers finished under the same conditions as the rest of the Colombian smallholders: having insufficient land and depending on the labor migration wages to sustain the precarious level of subsistence” (Zamosc, 1990: 162). Towards the end of the 1980s, a new cycle of demonstrations led to adjudication of entire haciendas in some municipalities and, with it, a return to the free peasant lifestyle.

The latest swing of the pendulum came in the 1990s and early 2000s, now because of the armed conflict, with 67 massacres⁵ in that

⁵ There is no objective criterion for defining “massacre.” However, there is widespread consensus in Colombia as to three main characteristics: the killing

region that left 487 victims between 1991 and 2000 (García-Reyes and Vargas Reina, 2014). According to the Unique Victims' Register (RUV), the violence resulted in more than 200,000 IDPs, or close to 60% of the population, in the four municipalities that constitute the Montes de María region. El Carmen de Bolívar municipality had the second-highest number of registered IDPs in the country (Acción Social, 2010, pp. 26–29).

The two periods of Álvaro Uribe's as president have different characteristics. The first is denominated Democratic Security (2002–2006) and the second Democratic Security Consolidation (2006–2010). The main objective of Democratic Security was to guarantee the rule of law through the control of the national territory in three phases: security recovery, security keeping, and security consolidation (Indepaz, 2011, p. 51). In September 2002, the Government declared Montes de María a Zone for Rehabilitation and Consolidation. The aim of the declaratory was to gain military control over territory by increasing the number of police and military, and furthermore by creating contra-guerrilla troops in rural zones (ODDHCo, 2008, p. 32). At the same time, Uribe initiated negotiations in order to demobilize paramilitary forces grouped under Colombia's United Self-defense Forces (AUC). These two measures led to the demobilization of paramilitary front Heroes of Montes de Marías in 2005.

The Democratic Security Consolidation policy initiated as a transition policy from security recovery to security consolidation. The main policy during this phase were the National Program of Territorial Consolidation, and their principal mechanism was the Center for Coordination and Integral Action (CCAI), a coordination scheme of State agencies for the social recovery of territories aimed at improve basic social indicators, reduce violence, spur economy development and building government capacity (Fundación Ideas para la Paz, 2011, p. 20)

Once the military recovery of the zones with public order problems had been achieved, in addition to emergency actions, it was necessary to guarantee an integral presence of the State, to deal with social and economic problems, as well as to create new institutions, relationships and processes to facilitate integrated recovery. In some regions, the emphasis was on facilitating the return of the population and the re-establishment of conditions necessary to guarantee their permanent presence. (GoC, 2014b: 19)

Montes de María was declared as Transition Area after the army killed the local FARC commander in October 2007. This implied the progressive diminution of the military effort and the increase of the presence of National Policy and judicial system, "at the same time, the presence of public and private institutions is becoming effective to promote social and economic development, starting with the immediate needs of the population" (Indepaz, 2011, 59). The transition-to-consolidation strategy followed six lines: emergency humanitarian assistance, justice and security, social development, economic development, governance, and territorial planning and property rights. (Indepaz, 2011; p. 60–70).

The main CCAI project in Montes de María was to induce the return of the internally displaced populations. Since 2007 up to 2010, CCAI spent more than 3 million USD in social projects including seven return processes, two of them in El Carmen de Bolívar municipality. Nevertheless, between 2008 and 2010 only 2,536 people returned to four municipalities, slightly less than 2% of the total population that had abandoned the region during the armed conflict (Daniels, 2011). The difficult to make IDPs return was foreseen by Álvaro Uribe. In December 2007. During a private meeting with Antioquia business men

(footnote continued)

of two or more victims under similar circumstances of place and time; an element of cruelty; and the victims being defenselessness (Nieto, 2012: 98). The Policy and the Victims Unit of Colombia considers the killing of four or more people as a massacre.

he expressed his concern about the slow consolidation of peace in the region, using statements as "but land was empty..", and "...employment would have to be generated.." (El Tiempo, 2010; El Espectador, 2011).

One of the first, and main, land buyers in the region, who was present during the meeting with Uribe, said that these words encouraged him to "find the way to invest in the region". In 2008 he and his partner in the company Tierra de Promisión (Promised Land) signed a contract with the Forest Investment Fund of the Colombian Government to plant 4000 ha. Eucalyptus trees, a venture intended to employ 280 people (El Tiempo, 2010; El Espectador, 2011, personal interview, March 21, 2014). The land rush had started. Our interviews reveal a widespread phenomenon, in which the entrepreneurs' interest in purchasing land for their projects corresponded with the villagers' desire and need to sell. The Land Registrar for the region describes what happened during 2008 and 2010 as follows,

"And here, lines of villagers with their land titles under their arms to sell them, they were long, they went around the corner, that was a huge stir, that was a total stir, and well, people fighting for being the first one, and then those men came and bought." (personal interview Land Registrar El Carmen de Bolívar, March 2014)

Several other respondents spoke of long lines of peasants in front of the Cachacos' (highlanders') offices waiting to offer their properties for sale (personal interviews El Carmen de Bolívar's Secretary of Government, March 20, 2014, El Carmen de Bolívar's Inspector Policy, June 23, 2014, El Carmen de Bolívar's Mayor, March 20, 2014). In 2011, a report of the Superintendent for Registry and the Notaries (SNR) showed that business entrepreneurs from several regions had bought more than 27,000 ha in Montes de María (SNR, 2011). Even the Colombian Institute for Agrarian Reform (INCODER), the official entity in charge of agrarian reform processes, had bought 528 ha of land according to the SNR report.

4. Agropecuaria El Carmen de Bolívar

4.1. The project

The El Carmen de Bolívar municipality (El Carmen from now) was a major producer of black tobacco in Colombia until the 1990ies. Local and public images of the town described it as prosperous place, a popular song sung by many Colombians says: "Beloved Carmen, land of loves, there are light and dream under your sky, and spring is always in your ground, Carmen land of pleasures, of light and joy, Carmen land of mine". Sadly, economic prosperity ended because of the internal armed conflict. La Tairona, the last tobacco company in town, closed its doors in 2006. It's warehouse is now Agropecuaria's property. The first of several interviews that we held with its manager took place there. He accepted to talk with us three years after SNR published its report on massive land sales in Montes de María region. Agropecuaria was one of the companies accused of dispossession. News and media had covered the study many times using the expression "dispossession traps" (personal interview, Agropecuaria's manager 20 march 2014).

Agropecuaria arrived to El Carmen in February 2008. By then, five members of the Dairy Cooperative of Antioquia (Colanta) which is the largest dairy cooperative in Colombia, and one of the brands with most consumer recognition in the country, decided to start growing bitter cassava as a substitute for corn as cattle fodder. They came to El Carmen almost by accident, looking for lands appropriate land for the cassava operation. The land in the main operation center of Colanta in Córdoba department was not suitable.

"We had no intention of coming here. We were invited to San Benito Abad near Sampués, but we didn't like those lands, and they [real-estate agents] let us alone there. We arrived here by accident because we were looking for land where we can grow bitter cassava, because they let us alone, we came here to meet El Carmen, we saw that people were coming to see the lands because President Uribe was inviting people to invest here in order to consolidate the peace in the region, we saw that

the lands were high quality lands, and people were used to grow cassava, they knew how to do it. We grew 200 ha of cassava during the first year [...] we hired 822 workers all of them with social security services" (Colanta representative, [Tribunal de Tierras Cartagena, 2014](#), personal interview March 20, 2014).

The operation was intended to be organized as follows. Colanta would buy milk from Agropecuaria, who then organized the delivery combining their own production with the associated small-scale producers under guidelines of Colanta. The project was to be developed as a cooperative with small-scale farmers in the municipality of El Carmen. The initial project encompassed a total of 6,000 ha in a rotation scheme as part of their milk delivery operation. In this cooperative/outgrower model, the partners are obliged to sell their production to the society. Under Colanta framework, anyone wishing to become an associate must take a three-day course, and commit to producing a minimum of 200 liters a day. The price of milk reflects the quality of the product, so the Cooperative promotes the construction of community storage tanks. All members are entitled to education grants, student insurance, housing loans, investment and technical assistance. Thus, contributions to the Cooperative are returned in subsidies, services, and a stable purchase price (personal interview March 20, 2014; report from visit February 5, 2015).

The Agropecuaria's partners vision was one of a national cooperative of cassava producers, they calculated that 400,000 ha could be grown in Colombia territory, and that Colanta would be capable of buying all the production ([Tribunal de Tierras Cartagena, 2015b, p 30](#)). However, it turned out that few small scale farmers wanted to take part in project. So Agropecuaria started to buy land instead. By December 2012, they had purchased 120 parcels and a total 6500 ha. Of these, 20% had originally been acquired through the land reform, while 80% were private estates owned by small farmers and medium-sized landowners (interview 20 March 2014, visit report 5 February 2015, reserved source). According to Agropecuaria's lawyer, between 2008 and 2012 the company had invested 720,000 USD in the region ([Tribunal de Tierras Cartagena, 2013b, p. 6](#)).

The size of investments and land sales demonstrates that Agropecuaria was rather confident that their project would become a success. The peasant selling their land had a rather contrary negative view on the future of farming in the region. This difference in expectations between the parties made massive land transfers from small holders to the company possible.

4.2. A consolidated territory

When Agropecuaria arrived in El Carmen, the municipality was in transition to security consolidation and they were confident their business model would succeed. President Alvaro Uribe actively promoted such "investor confidence" during his governments. In the later land restitution trails, the defense attorney of Agropecuaria's several times pointed to the fact: "State presence through the National Plan for Consolidation, and the investor confidence that it generates, made Manuel Medina [Agropecuarias' manager] invest his assets in buying lands" ([Tribunal de Tierras Cartagena, 2013a, p. 27](#)) and "during the government of President Álvaro Uribe there was implemented the National Plan for Consolidation in the frame of the National Policy for Democratic Security, Montes de María was a zone for priority intervention, considered as an area in transition to consolidation" ([Tribunal de Tierras Cartagena, 2013b, p. 5](#)).

The consolidation argument was not mere rhetorical. Agropecuarias' manager interpreted the presence of the Army in the zone as a sign of security, while for others it signaled that the conflict had not ended. In one of the trials he said,

"There was a lot of army, a lot of security, there was the Infantry. Wherever you went, you saw a lot of security measures, and the zone was in the process of consolidation. In fact, one of the mechanisms to know how security was, to talk to people, see the lands, and I saw the

people very secure with the Army and the Infantry, I really saw security.." ([Tribunal de Tierras Cartagena, 2014](#)).

This sense of consolidation was shared with States officials. El Carmen's Government Secretary described the situation as one of progressive conquer of spaces:

"You had to go there [El Carmen's rural area] hugged to the knife. To invest, to put one assets in a conflict-ridden zone, one had to be a little mad. But, when they [the investors] came here, the zone was, the last bastion was Martin Caballero [FARC's Commander] when he was defeated, the zone was recover" (personal interview, Government Secretary, March 20, 2014).

Carmen's Notary and Mayor expressed themselves in similar ways: "...and then they [investors] came here, after Front 37 [FARC] disappeared because of Martin Caballero's death, and at the national level every one made an invitation to return, and to whoever would like to invest to invest (personal interview, Notary, July 10, 2014), "much progress had already been made, Martin Caballero, who was the FARC's Commander by then, was death, authorities had reported that territory was free form paramilitaries. "(personal interview, Mayor, March 20, 2014).

Agropecuaria's manager and State officials' perception of the security conditions in El Carmen was in general not shared by the local inhabitants, who had a rather contrary feeling of insecurity. This was mainly due to their experiences and their knowledge of ongoing processes where very different, one of the restituted peasant said to the judge: "I thought I would never go back, that peace would never be restored, and because I was afraid of those groups that threaten us, I thought it would never be as before.." ([Tribunal de Tierras Cartagena, 2016a, p. 29](#), [Tribunal de Tierras Cartagena, 2016](#)). Another peasant said us, in a very illustrative way that,

"I tried, two times I tried to get back to those lands. The first time was when I cleared some lands, there were combats and there were, I don't know how many paramilitaries death, 40. And I tell you the true, in those lands, one goes and find the skulls of those people. I passed through those lands once, I went to a place called Bedoya, a there were ... it was four years later, and you could still see the skeletons whit their *machetes*, I saw two skeletons." (personal interview, peasant selling land, 10 July 2014).

The activity of Agropecuaria even seemed suspicious to another peasants, whose did not understand why the company was buying lands there at all,

"One couldn't work, what a weird world, one who was born and raised in this lands, you see people from outside coming and buying lands, what is going on? This made me think, people from other lands arriving at the place from one is leaving, I thought that, what is going on?" ([Tribunal de Tierras Cartagena, 2016, p. 30-31](#))

Economic disadvantage and cost of making land productive again after ten years of abandonment influenced the peasants to sell their lands to Agropecuaria. In several of land restitution cases analyzed, they also said they sold their lands because they needed to,

"Then I said, I'm taken by economic crisis, with debts, and paying rent, with everything. Then I said, I'm going to sell my little plot, but that was because I was taken by despair. Then, somebody told me, listen, XX can buy you land. OK, I said." ([Tribunal de Tierras Cartagena, 2014](#)).

"We left that [the land plot] alone, and because people said lands were never going to go up in price, nobody wanted those lands. I was afraid, everybody left because a neighbor was killed, when we wanted to return they said that they don't want anybody there, then I never went back, that is when I sold the land [...] because people said they didn't want those lands, not even for free." ([Tribunal de Tierras Cartagena, 2013a](#); [Tribunal de Tierras Cartagena, 2013b](#)).

Even though Agropecuaria's manager seemed conscious about peasant conditions, the overarching argument in defense of the company in restitution trials was that they followed all due legal procedures. This behavior was in fact according to law, because until Land

Restitution Law it did not exist any mandatory prohibition to buying land from IDPs.

4.3. Legal procedures

Real-estate purchase in Colombia involves three stages: (i) the pledge to buy and sell, whereby the interested party agrees to acquire the property for a fixed price, and the counterpart agrees to deliver it under the conditions established in the contract; (ii) deeding, whereby the formal transfer of ownership from the seller to the buyer is recorded; (iii) registration, whereby the new owner is registered with the deed in the history (tradición) of the property in the Office of Registry of Public Instruments (ORIP). In order for the transaction to reach the final stage, various requirements must be fulfilled: the property must be registered in the name of the seller; there must be no outstanding debts on the seller side; and the buyer must make full payment of the agreed price. In addition, if the property falls within the land-plot regime, authorization from INCODER is also required. In the case of protected land, the seller must obtain authorization from the Transitional Justice Territorial Committee.

Agropecuaria engaged a lawyer to assist sellers in meeting these requirements. The company also hired a surveyor to delimit the land to avoid the usual inconsistencies in the sizes indicated in the deeds and land registry. The price would depend on the size, condition, and location of the land. The final payment would be the agreed price minus payment of the debts incurred for loans and taxes (interview, Agropecuaria lawyer, June 22, 2015). Due to the prevailing conditions of informality, most sellers had to conduct various procedures and clarifications. Several interviews indicated that verbal agreements between seller and buyer, or in cases of inheritance, had been the normal solution until then. Even if a deed existed, it was seldom registered in ORIP. The costs associated with the registration and payment of debts have left the formalization of the lands half-completed, a gray area in which transactions are conducted among peasants.

"It happened in most INCODER land titles cases. Here all of us are responsible [...] when I asked them [peasants] why you did not register your deed? No, because I did not know we had to. I tell you that this is 99% of the cases. Because they didn't know it was possible, and then only 1% said: I knew it, but I didn't have the money." (personal interview, Land Registrar, July 10, 2014).

"There were many peasants who didn't register their deed, I don't know if it was because they didn't know or because they didn't have the money [...] But that didn't only happen in the rural zone, here in El Carmen de Bolívar, in the town center, there are a lot of people that have their houses, those old family houses, they still do not have deed, a thing that is totally informal, because in the past people valued verbal contracts." (personal interview, Inspector Policy, June 23, 2015).

The armed conflict made such informal sales arrangements even more common. With the courts largely inactive, there were no records of debts. In other cases, there were embargo orders and release authorizations that had never been executed (interview, Agropecuaria lawyer, June 22, 2015). That made it difficult to verify payments in the case of future conflicts (personal interview Agropecuaria's lawyer, June 22, 2015). The case of a mortgage credit in a restitution case is illustrative. The judge ordered to call the public bank of the agrarian reform (Caja de Crédito Agrario) to the trial, because the claimant of the land plot in question had a debt with it. Fiduprevisora, the institution responsible for Caja de Crédito Agrario assets after their closing in 2007, answered that they did not have any proves of the mortgage. For that reason and in attention to the Law [...] the judge ordered the mortgage be canceled (*Tribunal de Tierras Cartagena, 2015a, p. 28; Tribunal de Tierras Cartagena, 2015b, p. 83*).

In other case, the claimant wanted to pay their debt, but banks and displacement policies made it impossible,

"I asked for 150,000 pesos in 1987. I paid four dues, and then a summer came, bad days, and I couldn't harvest. Later, it was the debt

relief plan, and well, I went, but my debt was not covered because it was meant only for debts larger than 4 million pesos. I got angry and didn't pay. I regretted later, but there was not anything I could do. Then I get hold of a million pesos and I wanted to pay, but the debt was no longer a million pesos, it was \$1.2 million pesos, because of interests. Well, but I have one million, now it had to be \$1.2 million, I took my money back [...]. Later it was Law 111, one had to pay only capital without interests, but my debt was too little, it had to be bigger than ten million pesos, mine was less than two million. Then I said, well, when the debt is increasing, but there is always a chance to pay. I'll keep working, but then displacement came." (personal interview, April 1 2015).

Agropecuaria bought 120 parcels, of them 11 were under the land-plot regime, which is the set of rulings associated to awarded plots under the agrarian reform process. The beneficiaries must be poor peasants without land, or without enough land to support a family; no one can be awarded more than what is needed to support a family (UAF); the land is to be paid by the beneficiary through a loan provided by the state; the term for the repayment is set at 15 or 10 years; and the plot must be occupied and used for agricultural production. In addition, the owner can only sell the awarded properties if they fulfill various requirements. These include total payment of the debt with the state acquired by the first owner and they can only sell to INCODER, or to other peasants without land if they have prior authorization from INCODER. *Gutiérrez and García-Reyes (2016)* have shown that these rules, in interaction with the political system, serve to promote dispossession, rather than preventing it.

During the land rush period, two agrarian reform laws were in force (Law 160/1994 and Law 1152/2007) and two consecutive institutions were in charge (until 2003, Colombian Institute for the Agrarian Reform, INCORA; later the Colombian Institute for Rural Development INCODER). This meant differences in the time needed to complete the procedures, requirements, responsibilities, and interpretations,

"Then Law 1152/2007 came. That Law reformed INCODER, and land-plot regime too, they were no 15 years anymore, they were 10 years only [...] Law said once 10 years had passed since land allocation, people was free to sell them. That meant that A, B, o C could sell to D without problem." (personal interview INCODER official, July 10, 2014).

All the 11 properties under the land-plot regime that were bought by Agropecuaria were allotted more than 10 years before the transactions. This was a recurring statement made by it's lawyer during the land restitution trials, and during our interviews, which is related to the, by then, grey zone of accumulation of Family Agricultural Unit (UAF). These units are defined as the amount of land that a peasant family need to provide form themselves, and to produce surplus for replacing tools and animals. The UAF size in Montes de María Region is about 25 ha. The land plot regime establish that no one can be the owner of more than one UAF. Nevertheless, the general interpretation of the norm was that once the time established by the law has passed after adjudication (15 or 10 years), the land plots could be sold to anyone under any condition, as one INCODER official told us:

"Law allows that passed some time, those lands can be sold to anybody, being subject or not of agrarian reform. Somebody says that it is not possible, but no law says that land plots acquired under agrarian reform must remain in land reform regime, but after established time has been passed, they can be sold to anyone if the State doesn't buy it. This is a void that the law has, and that no law had regulated in order that all those lands acquired for social programs can be forever under those programs, and for land selling could be for people who do not have lands or for poor people only. This is an open debate, because if it was like somebody says, that law limits property forever, there can be no accumulation by capital producers, transnationals, or by national big capital." (personal interview, INCODER official, May 7 2014).

Agropecuaria was careful in this respect, in all transactions of land under the land-plot regime. Their lawyers assisted the seller to ask for

authorization from INCODER, even when it was not mandatory,

“They asked for selling authorization to INCODER because there was a prohibition in the land allocation resolution, but they made clear that those prohibition was no longer mandatory because more than 15 years has passed since adjudication until the purchase.” (Tribunal de Tierras Cartagena, 2014).

“Seller offers the land in sale to INCODER, and received their authorization. Then, having accomplished all legal requisites he expresses his will to sell in the deed, which were registered in the Land Register, in Carmen de Bolívar.” (Tribunal de Tierras Cartagena, 2015b, p.15).

The protective measures added further procedures, 67 of the purchased properties were under protective measures, which make transactions concerning such protected properties conditional on official authorization to lift the embargo (interview, Agropecuaria lawyer, June 22, 2015). In 2001, Colombian government made it mandatory to obtain a sales permit from the Local Transitional Justice Committee for sales of property protected under the “Imminent declaration of risk of forced displacement by violence” and registered in RUPTA. These measures were intended to guarantee that property under protection was sold due to improper violent threats. This implied that land transactions are subject to verification, but not forbidden,

“The protective measure is an annotation that State makes through Local Transitional Justice Committee, in order to Land Registrar Office refrains from register land sales before Committee authorized it. For instance, if I want to sell a land, which is in a protected zone, what I have to do is to ask permission from the Committee to sell it to given individual or just ask permission to sell. Then, they study the case, because they are a filter, and they authorize the purchase.” (personal interview, local civil lawyer, March 27, 2015).

As a rule, these measures must be listed in the certificate of registration issued by the ORIP. When this happens, the owner must request the Local Committee for Transitional Justice permission to sell their lands. However, in some cases, entries were included after purchases were recorded. That entailed requesting an *a posteriori* survey and the issuance of a new deed,

“At the time when the pledge to buy and sale was made, there was no prohibition limiting its sale, but when deed was made, it was refused because there was a protective measure from Zambrano’s Committee for Transitional Justice. The authorization was granted because sellers took pertinent actions in front of the Committee (Tribunal de Tierras Cartagena, 2016a, p. 4). In other cases, clear answers to requests were not provided, leaving transactions in lim” (interview, Agropecuaria lawyer, June 22, 2015; interview Public Records Registrar of El Carmen de Bolívar, July 10, 2014).

Things proceeded slowly because the Committee decided against granting permits to lands located in zones targeted for the restitution process:

“The [land] that is in restitution, we are not going to deal with it, because they [the URT] will think that we are taking sides. Since restitution was not related to the sales permit, people could sell today and request restitution tomorrow. They have until 2021 to request.” (Interview, Secretary of Government of El Carmen de Bolivar, March 20, 2014).

5. A new scenario

The first investigations into the land purchases by Agropecuaria started in 2011. The superintendent for Registry and the Notaries (SNR), the official entity responsible for the registration of real estate in Colombia, presented a report on the legal status of land in the Montes de María region. Based on a legal study of land transactions, the SNR concluded that there were several procurement irregularities and that purchasers had employed legalistic strategies to circumvent these requirements (SNR, 2011). Such strategies included authorization resolutions post-dated after the deed of sale; deeds of sale initially rejected because they lacked Committee authorization, but which

included a post-dated authorization; resolutions indicating incorrect names; authorization resolutions authorizing sales to several different persons; segregation or incorporation of properties; authorization resolutions not in line with formal requirements; award resolutions issued after the INCODER authorization; resolutions issued by INCORA but registered under the name of INCODER; and sales conducted under Law 1152/2007 (SNR, 2011).

Up to date, there are 16 rulings of Land Tribunals concerning Agropecuaria’s land purchases, which involve 19 land plots and near 489 ha. Of them, the court ordered restitution in favor of the claimant for 17 land plots, only leaving two plots to the company. At the start, the cassava project had seemed prosperous. Agropecuaria abandoned this approach of several reasons, some are only partly related to the restitution process. First, it proved impossible to contract the necessary 90 employees for planting they needed. Young people preferred other types of labor, and the work would be too heavy for the older people who had more farming experience. Second, the cattle started to die after eating the toxic plant *Mascagnia concinna* (locally known as *mindaca*, “cattle-killer”). Third, the price of corn fell, making the cassava offtake agreement with Colanta economically unsustainable. They stopped the cultivation of cassava, and buffalo were brought in to replace the cattle (personal interview, Agropecuaria’s manager 20 march 2014, report from visits February 5, 2015).

Agropecuaria could have chosen to clearing the land of the poisonous plant, continued with dairy production, and persist in their cooperative model, but it would be a costly alternative that ran counter to the risk of losing the land as created by the land restitution process (personal interview Agropecuaria’s manager, March 20, 2014; report from visits February 5, 2015; Tribunal de Tierras Cartagena, 2014). So, in this case, what land restitution reduced the willing to invest in an economic decay zone in times when reactivation was needed. As Agropecuaria’s manager expressed, “I would not invest in lands in this region, not even if they gave them to me for free” (personal interview, Agropecuaria’s manager, March 20, 2014)

6. Conclusions

After World War II, European countries conducted swift court cases for wartime profiteers, in order clarify property rights as a necessary basis to reconstruct the society and economy (Elster, 2004). It was important to avoid the World War I experience of slow economic progress that fed discontent and thereby war mongering. In Colombia, slow progress in the formal rural economy has brought similar undesired effects. Cocaine production has tripled in the course of few years as small-scale farmers have poured into former FARC-held territories after the rebel group’s taxation ended. Violence increases as criminal gangs fight for territorial control. The weak rule of law in many rural regions has led to threats to and killings of community leaders in general and restitution claimants in specific that obstruct criminal activity. Ocampo (2014) gives an example of such community leader that was killed when she organized the reclaim of land originally handed out by the paramilitary to what they perceived as “their peasants”.⁶

Unfortunately, agricultural investments remain low even today. Small-scale farmers lack funds, medium/large sized operators lack secure property rights; and the new laws of industrial agriculture on idle state land that would facilitate large operators and multinationals has still not been implemented. How can Colombian policymakers solve land-restitution issue to both secure victims’ rights and deal with the need for investments? Monetary compensations or redress through receiving alternative land on which there are no competing claims to the original owners, can give current users, both agribusiness and second

⁶ The irony is that the paramilitary this way could conduct defacto land reform through confiscating larger properties, and then splitting up the land to hand out plots to small scale farmers who were loyal to the paramilitary cause.

occupants who are often IDPs themselves, incentives to produce and invest (Wiig, 2009). Considerations of public moral might still require confiscation of land in cases where the current owner is the evident perpetrator, although compensating for the investment to improve the property after the eviction had taken place. The revenue from sales of such properties can finance the purchase of land to the IDPs, or simply a monetary compensation for the loss. The perpetrator would then lose stolen land, while retaining invested money that might have a legal origin. The claimant would recover the pre-displacement position rather than benefiting from the efforts of others in repossessing improved property. Separating land values from investments is especially important at the agricultural frontier where the costs of necessary land improvements may exceed the land price several times, as with palm cultivation and intensive cattle-holding in the poor soils of open savannah in the Los Llanos region (Wiig, 2017).

IDPs are entitled to claim land restitution until 2021. Any bona-fide new purchase and investment remains risky, as historical wrongdoings by former “owner” dispossessioners as well as title frauds, may entail losing the land. Agropecuaria has stressed that loss of reputation through being exposed as “displacers” soon frightened their partners away, due to the detrimental effect on other business activities. Such contagious reputation effects are even worse for multinational companies that otherwise possess the essential capital and knowhow necessary to boost yields on low-productive land in Colombia.

How can these problems be remedied? An ex-ante purchase/investment government investigation into the history of the land could certify the good intention of the investor, in case skeletons should fall out of the cupboard at a later stage. Paying compensations to potential claimants that might appear later is tolerable – whereas direct accusation of involvement in Colombia’s notorious violence and atrocities would be disastrous for any serious company. Such government investigation and “certification” would prevent bad outcome for the investor.

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