Avoiding conflict in the Colombian land restitution

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A very, very, preliminary draft, do not quote

Abstract:

Most of the 5 million IDPs in Colombia fled rural areas, leaving land and property behind. The Victims Law intends to restitute this land to the original owners. However, others now possess and farm most of these lands, not only the local powerful elite that used violence to expel smallholders but also smallholders that later settled on seemingly vacant lands. A government agency has initiated the process of land restitution in carefully picked areas that is furthermore approved by the military which considers the security for the operation. This paper maps the current areas of restitution, the amount of land and the relationship of the beneficiaries to the land. Fieldwork indicate that only deserted areas, where guerrilla or paramilitaries expelled all inhabitants to transport illicit drugs or troops, are included in the restitution process, while the restitution agency and military avoids areas with real conflicts of interests. Whether land restitution is doable in areas with weak central government control is hence still not put to a real test.

1: Introduction

Access to land as a mean to sustain a decent livelihood for oneself and the family is assumed to be the cornerstone in the violent conflict of Colombia, today as in the early days of the republic. The right to land has always been related to the physical power of actors in the countryside as the Colombian state does not possess the will or means intervene when conflicts over land rises in the countryside (Wiig 2009). When the power equilibrium is distorted through violent conflict an opportunity to confiscate land from the weak arises, normally leaving the expropriator with the land when peace returns. The current and ongoing conflict started in the late 1960ies, but land confiscations rose to new levels as the conflict intensified in the mid 1980ies. As people fled the countryside and become Internally Displaces People (IDPs), in some other rural area or into the cities, they left the land behind open to be appropriated by others. Or, as often happened, the warring parties forced the peasants to flee in order to confiscate their land. The estimated 5 million IDPs has lost about 8

million hectares (ref). As this violent episode is finally coming to an end with the para-military signing a peace agreement in 2005 and the reduced influence of the Colombian Revolutionary Army (FARC) which is currently in peace negotiations, there is less hindrances for the IDPs to return to their original lands. However, return turns out to be difficult as much of the land is now in use by others, most often by the very victimizers but also by bona-fide third parties, being other IDPs occupying vacant land or people who bought the land from fleeing IDPs, etc.

FARC is bleeding members through deserting and voluntary disarmament under The Peace and Victims law and the ELN remains a rather small localized organisation. However, still in conflict, the government initiated a process of restituting land to the original owners, a complex process where the original right holder to the land must be identified and then proven to hold the land. This turns out to be a time consuming administrative and legal process in each case. The cost in time and resources will be close to unlimited. The alternative is comprehensive land reform as advocated the FARC in the ongoing peace negotiations, distributing land to the ones in need independent of history and rather settle for monetary compensations to the ones that have lost land or other properties.

There are several reasons why the government prefers the former, possibly adding some of the latter to settle the peace agreement with FARC. The fundamental is to use land restitution as a mean to break the vicious circle of land confiscations and conflict. People confiscating land during the previous conflict experience they are able to keep the land when peace arrives. This creates grievance amongst the small scale farmers, leading to resistance and support for violent representative organisations. Faced by opposition, the rural leaders create paramilitary forces to quell the uprising, furthermore tempted by the possibility of confiscating even more land, the response is violent. With restitution, the government hope to break this vicious circle. The strongmen are not able to keep the land, reducing the incentive of looting land to start a conflict later, and less grievance amongst the smallholders and hence less support for possible violent uprisings in the future (Wiig 2009). If the hypothesis is correct, the outrageous administrative cost is still small compared to the enormous benefit of creating a peaceful Colombia.

2: Typology of cases

The Commission for Observation of the Public Policy on Forced Displacement estimated 6,628,195 hectares abandoned due to conflict between 1980 and 2010 and The Administrative

Special Unit for the Attention and Reparation of Victims registered 4,794,646 victims of forced displacement.

The NGO Consultancy for Human Rights and Displacement (CODHES) has registered 5.4 million IDPs since they started the operation in 1985. They use two main sources of information in their database. First as recorded by any civil organisation when they leave their place of origin and secondly at the place of arrival as registered by the organisations or the state apparatus. The governmental figure is a lot lower, for example the Presidential list with "only" 3.3 million IDPs since they only include IDPs in poverty that needs some kind of economic support. Once they can fend for themselves, they are taken out of the IDP registry. However, the exact assessment plays a minor role since (i) the number is enormous and (ii) the line between being IDPs and migrants is blurring. Nobody seems to questions violence as a trigger for migration; economic and social factors might have been contributing factors, not at least for not returning even if possible. Neither do we know what the counterfactual situation of no violence would have brought. The rural-urban migration in similar countries has been enormous in similar countries. Whether they are to be counted as IDPs, or now settled migrants, would also depend on their ability to adapt to the new living situation. A clear parallel is the definition of refugees, e.g. the living courters of Palestinian refugee outside Israel are similar to how poor indigenous people live in other parts of the towns, but are still defined as "refugee camps".

The right to restitution through The Victims Law applies to all IDPs as registered after 1. January 1991[1], independent of IDPs wish or willingness to use their original lands themselves. Once the IDP is resituated to become the rightful owner of plot of land, they are free to use, rent or sell the land as they wish. The by-product of restitution is formalization of property rights to land and the introduction of "rule-of-law". Or, the other way around, Colombia needs to introduce rule-of-law and functioning property markets as a necessary condition to sign bilateral/regional trade agreements and at last become member of the OECD. "Civilized" economies demand a levelling playing field and rule-of-law for fair competition in order to reduce trade tariffs and hindrances to cross-border investments and ownership. Joining a labour union cannot be a risk to your life and any property right must be absolute for open markets to work. The implementation of the land restitution process can be more of a pretext for needed institutional reform than the aim in itself.

[1] This cut of point is set at the date of the new constitution that resulted from the former peace process with the former guerrilla organisation M-19. The parliament reaches this conclusion after a thorough public debate.

Independent of the underlying objectives, the government hence sets out to "restitute land to the original rights holders". However, the seemingly easy task of matching people with parcels, and then file a case, might turn out to be complicated as the original property rights are far from clear. Defining those now, more than 20 years the IDP have left the plot (The Victimes Law sets 1991 as the historic cut of point), makes the task even more overwhelming if the process is to follow the thorough and time-consuming judicial traditional in Colombia. Other countries in similar situations of informality have chosen more quick'n'dirty procedures to define property rights, and once given, they are not renegotiable. Peru titled 1.5 million parcels in less than 10 years in a "carpet approach" where other possible interests were given just one month to come with a counter claim. If not objections, the property right was settled (Wiig 2013). Another parallel is the transition period in the old Eastern Europe after the communist period. Some, right or wrongfully, were just given or manipulated to get state property. Becoming private property, the market could start to work and by transactions the property would end up where its highest economic potential was realized.

The topology of defining property rights under The Victims Law is a four dimensional with several options in each direction. The resulting numerous varieties might give rise to different ruling by the court, i.e. historic rights to the land, current use of the land, type of leaving the land and perceived rights to the land.

Legal rights to the land: There are four main categories of historic rights to a given land. The most secure type is registered "Property" (propiedad) in the national cadastre and registry. However, such titles were often issued a long time ago and transfers in rights seldom updated in the public registry. If the claimant possesses a title in another person's name, but is able to document the transfer to his or her through transactions, the status is regarded as *rightful* "Possession" (poseción). The judge can in both cases settle the property right. The third category "Occupant" is trickier since no formal property right has ever been issued. The law states that anyone who has farmed the land without any objection for a certain time in good faith, considerably longer if enforce in bad faith, has the right to the land. The limit is 1 and 5 year on state land, while 10 and 20 years for private lands. If the land restitution court finds such occupancy to be proven, they can send the case to land reform state agency INCODER who will first have to title the land before the land court can make their final approval of property right. The last category is "Tenancy" (tenedor). The large land owners used to, or even today, rent out parcels of land without monetary compensation nor any written agreement to peasants who were expected to repay by offering casual labour in the landlords

agricultural or other production. The Victims Law only includes the three first categories, while the latter has no right of "restitution" even though the peasant might consider himself to have developed rights to the land. He do not have the right to return to the former tenancy arrangement if the current owner, being property, possession or occupancy, does not want to grant such rights. One possible scenario is still that tenants claim to have occupied the land without any implicit contract with the large land owner and hence claim to be "Occupant", but no such cases has still been given in court.

Transaction: The second dimension is the relationship to the land by the current user. The case should be clear cut if the person is the wrong-doer, or related to him in any way, forcing the former owner to flee from the land. However, the IDP might just have left the land and then someone else, often other IDPs, have started to use the land in good faith. The IDP might have sold the right to the land, either voluntarily or pressured to do so. The four main categories are (i) voluntary sale at a fair price (ii) voluntary sale at an unfair prices (iii) forced sale, hence also unfair price (iv) settle on abandoned land.

Current use: The current way of exploiting the land might come in different shapes. If uncultivated since abandonment, there is probably a need to clear the land for jungle or bush to make it cultivable. If cultivated today, the activity might have different forms, i.e. small scale diversified farming, commercial farms with or without major investments in infrastructure and crop, by local, regional or international capital.

Perceived rights differ from legal rights: There might be conflict between the law and the perceived rights by the people themselves in various occasions. (i) The tenants that cultivated a given piece of land and perceived to have rights to that land even though someone else is the real owner. There are three cases where the contradiction might induce possible violent responses if the perception is challenged by the state: (ii) The government intention has been to open the agricultural frontier for small scale farmers. Anyone who does not possess land, could enter virgin unused land or forests belonging to the state (the so-called *valdios*) to clear the land. After one year they would then have the legal status as occupant. However, in 1961 the state set a maximum size to be cleared as one Agricultural Family Unit (UAF), the area needed for family to have sustainable livelihood and the Agricultural ministry has calculated the size depending on soil fertility, climate and distance to urban areas. (iii) The government has forcefully expropriated land as part of the land reform since the 1970ies. (iv) Swindle has formally legitimized private confiscations of other peoples land.

A strong state can impose whatever property rights it finds suitable. However, in reality, few countries are able to make people comply only by force. People who are able oppose to the implementation must normally perceive the law or imposition to be fair and needed, e.g. perceive the law to be legitimate. This is problematic in Colombia where the central government is nearly absent in rural districts and the law seldom known or implemented at all. This becomes a problem in the cases mentioned above. A tenant might fight a large landowner for the land he and his family might have cultivated as "his" for several generations. Even small scale farmers have more land than a UAF, and the large scale farmers might have invested large amounts in land clearing as a common practise in the area and never previously challenged nor opposed by state authorities. In spite of being unlawful, people in the area do recognise property right based on the owner's effort, either by himself or by his employees. The perception of size does not matter to the rural population that perceives unused state land as an open frontier.

The land reform farms are more conflictive. During the radical 1960/70ies there was a tide of farm occupations, finally leading to forced expropriations by the land reform agency (then INCORA, that later became INCODER). Even though the process is legal by law, the former land owners did not necessary adheres to the process nor accepted the outcome. In their view, such moves accounted to land robbery and they resisted later in any way they could.

The last phenomena of swindle and document falsification either reflect pure corruption, e.g. the state agency let themselves be bought by any actor that was willing to pay. Another interpretation is intimidation of the public employees or that local organisation is outright controlled by local powerlords. The former director of the Public Register in Montes de Maria was arrested for registering false property rights (URT-Bolivar, 2013). Between 1997 and 2000 INCODE cancelled 134 parcel titles, accusing the IDPs of not paying their debt to the institution. They issued new titles on the land to people connected to the feared paramilitary leader Jorge-40 instead (SNR 2013).

The typology of these four different dimensions, with many alternatives within each, gives a complex set for the courts to decide when it comes to the restitution in each case.

3: Status in the restitution process

The Colombian parliament passed Law 1448 on 10th June 2011, so-called The Victims Law, with the following decree 4829 issued on 20th December same year that regulated the land

restitution process. The new Administrative Special Unit for The Administration of Dispossessed Land (URT) did not have to build their organisation from scratch since the former Presidential administrative agency Acción Social had already work on the land issue and the employees were transferred to the new unit. The URT had their first planning session at the 17th May, even before the new law was in place. The Directive Council of URT was installed on 27th February 2012 and the organisation started to work in the field right away.

The normal judicial system in Colombia is thorough and time consuming. It is possible to detect the government and parliament willingness to actually go through with the new policy by their willingness to include fast tract procedures in the law and put financial and human resources to carry out the process. In the Law 975 of 2005, so-called Law of Justice and Peace, set the conditions for the surrender of the paramilitary forces (and guerrilla). They were given relaxed sentences if they admitted their crimes, handed in the confiscated lands to the original owners and further compensated their victims economically. Over 30.000 paramilitary troops laid down their weapons, but so far there has only been 10 court sentences where the violator has handed over the land to the original owners (Lid & García-Godos 2010). Even though the paramilitary leaders got jail sentences of up to 8 years and the president broke the peace agreement by extraditing the most notorious to the USA for terrorism and drug-trafficking, the claim in the Law of Justice and Peace for confiscated land and other property turned out to be pure symbol politics as it is not effectuated on the ground. Whether a law exist or not, when the procedure is so long that hardly any sentences are made, is up for debate.

Land reparations through The Victims Law seem to work better. To date, there have been about 250 cases, restitution about 1000 families. It sounds like a drop in the ocean compared to the estimated 5 million IDPs and 7 million hectares of disposed land. However, it is sufficient to establish an institutional procedure and court practise that will hopefully make it possible escalate the number rapidly in the future.

The restitution process works in the following way. In 2012 the National Security Council decided 10 macro-zones where the URT could start to work based on three criteria: (i) the density of land confiscations (ii) security situation and (iii) the possibility for the IDPs to return. The latter is related to the second, but also includes the possibility for the returnees to sustain themselves economically and the existence of public services. The identification of macro-zones is based on input from a inter-ministerial working group at national level headed by the Ministry of National Defence which investigated and assessed the situation in different

parts of the country (see map in figure 2). The URT then created the Register of Abandoned and Forcefully Dispossessed Land (RTDAF) where people who had lost land within the given macro-zones would register their land plots as a necessary step to enter the land restitution process. The information on how to apply to be registered is spread by mass-media, NGOs and the state apparatus itself. By 3rd February 2013, 32.668 people had solicited to be included in the registry (only one person for each parcels) claiming 2.368.908 hectares of land (URT 2013). There is no updates national figure, but the number is probably much higher with more attention to the process now as the first court cases are settled.

The regional URT offices decide which areas within their macro-zones where they want to start to work. This micro-focalization follows the same procedures and criteria as the macro-focalization, although at local level. First the regional office of the URT uses the RTDAF as well as The Unique Registry of Abandoned Parcels and Territories (RUPTA) to identify municipalities with high density of abandoned land. Then they call for the Centre of Integrated Intelligence for Land Restitution (CI2RT) consisting of different governmental agencies where the military has the major influence, to assess whether it the municipality is considered secure and there is a possibility for the IDPs to return. If yes, the Local Operative Committee (COLR) consisting of state agencies, NGO, military and civil society is called upon to assist in the operation. Normally, URT will first identify areas within the municipality with the highest density to define this as the micro-zone and then proceed with the rest of the municipality later. However, security might still be a problem in the micro-zones as the state does not necessarily have full control. Our respondents within the URT indicate three potential security problems that might jeopardize the restitution process (i) The military tends to overestimate local security and for example fail to report guerrilla activity since local peace is their success criteria towards superiors. (ii) Even thought the paramilitary organisations has laid down arms, their members and other criminals now form the so-called Criminal Group in the Narcotrafic Service (BACRIM) that move over geographic distances. Even if not present today, they might move in and settle tomorrow. (iii) The local elite and local politicians linked to the former paramilitary and the people who benefitted by confiscating land are still in power. All three points would seriously jeopardize the restitution process.

The first task of the URT is to investigate whether a RTDAF application for a parcel within a micro-zone actually qualifies for restitution according to the law. The most common problem is that the farmer was actually a tenant on the land of others and does not qualify. When do qualify, they bring the farmer to the field in order to verify the borders of the property and

make a technical map and put up a poster asking other possible claimants to come forward. The case is furthermore investigated to file the history of the field, the family of the claimant and possible third party interests. If the claimant is thought to have rights, the parcel is included in the RTDAF. The process from claim first being made to the registration cannot take more than 60 + 30 days in all. However, this is probably only practised within the micro-zones where the URT has already decided to work. There are probably many micro-zones on hold due to the work load. A provincial URT is only obligated to treat about 250 parcel cases a year out of an overwhelming number of cases.

The parliament proved willingness to act and actually carry though the land restitution when they allowed the creation of the Specialized Restitution Courts where civil judges would rule in cases where no specific objections. This seems to be an intermediate solution in complexity. Peru let the titling agency rule the property rights cases if no counterclaims were put forth, and transferring the case to the normal judicial system if someone questioned their verdict. The case would be brought to the formal court if such objections existed or the claimant wanted to retry the case at a higher level if lost in the first. The URT is responsible for progress in the court by collecting all necessary information, while the court calls upon witnesses and decide in the matter. The court is not allowed to use more than four month from URT or the claimant raised the case to the court to the final verdict is given. The court is furthermore obliged to direct protection by the police and other instances to secure the return of the claimant to his parcel. If return is decided, the URT is obliged to give the claimant different types of economic support to make the return possible.

The institutional and judicial infrastructure for restitution of land has been established remarkably fast and is now able to conclude cases in less than a year. However, several pitfalls have come to light that: (i) Even though the URT admit a parcel into the RTDAF, they do not necessarily bring the case to the court. (ii) The process of information gathering is complicated and foresee the collaboration by other state entities, e.g. defining the borders of the plot, finding the family of the claimants, e.g. spouse at the moment of land abandonment, that has a right to be co-owners of the plot, and not at least the collaboration by INCODER to issue property title to the parcel of *occupants*. These entities have large backlogs and do not necessarily respond the URT enquiries or the orders of the court. (iii) The policy and military might similarly disregard the courts demand of protection in the return process. They might lack interest and resources to protect the individual families, or they simply disregard such protection as they are more aligned to the people who actually farm the area today.

Carrying out a specific restitution is hence demand ingenuity and strong will to find creative solutions by the URT employees to make the different institutions collaborate. Luckily, many are activists dedicated to the cause of land restitution to the "poor and oppressed" rather than bureaucrats to execute the will of the state apparatus. The URT is actually a mix of being the legal defence of the IDP and a state bureaucracy unbiased registering information in each case. Whether the latter is possible in light of the former is questionable. Herein lays the danger of mismanagement and misinformation for a "good cause", for example by finding ways to elude the law when considered "unfair". URT employees admit openly to have recommended the family to distribute the land to several family members when they possess more than a UAF, each making a separate claim to be admitted to the RTDAF and later the land restitution court.

3:4 Viability not really tested

Fieldwork by the author in Atlantic Cost of Colombia, interviewing individual claimants as well as key informants indicate that URT so far has only dealt with cases that are more easy to handle of several reasons.

They tend to include areas with high density of claimants and the labour cost of each unit hence rather low as they share more or less the same historical experience. The mass expulsions normally happened in one episode that was equal for all. They also tend to have clear and defined property rights to the land. A typical example combining the two elements are former land reform farms where INCODER actually issued titles to each parcel when they were originally handed over. The chosen cases are even easier to handle in the court when there is nobody today actually farming the land. Both paramilitary and guerrilla needed to move troops and smuggle illicit crops and goods out of the country. They hence force the smallholders from their land in order to avoid witnesses to this traffic. The point was actually to stop anyone from farming. Today, the land has returned to bush and jungle, needing investment in forest clearing and land preparation to make it suitable for farming again.

Several academic institutions and research programs in Colombia is today following the court procedures, e.g. a program at University Los Andes and Land Observatory project managed by University Rosario. They have still not published any conclusions on the sentences so far, but it seems like the URT has avoided the politically more complicated cases where large investors, either national or international, appropriated the land. These can probably put up more legal resistance compared to the paramilitary leaders and small scale farmers that has

lost their rights so far. The land was often sold and resold several times before they ended up in the hands of the current owners who claim to be bona-fide third parties. These often make heavy investments on infrastructure and plantations of perennials, e.g. the African palm oil trees. The restitution and hence breakup of such highly productive plantations will furthermore give negative shock to the regional economy and furthermore challenge powerful companies and economic interests.

The Public Registries, INCODER and other state entities are furthermore corrupt or even managed by the local elite, paramilitary and other parties that have issued titles to land according to their own interests[2]. Outright fraud and falsified titles are also common. The investigation into each case will be very time-consuming especially if no other paper trails exist, other neighbours and possible witnesses are dead or scattered all over the country.

It is furthermore difficult settle property rights between family members and defend weaker members. There are many children whos parents died during the conflict. The Court has settled some cases in their favour, but the opponents were probably not very fierce. The real test will come when they oppose companies and powerful other claimants.

4: Outcome

The total number of sentences is estimated to be around 250 today. Each might consist of only one or several individual case when for example the whole village were exposed to the same violent episode and by the same aggressor. The Land Observatory project headed by University of Rosario en Colombia has given the following analysis of the 215 sentences issued from the start in October 2012 until July 2013. There are two mayor limitations to the possibility of investigating the sentences. (i) The total information given in each court case is not available to the public and (ii) It is not possible to verify whether the order of the court was followed up it the field.

The 215 sentences were spread on all the regional URT offices and their according courts, with the highest number of 56 sentences in Tolima and 25 in Sucre. The total amount of land restituted so far is rather small with 2,114 hectares nationwide, reflecting that most cases are for small scale farmers rather than the large farms. The last updated information from URT

[2] The paramilitary control of municipalities, government agencies and institutions was common knowledge, but the central leadership and government did not close them down and introduced central state management instead. By closing their eyes, they could pretend normality in the mid of central crisis. These government institutions probably made things worse compared to the counterfactual of no government institutions besides police and

from February 2013 on applications to have abandoned land registered in the RTDAF shows 32,688 cases with a total of 2,368,908 hectares. This number will probably increase rapidly as the restitution process becomes better know and the outcome is favourable to the applicants. However, extrapolating this rather slow pace is misleading. With experience and jurisprudence will the courts be able to handle a large amount of cases. However, the need for detailed information and treating each individual case thoroughly indicate that the task is overwhelming and probably not possible to carry through. According to information given by URT to the NGO AmbitoJuridico given earlier in 2013, 91 sentences had benefited 397 families, which indicate on average four families per sentence. They indicate that only 39 judges are working the restitution cases today and indicate such small size would not be able to pass all the cases in the 10 years intended for the process. The IDPs that are not able to pass their cases before this time limit risk losing their land as a title will be given to the current land holder. The sentences until now show that the judges differ in their interpretation of the law, e.g. allow more than one parcel and more land than the UAF for occupants in some cases and other not. They also order different types of follow up measures as part of an integral action plan, e.g. schools, exemption from land taxes, credit for reconstruction, etc. Whether these orders are actually effectuated by the according state agency is a different matter.

5: Joint titling

The Victims Law[3] and the following regulation[4] establish that the "man and woman forming a consensual union at the time of displacement will jointly own the land to be returned." Both names must appear on the title deed in the formalization process that follows. The aim of this policy is to protect the rights of women who are often left out in land titling processes, as men are considered the "main agriculturalist" in most Latin American societies.

However, a large part of the land brought into the household economy by the man (or woman) has probably been either acquired before finding a spouse or through inter-vivo transfer from parents or inheritance, while a minor share has probably been acquired (on the market) by the couple jointly. The default marriage regime in the Colombian civil code is *partial community property*. Anything brought into the civil union stays as individual property,[5] while anything acquired while married is jointly owned[6]. The joint titling requirement in Colombia's Victims'

[3] Law 1448, §17, §114-§118
[4] Decree 4829 of 2011
[5] Although production and rents resulting thereof are jointly owned
[6] Article 1781 and subsequent articles in the Civil code

Law hence contradicts the Civil Code for example if land is inherited. What principle is the strongest, giving joint or individual titling, will be decided by the special Land Restitution Judges who rule in specific case prepared by the Restitution Unit.

The uncertainty is high as the Victims' Law legislation does not explicitly distinguish between the three types of situations that give the right to land restitution: *Property*, formal title in the solicitor(s) name; *Possession*, formal title in other's name and then transferred informally to the solicitor(s); and *Occupation*, no formal title but rights by "tradition" of solicitor(s). In all three situations, a joint title can be given independent of the history of the given parcel.

As far as we have been able to establish, the judges have not yet addressed this potential conflict between the Victims' Law and the Civil Code. Yes, there are considerable sentences with joint titling, but these are normally on former INCODER land reform farms which issued joint titles when the land was passed on the peasants originally. Formally, the problem of issuing joint titles on "property" and "possessing" is problematic according to the civil law. However, "occupations" are not since the Colombian laws does not consider such land to carry any "tradition", e.g. it is not possible to inherit or transact in any way. The people staying on the land at the moment of formalization have a right to it (but there is made an exemption in case of forceful evictions). This interpretation collides with the international practice in formalization where the idea is to respect informal rights and customary law. In Colombia, the person inheriting the land rather than the spouse is considered the "owner", similarly if th land is brought into marriage by one of the parties.

This issue has escaped the attention of the public, and we do not know what the reaction will be once the first decisions are reached. During a short preparatory fieldwork, the research team made two important empirical observations: (i) The Restitution Unit does perceive joint titling to be the default and makes an effort to guide the applicant into including the spouse. (ii) Applicants interviewed do not perceive joint ownership as unfair, unreasonable or discriminating and thus not resist including their spouse in the application. This indicates that land will become joint property, but policy makers should follow the process closely to ensure the successful application of joint titling.

6: Incomplete land reforms fuels resistance

There have been several intents to redistribute land in Colombia. Unfortunately, all of them must be characterized as unsuccessful. One possible explanation is the limited extent of previous initiatives. Most land reforms in which considerable amounts of land are passed on from large owners to peasants has implied a forceful extinction of traditional rural elites. In Peru, General Velasco expropriated all land for a pity in the 1960-70s, indirectly forcing the rural elite to move to the towns. Ethiopia expropriated land, refuting the local elite any type of position of responsibility in their area. In China, the Maoists expelled and executed many large scale land owners. The extinction of the rural elite was seen as necessary to prevent sabotage of the land reform and their later comeback.

In Colombia, only some large farmers got their land expropriated. The rest stayed unaffected, but feared they would be the next in line. Also out of solidarity with their former neighbors and still friends, land owners had an incentive to build an alliance against smallholders as well as the guerrilla. The failure of the "willing seller – willing buyer"[7] attempt in the 1990s can be interpreted the same way. If a group of small scale farmers could prove them capable of running former large estates, even increasing production, a political pressure to redistribute forcefully could be the result. Large land owners had hence an incentive at least not to help, or even prevent, such overtakes by smallholders to become a success. The lack of political interest in making the willing seller – willing buyer programs in for example Guatemala or South Africa actually work can actually be a way of protecting the current position of the rural elites.

The new *Fondo de Tierras* proposed in Havana runs the same risk of failure as the former land reform programs in Colombia. Half-hearted land reforms are seldom a success, and could actually bring more problems than solutions. The fierce resistance by the rural elite in Colombia today - which constitute part of the "dark forces" alongside narcomafias and paramilitaries, could be based on a legitimate fear of state expropriation of what they perceive to be their rightful property. One example is land cleared on the agricultural frontier after 1961. Then the limit was set to one Agricultural Family Unit (UAF), e.g. as much as one family could farm alone. However, many continued clearing large estates without meeting any objection from the state. The law, as many other Colombian laws, was never enacted in practice. Reclaiming such land now as state property, more than five decades later, is hence seen as expropriation and an attack on large scales farmers. The Colombian land agency

[7] Land owners sell voluntarily at market prices and the state subsidies (groups of) peasants who want to buy the land

INCODER enacted one similar case in the Atlantic Coast in 2011, reclaiming and confiscating 10 out for 11 parcels of lands that constituted the estate[8]. If the rural elites are not considerably weakened through the peace process, they will remain strong enough to use any available means to resist and obstruct any type of land redistribution.

One way to address this issue is to convince the rural elites that formalization and the presence of a strong state would improve the profitability and facilitate agricultural production. The lack of state presence and general lawlessness in rural areas prevent the general transition from rather low productive cattle ranging to high productive commercial estate farming. "Split and conquer" could be a possible strategy, for example by building alliances with the agro industrial complex, inducing some large scale farmers to put pressure on the most conservative amongst themselves to accept the cost through some redistribution to achieve the gains from formalization. The idea is to introduce rule of law once and for all. The most extreme solution would be to copy the post-Soviet solution in Russia, e.g. just formalize the current landowners even though they are known criminals that stole land. Then, through formalization, state presence and rule of law, they could convert themselves into a modern law-abiding agro capitalist class, accepting a smallholder class that is given land in willing-seller, willing-buyer approaches. This alternative, however, would have a high political cost. Such solution is not politically acceptable in the same manner as a revolutionary land reform disempowering the rural elite once and for all is unthinkable. Another possibility is simply to "give up" the most unruly parts of the countryside. If there is no expectation of taking the poor farmers out of the powerlords grip within reasonable time, then paying people to migrate to the cities instead could be a easier way to give people a decent life. With now labor power left, the large landlords had will have to behave better and give good wages in order to attract migrant labor.

Apparently, a half-hearted reform is probably the only possible outcome in the peace negotiations. Whether such will have any practical implication for the rural poor is highly questionable, something probably known by both parties. However, it is vital to prevent FARC from losing face from what might appear as an outright unconditional surrender, to make the organizations leaders able to convince their troops to lay down their arms. As often in Latin America, "illusions" do play a role in real politics.

[8]http://www.incoder.gov.co/Bolivar/pavas_predios.aspx

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Appendix


Océano Atlántico
Mar Caribe
LA GUAJIRA
ATLANTICO
MAGDALENA
CESAR
PANAMA
SUCRE
BOLIVAR
CORDOBA
NORTE DE SANTANDER
VENEZUELA
ANTIOQUIA
SANTANDER
ARAUCA
CHOCO
BOYACA
CASANARE
CALDAS
RISARALDA
CUNDINAMARCA
VICHADA
QUINDIO
TOLIMA
VALLE DEL CAUCA
META
GUAINIA
CAUCA
HUILA
GUAVIARE
NARIÑO
PUTUMAYO
CAQUETA
VAUPES
BRASIL
ECUADOR
AMAZONAS
PERÚ
Océano Pacífico
PROSPERIDAD PARA TODOS
UNIDAD DE RESTITUCIÓN DE TIERRAS
Densidad de Predios Abandonados y/o Despojados
1 - 100 Dispersión
100 - 500 Baja
500 - 1000 Media
1000 - 7389 Alta
Escala: 1:6.500.000

Figure 1: Land abandonment and deprivation densities in Colombia, Source. URT homepages 15/12-2013

Figure 2: Macro-focalized zones in Colombia, Source. URT homepages 15/12-2013

Figure 3: Micro-focalized zones in Colombia, source. URT homepages 15/9-2013

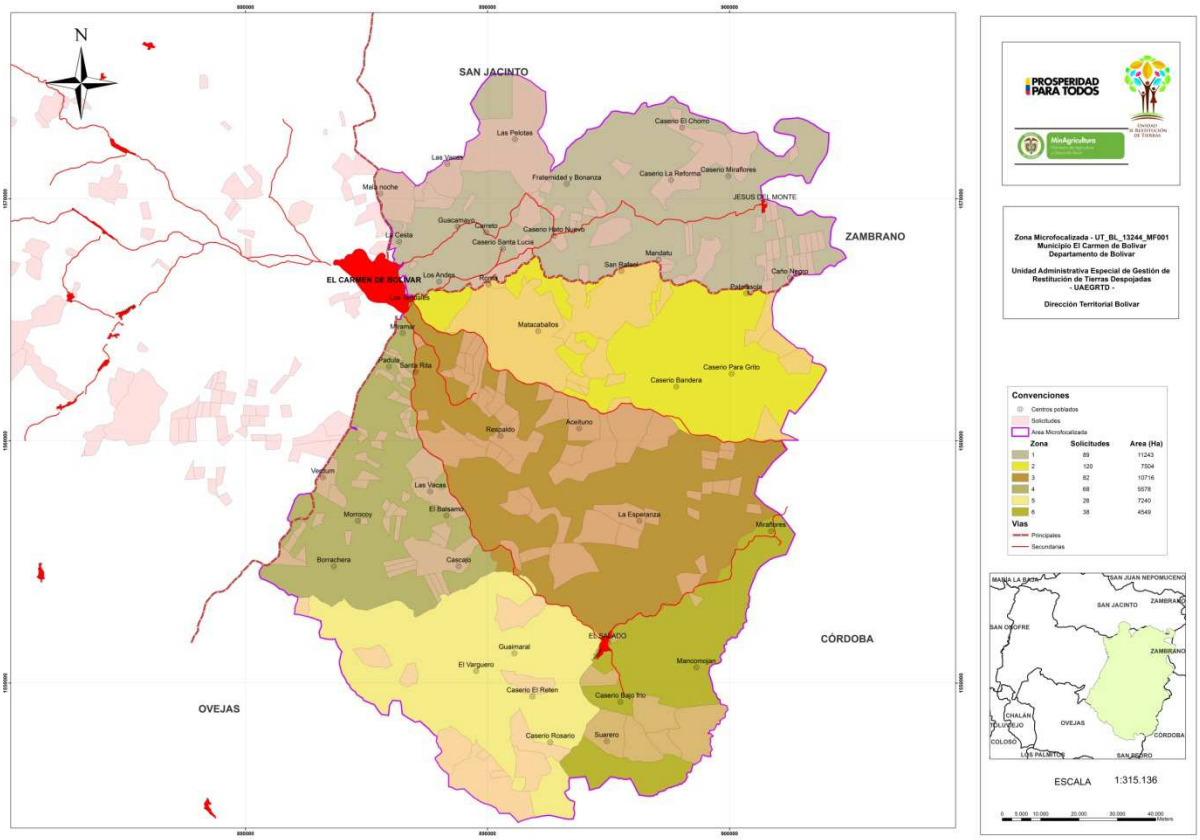

Figure 4: Micro-focalized zone in Municipio de El Carmen de Bolivar, Source: URT Bolivar office 15. May 2013

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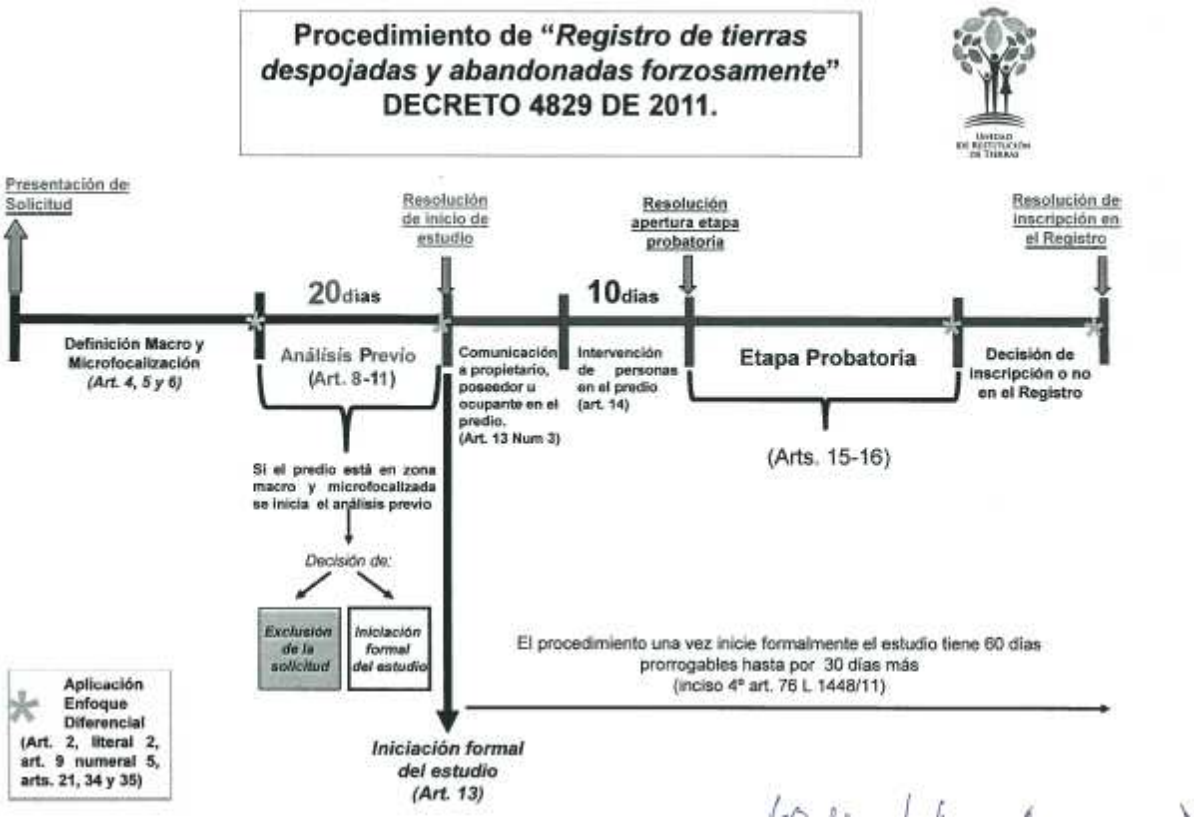

Figure 5: The process of registering abandoned land due to conflict, source: URT

Figure 6: The judicial process of restitution and formalization of property rights, source: URT