BREAD OR JUSTICE: LAND RESTITUTION AND INVESTMENTS IN COLOMBIAN AGRICULTURE

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1: Introduction

The rural population of Colombia has suffered in the five decades of conflict between the left-wing guerrilla, paramilitary forces[1], and the army. Caught in the middle, an estimated 6 million, or 12 percent of the population, were forced to abandon their homes and lands in the countryside, becoming Internally Displaced People (IDPs) (CODHES, 2014). Assisting the victims of the conflict rank high on the political agenda, once the state regained territorial control of regions. Newly elected President Santos launched Law 1448 of 2011, known as the Victims' Law, with land restitution as a main mechanism for assisting and providing reparation to the IDPs. The law was designed based on the underlying premise that right-wing paramilitary forces had forced small-scale farmers at gunpoint to hand over their land. It was expected to be easy to identify the perpetrators, confiscate the land and return it to the original owners, thereby re-establishing the respect for private property, and making it possible for poor IDPs to return to the countryside and earn a living from agriculture.

The government quickly set about implementing this *de facto* transitional justice mechanism by creating a state agency of land restitution, URT, to administer the process and investigate each case. The judicial system would then decide the case, represented by an individual land judge if no other claimant existed, and otherwise through court proceedings. However, when IDPs started to claim restitution of their lost lands, it became apparent that the process would be far more complex than anticipated. First, only a small share of the land is formally titled and there is no

complete registry of land in Colombia. The claimants hence had to prove their rights. Secondly, it was difficult to identify the perpetrators, as the general insecurity had often forced the rural population to leave the area. Other penniless IDPs searching for a way to survive would later settle on idle land and start farming. Thirdly, as IDPs found other sources of income in the towns and cities, many had no intention of keeping their rural land, and sold their rights in apparently voluntary agreements.

Each case required time and human resources from the administrative agency and judicial system in separate evaluations, resulting in a slow and resource-consuming process. Of the estimated reclaimable 6.5 million hectares of land, the courts had settled cases for only 187,000 hectares as of June 2016 (URT, 2016). Even though the system has become more efficient and its capacity has gradually increased, the huge backlog of claims reduces tenure security for the current landholders and thereby their willingness to invest in further production. In addition, the restitution process has disclosed many irregularities in the registration of land rights in general. Banks have responded by refusing to accept rural title deeds as collateral for loans.

In this article, we analyze how the land restitution process has influenced investment decisions in the Montes de María region of Colombia's Caribbean coast. This region holds special significance for Colombians because of the atrocities committed against the civilian population especially by the paramilitary forces, and was therefore chosen by President Santos himself to be among the first to be included in the restitution process. Comprehensive fieldwork with qualitative interviews and surveys of institutions, IDPs, NGOs, and the business community has

shown that the local investment boom in agriculture after the state regained control of the region from the paramilitary in 2005 flopped after the restitution process started in 2011. Many agribusiness investors who had bought land directly from IDPs in what the judiciary system now considered dubious transactions lost their rights to the land. More importantly, the land restitution process entailed the risk that all land ownership rights might be challenged in the future by restitution claims based on historic wrongdoings, whether known or unknown to the current landholder. In addition, making new investments would raise land values, thereby attracting rightful as well as unwarranted restitution claims in the future.

Agricultural business companies saw opportunities arise as peace returned in the region. In open campaigns, they undertook massive purchases of land from IDPs and from current farmers, from both registered and informal land rights-holders, by offering money, debt coverage and assistance in finalizing the processes of formalization. Later, IDPs challenged many of these transactions in court, claiming dispossession in the restitution process. The current owners, however, claimed that the land had been voluntarily sold to them, in a post-conflict situation free of undue pressure; further that they had even been encouraged by the state, so as to create rural jobs that might induce IDPs to return. However, the judges have held that no sales based on the need for cash because of the conflict should be considered "voluntary," and have until now sided with the IDPs.

We identify several agricultural businesses that bought land in the region, who have later lost in restitution cases and then stopped investing in the land. They feel there is a high risk of losing also other plots of land, as new claims might be made in the future. One example is the company

Agropecuaria El Carmen de Bolívar (hereafter *Agropecuaria*), which bought 120 different plots of land in the area, a total of 6500 hectares, for cassava crop and dairy operations. They also intended to buy milk from various independent small-scale milk producers in the region. Today, the cassava idea is history; and the dairy operation has been cancelled, the cattle replaced by less investment-demanding and less labor-intensive buffalo – all this impeding progress in the agricultural sector, which was intended as the foundation for growth in the government's economic development plan (GoC, 2010).

2: Restitution and insecure land rights in Colombia

The peace agreement between the Santos government and the Revolutionary Forces of Colombia (FARC) will end a social conflict that has been ongoing for some 50 year. Although the conflict is often said to have started with the creation of the FARC to defend small-scale farmers against government confiscation of their lands, land conflict has always been a part of rural life in Colombia, as the state has never been able to register or defend property rights (Oquist, 1980; Wiig, 2009). Using physical force, people have gained, and lost, rights to land by defending themselves or opposing others.

Neither did the new constitution of 1991, which is popularly called the "Constitution of the Human Rights", introduce individual property rights as one of the defined 41 fundamental rights (the right to life, not to be displaced, equality before the law, etc.). However, the new constitution defined a new legal mechanism of *tutela,* whereby those who claimed to have been deprived of

fundamental rights were given preferential and speedy judicial process. With the growing intensity of the conflict at the time, many IDPs filed *tutela,* claiming for the protection for their fundamental rights, mainly live, as associated to the guarantee to land and shelter. The increased attention to displacement led the Congress to pass Law 387/1997, with measures to protect abandoned land, first regulated and implemented in 2001. In the "individual route," IDPs informed about abandoned land in a consultation with the authorities of land under explicit protection. In the "collective route," a Local Committee for Transitional Justice 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: no transactions allowed without specific permission from the Committee, to prevent others from stealing the land.

As conflict intensity and land dispossession increased after the turn of the century, it became clear that the government was unable to protect the rights of the rural population. In 2004, the Constitutional Court (CC) reviewed the *tutela* cases dealt with and declared the situation of IDPs as unconstitutional, ordering the government to implement a list of concrete measures, as per Judgment T025/2004 (CC, 2004). The response from President Uribe was slow and unwilling, so the CC in 2009 ordered the executive to provide better protection of IDP property (CC, 2009).

The newly elected (2010) President Santos launched a legal project on land restitution as a direct response to the instruction of the Constitutional Court, in parallel with a parliamentary law initiative on victims' rights. 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. To our knowledge, there has been no reference to economic benefits or costs for society in general in the public debate on the land restitution part of the Victims' Law.

There are two possible explanations for this one-sided focus on judicial rights rather than economic consequences. The widespread impression at the time was paramilitary commanders had coerced IDPs into abandoning and selling their land at gun point. Whether the land was then left idle, or was sold to agribusiness, the benefits were deemed private and immoral. Restoring property is seen not only a way to counter the injustice done to the original owners, but also as a means of punishing the wrongdoers (Elster, 2004). Furthermore, it is seen as important to signal to potential future wrongdoers that they cannot expect to keep their war booty, to prevent opportunistic warmongering also in the future (Wiig, 2009).

The right to victim reparation has been the overarching argument for the law, not economic considerations. However, it appears that the proponents were aware of problems that might arise, problem with indirect costs for others and society at large. When presenting the law 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 ordered land restitution as the chosen form of reparation and compensation for the wrongdoings committed against the victims (GoC, 2010). The needs of the IDPs should outweigh any possible negative side-effects on the policy on society, as specified by the

ministers. They noted explicitly that most IDPs would probably not return even if land were restored to them, that innocent secondary occupants who themselves were IDPs now lived on and farmed abandoned land, or similarly by family and friends, that land rights had been sold voluntary by the IDPs to neighbors as well as agribusiness, etc., and that some sales took place at gunpoint – but the law proposal saw all such transactions as being "contrary to the principle of good faith principle" when it concerned "buying land cheaply from a population escaping from the impact of terror" (ibid, p. 4). Whether "cheap" meant higher than the going market price at the time, or whether the selling IDPs were desperately in need of cash to establish themselves in their new situation, was to carry no weight in URT's future investigation or the ruling of the land judges: the IDPs win nearly all cases against opponents. As a transitional justice mechanism, the only consideration is whether the sellers were affected by the conflict in a way that might have forced them to sell the land. Whether the agreed price was high or low compared to market prices at the time or assumed value in times of peace is not held to be a relevant argument.[3] In our parallel study of 205 settled restitution cases with a post-court settlement survey (García & Pardo 2016, García & Wiig, forthcoming), we found that the opposition being buyers or other claimants had been given partial rights in only two of the 70 cases. Of those, 20 had in fact still not been able to reclaim their land – which would indicate a certain lack of public interest in restoring IDPs rights in practice.

The lack of secure property rights, to property as well as to intangible ideas (intellectual property rights, IPRs), has long been considered the major obstacle to economic growth in developing countries (Acemoglu & Robinson, 2012). People do not dare to invest today, as they are not sure of reaping the benefits of increased productivity tomorrow. Why sow if you might not be the one

to harvest? Land rights are notoriously insecure in Colombia as the government institutions do not work properly, especially 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 remainders either lying fallow or being used for low-productive extensive cattle farming (GoC, 2010). The low productivity of prime agricultural lands is indirect evidence of land tenure insecurity.

The Victims' Law differentiates between property, possession, occupation, and tenure rights to land. With the first, there is a title deed in your name at the public registry; with the second category, a title deed registered in another person's name; and the third case the landownership has never been formalized even if the government's requirements have been fulfilled. Only a small proportion of the land is within the first category, but even holdings are insecure due to imprecise registration and not at least forgeries and undue processing on the part of the titling agencies that does not necessarily hold up to court scrutiny.[4] The fourth category of land tenancy gives no rights to the IDP as the land actually belongs to someone else and the IDP has accepted this fact by not acting as "*señor y dueño*" (lord and master).

The government probably underestimated the adverse effect of the land restitution process on investments, as they had expected the process would be swift: quick combined redistribution and formalization of land rights would be possible as the perpetrators and IDPs would be easy to identify, and thereafter the beneficiaries could sell their land to the most efficient farmers, with absolute tenure security. In reality, however, the administration costs of the process have proven

to be close to the value of the land itself. In five years only 187,000 hectares were restituted, indicating that the program will end as planned after 10 years, but without any tangible impact, or that it will continue indefinitely, with tenure insecurity as the result (Gutiérrez, 2013). The process involves three stages, as described in Garcia-Godos and Wiig (2014). 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 settled by an individual land judge if no opposition exists and by specially trained ordinary judges in 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 ordered in the court ruling.[5]

In their long-term development plan the government has 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, and the government has declared it intends to facilitate this change. Their second development plan (2014-2018) states that a durable and stable peace will need an integral transformation of the countryside. This includes, guarantee land rights to rural producers; promoting social mobility, reducing poverty, and adjusting institutions. In the document, the restitution process is conceived as a tool to promote access to land to rural population (GoC, 2014). However, it actually hindered the agricultural growth, and the transformation initiatives, in various ways: (i) Current secondary occupants are probably more willing and more able to farm than are IDPs now living in urban areas and not intending to return. An ironic twist is that the current occupants may themselves be IDPs who are entitled to land in another municipality that has not yet been included in the

restitution process and who thus have no possibility of returning, (ii) Unproductive restituted IDPs do not sell the land after the two-year time limit, because they await production subsidies that might be higher than the value of the land itself, (iii) About 60,000 restitution claims remain to be processed (URT 2016), (iv) Anyone farming unclaimed land is in fact in a judicial limbo until 2021, as restitution claims might still come in – perhaps indefinitely, if the deadline for filing restitution claims is extended.

The amount of future restitution claims to expect is unknown. The government took 6.5 million ha. as the best estimate, while the more conservative figure of 3 million ha was applied when the law proposal was presented. Further, the current figure of 80,000 restitution claims is considerably lower than estimated 460,000 household that should have land that was abandoned (GoC, 2010). Whether the remaining potential claimants will come forward is not known, but the government has been considering closing some URT offices which have been unable to locate any more claimants within their allocated region.

The risk of restitution claims is of course lower in areas not affected by the violence. However, URT and the other land-related state institutions investigating the history of the land have found considerable irregularities in land transactions and land transactions in general. All property rights are questionable, as nobody can be sure that their land is properly registered. The problem is not just institutional weaknesses in implementing the law, but also that such laws are often seen as encroachments resulting from the urban-focused central government's poor understanding of rural realities. Especially the restriction to one Family Agricultural Unit (UAF), which differs

between location and productivity of the land, as per the law of 1961, is perceived as unjust and not in line with the needs of the rural population. A smallholder, who has inherited from an ancestor who cleared all the land, but did not formalize the property, will be entitled only to the UAF share of his inherited land. Large-scale agricultural producers may have bought several UAFs from initial beneficiaries of state land even if mergers were forbidden. They cannot conduct industrial agriculture on small units if they are supposed to achieve the growth expected by the Ministry of Agriculture.

Furthermore, there may be many entitlements of UAFs where falsified documents have been issued to non-existent or non-entitled property holders, as well as encroaching on other people's land. Lastly, their rights may in fact be only informal, as state had never processed any claim for that land. For instance, cattle ranchers on the eastern plains used to make private agreements among themselves on borders to be registered as "possession rights" by the local notary, and the document defined as a "possession deed" was accepted by banks as collateral for loans. When these irregularities came to the attention of the public, in 2013 the state agency INCODER declared it would investigate the history of all large land properties. Banks immediately stopped financing agribusinesses that use any type of land-right title as collateral, including registered property rights entered in the land registry. Investment in agriculture stopped overnight and has not yet recovered.

There are reasons to believe that the state probably turned a blind eye to shady deals and irregularities in land transactions as a way of inducing growth in the agricultural sectors. The

government's sudden interest in investigating land rights might be instrumental and coincide with their sudden need for state land that could be redistributed to the rural landless or land-poor population. A *de facto* comprehensive land reform is part of the peace accord between the government and the FARC guerrilla. Much of the 3 million ha. that will be distributed to rural people who give agriculture as their main occupation, but who have little or no land is actually farmed today by others who will lose their rights to the land, even if these are presumed to be state vacant lands (baldíos). Most current landholders now find themselves under threat, as "fool-proof" non-fraudulent land certification hardly exists, due to the historic institutional weakness of the state.

Colombia has been a pioneer country in giving compensation to IDPs in the form of comprehensive restitution of their former properties following the UN Pinheiro Principles on Housing and Property Restitution for Refugees, otherwise considered "soft law" rather than an absolute criterion in international agreements. These principles are based upon the premise that none fact could legitimate the dispossession or the illegal acquisition of IDPs and refugee's lands, houses and properties. Nevertheless, the accomplish of its mandate could implies tensions between peace and development. The success or failure of Colombia's restitution program may well influence decisions made in similar situations elsewhere in the future. The Dayton Agreement on Bosnia-Herzegovina induced similar restitution of individual plots of land with medium success, in a UN-led and financed process. A similar process in Guatemala has been deemed only a relative success (Huggins & Glebeek, 2009).

3: Land purchases in Montes de Maria 2000–2010

The region of Montes de María consists of 15 municipalities near the Atlantic coast in the north of Colombia. It has access to ports and a huge agricultural potential. However, it has been severely affected by the armed conflict. This region became a central point of Alvaro Uribe's Democratic Security Policy (2002–2010) and a benchmark of the army's triumphs against the FARC. This turned it into an emblematic area of reparation policies for later victims. In fact, the country's first land restitution ruling was given in this region (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). The history of this region shows a swing of the pendulum, with peasants acquiring rights to land ownership, and then losing them. During the colonial period and the first years of the republican, this region was populated by relatively autonomous indigenous and Afro-Colombians groups. At the beginning of the twentieth century, with the expansion of farming, many of them started to work as laborers, sharecroppers, or wage-earners. Then the agrarian reform of 1968 that modified the land law of 1961 changed the production relations associated with these farmers and gave way to 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 individual wage-earners or day-workers. By 1985, only 214 of the 780 community enterprises that had benefited from the reform were left. "(T)he 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 brought the adjudication of entire haciendas in some municipalities and, with it, a return to peasant life.

The last swing of the pendulum came in the 1990s and 2000s, this time because of the armed conflict. Between 1991 and 2000 there were 67 massacres[6] that left 487 victims (García Reyes *et al.,* 2015) and caused the displacement of more than 200,000 people in the Montes de María, a figure close to the 60% of its population according to The Unique Victims' Register (RUV). By 2010, four of the municipalities in the region were among the 100 with the most displaced population in the country; El Carmen de Bolívar, the most populous, was the second largest (Acción Social, 2010, pp. 26–29). There were three rural processes associated with forced displacement mostly induced by paramilitaries during this period: (i) permanent abandonment of the lands; (ii) properties purchases and sales by businesspeople from other regions of the country, and (iii) ownership transfers among the peasants themselves (García Reyes, Ochoa, Pardo & Zableh*,* 2015). In this article, we focus on the second group. These purchases and sales show ways of doing and rationalities related to the weakness of the assignment of property rights by the Colombian government, while also indicate the magnitude of the difficulties facing the land restitution process.

4: Investment period 2008–2011

The year 2005 saw change in the dynamics of the conflict in Montes de María. That year, the paramilitary group in the region demobilized, after negotiations between the umbrella

organization United Self-Defense Forces of Colombia (AUC) and the government. Then, in 2008, the army killed the local FARC commander. These events resulted from implementation of Alvaro Uribe's Democratic Security Policy. This consisted of a set of measures: delimitation of the Montes de Maria as a Rehabilitation and Consolidation Zone in order to recover military control (2003), creation of the Center for Coordination and Integral Action (CCAI) to promote development in the territories recovered (2004), and creation of the National Program of Territorial Consolidation (PNCRT) in 2007 with the aim of achieving social recovery of the territory.

> Once the military recovery of the zones with public order problems was carried out, 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 (PNCRT, 2014: 19).

The policies conducted were successful, but in 2006, Uribe expressed concern because the recovery of the area was certain but the peasants were not returning. For this, he said, employment would have to be generated. Thus, he sent a public signal that encouraged some businesspersons to invest in the region (El Tiempo 2010). At the same time, the CCAI encouraged peasant return processes: this resulted in 2536 people returning to four municipalities

between 2008 and 2010, slightly less than 2% of the total population that had been expelled (Daniels, 2011).

The first business undertakings were made by Alvaro Echeverría, partner in the company *Tierras de Promisión*. In 2001 he bought 3000 ha. of land from one of the important local land owners. Then, in 2005, bought an additional 4000 ha., through a local intermediary. Although this was when the conflict was particularly intense, his purchases had the support of the Colombian army and other government institutions (interview, Alvaro Echeverría, March 21, 2014). Then, in 2007, Echeverría signed a contract with the Forest Investment Fund of the Colombian Government to plant 4000 ha. of eucalyptus, in a venture that would employ 280 people (personal interview, March 21, 2014).

The death of the FARC commander in 2008 attracted new investors, several of whom were known to Echeverria and the business elite of Antioquia (personal interview, March 21, 2014). At this point the government again encouraged “the public” to invest in the area. In a meeting with local residents, the then Minister of Agriculture expressed concern about the obstacles represented by the protection measures that worked counter to the intentions of the investors, and proposed to overcome them so that entrepreneurs could take their businesses there (La Silla Vacía, 2011; El Heraldo, 2011). Our interviews show us a widespread phenomenon, in which the entrepreneurs’ interest in purchasing corresponded with the villagers’ desire and/or need to sell. In several of interviews, mention was made of long lines of peasants in front of the "cachacos" offices, waiting to offer their properties for sale. Among reasons were pressures for debt

collection on the part of the state, and the cascade effect. According to several interviews, and from the court documents, peasants specifically noted the pressure for sales as the other neighbors sold and the fear of *de facto* confiscation of their properties if they refused.

5: Land restitution starts

The first official questioning of these land purchases came in 2011. That year, 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 region. Review of the records showed that businessmen from several regions, from the department of Antioquia in particular, had bought 422 properties in Montes de Maria (SNR 2011), see table 1 below. Even the Colombian Institute for Agrarian Reform (INCODER), the official entity in charge of agrarian reform processes, had acquired 528 hectares.

Companies	Properties	Ha
Agropecuaria Carmen de Bolívar S.A.	157	8,618
Alvaro Ignacio Echeverría Ramírez	79	6,294
Cementos Argos S.A.	78	6,032
Agropecuaria Tacaloa S.A.S	43	1,380
Arango Botero	34	870
Consorcio Agroindustrial del Norte S.A.	2	841
Agropecuaria Montes de María	8	727
Mar de Tiguas S.A.	3	722
Invequímica S.A. Invesa S.A.	9	699
Amauri Rafael Peniche Jimenez	6	537
INCODER	3	528
Total	422	27,248

Table 1: Number and area of agricultural land purchased in Montes de Maria region by acquiring company (SNR, 2011)

The SNR found that 155 of these properties had been awarded and that their sales did not met the requirements of the land-plot regime (*régimen parcelario*) (SNR, 2011). In addition, 167 of the purchased properties were covered by protective measures. The land-plot regime is the set of rules associated to awarded plots under the agrarian reform process: the beneficiaries must be poor peasants without or with not enough land to the familial production; no one can be awarded with more than one plot (UAF); the land will be paid by the beneficiary with a loan provided by the state; the term for the payment of the loan will be 15 years; the plot must be occupied and used for agricultural production. Also, it makes the sale of the awarded properties conditional on a set of requirements: these include total payment of the debt acquired by the first owner with the state; and sales only to INCODER, or to other peasants without land, prior authorization of INCODER. Elsewhere (Guitérrez & García 2016) we have shown how these rules, in interaction with the political system, actually served to enable dispossession, rather than preventing it. In addition, they acted as incentives for the peasants to keep their transactions informal. On the other hand, the costs associated with the registration and payment of debts left the formalization of the lands half-completed, a gray area in which transactions between peasants occurred.

Protection measures make transactions concerning such protected properties conditional on official authorization. In 2003, the Colombian government made it mandatory to obtain a sales permit from the Territorial Committee for Assistance to the Displaced Population, if the property was protected under the "Imminent declaration of risk of forced displacement by violence" and registered in RUPTA. These measures were intended to protect the rights and lands of landowners, possessors, occupants, and holders who were at risk or who had left their property because of the violence. In the case of homeowners, the aim was to prevent transactions without

proper consent. For occupiers and tenants, the point was to make public the existing circumstances concerning the lands.

The SNR (2011) concluded that there were various procurement irregularities and that purchasers had used legal strategies to overcome these requirements. Among them are: authorization resolutions post-dated after the deed of sale; deeds of sale initially rejected because they did not have 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.

An issue not reported by SNR in its document, was the acquisition of more than one awarded plot by one person. In terms of the land-plot regime, no one can own more than one Familiar Agricultural Unit (UAF). This means that *the facto* accumulation of UAFs which took place in Montes de María was, in principle, forbidden. In one ruling, related to a *tutela* made by a group of peasants which had the will to sale their plots to the Agropecuaria Tlacaloa company, the Constitutional Court made its point on this respect. In 2008, the peasants request permission from the Local Transititonal Justice Committee to sell their lands to Agropecuaria Tlacaloa. The Committee denied the petition because the buyer was intended to acquire more than one UAF. In response, the peasants alleged the right to due process because INCODER had previously

authorized them. In its ruling, the Constitutional Court considered that agrarian reform measures are aimed to grant land access to rural workers which have no land. In this sense, they are a social structure reform tool oriented to specific beneficiaries, and serves to a social aim that is contrary to the *latifundio* (CC 2011). Nevertheless, it has not been the illegality of agglomeration of UAFs the core aspect considered by restitution judges in their rules, but the bad faith of the acquisitions.

In the described scenario, the transactions held in Montes de María during the period analized, began to be termed "dispossession." With the implementation of the Law of Victims and Land Restitution, some of the negotiated properties were claimed by the sellers. In fact, several of the resultant rulings refer to SNR's report (SNR 2011) as evidence of the illegality of the transactions. As of July 2015, there had been 302 restitution judgments in Montes de María of which 18 involved agribusinesses, in which agropecuaria 8 cases Agropecuaria El Carmen de Bolívar.

6: The case of Agropecuaria El Carmen de Bolívar

6.1: The project

In 2008, five members of The Diary Cooperative of Antioquia (Colanta) – the largest dairy cooperative of Colombia – founded *Agropecuaria El Carmen de Bolivar* (from now Agropecuaria) in order to produce cassava, as a substitute for corn as the raw material for the cattle fodder. Between 2007 and 2008 the price of corn had risen due to the biofuels boom, which was why they wanted to replace it with cassava[7]. In addition to cassava cultivation, milk

production was planned as a secondary business. The initial project was to buy 200 hectares to produce seeds that would allow planting of 1000 hectares of cassava a year, with a perspective of 6,000 hectares in a rotation scheme: 1000 ha. for cattle, 4000 for stubble and 1000 for cassava, with two years fallow time. The cassava would be an exclusive business of the partners of *Agropecuaria*, whereas dairy production would be an extension of Colanta. The first year's production was promised for sale to the Cooperative. To start the project, a loan from a private bank was applied for.

Dairy production would follow the cooperative model: each partner would have to sell the milk produced to the Colanta, or be expelled. Anyone who wanted to associate had to take a three-day course, commit to producing a minimum of 200 liters a day and make a contribution of one day of production for 56 weeks. The price of milk is based on its quality, 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, the contribution to the Cooperative is returned in subsidies, services, and a stable purchase price (interview March 20, 2014; report, visits February 5, 2015).

By June 2014, *Agropecuaria* had purchased 120 farms covering 6500 ha., of which 20% or about 1000 ha. were covered by the land-plot regime. The remainder were private estates owned by small and medium-sized landowners, including also some local landowners. However, the project faced several problems. They had expected to hire 90 employees per hectare for planting, but found that young people did not want to take on those jobs, and any experienced older farmers

people who were interested were already too old; the cattle began to die after eating *Mascagnia concinna* (locally known as *mindaca* or *cattlekiller),* a plant toxic to cattle; furthermore, the price of corn fell; and the agreement reached with Colanta was economically unsustainable. Moreover, the cooperative model did not thrive. Thus, they stopped cultivating cassava, and brought in buffalo to replace the cattle. The alternative to clear the land of the poisonous plant, which would be costly, was discarded because it ran counter to the land restitution process. Thus, they stopped cultivating cassava, and brought in buffalo to replace the cattle (interview 20 March 2014, visit report 5 February 2015, reserved source).

6.2: Complex procedures

Real estate purchase in Colombia involves three stages: (i) a promise to buy and sell, in which the interested party agrees to acquire the property for a fixed price, while the counterpart agrees to deliver it under the conditions established in the contract; (ii) deeding, in which the formal transfer of ownership from the seller to the buyer is recorded; (iii) registration, in which the new owner is registered in the history or tradition of the property. In order for the transaction to reach the final step, a set of requirements must be fulfilled: the property must be registered in the name of the seller; it must not have outstanding debts on the seller side; and the buyer must make full payment of the agreed price. As mentioned, if the property is within the land-plot regime, the authorization of INCODER is also required. In the case of protected land, the seller must request and submit the authorization of the Transitional Justice Territorial Committee.

Agropecuaria engaged a lawyer to assist sellers in meeting these requirements. It also hired a surveyor to delimit the grounds against the usual inconsistencies in the sizes indicated in the deeds and adjudication resolutions. The final price would depend on the size, the condition, and the location of the land. The final payment resulted from the agreed price minus payment of the debts incurred for loans and taxes (interview, Agropecuaria lawyer, June 22, 2015). Due to conditions of informality, these steps of support by the buyer are common and may involve several procedures and clarifications. The agrarian reform processes provided some peasants with land, but were not successful in achieving formalization. From several interviews, we found that it was common to receive the land in adjudication, but not to register it with the Office of Registry of Public Instruments (ORIP). It was not usual to pay property tax either: there are incentives within the political system that serve to make this situation the norm, given the antipathy that tax collection generates among voters.

The armed conflict in the country made such informal sales arrangements even more common. With the courts, largely inactive, for example, there were no records of the debts already paid. In other cases, there were embargo orders and release authorizations that had never been executed (interview, Agropecuaria lawyer, June 22, 2015). In addition, regulations and institutions were uncertain. During this period, there were two laws in force (Law 160/1994 and Law 1152/2007) and two institutions in charge of agrarian reform (until 2003, Colombian Institute for the Agrarian Reform, INCORA; Colombian Institute for Rural Development INCODER, later). This caused differences in times needed to complete the procedure, requirements, responsibilities, and interpretations, which were added to complicate the scenario. Thus, for example, someone who had received a title from INCORA and wanted to legalize it in 2008 could not because the

institution now responsible was INCODER. In the interpretation of the local registrar the process was no longer viable because of the change in the institution in charge (interview Cecilia Torres, July 10, 2014). With the land tax, the municipality used unbanked payments, to avoid collecting the money in its embargoed accounts[8]. That made it difficult to verify such payments in the case of future conflicts (interview with Agropecuaria, June 22, 2015).

The protective measures added additional procedures. 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 to remove the measure. However, in some cases, entries were included after purchases were recorded. That entailed requesting an *a posteriori* survey and to issuing a new deed. In other cases, clear answers to requests were not provided, leaving transactions in limbo (interview, Agropecuaria lawyer, June 22, 2015; interview Public Records Registrar of El Carmen de Bolívar, July 10, 2014). This slowness was because the Committee decided to refrain from granting permits to lands located in zones targeted for the restitution process:

> The [land] that is in restitution, we are going to discard it, because they [the URT] will not think that we are taking sides. Because nothing has to with the restitution issue with the sale permit, because the person can sell today and tomorrow request restitution, they have until 2021 to request. (Interview, Secretary of Government of El Carmen de Bolivar, March 20, 2014)

We were able to access a random sample of the document folders of the transactions of 29 properties for the 120 land purchases by Agropecuaria. They all show differing and often confused ways of following the procedures associated with such purchases. However, we can note some relevant data. The average paid by hectare was 694.6 USD, the biggest plot size is 169 ha. and the lowest 5.6. Most of the properties (22 of 29) were bought in 2008 and owned by persons who had acquired them by inheritance or purchase; the remaining seven had been adjudicated by the state. Ten of the sellers had outstanding debts or mortgages that were subtracted from the price paid. The average price per hectare was 711 USD (1 USD = 1869 COP). The lowest price paid was 125.1 USD and the highest 3224.6 USD for a plot, depending on the location and condition of the property. Of the total of 29 properties, 16 had protection measures, of which 10 were waiting for selling authorization. One of them is currently in force, in favor of *Agropecuaria.*

#	Bougth	Ha.	USD/ha. Registered*	USD/ha. Actual**	Relation	Protection	Removal of measure***	Debt
1	2008	5.6	$3,210.2	$3,224.6	owner	nd	nd	no
2	2008	14.6	$240.8	$242.0	awarded	yes	si	yes
3	2008	15.0	$370.9	$370.9	owner	nd	na	no
4	2008	16.7	$240.8	$3,144.5	owner	yes	in process	no
5	2008	16.4	$3,210.3	$245.6	awarded	nd	nd	yes
6	2008	17.0	$288.8	$1,002.4	owner	no	na	yes
7	2008	18.0	$321.0	$321.0	owner	yes	no	no
8	2008	26.0	$133.3	$274.6	awarded	yes	yes	yes
9	2008	26.2	$265.1	$267.9	awarded	yes	yes	yes
10	2008	27.8	$187.3	$187.2	awarded	no	na	no
11	2008	27.7	$735.7	$734.6	awarded	no	na	no
12	2008	28.8	$930.6	$928.9	awarded	yes	in process	yes
13	2008	40.7	$295.2	$349.3	owner	yes	yes	yes
14	2009	41.6	$3,210.3	$3,212.8	owner	nd	nd	no
15	2009	51.9	$321.0	$320.8	owner	yes	yes	yes
16	2003	53.4	$125.2	$125.1	owner	yes	in process	no
17	2008	55.0	$254.5	$254.5	owner	nd	nd	no
18	2008	60.0	$1,016.6	$1,016.6	owner	no	na	no
19	2008	63.0	$677.7	$321.0	owner	yes	in process	no
20	2009	64.0	$444.3	$535.0	owner	yes	in process	no
21	2008	65.7	$101.9	$329.8	owner	no	na	no
22	2008	69.0	$374.5	$374.5	owner	yes	in process	si
23	2009	110.0	$535.1	$204.3	owner	yes	in process	no
24	2009	112.0	$268.7	$525.5	owner	yes	in process	no
25	2008	130.0	$314.8	$314.9	owner	yes	in process	no
26	2008	133.0	$201.1	$307.8	owner	yes	in process	no
27	2008	160.5	$153.8	$255.0	owner	yes	in process	yes
28	2009	169.0	$245.0	$508.1	owner	no	na	no
29	2009	169.0	$245.0	$245.0	owner	no	na	no

* Price included in the deed

** Price actually agreed between parties. It is common for the sale to be registered at a lower price in order to reduce notary and retention costs, assessed as a a percentage of the purchase value.

*** nd = no data; na = not applicable

Table 3. Plots bought by *Agropecuaria*, sample

6.3: Land restitution

Of the total of the 120 properties purchased by *Agropecuaria*, 23 have been requested for restitution. To date, nine cases have been closed; in seven of these, restitution has been ordered.

Agropecuaria paid on average 513 USD/ha. for the claimed properties, which have a total area of 220 hectares.

#	Ha.	USD/ha. Registered	USD/ha. Actual	Relation	Abandoned (year)	Bougth	Protection	Restitution Requirement	Sentence (year)	Ruling*
1	41.0	$387.8	$387.8	owner	2000	feb.-08	oct.-08	2013	2015	NR
2	16.3	$329.1	$329.1	owner	2000	feb.-08	oct.-08	2013	2015	R
3	24.0	$321.9	$321.9	owner	2000	mar.-08	oct.-08	2012	2013	R
4	21.0	$337.2	$337.2	owner	2000	may.-08	oct.-08	2014	2016	R
5	16.1	$308.2	$308.2	awarded	1994	may.-08	na	2013	2015	NR
6	26.2	$306.2	$306.2	awarded	1999	ago.-08	oct.-08	2012	2015	R
7	18.1	$134.8	$2,022.0	owner	2000	oct.-08	oct.-08	2012	2015	R
8	31.9	$420.4	$386.8	owner	2000	oct.-08	oct.-08	2012	2014	R
9	25.3	$219.4	$219.4	owner	2000	jun.-08	oct.-08	2014	2016	R
* R = Restitution, NR = No Restitution										

Table 4. Agropecuraria's plots bought/restituted

There is no pattern to the rulings in these cases. One of the unrecovered properties was awarded in agrarian reform, but not the another. Protection measures are present in all but one of the cases. The prices paid per hectare show considerable variation. The most recent ruling is from 2016; the remainder are still in process.

Our review of the rulings handed down showed that in both cases in which the result was non-restitution, the magistrate agreed that that there was no link between the fact of the property having been abandoned and its sale. In all cases, the protection measures came after the purchases had been made. However, the magistrates considered that this did not prove good faith/exemption from guilt because the preceding violence was a notorious fact. In no case did the magistrates establish that the price was inferior to prices established in the cadaster: indeed, the price actually

paid was in some cases higher than the registered one. This is not uncommon, also in urban contexts, to put cadastral prices artificially low as a measure to reduce the costs associated with business, which are established on the value of the purchase (notary payments, withholding tax, municipal taxes, ORIP registration).

7: Conclusions

We have shown how Colombia's land restitution process clashed with investment plans in the Montes de María region, based on analysis of the case of *Agropecuaria El Carmen de Bolívar*. Tensions between concerns of justice and of development are a constant fact in the transitional justice process. Colombia settled this conflict in favor of justice as a way to return lost lands to the dispossessed and, in turn, to punish the dispossessors. However, the case of *Agropecuaria* shows at least two basic circumstances that indicate the need to attempt a better balance, particularly in facing the challenges that will arise from implementation of the recent peace Havana Agreements. First, the line between formality and informality is very thin (Gutiérrez & García, 2016). Although the restitution process must end up creating a clearer boundary, restrictions and costs associated with formalization of ownership persist. Restrictions imposed by the complex land regime and by the protection measures have not been overcome but overlap with the process. Second, the Law of Victims and Land Restitution provides that restituted property may be sold after two years following restitution. However, as long as that law remains in force (10 years from 2011, possibly forever as it is expected that the restitution process will be prolonged), properties purchased previously are in a kind of legal limbo. This circumstance discourages investments of any kind and thus acts counter to the aim of promoting rural

development. This points to the opposition between developmental policies and policies of justice that restitution cannot solve, and which has been the basis of most rural conflicts in Colombia.

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[1]In Colombia, the term paramilitary forces refer to private armed groups created since 1980 decade to combat guerrilla groups. This private forces grouped under the Colombian United Self Defenses (AUC by its initials in Spanish) y 1997. AUC demobilized during the first government of president Alvaro Uribe (2002-2006).

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

[3]Conventional law, the *lesión enorme,* considers a trade to be "usurpation" only if the price paid is less than 50 percent of the price indicated in the cadaster, but this rule does not apply in transitional justice.

[4]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 households with relationship to a farm report 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)

[5]The parallel study of 205 restitution convictions in Montes de Maria demonstrate that the process of restitution has gone reasonably well and that production support is being rolled out, but that there has been hardly any work on infrastructure (García Reyes & Pardo, 2016)

[6]There is no an objective criterion to define massacre. Nevertheless, in Colombia, there is a general consensus about three main characteristics: the killing of two or more victims under similar circumstances of place and time; an element of cruelty, and victim´s defenselessness (Nieto 2012: 98). The Policy and the Victims Unit of Colombia, consider the assassination of four or more people as a massacre.

[7]Colombia imports 400 million tons of dried cassava a year from Thailand.

[8]Since 2009, El Carmen de Bolívar