

Land Restitution in Colombia: Progressive Policy and Political Opportunity?

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ABSTRACT

LAND RESTITUTION IN COLOMBIA: PROGRESSIVE POLICY AND POLITICAL OPPORTUNITY?

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This paper studies the policy changes that have led to the design and early implementation of the land restitution program in Colombia. I use the land reform literature to frame land reform efforts in Colombia within the larger ideological discussion on land reform. The study maps out the roles of the main actors that influenced the actions of government regarding land reform and their role in shaping the present policies affecting land restitution.

The paper argues that although the land restitution program provides an opportunity to initiate a peace building process and should be seriously considered as a measure to compensate the victims of the armed conflict, the present rural development model is an impediment to its success. Although, the more progressive coalition was able to achieve the approval of the land restitution program, the success of the program relies entirely on the wider rural development model being currently embraced in the country. The present rural development model puts an emphasis on the exploitation of extractive resources and other mega projects responding to global market demands; while illicit crops continue to provide an easy and profitable livelihood opportunity for many in the countryside. Such development does not support the livelihoods of returnees and thus does not compliment the land restitution program. The success of the land restitution program thus remains in doubt. The reason is that powerful actors support a neoliberal development model that continues to dominate the political agenda.

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Translation and use of Spanish terms

I was born and raised in Colombia and completed my Bachelor and Master degrees in Canada. I have translated all interviews and documents to the best of my ability. The acronyms of all government agencies and other organizations will remain in Spanish although the English translation will be provided. A large part of the writing process was dedicated to providing the proper translation of specific terminology to hopefully transmit the equivalent meaning to the English audience.

Some words will remain in Spanish and will be written in italics. Their definition will be provided in the glossary provided in Appendix A.

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List of Acronyms and Abbreviations

ANTA National Association of Agricultural Workers
 ANUC National Peasant Association, *La Asociación Nacional de Usuarios Campesinos*
 AUC United Self-Defence Forces of Colombia
 CIDA Canadian International Development Agency
 CIDER Interdisciplinary Center for Development Studies of the University of the Andes
 CINEP Center for Research and Popular Education/Peace Program
 CNRR National Commission of Reparation and reconciliation
 CODHES Bureau on Human Rights and Displacement, *Consultoría para los Derechos Humanos y el Desplazamiento*
 DNP Department of National Planning, *Departamento Nacional de Planeación*
 ECHO European Commission Humanitarian Aid Department (ECHO)
 DRI Integrated Rural Development
 GPSP Canadian Global Peace and Security Program
 IDP Internally Displaced Population
 IGAC Geographical Institute Agustin Codazzi
 INCODER Colombian Institute of Rural Development
 INCORA Colombian Institute of Agrarian Reform
 IOM International Organization for Migration
 IPC Popular Training Institute, *Instituto Popular de Capacitación*
 FENSA National Labour Union Federation of Agriculture *Federación Nacional Sindical Agropecuaria*
 LRU Land Restitution Unit, *la Unidad de Restitución de Tierras*
 MAPP-OAS Peace Process Support Mission of the Organization of American States
 NGO Non-government Organization
 RUPTA Unique Registry of Abandoned Properties and Lands, *Registro único de predios y territorios abandonados*
 RUT Colombian Bishops Conference's Information System on Displaced Population
 SAC Agricultural Society of Colombia
 SIPOD Information System for the displaced Population, *Sistema de Información Para la Población Desplazada*
 SNR Notary and Registry Superintendency, *Superintendencia de Notariado y Registro*
 TJ Transitional justice
 UAF Agricultural Family Unit, *Unidad Agrícola Familiar*
 UNDP United Nations Development Program
 USAID United State's Agency for International development
 UNHCR – United Nations Refugee Agency

Chapter 1: Introduction

“Land implies ‘one’s place’ and involves a critical emotional bond for the Colombian peasantry and a connection to a collective history and spirituality for the indigenous and Afro-Colombian peoples” (Meertens and Zembrano, 2010, 191)

This thesis investigates the current land restitution program in Colombia. The issue of land distribution in Colombia is back on the political agenda; this time after a massive wave of land dispossession. The Victim’s Law, passed in June 2011 and sanctioned with the presence and the approval of the UN Secretary General, Ban Ki-Moon, marked a new land policy era for the country. The problem is that historically land reform programs in Colombia have been unsuccessful, levels of land concentration continue to escalate, and internal displacement in the country has now become a great humanitarian crisis. Colombia has one of the two largest internally displaced populations (IDP) in the world, alongside that of Sudan¹. Among those displaced a large number were forcefully dispossessed of their lands. Despite economic growth, economic liberalization, and a reduction in violence, rural poverty continues to be a major problem and the most acute social tensions continue to be expressed in the rural areas. At the same time as free trade agreements with the United States and Canada have been formalized, human rights organizations and international and national NGOs have warned about the terrible situation of the many peasants, indigenous peoples, and afro-descendants that were forced to abandon their land and their property often as a result of the massive territorial ‘cleansing’ that

¹ According to the Internally Displacement Monitoring Center in 2011 Colombia had between 3,876,000 and 5,454,766 IDPs, government data and CODHES data respectively, while Sudan had between 4,5 and 5,2 IDPs. At the end of 2011, there were five countries with more than a million IDPs, which had all faced large-scale armed conflict. The largest population was in Colombia. For the most recent numbers of internal displacement. visit: www.internaldisplacement.org

The UN has defined Internally displaced persons as "persons who have been forced to flee their homes as a result of armed conflicts, situations of generalized violence, violations of human rights, natural or human made disasters, and who have not crossed an internationally recognized State border" (10).

took place to control strategic areas of the country (See Appendix D for a graph of land displacement by ethnicity from 2002 to 2010). Rural areas continue to have the highest levels of poverty and the lowest levels of access to services of the entire country making the rural population very vulnerable.

A recent study shows that people from the rural areas have been forced to abandon or sell approximately 6.8² million hectares of land, equivalent to 10.8 percent of the country's agricultural land, in the last ten years (Saffon, 2010, 123). At present, approximately 80 percent of rural land possessions are *minifundios* (see Appendix A for a detailed definition of the word *minifundios*) and therefore possessors are below the poverty line since their land holdings, are smaller than one Agricultural Family Unit UAF, which is the land size established by the government to guarantee a family's subsistence considering the land productivity capacity and location³. On the other hand 1.15 percent of possessors owned 52.2 of the land (UNDP, 2011). Ibáñez (2011) provides evidence that the increase of land concentration since 2005 has been caused by the increased land area acquired by former land owners and not by new owners. This process of land concentration has been accompanied by the weakening of government institutions, particularly at the local level. Land concentration, according to Ibáñez (2011), created regional elites, which have the capacity of exercising political influence and determining policy design and implementation. Since the state remains unable to penetrate the entire territory, parastatal groups and local elites are easily able to permeate local institutions. Land continues to be a factor reflected in political power particularly in the Colombian countryside.

² The government identifies at least 4.7 million hectares while the NGO Victim's Movement of state crimes reports 10 million hectares

³ This was explained to me by Professor Albert Berry who has study Colombia's agricultural economics since the 1960s.

Land displacement, many argue, has been a massive attempt by actors outside the state to shift the land tenure structure in Colombia and to control large areas for the development of military strategies and the control of lucrative territories (Gaviria & Muñoz, 2007, 16). This phenomenon has been defined as an agrarian counter-reform, since it has increased land concentration and perpetuated the underutilization of land⁴ (Saffon, 2010, 124; UNDP, 2011, 217). In addition most of the lands that the state distributed during the 70s and 80s have been seized in Colombia under the pretext of the internal armed conflict⁵. The World Bank Gini coefficient concerning inequality in rural ownership grew from 0.81 in 1990 to 0.87 in 2009- in a scale where 0 is perfect equality and 100 is total inequality⁶ (World Bank, 2004, 10; Saffon, 2010, 124, Fajardo, 2011). Pardo (2011) argues that unlike other countries, the price of land in Colombia is not determined by the land's productivity but by other outside factors such as a money laundering mechanism and to gain prestige. In fact, land displacement has been related not only directly to the armed conflict but to drug trafficking, the lack of support available for small farmers and the expansion of agro-businesses and other megaprojects in the countryside.

⁴ According to the Geographical Institute Agustín Codazzi (IGAC) of the 114 million hectares that make up the total country's surface potentially 14.3 could be used for agriculture but only 3.5 million hectares are being used according to Dane, in essence 10.8 million hectares are not being used for agriculture. On the other hand although 19.2 million hectares are up for cattle ranching, 39.1 million hectares are being used for this purpose. The Federation of Cattle Ranchers (FEDEGAN) estimates that there are 20 million hectares being misused which could be destined for agriculture or the as protected forest areas.

⁵ The National Commission for Reparation and Reconciliation through the Historical Memory Center (MH) was able to establish the registration of 15,000 hectares accumulated by only 20 individual owners and agro-businesses through the purchase of 257 small and medium properties. Of these 257 properties, 133 had a collective ownership status, in other words they were distributed by the government as part of a previous land reform program.

⁶ In 1996, 0.4 percent of landowners (of properties larger than 500 hectares) owned around 44.6 percent of the rural land; in 2001, the same 0.4 percent controlled 61.2 percent of total land (Muñoz 2007, 14). With a Gini coefficient of around 0.87 Colombia's rural land ownership pattern is very unequal. Although this value is not unlike those for other Latin American countries, it is in sharp contrast to Asian economies, which have grown at rapid rates in the past decades, such as the Republic of Korea (0.35), Taiwan Province of China (0.45) and Thailand (0.45) (Deininger in Castaño, 1999). Gini coefficient for 2009 excerpted from: Ana M. Ibáñez, *La concentración de la propiedad rural en Colombia: conflicto, desplazamiento forzoso y efectos productivos*, Universidad de Los Andes, presentación, mayo de 2009 (base don IGAC, 2009).

The Victim's Law that was ratified in June 2011 includes a land restitution chapter that aims to return the land to the millions of peasants that were forcefully dispossessed since 1991. Although many Colombians, especially those that were personally affected by the conflict, have high expectations of the land restitution program, Colombia has a history of changing and failed land policies that have led many experts on the topic to predict a negative future for the program. Others, however, see the land restitution effort as an opportunity for the country. The current government's initiative has opened up a dialogue that looks for ways to improve the conditions of the victims and return to them their right to their lands. Nonetheless, the violence has not ceased: 50 land restitution leaders have been assassinated in the last five years, and according to the NGO Bureau on Human Rights and Displacement during 2011, approximately 259.146 persons (around 70.034 families) were displaced in Colombia (Monroy, 2012, 6; CODHES, 2012, 4).

The fact that different actors, whose positions are usually opposed, reached a consensus on the need to implement a land restitution program has opened up a tremendous opportunity to look at the problem of unequal land distribution in the country and to find ways to implement a sustainable land restitution program. It is in response to this social context that the land issue once more has become a priority not only for the government but for scholars, the international community, and those actors who previously struggled in favour of land reform and were forced to remain silent through the years.

Much of the literature on land reform provides a normative theory derived from common political ideologies. Grouping the literature into different political ideologies helps to analyze current effort to redistribute land which are also attached to a particular normative concept of development. In the course of studying the land restitution program in Colombia, however, I

realised that although the approval of the land restitution law demonstrates a change in the government's policy direction there was much more at stake with this policy. I came to doubt that implementing the land restitution program will lead to an improvement of living conditions in rural Colombia. I became interested in looking at the prospect for success of the land restitution program by examining the post-settlement conditions faced by the returnees.

I argue that recent history of land policy in Colombia reflects a competition between coalitions who differ about the possible solutions for the land conflict. I suggest that there are two main coalitions. The minority coalition is made up of those directly affected by displacement plus other victims that have been for years part of the land struggle such as peasants, indigenous peoples and afro-Colombians. Other international organizations and donor agencies that embrace a human rights approach also support the land restitution effort. The dominant coalition which was able to block land restitution efforts in the past and that threatens the success of land restitution in the present is composed of conservative branches of the government and those whose interests are threatened by the land restitution program such as drug traffickers, illegal armed groups, and others who benefit from land displacement. Other strong forces coming from the global demand for extractive resources and energy crops also embrace neoliberal economic policies that facilitate land acquisition in Colombia.

The pro-land restitution coalition began its struggle for land restitution with the change of government in 2010. The pro-land restitution coalition positioned itself and was able to push forward the land restitution policy particularly because the new government positioned itself as part of this coalition transforming dramatically the balance of power in the land policy arena.

However, this coalition is not sufficiently wide to also push forward a rural development⁷ agenda capable of supporting a successful and sustainable land reform program.

This research began with the hypothesis that land restitution in 2012 would be possible. The shift in the government agenda, the sudden mobilization of civil society groups, the reduction of violence and the strong commitment by the international community to support land restitution programs suggested that a successful land restitution program could be implemented. This sudden shift also produced positive reactions from scholars that have studied the prolonged conflict in Colombia (Uribe, 2011; Reyes, 2012; Fajardo 2011,). In Chapter four I will introduce the explanation of what forces allowed the introduction of the land Restitution Chapter of the Victim's Law. It is argued there that the forces in favour of land restitution were guided by neo-populist ideology and the principle that the government should call on the masses to support the land reform process. But it will be argued in Chapter 5 that the fragile pro-land restitution coalition will not be able to push forward rural development policies which will resolve systemic issues of land displacement and rural poverty in the future. As a result I argue that the land restitution program will ultimately fail.

1.2 Research Motive

When I started this research I was interested in exploring land reform and the redistribution of land as a strategy to deal with the structural roots of inequality and violence in Colombia. Acute land concentration in Colombia has been diagnosed as the root of social problems such as inequality, poverty, agricultural inefficiency, racial discrimination and violence. Historical processes have determined the current distribution of land in Colombia.

⁷ I follow the definition of rural development proposed by Anríquez and Stamoulis (2007): “development that benefits rural populations; where development is understood as the *sustained* improvement of the population's standards of living or welfare” (pp.2).

Some argue that in today's industrialized countries agrarian reform occurred when societies were predominantly rural putting an end to acute land concentration. Afterwards, these countries decided to subsidise agricultural activities in order to guarantee the subsistence of a rural population. However, Colombia like many other countries in Latin America did not take this path; the pattern of land inequality has not changed and it is clearly reflected in today's acute land concentration in the countryside. Three attempts to redistribute the land and reduce the levels of land concentration can be traced since the early 20th century in Colombia. Two efforts to implement a redistributive land reform program were tried in 1936 and 1964 under the presidency of Alfonso Lopez Pumarejo and Alberto Lleras respectively, and a market-based land reform program was designed in the 1990's. These three attempts, however, failed to redistribute land more equally and since 2000 land concentration has increased dramatically, the number of internally displaced persons has grown significantly, and the struggle for land and territory continues to generate deep social tensions. The inability to implement a serious redistributive land reform program has been identified by many scholars as one of the reasons why the conflict in Colombia has continued for so many years.

I had the opportunity to take a reading course and explore the literature on land reform. After reading about land reform in general and specific case studies I became aware that the types of land reform and their methods of implementation were clearly related to specific political ideologies. I decided to use this literature in order to frame the case of land restitution in Colombia; a land policy with the goal of compensating the victims of the armed conflict in a country with a history of failed land policies.

1.3 Thesis Structure

First the thesis will provide the conceptual and analytical frameworks used to describe and critically assess progress made in the effort to return the land to those who were forcefully dispossessed by the conflict. The literature review is divided into two parts. The first examines the ideological justifications for land reform found in the general land reform literature. The second reviews the contemporary land reform literature with a particular emphasis on land restitution literature. In Chapter 3 the land reform context of Colombia will be described. The chapter provides an overview of the context and the history of land reform policies since the first attempt in 1936. Chapter 3 also contains a section on the evolution of the conflict for land in the country. Chapter 4 provides the analysis of my research results and will be divided in four sections. The first section looks in detail at the coalition formation that led to the approval of the Chapter of land restitution included in the Victim's Law. Then I will analyze the dominant coalition. I will then examine the role played by the international community in the approval and early implementation of the program. Finally, the concluding chapter will with the help of the land reform literature analyse the probabilities of success of the land restitution program, looking particularly at the rural development model that Colombia has embraced. Then I will provide remarks on the research results and discuss some key concepts and ideas that must be considered to generate a sustainable land restitution program in Colombia. Finally I will use this chapter to discuss some suggestions for further research.

Chapter 2: Literature Background

The literature review helps to provide an in depth evaluation of the possible success of the land restitution program. I will first review the more general contemporary land reform. Then, I will review the land reform literature concentrating on the current land reform ideological battle. I will then move on to analyze the literature on land restitution

2.1 Contemporary Land Reform Discussion

Land reform is reappearing as a predominant theme when discussing development in the global south. Extensive literature on the topic has been published in recent years analysing the current debates and experiences of countries that have included land reform in their developing agendas. Land reform measures have strong political and economic effects, and have been possible in situations where pressure from below (i.e. peasant organizations and other grass roots organizations) is strong or when the land tenure structure obstructs economic development and landowner power impedes the functioning of a modern state (Albán, 331). Nonetheless, the current rural depopulation and urban agglomeration and the increased inequality in the global south continue to suggest that a solution must be found to build or rebuild sustainable rural communities. The invigoration of rural communities particularly in areas where land is heavily concentrated necessarily includes changes in the land tenure system to guarantee land access, food security and basic services to the rural population (Janvry & Sadoulet 2002).

The term land reform refers to any attempt to formally or informally change the land tenure system of a country. Borras and Franco (2008 A2) introduce four types of land reform: redistribution, distribution, non-redistribution and re-concentration. Pro-poor land reform can be achieved through either redistributive or distributive land reform. Other policies that focus on maintaining the status quo or benefiting the elites takes the form of non-distribution or re-

concentration land reform. Each type of reform, however, reflects and shapes the social relations surrounding the land issue and has implicit consequences for all the stakeholders.

When talking about redistributive land reform the priority is on shifting wealth from the wealthy classes to the poor. Borras and Franco (2008 A2) suggest a simple formula for exploring pro-poor policy, by measuring “(a) the degree of wealth and power (b) that are transferred from the landed classes or the state (c) to the landless and near landless working poor”. Redistributive land reform, according to Borras and Franco (2008A2), should take into account the formal social tensions that exist and that are reproduced on the ground while targeting the rural vulnerable population who lack access to land. It implies that land based wealth and power are transferred from the monopoly control of either private landed classes or the state to landless and near-landless working poor. In contrast, distributive land reform enhances the livelihood opportunities of the poor without redistributing the wealth of the rich (Garcia-Colon, 2006). Programs that focus on distributing public land or buying land from the landed class at a market price or lower in order to distribute it to the poor are examples of this type of reform. Both redistributive and distributive land reforms are proposed as strategies for improving the conditions of the rural poor in the global south.

Non-distributive land reform, on the other hand, takes place when land policy re-establishes the same economic and social conditions for the poor. The defining character of this type is the maintenance of the status quo, where the latter is a condition that is marked by inequity and exclusion in land-based social relations. Land formalization policies can have this regressive effect in settings marked by high degrees of inequality. In the case of contemporary Africa, Nyamu Musembi (2007) makes the claim that implementation of property formalization programs are having a non-distributive effect. Finally, land re-concentration takes place when

the land reform legislation produces programs that benefit the wealthy, displacing the poor from the land. For instance, during the Pinochet regime (1973-1990), the land that had been previously expropriated and distributed to the poor by the Allende government was allotted back to the former owners (Belisario, 2007). This generated a re-concentration of wealth in the country and put the poor at a disadvantageous position. The current issue of land grabbing⁸, sometimes facilitated by government policies and the pressure of foreign investors, also illustrates land concentration. The global land grab for production of food and biofuel for export, tourism, urban extensions, retiring migration and land purchase by migrants in their country of origin can also result in land concentration and increasing the vulnerability of local rural peasants and their families. In these instances, the rural poor are the first to lose their land and are usually displaced from their communities (Zoomers, 2010). Land grabbing is an acute problem when the poor do not possess formal legal titles; this is because people with only customary titles enjoy little protection from the law (Zoomers, 2010).

Land reform can take very different shapes. When looking at processes that aim to improve the conditions of those living in poverty in the global south, one must look at land policies that aim particularly at distributing resources to this sector of the population. Pro-poor land reform can be shaped by different ideologies which aim at the same broad objective - to improve the living conditions of the poor in the global south - but differ on basic principles of how land policies should be implemented in order to guarantee its success.

⁸ I use the definition of land grab provided by Borras et al. (2012) which states that “land grabbing is essentially ‘control grabbing’: grabbing the power to control land and other associated resources such as water in order to derive benefit from such control of resources” (pp.850)

2.2 Ideologies of Land Reform

This literature review explores the ideological frameworks that have shaped the land reform debate through the years and those that today characterize the bilateral debate: human rights versus productivity. The conditions that regulate access to land in a particular context reflect a certain ideology. In this paper we use Hamilton's (1987) definition of ideology: "a system of collectively held normative and reputedly factual ideas, beliefs and attitudes advocating a particular pattern of social relationships and arrangements..." (pp. 38). Ideologies clearly justify the message that proponents of a particular land reform program try to promote (Hamilton, 1987, 38). Four prominent ideologies are discussed: liberalism, neoliberalism, Marxism and neopopulism. Even though in the past, liberalism and Marxism were the two rival ideologies that defined the agrarian problem, today's argument has been dominated by the debate between the neoliberal approach and what some call the social or inclusive liberal approach (Borras, 2009). The core arguments presented by important land reform advocates such as the World Bank, the EU, FAO, Via Campesina and many national governments and social movements reflect one of these two ideologies. Superficially, Marxist principles are still present for some promoters of a radical alternative; however, a new argument has sprouted highlighting the tensions in liberalism and questioning neoliberalism as a development model. It is essential to underscore that the present debate confronts two opposite views of how developing countries should undertake land reform for the benefit of the rural poor and on the role that those affected by land reform policies should have on the process. Today's 'leftist' land reform argument does not promote threatening revolutionary ideals, but embraces modern liberal principles of equality, freedom and democracy and refuses neoliberal principles of development such as market liberalization. This effort has regained global attention and has been supported by many

international movements including La Via Campesina, The International Land Coalition, the Rural Dialogue Group (GDR) and the United Nations Development Program- Colombia (UNDP).

2.2.1 Liberalism and land reform

Liberalism is not a straightforward concept; its usage tends to shift according to time and regional differences. According to Thorsen and Lie (2007) classic liberalism and modern liberalism are the two popular trends in liberal thought. Classic liberalism embraces the minimal role of the state and tends to favour *laissez-faire* economic policies. This Lockean view identifies the role of the state as a ‘night watchman state’ that guarantees the protection of freedom and private property but refrains from interfering in other affairs. Alternatively, modern liberalism, stresses that the government should have an active role in the economy in order to protect vulnerable individuals and achieve a more equitable society (Thorsen & Lie, 2007, 5). Neoliberalism has been associated with classic liberalism since its main concern is in promoting economic liberalization and reducing the role of the state. Similarly, neopopulist tendencies reflect principles associated with modern liberalism such as the important responsibility the state has to redistribute wealth and power in order to contribute to a free and democratic society (Thorsen & Lie, 2007, 5) In addition, other liberals indicate that “the most characteristic feature of a liberal society is its toleration of beliefs and diverse ways of life” (Freeman, 2002, 108). For instance, Freeman (2002) argues that liberty of conscience is considered perhaps the most important basic liberty since it includes the freedom to hold a particular thought; therefore securing toleration of religious, political and philosophical beliefs. Moreover, concerning private property, which is one of the principles that neoliberals argue should never be compromised,

Freeman (2002) explains that modern liberals, including strong defenders of private property, agree that governments have the authority to regulate property and contractual agreements, and burden them when necessary for the public good. He adds, “rights of property are not in these regards fundamental: They can be regulated and revised for reasons other than protecting and maintaining basic rights and liberties” (Freeman, 2002, 115). Therefore, the social function that many governments allot to land ought not to conflict with liberal principles that protect private property since in some cases excessive land tenure by landowners has compromised the most fundamental liberal principles of equality, freedom and democracy (Wolford, 2007, 562; Borrás & Franco, 2008A1). As a matter of right and justice, Freeman (2002) argues liberalism commits to provide all citizens with an adequate share of material means so that they are suitably independent, capable of governing themselves, and able to take advantage of their basic liberties and fair opportunities. If this condition is not satisfied, then there is absolutely no reason to defend liberties and opportunities in the first place (Freeman, 2002, 117). The following discussion of ‘liberal land reforms’ covers elements related particularly to what has been described as ‘modern liberalism’ and what social movements, such as that of Via Campesina, proclaim to be an alternative to the current neoliberal approach being enforced by development agencies around the developing world.

When considering land reform the liberal focus will be on achieving more equality by providing access to land and therefore equal opportunities to the most vulnerable; this will ultimately lead to more democratic processes (Borrás and Franco, 2008A1). Therefore, liberal reform is not associated with a particular type of land reform. It is consistent with any effort that could bring greater equality without compromising basic liberties. Some have argued that the liberal approach can support the establishment of rational and efficient land markets, the

recognition of collectively titled indigenous territories, and the implementation of some land redistributions (Cousins, 1997, 2). The reform may aim at strengthening municipal decentralization and granting special status to traditional authorities and indigenous organizations if these measures accomplish liberal ideals. There are cases when conflicts arise among liberal principles. Allowing local communities to regulate their own territory has been in some instances a barrier to achieving greater equality. For instance, in efforts to redress the legacy of centuries of dispossession, racially defined and discriminatory legal frameworks and deep rural poverty, the government of South Africa insists on the need to reinstitute the land and allow local groups to own and control it (Cousins, 1997, 2). Many liberals, who argue that cultural rights, institutions and ceremonies should be respected, have defended traditional leadership, which draws much of its legitimate authority from its embeddings in the social and cultural life of rural communities (Cousins, 1997, 14). However, this emphasis on freedom of association has compromised gender equality since the local leadership may accept gender discriminatory practices such as restricting women's access to land. Liberal land reform efforts do not have to be directly associated with a particular method as long as it insists in the protection of fundamental right and freedoms.

2.2.2 Neoliberal land policies and land reform

Neoliberalism has been embraced by most development agencies; therefore, shaping most development efforts in the developing world (Borras & Franco, 2008A1). Developing governments, particularly in Latin America have eagerly embraced neoliberal principles promoting economic liberalization, foreign investment and market led reforms. With regards to land reform, developing countries have been encouraged to create a land market in order to

transfer land from unproductive owners to productive ones. Initially, the process of creating a land market discourages state-led programs, which, neoliberals argue, are subject to rentierism and corruption (Petras & Veltmeyer, 2007, 373). Neoliberalism persuades governments to pull back from their position as administrators of development policies and allow the market to lead these efforts. It is important from the outset to highlight that neoliberalism is considered by some a radical branch of liberalism which neglects traditional liberal principles of equality, democracy and freedom and endeavours to create a society governed by market mechanisms (Thorsen & Lie, 2007, 16). Although, the allocative role of markets is a basic precept in all liberal views, libertarians and later on neoliberals have given the market almost total control of economic and social policies. For Freeman (2002), libertarianism, which is considered a branch of classical liberalism and for some the father of neoliberalism, commits to using markets as the exclusive mechanism for distributing income and wealth. Besides, one of the most characteristic features of libertarianism is that the protection and enforcement of people's rights is treated as an economic good, to be provided for by private market interactions (Freeman, 2002, 142). For neoliberals, "the state has no role to play in distributing income and wealth (other than enforcing existing rights); distributions are to be decided entirely by people's free decisions" (Freeman, 2002, 138). Therefore land reform should be a process entirely market-driven in order to avoid the inefficiency and corruption associated with state-led programs.

Neoliberal principles vigorously defend market-led land reform (MLAR). This 'demand-driven' style of land reform encourages free market transactions between willing buyers and willing sellers. Fraser (2008, p. 513) observes, with particular regard to land reform: "neoliberalism emerges as an important matter because neoliberal principles and ideologies underpin MLAR-style land-reform approaches". It is in a way a change in direction from the

most common and controversial state-led land reform programs, which are solemnly supply-driven and function by either identifying possible beneficiaries and then searching for land to be expropriated or vice versa (Borras & Franco, 2008 A1, 7). Market-driven land reform, according to Fraser (2008, p. 514), “entails acquiring land from so-called willing sellers rather than via expropriation and delivering land for commercial, rather than subsistence purposes”. This exchange will only occur if beneficiaries demonstrate their determination to acquire the land and if land owners are willing to sell their lands. The market model attempts to create a land market and avoid having the political issues that were caused by other state-led initiatives such as expropriation (Fraser, 2008, 513). Neoliberalism ultimately aims to create or restore private rights to property for the purpose of improving the smooth functioning of rural markets, while increasing efficiency and production through security of title (Wolford, 2007, pp. 551).

Establishing written records of landownership improves the transferability of property, reduces the cost of land transactions, and increases the liquidity of the land market (Wolford, 2007, 555). According to this approach, where there is inequality, it is most often an indication of inappropriate “political” or state-based policies. To fix this problem, all market restrictions should be eliminated to allow for the land market to flourish. For instance, landowners ceiling laws, which restricts land owners to own land only under a maximum farm size, should be abolished. These are expensive to enforce and usually impose costs on landowners whose methods to avoid them lead to corruption, tenure insecurity, and red tape (Woldford, 2007; Deininger & Binswanger, 1999, 263). In addition, rental and sale restrictions should be eliminated since these market transactions are likely to become more important with economic development. Instead, pro market-led land reform specialists believe that rental restrictions

should be replaced with a clear regulatory framework for land rental markets to protect potential tenants (Deininger & Binswanger, 1999, 265).

State enforced land restrictions are also responsible for distorting land markets leading to informal land markets (Borras, 2006, 7). This is because landowners usually engage in illegal land transactions to avoid the restrictions imposed by the state. To avoid land market distortion, some neoliberals argue, any land reform must be accompanied by a progressive land taxation and systematic land titling program. The introduction of a land tax which decreases as income generated from the land increases will encourage more productive use of resources (Deininger & Binswanger, 1999, 265). Furthermore, focusing on the implementation of a land titling program, an initiative that has been neglected when executing state-led land reforms, formalizes the land market and allows the new beneficiaries to reap the benefits associated with becoming land owners.

Enforcing a title registration program has been a priority in countries that implement a market-led land reform. Lustrum (2010, p.343) argues that “neoliberal land policy tends to prioritize property-rights regimes based on the premise that markets are the most efficient way of managing resources”. Written records of landownership improve the transferability of property, making it easier to transfer land from less productive to more productive owners (Deininger & Binswanger, 1999, 250). In addition, when land titles are registered and property rights are formalized, new land owners are able to easily access credit from formal sources. This is because they can now use land as collateral for loans to increase their farm productivity (Deininger & Binswanger, 1999, 250). In addition they argue, “clear property rights can prevent wasteful “overinvestment” in protective measures by individuals eager to claim and defend their property rights. Secure land titles have also been associated with sustainable use of the land and its natural

resources (Deininger & Binswanger, 1999, 250). Land reform in Mozambique, for instance, which has adopted a neoliberal land law, primarily aims at the privatization of land and natural resources as a means of attracting foreign investment and increasing the efficient use of resources (Lunstrum, 2010, 353). Whether or not land sales to foreigners should be allowed is a hotly debated issue in many locations. Neoliberals believe that doing so offers a number of advantages, including better access to capital through foreign direct investment and access to the technology that normally comes with it. Neoliberals also argue in favour of allowing private sector participation because this partnership between society and the private sector increases accountability and tends to lead to more transparent processes (Borras and Franco, 2008A1).

Encouraging a market-led land reform, according to proponents of this approach, reduces corruption and clientelism since there is no need to rely heavily on the central state and its huge bureaucracy for implementation (Borras, 2006, 7). In fact, there is the neoliberal assumption that a privatized and decentralized implementation approach to land reform will lead to a greater degree of accountability and transparency in policy implementation (Borras, 2006, 12). This is due to the fact that market-led land reform encourages community management and voluntary negotiations which permits careful monitoring and reduces the power of influential lobbies. In general, when the land reform takes the form of market transactions traditional problems of asset distribution and social exclusion are avoided (Deininger and Binswanger, 1999, 249). In addition, the pro-market model assumes that a land acquisition method that is voluntary and provides 100 percent cash payment to landlords for 100 percent market value of their land will lead to successful land reform (Borras, 2006, 11). The threat of land expropriation without just compensation has led landowners to launch legal battles preventing any reform program from being implemented. Under the market-led model, landlords will cooperate when they know that

they will be justly compensated. Finally, the neoliberal approach to land reform relies on governmental agencies, which are responsible for the implementation of land reform programs and support services. In the developing world, these government agencies, which are often corrupt, usually act in favour of the politically influential sector of large farmers and local elites, thus inhibiting the process of growth (Deininger 1999, 266; Petras & Veltmeyer, 2007, 373). Consequently, as little as possible ought to be subjected to state intervention; in fact, these programs ought to be left to the market in the form of voluntary processes that lead to increase land productivity in the developing world.

2.2.3 Marxism and land reform

Marxism is particularly concerned with identifying class relations. Capitalism formed a system characterized by a dominant elite class and a subjugated working class. When discussing land reform, Marxist revolutions, such as those initiated in China, Russia and Cuba have been based on the idea that the struggle for land is another class struggle that could only be solved with a revolution in which the proletariat and peasantry unite to gain control of the land and other means of production. Marxist land reform defends in particular a 'land to the tiller' ideology, in which peasants ought to have control of the land they till. In addition, Marxism has maintained from its birth that the analysis of any aspect of social reality should take the economic structure as a point of analytical departure (Polanco, 1982, 53). This fundamental methodological procedure implies that superstructural phenomena such as race and gender can only be understood, in their real sense, from an analysis of the concrete economic conditions from which they derive (Polanco, 1982, 53). Marxism opposes all forms of nationalism based on ethnicity in the name of internationalism (Brass, 1997). Some interpreters of Marx predict that

with agrarian capitalism peasants would simply disappear. The masters of globalization expect them to succumb to commercialized large farms. Certain critics of Marxism allege that Marx, and therefore Marxists, view the peasantry as an abomination, an obstacle to the progressive development of human society. However, Harrid (1978, p.6) insists that a careful reading of Marx reveals that the oppressed peasantry could be a revolutionary ally of the proletariat against the current system. For instance, for Mao, in the particular conditions of pre-revolutionary Chinese society, the peasantry, under the direction of the proletariat, were the main revolutionary class and the motor of the Chinese revolution (Harrid, 1978, 7). Communist governments in Africa have implemented different styles of Marxist inspired land reforms. For instance, Rahmato (1984 in Holden et al., 2011, 33) found that the Ethiopian land reform in 1975 made all land state land, eliminated the wealthy rural landlord elite, and prohibited land sales, land rentals, and hiring of labour. In the Ethiopian case, communities, which were constituted by peasant associations established by the new regime, distributed land to households, based on their family size, their need and their ability to cultivate (Holden et al., 2011, 33). This, according to Holden (2011) was an effort to create an egalitarian land distribution in which the state land was equally distributed among the peasants.

In general, Marxist scholars explain the multiple ways in which the rural merchants and large landowners exploit the peasantry. Others scholars, are interested in exploring the proletarianization of the rural sector. There is a Marxist assumption that under the current model of commercial farming small subsistence farmers will be pressured to work in the large commercial farms; therefore becoming part of the proletariat class. According to Cristobal Kay (1974), the former kind of rural proletarianization can be referred to as internal proletarianization given that the serfs or tenants that used to inhabit these feudal states are transformed into a rural

proletariat which is now employed by these units of production. On the other hand, external proletarianization, which Kay (1974) argues has been the main kind of proletarianization in Latin America and Western Europe, involves the expropriation of small-holding peasant producers and the displacement of small farmers and their families. This expulsion from the countryside which many today call a land grab, Marxists would argue, is a clear sign of the proletarianization of the peasantry.

Some interpreters of Marx argue that agrarian reforms have been used by the state in Latin America as well as in the rest of the world, to gain political control over the peasantry and create the conditions for the extension of capitalist relations of production within agriculture (Harrid, 1978, 14). For instance, the effort to introduce farmer cooperatives, which was endorsed by populists during the 1950s in Peru, provided the conditions to appease the masses by implementing a superficial solution to the rising economic problems of poor peasants under capitalism (Brass, 2005). Similarly, Yashar (1999, p. 82) explains that land reforms in Mexico (1934), Bolivia (1953), Guatemala (1952), Ecuador (1964 and 1973), and Peru (1968), also expose an effort from the government to pacify the peasantry and indigenous communities. Many peasant and indigenous communities joined peasant federations in hopes of gaining access to land and other resources. In Mexico, for example, the land reform accompanied the creation of a national peasant federation, the CNC, and distributed property in many forms. Of these, the distribution of ejidos (communally owned land) unwittingly provided the greatest latitude for local indigenous autonomy; they were community based, inalienable, and, while regulated, often beyond state control (Yashar, 1999, 83). Some have argued that such movements evolved from what Marx called a class in itself to a class for itself; peasants and indigenous group became collective agents that shifted from being a victim of the historical process to changing history

Huizer, 1999, 66). However, the majority of Marxists agree that these efforts, led by the state, are another way to dissuade the peasantry from revolting against the elite class.

Many Marxists argue that such cooperatives and communally owned lands embody all the contradictions of capitalism and that ultimately rich peasants would assert their control (Brass, 2005, 243). For instance, the case study on cooperatives in Peru presented by Brass (2005) confirmed that class divisions within the peasantry not only surfaced inside the cooperative structure but also defined the accumulation project in this sector (Brass, 2005, 24). There is some consensus that an attempt to implement redistributive land reform is a response of the state to pressures for more revolutionary change. Petras & Veltmeyer (2007) found for instance that other tactics used by the state in Latin America over the years included: “co-optation or accommodation of community or agrarian movement leaders; setting up parallel government-controlled peasant organizations; and, of course, unleashing its repressive apparatus” (Petras & Veltmeyer, 2007, 387).

2.2.4 Neopopulist land policies and land reform

Land reform for neopopulists seeks to recuperate peasant and indigenous identity. It is a process that must be decided by those that are being affected themselves and not imposed by external agencies. In effect, populism assumes a critical attitude towards capitalism and singles out problems that bourgeois thought is incapable of identifying (Polanco, 1982, 44). Polanco (1982) explains that the neopopulist solution to the land issue relies on the conservation of indigenous and peasant groups and their identity, their system of internal organization, their customs, and traditions. The neopopulist argument with regards to land reform suggests that rather than seeking the creation of one formal homogeneous property system developing

countries must seek a “differentiation of land law regimes through regional and local regulation, which leaves room for pluralism, including the legal recognition of customary tenure systems” (Assies 2009, 586). Earlier, for instance, the Zapatista movement in Mexico reflected neopopulist ideals. The movement argued that both feudalism and capitalism had allowed land to be taken from the poor, for and by the wealthy and declared the beginning of an armed insurgency on January 1, 1994, in the name of a territory they considered theirs because of a historical attachment to both its cultural and productive aspects (Wolford, 2007, 558).

Throughout the late 20th and early 21st century, new rural actors from Brazil to the Philippines to South Africa have mobilized to demand radical changes in their relationship to property and the land (Wolford, 2007 557). These are powerful social movements, such as the landless movements in Brazil, Bolivia and South Africa. Today’s neopopulist movements, utilize social and political mobilization to achieve greater access and control over the land. Their discourse criticizes neoliberal models of modernization and promotes development based on the notion of an organic, free and equitable society (Brass, 1997 206). In general terms, populism reacts against the large scale and endorses the idea of non-class-specific common interests operating on the basis of local initiatives (Brass, 1997, 210). These grassroots initiatives celebrate diversity, freedom and choice. In contrast to Marxism, in which the working class is in charge of leading the revolution, in the 'new' populism marginal socio-economic elements that are similarly alienated from capitalism are in charge of pressing for reform (Brass, 1997, 210). They demand a reversion to subsistence agriculture in order to enhance the position of those that are often marginalized such as women, indigenous peoples and peasants (Brass, 1997, 219). The peasant identity is celebrated and the desirability of further economic development is questioned particularly because of environmental issues and its effects of the local peasant populations

(Brass 2005, 654). Powerful social movements such as many of Via Campesina's organizations in Latin America and other Asian movements have proudly affirmed their peasant identity and defined their solution to the problems of the present (Desmarais, 2008, 139). Neopopulist land reforms, attempt to create or restore the connection between peasant communities and the land, improving social justice by distributing resources to the poorest who will then contribute to balanced development and food sovereignty (Wolford, 2007, 552).

2.3 Distributive Land Policy: Land Restitution

Land restitution is a policy that aims to shift the land tenure structure to reproduce and improve the land tenure conditions that were present before land dispossession took place. Forced migration in general reduces the well-being, particularly of those who lost their property, denies access to previous livelihoods and destroys previous community social networks. In addition, scholars agree that displacement causes social organization and family units to break down. Although, adaptation to new environments usually does occur a distrust for state institutions that allow displacement often prevails (Holtzman, 1999, 13). Land restitution programs have been implemented in countries where a large number have been forcefully dispossessed of their land and territory. The restitution of land is an attempt to repair past atrocities and commit to peace building processes which imply a reparation process. UN human rights bodies have stressed the need for United Nations international operations to address housing, land and property (HLP) rights in countries emerging from conflict⁹. In fact, the international community, in particular the UN has supported post-conflict land restitution programs around the world (Cordial and Rosandhaug, 2004, 61).

⁹ In terms of international law, there was no significant precedent for returning land to displaced persons prior to the end of the Cold War, when a number of peace processes took place. International law protect the rights to possess, dispose of and use property

Many believe that land restitution is a pre-condition to the restoration of rural communities after a civil conflict (Cordial and Rosandhaug, 2004, 61). In places such as Bosnia, Cambodia, Guatemala, Sudan, Mozambique, South Africa and Turkey land restitution has been a crucial transitional policy to consolidate peace. Post-conflict land reform, such as the one that took place in Rwanda, after one of the most horrific genocides that has ever occurred, was an initial step towards consolidating peace and social cohesion (Pottier, 2006).

Fragile reconciliation processes could be obstructed if strong desires for restitution at the individual and group level are not effectively dealt with. For instance, according to the report discussing the opportunities and obstacles to refugees returning to Southern Sudan, the lack of a coordinated effort to provide land titles to the new returnees increased cleavages between different returnees straining the peace-making and community building processes (Pantuliano et al., 2008). The share agreement to support a long-term commitment to implement a restitution program between the state, NGOs, beneficiaries and the private sector could be fruitful for the administration of post-conflict restitutions as was evident in the Elandskloof case in South Africa (Barry, 2010). Processes of land restitution require an understanding of custom which demands taking into account historical roots responsible for establishing local social and economic structures (Pottier, 2006). In other words, processes of land dispossession must be understood and considered when implementing a land restitution programs. Due to the fact that land issues are in many cases one of the reasons for the conflict, “pre-conflict ideas about land return and restitution that have been neglected will come to the fore in the post-conflict environment” (Unruh, 2004, 19). Considering the pre-conflict situation will allow land restitution programs that prevent land displacement in the future. In addition, it is important, to understand the characteristics and social conflicts that shape the communities where the land restitution is taking

place in order to contribute to the community building process and avoid reviving cleavages that could obstruct the sustainability of these communities (Pottier, 2006).

Restitution, according to Hall (2007), must be combined with strategies for livelihood development since the success of this program is based on the opportunities available for those people returning to the land and their families. In an overview of the progress of the land restitution program in South Africa, Hall (2009) argues that land rights have not necessarily led to development. According to Hall the only major review, performed by Community Agency for Social Enquiry (CASE), of the program's developmental impact to date found that "the vast majority of projects were dysfunctional in that little if any production was being pursued, income from production was minimal, and only one project had achieved its developmental goals" (pp.13). According to Borrás and Franco (2010) Land restitution peace settlements that include land policies seldom translate into redistributive reforms because forces opposed to any land redistribution are able to implement land programs that benefit more the elite than the rural poor.

International organizations such as FAO and the United Nations have proposed new frameworks for the implementation of land restitution programs. The Deng and Pinheiro Principles which were established in 2005 establish guidelines for the implementation of post-conflict land restitution programs. These principles insist on the rights of IDPs to voluntarily return to their lands in safety and dignity and on the role of national governments to achieve this goal (Art 10 of the Pinheiro Principles). Two of the most important land restitution cases, the case of Bosnia and the case of Guatemala, prior to the introduction of the Pinheiro principles provide useful evidence of the opportunities and threats that a land restitution program provides.

Restitution in Bosnia has been considered one of the most ambitious and successful cases of land restitution. The land displacement and territory cleansing that occurred in Bosnia

Herzegovina resulted from a conflict along largely ethno-religious lines between the Orthodox Serbs, Catholic Croats, and Muslim Bosniacs. The civil war that began in 1992, after Bosnia Hersegovina achieved its full independence from the Socialist Federal Republic of Yugoslavia (SFRY), displaced approximately 2.2 million persons from their lands. Many have described the ethnic conflict that developed as an attempt by the different ethnicities to gain control of the territory¹⁰. After the Dayton Peace Accords were signed in 1995 approximately 200,000 properties were returned to their previous owners during the course of six years¹¹ (Williams, 2005, 17). The ethnic conflict that appeared after the dissolution of Yugoslavia rapidly escalated while the larger ethnic groups fought to control the territory and expel all other ethnic minorities from the area (Williams, 2005, 17). The Accord tried to reverse ethnic cleansing by introducing Annex VII, which declared the right of those displaced by the conflict to return to their pre-war homes (Dahlman and Tuathail, 2005). Many argue that the case of Bosnia was in part successful because of the large role that the international community played in the process¹² (Williams, 2005, 18). The international community led the land restitution program and pressured the Bosnian government to implement it. According to Williams (2005) the international community in Bosnia also played a critical role in overcoming the initially fierce political resistance to refugee return, drawing on an unprecedented deployment of legal, political, and financial resources, as well as an unusual level of unity and perseverance. A ‘carrot and stick’ strategy manifested itself in high-profile funding, admittance to international bodies, and the removal of obstructive officials (Philpott, 2006, 30). Although restitution of land title has been considered

¹⁰ According to the internal displacement monitor the conflict that took place between 1992 and 1995 led to the creation of ethnically homogeneous areas

¹¹ 215,000 claims were filed, 93 percent of which were adjudicated and enforced in favour of displaced claimants. <http://www.international.gc.ca/cip-pic/fellowship-bourse/bradley1.aspx?view=d>

¹² It is stated in the “The State of the World’s Refugees: Fifty Years of Humanitarian Action”, A Report prepared by the United Nations Refugee Agency (UNHCR) that “In Bosnia and Herzegovina, for the first time in its history, UNHCR mounted a relief operation in the midst of an ongoing war, in an attempt to assist not only refugees, but also internally displaced people and other war-affected populations” (pp. 211).

successful Dahlman and Tuathail (2005) argue that the ethnic conflict in Bosnia radically transformed the demographic character and cultural landscape of the country and that this has obstructed the return of internally displaced people to their pre-war territory (pp.658).

Guatemala initiated a peace dialogue process in the 90s, after approximately 36 years of armed conflict. The peace agreement signed by the government and the guerrillas in 1996 included land restitution as a reparation strategy to the approximately 1.4 million victims of displacement¹³. The civil war that erupted between guerrilla groups and the government was responsible for violently displacing a large number of the population particularly indigenous peoples. The institutionalized counterinsurgency of the state and the creation of "death squads" as a government tactic, however, became particularly widespread after 1996. Similarly to the case of Bosnia, Bailliet (2002) argues that refugees were able to obtain some success in attaining their lands because of the pressure placed on their behalf by international actors. In total 4,167 refugees attained restitution or were compensated with alternative land but the expectations of refugees and internally displaced persons were diminished by the failure of the government to implement articulated programs to improve the living conditions of the returnees. The result of the land restitution program have not been as positive as expected "land fragmentation on account of demographic pressures, exhaustion of land, deforestation and other types of environmental degradation are rising" (Bailliet, 2002, 6) and a large number of returnees have been forced to sell or leave their land due to what some have defined as "economic violence" (Bailliet, 2002, 2).

The literature on land restitution focuses primarily on opportunities and weakness of land restitution programs and the particular role that the international community has played to

¹³ According to an estimate taken from Deli Sante (1996), that has compared different sources approximately 1 million persons were displaced within the country and 350,000 to 400,000 sought refuge abroad, particularly in Mexico and the United States (in Steputtan,1999, 3).

facilitate its implementation. Both cases highlight the important role that the international community has played in the design and implementation program. Particularly in the case of Bosnia it is evident that the international community actively had to support the program in order for it to be implemented. The case of Guatemala demonstrates how the economic model embraced can affect the implementation of the land restitution program and its long term effects. Ideological tensions about land reform can be easily recognized in today's discussion. In the case of land restitution in Colombia competing ideologies guide the policy discussion. Political ideologies play a role in the kind of land policies discussed in a particular context and in the way land policies are presented to the public. In the case of Colombia the government has been able to appeal to the masses to support the land restitution program. This has helped gain the support particularly of local NGO's and peasant groups that have come to endorse this initiative.

Colombia is, of course, a unique case and any effort to discuss land restitution should consider its particular political, economic and social context. As Attanasio and Sanchez (2012) explain the Colombian land restitution being the first major post-Pinheiro land restitution case was created with the principles explicitly in mind. All the cases of land restitution, previously discussed provide lessons to analyze the many opportunities and obstacles that are present during the design and implementation of land restitution policies and the re-integration of internally displaced persons to communities that sometimes have new economic, social and political structures. Sometimes the implementation of land restitutions could increase cleavages in a community and therefore past experiences provide an opportunity to look at useful mechanisms to increase the success and sustainability of a land restitution project. In sum, the implementation of a land restitution program must give special attention to the local social context and have practical policies in place to build sustainable communities that provide the returnees the

opportunities necessary to stay on their land and avoid further displacement in the future. In the following chapters I will present the motives that led to the introduction of a land restitution program in Colombia. I will discuss the ideologies that are guiding the coalitions in favour and against land restitution in Colombia; the actors that make up these coalitions; and how these actors channeled their demands. Then I will provide an analysis of the reasons why the land restitution program's success seems unlikely by asking: considering current conditions what will be the future of the land restitution program? Does the current rural development model support a land restitution program?

Chapter 3: Context

3.1 Collecting Data

I carried out field research in the winter of 2012. As a Colombian citizen born and raised in the City of Medellin, and native Spanish speaker I was able to contact a heterogeneous group and build connections from the first week. I spent 5 weeks in Bogota and 3 weeks in Medellin. Although most of my research was conducted in Bogota, Medellin is the city that receives the largest number of displaced persons and it became central to my research since a lot of the organization that study and monitor the displacement phenomenon and that represent the victims such as Tierra y Vida, the Popular Research institute (IPC) and Forjando Futuros are based in this city.

The evidence presented in this study was gathered primarily through semi-structured and open-ended interviews conducted between January and March 2012 with key government officials, victims and land restitution activists, nongovernmental organization (NGO), scholars and representative from the agricultural sector formerly involved in the land restitution program. During a two month period I conducted 26 interviews. I also visited the new land restitution offices in Bogota and Medellin and other centers responsible for assisting victims with accessing land restitution. These data were supplemented by the use of government documents and publications, and newspaper accounts. Along with primary data collected by the government and other international and national organizations I used secondary resources such as peer-reviewed literature, published articles, newspapers, and reports. While visiting all the libraries of the major Universities and the congress library I was able to access a wide range of documentation. I also had the opportunity of attending the Latin American Study Association Annual conference

in San Francisco, California. I was able to attend some very informative panel discussions discussing the land restitution program in Colombia and other topics related to my research.

3.2 Past Land Policies

A conventional land reform law was introduced in Colombia in 1936 with the government of Lopez Pumarejo and a more ambitious one in 1968 during the presidency of Alberto Lleras. The latest attempt to deal with land concentration was in 1994 with the introduction of a market-led land reform program. The elimination of policy interventions in the early 1990s led to the design of a new land reform law that aimed to establish a more integrated process with lesser government intervention and a greater role for the market (Deininger 1999). Regarding land reform policies which focus on redistributing the land and improving the conditions of the rural poor, their implementation has been insufficient. Redistribution efforts have on three previous occasions been abandoned in favour of attempts to modernize the agricultural sector and increase productivity while at the same time benefiting the *terratenientes*. These reforms have brought little benefit to the overall rural population¹⁴. Nonetheless, the problem of land concentration and the struggle for land continues and now includes the Victims movement, a new actor that is supported by wide and diverse group of national and international actors. A Victim's Law, which includes a Land Restitution chapter, has been passed. The victim's movement has become essential for the pro-land restitution coalition. Transitional justice achieved by returning land to the victims of violence is now seen by a wider and stronger coalition as a cornerstone of the peace building process. In this section the three previous failed

¹⁴ Borrás (2006) argues that in the case of Colombia idle or forest lands that official government documents claim are 'public' lands are in reality under the effective control of private entities, elite or otherwise (Borrás, 2006A1, 127).

government attempts to shift the land tenure structure will be analyzed. This analysis will help to identify the political and economic forces that play a role in the current land restitution effort.

3.3.1 Land Reform in 1936: The Introduction of Law 200

In 1936 an agrarian law was ratified, which stated that private property had a social purpose and authorized the state to expropriate unutilized or underutilized land. The law was very controversial particularly because of a provision that established the state's authority to expropriate land that had not been exploited for more than ten years (Saffon, 2010, 117). The law was a way to placate the confrontation between settlers and land owners and to try to contain the violence in the rural areas (Saffon, 2010, 117). The violence and lack of access to land led peasants to demand solutions to their problems by occupying land and confronting the state and the *terratienientes* (Albán, 2011, 345). Peasants in the 30s were fighting for the adjudication of the land they tilled and the expropriation of unutilized land, basically their struggle was for a state-led land reform (Albán, 2011, 345).

Law 200 was originally designed with the intention of expropriating unutilized land, transferring land to those who tilled it, and formalizing the ownership of occupied idle land. During this period important provisions were established, such as having specialized judges to resolve land issues, the principle that land had a social function, and the right of holders of privately owned land to claim property rights after five years of working the land. The reform threatened large land owners who were prompted to evict sharecroppers before the five year period. This, however, increased land colonization of the agricultural frontier, since many evicted peasants had to find a new place to settle. It also failed to address the high levels of concentration of land ownership (Saffon, 2010, 120; Uribe, 2011). Soon enough the intentions

of the land reform program were reduced to modernizing the agricultural sector to support the process of industrialization, This first land reform attempt did not manage to translate into a credible strategy to redistribute rural land and modify the rural property structure (Fajardo, 2000). The implementation of the land extinction provision proved to be impossible to execute due to the political influence that the large land owners had at the time which was evident when looking at the specific provisions of the land reform law¹⁵ (Uribe, 2011, 258).

The Agrarian reform proposed in the 30s was heavily influenced by the *terratenientes* (see Appendix A for a detailed definition of *terratenientes*). For instance, the timeframe that the government put in place to determine land expropriation allowed land owners to find ways to avoid expropriation¹⁶ (Uribe, 2011, 258). The purpose of the Land Reform Law became to stimulate productivity and limit the rental of land, which affected competition and postponed industrialization (Albán, 2011, 339). The land expropriation threat was meant to increase agricultural productivity in a ten year term (Albán, 2011, 345).

During the late 1940's violence escalated in the Colombian countryside. It is argued that the Land Reform Law far from solving the rural conflict added fuel to it and became one of the main factors contributing to the sudden violence that erupted in the countryside (Saffon, 2010, 118). What is known as *La Violencia* can be defined as a political war between Conservatives and Liberals (Findley 1972, 884). Findley (1972) explains that the attacks were directed at peasants of the opposite political party who were in most cases assassinated or forced to abandon their lands and flee to the cities (p.886). Uribe argues that during this period the apparent political sectarianism was responsible for the expulsion of peasants and the further concentration

¹⁵ Landed elites were grouped in the National Economic Patriotic Association (APEN) “conformed of terratenientes and financiers” (Orjuela, 2008:214), in Uribe 2011 pp. 257.

¹⁶ No less than half of the property had to be used productively , if not the property owner had fifteen years of grace to follow the disposition (de Janvry y Sadoulet, 1996, 307)

of land (Uribe, 2009, 94). A massive wave of rural-urban migration occurred leading to an increased land concentration (Albán, 2011, 246). In addition, this political confrontation debilitated agricultural productivity and led to high levels of unemployment (Albán, 2011, 146).

In 1944, the government ratified Law 100 as a way to increase productivity. This law which modified the previous land reform law re-established sharecropping contracts to increase agricultural production. This negated the peasants' right to claim the land that they had been tilling. In addition, Law 100 increased the number of years that landowners had to modify their land use to avoid expropriation from 10 to 15 (Albán, 2011, 345). This law favoured the interests of the *terratenientes* and maintained the large land holdings intact (Albán, 246). 'La Violencia' lasting for approximately 40 years, formally ended in 1958, with the creation of the National Front, an agreement between the Conservatives and the Liberal elites that allowed the two political parties of the time, the Liberal and the Conservative, to hold alternating periods in office.

3.3.2 Land Reform during the National Front

Already in the 1950s a World Bank mission identified unequal land distribution as a key impediment to economic and social development in the country (Currie 1950, in World Bank 2004). The issue was ignored at the time while conflict continued to intensify, particularly in the rural areas. After the downfall of the military rule of Gustavo Rojas Pinilla in 1957, the National Front Coalition was established. This was a political agreement between the Conservative and the Liberal parties that placed both parties as equals at every level of government. It was agreed that every four years the presidency would alternate between the Conservative and Liberal Party and congress would have the same amount of incumbents from each of the two parties (Findley,

1972, 886). It is claimed, that this political alliance was a way to hinder the possibility of having a third party and maintaining the elites in power (pp. 886). In 1958, Alberto Lleras Camargo became the second Liberal president to propose a land reform act. He established a National Agrarian Committee to address the land concentration issue and freeze the leftist insurgency that at this time was just beginning to develop. He also helped to form a peasant organization, The National Peasant Association (ANUC) to help with the design and implementation of the land reform program.

The ANUC was formed with the support of the liberal government to articulate the demands of the peasants on a national scale and to neutralize the peasant groups which threatened to become an important political force with the support of guerrilla groups (Perez-Casas, 1996). Findley (1972) believes that at the same time, Lleras wanted to organize the peasantry so that it could solidify as an influential political force able to create the necessary pressure for land reform.

This second attempt at land reform was crucial in that it proposed the expropriation of unproductive lands (Ibáñez, 2011). Land reform in the 60's promised to become a reality for those in the countryside, especially for the landless peasants, but land expropriation was minimal and the program focused in the distribution of idle land, extending the agricultural frontier even further (Ibáñez 2011). According to Berry (2002) internal and external forces influenced the second land reform program in the 60's. The violence in the countryside, the inefficient levels of food production and the need for votes were the internal forces that lead the consensus in favour of a second attempt at land reform. International pressure came primarily from the United States, which at that time was committed to eliminate any communist threat coming from the Latin American Region. The *Alliance for Progress* headed by the United States supported land reform

as a strategy to counter the appeal of revolutionary politics in Latin America. *The Alliance for Progress*, promoted by John F. Kennedy (1961-1963) attempted to provide guidance on ways to bring economic development and social reforms to help the poorest in Latin America (Uribe, date). In addition, the United Nations Economic Commission for Latin America and the Caribbean ECLAC, established in 1948, also supported social reform in Latin America. Nonetheless, at this time *terratenientes*, still possessed sufficient political power and their interests were more inline to those of the industrial bourgeoisie. This allowed the elites to shift the intentions of the land reform program for the benefit of the *terratenientes* once more (Albán, 2011, 246).

This social land reform had three basic purposes. First, distribute land to the landless peasants and re-establish viable lands in areas where small land holdings predominated. Second, promote effective economic exploitation of uncultivated lands by creating programs that established the ordered distribution of land and its rational utilization (Findley 1972, 889). Third, provide the necessary conditions for small tenant farmers and sharecroppers to improve their living standard and have the opportunity to become land owners (889). Concurrently, the Colombian Institute for Land Reform (INCORA) was created in 1961 as an arm's length agency accountable to the legislature through the Ministry of the Agriculture (889)¹⁷. The Institute was given the responsibility to identify, acquire and distribute specified lands in order to fulfill the objectives of the law¹⁸.

17 In 2003 INCORA was replaced by the Colombian Institute of Rural Development (INCODER). The restructured institution assumed the responsibilities also of the Institute of Land Adaptation (INAT), the Institute of Agrarian Reform (ICODER), the National Institute of Fishing and Aquaculture (INPA) and the Integrated Rural Development Fund (DRI).

¹⁸ Private land could be acquired by INCORA through "extinction, gratuitous transfer, expropriation and negotiated purchased" (Findley 1972, 889). Extinction of ownership of the land which can be seen as the most radical way for the state to acquire the land was only possible if the landowner failed to exploit the land for more than ten consecutive years (889). INCORA's decision was to be approved by the government and consequentially the landowner had the right to appeal this decision. Expropriation on the other hand, was only possible if the land was

The ANUC was meant to serve as a channel for peasant groups to amalgamate their demands inside the boundaries of the state¹⁹ (Perez-Casas, 1996). Nonetheless, this peasant organization and their leaders were increasingly weakened by the constant violent attacks against peasant land occupations and protests. Therefore, they began to frame land reform as a struggle against the state, rather than a struggle with the state, and committed to form revolutionary organizations to pursue their ends. During the early 70s the ANUC congregated 800 thousand members and positioned 380 peasant leaders in different areas of the country. ANUC members channelled their demands through riots, land and public building occupations without precedent in the country's history, and publicly threatened to become a revolutionary force. These actions threatened the political elites. From 1972, the number of peasant detention rose to 2,084 cases, compared to the 845 detentions that were reported the year before (Perez-Casas, 1996). During land invasion and peasant mobilizations police interventions were also substituted for military operations. Peasants that were once on the side of the state were now mobilizing against the state and joining guerrilla groups (Perez-Casas, 1996). However, by the time the Conservative government took power in 1972 the landed class was much more organized and able to blame

regarded by INCORA as inadequately used. INCORA was assigned the administrative task of evaluating land use of all farms larger than 2,000 hectares; however the criteria for establishing adequate and inadequate used land was vague and hard to establish. Usually, the decision was based on a comparison of land to be expropriated to the most efficient used land in the region (889). Once the land was acquired INCORA was responsible for distributing it. INCORA had two basic steps for distributing the acquired land. First, INCORA could adjudicate land that was obtained through extinction, free of charge, by either granting it immediately to settlers that already occupied the land, or by reserving it for planned settlement areas (Findley 1972, 893). On the other hand, land that was acquired through gratuitous transfer, expropriation and negotiated purchase could be sold to low income families or family corporations. However, the new land owner was required to meet certain conditions in order to keep the land including not to make permanent improvements without previous authorization, not to transfer any of his rights under the contract to any other individual, and not to employ workers, unless under special circumstances (892). After the land was distributed INCORA still had a role to play ensuring that the new owners continued to utilize the land following the restrictions imposed by the government.

¹⁹According to Leon Zamosc (2006) The ANUC emerged as a unifying force expressing the peasants' demands and grievances in three main battlefronts: the struggle for land, the defence of the colonist and the protection of the smallholder.

those who were in favour of land reform for engaging in insurgent activities that put in jeopardy the security of the Colombian nation.

Concurrently, the state's repression of social movements was able to change the political process, providing a signal to both pro- and anti-land reform coalitions about the state's position against those in favour of land reform (Campbell 2005, 66). At the same time, the influence of medium and large farmers over the state grew while the closed, insulated, and centralized set of political institution, restricted access to the policymaking arena for peasants groups. Those that were being constantly oppressed resorted to mass demonstrations and civil disobedience (Campbell 2005, 64). During the 1970s the landed elite found an ally in the new Conservative government (Berry 2002, 42). At the same time, the most influential peasant group became an enemy of the state. This group, Berry explained, was heterogeneous in its composition including small tenure farmers and landless peasant workers. However, the hostile position of the new government exacerbated internal divisions between farmers and workers providing a condition for opposition forces to exploit to their advantage (Berry 2002, 42). While peasant groups were now seen as a threat to the state those against land reform had strengthened their political position and were able to pressure authorities to commit to their objectives.

It is argued that land reform was not successful because the Colombian state "chose to first modernize medium and large farms, using expropriation as a threat instead of proceeding with outright expropriation and redistribution" (Janvry & Sadoulet 1989, 1398). In fact, an obstacle for the land redistribution program was the President's focus on economic policies to increase the national income and production of exportable commodities that could expand the national economy (Findley 1972, 905). For instance in 1969 the program's main objectives were primarily to increase agriculture production, rather than to redistribute land to the peasantry

(905). Another aspect that delayed the redistribution process was the legal position of the Council of States which determined that in order to decide whether or not land was being used adequately a new visual inspection was necessary (Findley, 1972, 911). Before a decision was made the landowner now had ample of time to make the changes necessary including moving cattle to an unutilized piece of land or cultivating crops in order to avoid the land extinction process (911). There were evidently, excessive delays for distributing the land previously acquired by INCORA (915). Peasant groups after realizing that land reform was not going to have the promised outcomes used new means to pursue their objectives.

The insignificant progress achieved by INCORA during its first years²⁰ led the Liberal government of Carlos Lleras, to propose Law 1a 1968, which established conditions to facilitate the land redistribution process (Fajardo 2002, 14). It was not until 1968 that INCORA initiated its function more vigorously. From 1969 to 1971 it was able to distribute, 88,000 hectares of land to 3,500 families in the countryside (Findley 1972). Afterwards, the new President, Misael Pastrana, started to slow down land reform in response to Conservative forces that defended the status quo. This culminated in riots in the major cities and illicit land occupations throughout the country (907). In total, 3,000 peasants occupied 44 private estates. However, this demonstration of civil support for social reform, which aimed to force the government to accelerate the pace of land redistributions, was resisted by the military (907). In 1971 INCORA suspended all land redistribution activities and the land that had been previously acquired remained undistributed. For example, of 2,454,000 hectares acquired by extinction only 5,000 hectares had been distributed by 1971 (900). In 1972, an agreement between the Conservative and Liberal parties resulted in the total termination of land reform efforts. In fact, the budget that was previously

²⁰ To illustrate, INCORA acquired 2.5 million hectares of unused land by extinction of which none were distributed (917)

reserved for redistributing land was immediately reallocated for agricultural development. The government committed to help the peasants who had already acquired land and those who had been affected by the heavy rains, which could put at risk food production throughout the country (907). Concurrently, INCORA, which was first established to implement land reform programs, changed its role to provide technical assistance to modernize the agricultural sector such as facilitating credit to large landowners to modernize their farms (Janvry & Sadoulet 1989, 1406)²¹. This policy change benefitted large land owners and left behind the rural landless population and the new land recipients. In comparison, 1 percent of the largest farmers received 50 percent of public credit while the 50 percent of the smallest farmers received 4.2 percent of public credit (1406). The coalition against land reform was able to enhance their economic status with the programs that INCORA provided to modernize the agricultural sector. Albertus and Kaplan (2010) insist that “modernization of medium and large farms created economic and, hence, political power among these farmers which allowed them to gain (or reinforce their) privileged access to the state” (p.1399). At the same time, INCORA was unable to provide the assistance necessary for those new land owners and many were forced to rent out a piece of their farms to old landlords (Deininger, 1999, 655).

In 1974, the conservative government organized a meeting with the liberal party, the cattle farmers association, and other large landowners to discuss the future of land reform. During this meeting, which took place in Chicoral, Tolima, an agreement was reached in which the government committed to put a halt to land redistribution. With the treaty of Chicoral, the dominant coalition was able to bring an agreement that rural development was to take place by modernizing existing farms, and not by redistributing land (Janvry & Sadoulet 1989, 1405).

²¹ Even though INCORA had a large budget to implement land reform, Deininger (1999) states that INCORA's average annual budget in the late 1980s was about US \$140 million, most was spent on a large bureaucracy and after produced little visible effect on the ground (pp. 655).

Evidently, the Chicoral agreement, which was institutionalized with the ratification of Law 4 in 1973, aimed to benefit the medium and large farm owners who could access the benefits offered by the state to modernize their farms and increase productivity. The law prohibited land expropriations for redistribution and restated the promise of “non-expropriation-if-modernization”; agreements which were made during the Chicoral Treaty (Albertus and Kaplan p.1399). This historical event is viewed as the last frustrated attempt to implement land redistribution in the nation (Fajardo, 2002, 15).

Years later in place of the land reform, the government of Alfonso López Michelsen (1974-1978) adopted the Integrated Rural Development program (DRI) that was part of the Food and Nutrition National Plan. The DRI was intended to improve the critical living conditions of the poorest and rectify the failures of the land reform program. The program intended to provide small food producers with subsidies, technical assistance, commercialization paths, electrifications and education. Nonetheless, Albán (2011) suggests that there were few results of the program and the lack of resources delegated for its implementation exacerbated the food production crisis (pp. 349).

Peasant organization such as the National Trade Union Federation of Agriculture (FENSA) and the National Association of Agricultural Workers (ANTA) were created during the 80s and the peasant struggle for land reached a new peak in 1987. Faced with the numerous peasant demonstrations and land invasions a peace framework was promoted by the government and negotiated with subversive groups, leading to the creation of the National Rehabilitation Plan (PRD)²². The PRD objectives were to implement social programs in areas affected by violence and to support INCORA’s activities (Albán, 2011, 350). The internal conflict, however, which

²² In 1982, Law 130 was ratified to strengthen the role of INCORA. By then according to Vasquez INCORA’s mission was reduced to buying underutilized lands. Land expropriations were reduced to a minimum benefiting the speculative landowners (Alban, 350)

continued to escalate led the state to concentrate in finding ways to combat the insurgency while putting aside the land reform efforts of the past (Saffon, 2010, 121). Two guerrilla groups, the FARC and the ELN (see Appendix A for a description of these two insurgent groups), became stronger and achieved control of a large piece of the territory. In addition paramilitary groups emerged with the support of *teratenientes* to protect their lands from the guerrilla threat. The conflict intensified as a result of confrontations of these actors and land displacement rapidly escalated (Albertus and Kaplan, 31, 2012).

4.3.3 Market Land Reform: Downsizing the State

During the creation of the 1991 constitution the land issue was discussed again. The constitution included a chapter that aimed to guarantee the social and ecological purposes of the land (Lasa conference, May 2012). The state policy on land changed in 1990s as the government designed a market led approach to land reform. This attempt at land reform came with the introduction of Law 160, in 1994, which proposed a land reform program based on the recommendations of many international development agencies, in particular the World Bank. The program aimed at eliminating bureaucratic interference and state intervention and encouraging the participation of private agents in the land market. The proponents of this initiative insisted that the land market will allow the rural poor to access land ownership (Machado, 2009, 20). The law established a subsidy and line of credit with interest rates close to those of the market to buy land (Machado, 2009, 116). The 1994 Land Reform Law provided for a land purchase grant that was restricted for the purchase of land and could not be used for any other investments. Basically, INCORA, through the National Agrarian Fund, was responsible for giving grants that would supplement beneficiaries' efforts and thus allow them to acquire land.

INCORA was responsible for subsidising 70 percent of the total cost while the remaining 30 percent of the land purchase price, plus any additional start-up investment, had to be obtained from other sources either the farm household's own resources or a regular loan from a financial institution at market rates. INCORA was also responsible for acquiring private land directly and distributing it to landless peasants or those with very little land²³ (Law 160, 1994, chapter 12-9).

However, this effort has been considered a failure in trying to achieve a more equal land distribution (Borras, 2003, 390). Beneficiaries have been unable to repay their debts due to high interest rates and there has been an ongoing reduction to INCORA's budget resulting in a vast slow-down of beneficiary disbursement (Mondragon, 2000). According to the World Bank, lack of continuity, legal issues, design flaws and centralized implementation were responsible for the failure of the market land reform program. Deininger (1999) argues that the fact that there were few incentives for local leaders to create the necessary institutional structure for the market-led land reform process prevented the participation of beneficiaries at the local level (10). Funding for the program's implementation was scarce and INCORA, a centralized government agency, failed to incorporate all the local factors that would impede beneficiaries from gaining access to productive and social infrastructure, markets, and technical assistance. In addition, the World Bank report establishes that participation of the private sector in financing was never achieved and de facto exclusion of civil society and NGOs also reduced transparency and independent monitoring and evaluation (World Bank, 6). In addition, the subsidy was costly; it has been set to equal to 70 per cent of the land price in Colombia which proved to be a budgetary constraint in

²³ The Colombian Institute of Rural Development, INCODER, will be allowed to acquire through direct negotiations or order the expropriation of properties to ensure that the law is upheld only in the following cases:

- a) for the indigenous and Afro-Colombian and other ethnic minorities that do not possess them or possess them insufficiently;
- b) To assign lands to peasants that inhabit regions affected by natural disasters;
- c) To benefit peasants, people or entities that the national government establishes qualified to access to programs of agricultural land adaptations or special management areas or of ecological interests. (Bill 160/ 1994, Chapter II, Translation by author)

the long term (17). Landlords have in many instances overstated the price of land and in some cases INCORA was paying less through direct intervention than beneficiaries through "negotiated" land reform in the open market. Others argue that because landlords are paid a hundred per cent cash they become the real immediate beneficiaries and fully support the program. In addition to the 'demand-driven' approach, due to the high income ceiling required (equivalent to income derived from a 15-hectare farm – large by Colombian standards) to join the programme, the beneficiaries are mostly, according to Borrás (2003) rich peasants. The program also lacked the complementary mechanism such as strong agricultural extension services, credit, farming inputs, water for irrigation, marketing arrangements, information and training, to ensure that the beneficiaries could make effective use of the land.

It has been argued that an important provision of the law, which establishes that all tenant farmer areas become *Zonas de Reservas Campesinas*²⁴ if they have not previously been declared for business development, has not been enforced. Only five *Zonas de Reservas Campesinas* were formerly created in the country; however, these were abolished in 2003. Through the years of combating insurgent groups Law 160 was ignored and instead, land grabbing practices by illicit groups that terrorized peasant communities forced many to migrate to the cities. According to Molano (2012) these zones which were established in law 160 in 1994 as a way to prevent further land concentration and provide land to landless peasants for their subsistence could have been an alternative model to protect small farmers but have been forgotten by the state²⁵.

²⁴ Peasant Reserve Zones

²⁵ Basically the law establishes peasant reserve zones where each family can own not more than one Family Agrarian Unit (UAF) of variable extension according to soil type, and distance to markets. The land could only be sold to another peasant who is also restricted from buying more land.

In Colombia, the land market-assisted land reform programme has largely been brought to a halt by insecurity in the countryside²⁶. Assistance programs for the displaced population have supplanted land reform programs²⁷. The political agenda of the last administration focused exclusively on combating the insurgency and bringing security to the country. The only modifications of Bill 160 1994 occurred in 2003 when the government introduced Bill 812 which in line with the market approach to agrarian reform establishes a subsidy for productive projects and broadens the scope of land tenure options that can access the subsidy to include leasing with option to buy, recuperation of abandoned lands, renting for the duration of the project, renting of public lands, shared ownership models and other forms of land management (Machado, 2009, 175). Nonetheless, the conflict which is responsible for displacing millions of Colombians from their lands has brought back land policy to the political stage. It is estimated that the total hectares of land that have been abandoned or taken over since the late 1990s is equivalent to 10.8 percent of the country's agricultural land. The social and economic impacts of land displacement have been dramatic for the agricultural sector. The land displacement phenomenon has also highlighted the problems related to rural property informality since displacement was facilitated by the fact that many peasants lack the legal titles of their land or informally occupied the land²⁸. Informal land tenure, according to experts, facilitates illegal land appropriation. This connection between land informality and land displacement has been restated by the fact that only 31 percent of abandoned land possessed legal titles (Saffon, 2010, 127; Elhawary, 2007, 179). The

²⁶ Law 160 created the National System of Agrarian Reform and Rural Peasant Development to promote access of land for agrarian workers and improve the living standards of the rural populations. Since then the government stimulated land colonization and land titling of idle national land and has avoided any efforts to redistribute fertile land, which today some estimate most of it is underutilized and in the possession of drug traffickers (Alban, 2011, 345)

²⁷ Machado (2009) argues that the government programs reflected a deviation from land reform programs in order to tackle more directly the effects of the war rather than its causes (pp. 173)

²⁸ 55 percent of the total displaced population were landholders before being displaced; however although 94 percent abandoned or transfer their land as a consequence of displacement, only 18.7 percent of them held formal titles (Saffon 125).

land restitution program as a measure to compensate the victims of the conflict and provide a solution for the displaced population, alongside land formalization is considered an important objective for the Colombian government (Restrepo, 2012).

3.4 The Evolution of Conflict in Colombia: Conflict for Land and Territory

To understand how the coalitions concerning land restitution have formed it is important to analyze carefully how the conflict in Colombia has evolved. Many agree that land has had a central role in the evolution of the conflict²⁹ (Reyes, 2009). Ramirez states that land inequality is both a cause and a consequence of the political conflicts that have plagued Colombia for so many decades (2011, 51). The fact that 52 percent of the land is owned by 1 percent of the population is directly related to the emergence of the guerrilla groups and later on of the paramilitary forces, which were created to defend the lands of large land owners from the left wing guerrilla threat (Reyes, 2009). The Guerrilla groups of the 60s all organized in favour of a more egalitarian society and pressured the government to implement land reform. Later on paramilitary armies were created to protect the interests of large land owners and drug traffickers from the attacks of the guerrilla rebels. Although the paramilitaries were not well organized structures at the beginning they were able to form a unified front in the 1980's known as the United Self-Defence Forces of Colombia (AUC).

Reyes (2009) distinguished two relationship models between drug traffickers and the guerrilla: one of accommodation and one of conflict. The first model occurred when drug

²⁹ It was expressed in the latest UNDP report that the land tenure structure and the 'counter land reform' that occurred as a result of the actions of drug cartels and illegal armed groups and their alliances with the rural elites, obstructed any political action to transform rural communities (UNDP Report, 217). However others, such as Miguel Gomez Martinez, a congress representative argues that it is the lack of state which has allowed processes of land colonization to become violent and disagrees with the conventional argument that high levels of land concentration have led to violence (Gomez, 2011)

traffickers bought land in an area dominated by guerrilla groups and were obliged to pay the guerrillas a tax in exchange for protection. The second model describes the situation when drug traffickers who owned large properties refused to cooperate with the guerrillas and brought in their own paramilitary army to fight the guerrillas (pp. 81).

Although, the AUC were formed in the 1980's as a counter insurgency front, later on they were able to control vast areas of the territory, to generate a large scale land grabbing process and permeate local political institutions (Estrada, 2009, 12; Grajales, 2011, 771). As Estrada (2009) asserts perhaps the most apparent consequence of this form of state cooptation is the growing distrust of the state by civil society and the relationships that have come to light between the elites and politicians, particularly local politicians, and parastatal³⁰ organizations (13). Drug traffickers have also bought large areas of land to use either for illegal drug production and smuggling or for money laundering purposes. One pattern that has been highlighted, in reference to this, is the adaptation of agricultural land for extensive cattle ranching (Reyes, 2009, 77). Drug traffickers have also contributed with the enrichment of parastatal organizations by providing payments in exchange of protection of their land and drug transit corridors.

The former government's democratic security policy was very effective at reducing the leftist FARC and ELN guerrillas. Nonetheless, previous administrations have been unable to convince guerrilla groups to formally disarm³¹. A peace treaty was not reached with these guerrilla groups and they continue to engage in guerrilla warfare tactics to maintain or regain

³⁰ Parastatal organizations refers to those armed actors that challenge the authority of the state. In the case of Colombia they include left-wing guerrilla groups and criminal bands or neo-paramilitaries.

³¹ According to general Jesús Alberto Ruiz Mora, of the Research Institute of Military sciences the plan to consolidate democratic security which was planned to take place during Uribe's second term was not totally fulfilled and the new President instead of continuing with this predecessors decided to implement a democratic prosperity plan leaving behind the military strategy necessary for successfully continue to pressure the guerrilla groups and gaining control of the territory (LASA conference 2012).

control of territory. Although, the AUC were persuaded to disarm between 2003 and 2006 criminal organizations that many have come to name neoparamilitaries³² have begun to operate particularly in zones that were under the former paramilitaries' territorial control. It is believed that although these criminal bands lack the structural organization of the AUC, they benefitted from the vacuum left by the paramilitary demobilization and they are dedicated to the cocaine trade, from controlling coca crops to processing the paste and shipping the product (Restrepo Granado & Tobon 2011, 464).

The negotiations with the paramilitaries dismantled these relationships and allowed a clearer view of the conflict. Although drug trafficking does not explain all the source of violence in Colombia, the drug trafficking economy has permeated all parastatal organizations and fomented the competition for protection and private security (Estrada 2009, 32). Estrada (2009) suggests that the armed conflict continues to be incentivized by unequal economic relations illustrating the asymmetric development forms that exist between the rural and the urban, poverty, unemployment and corruption (32). Territorial control became a key element in the war strategies of guerrillas, paramilitaries, and drug traffickers making expulsion of land users a tactical element in the conflict (World Bank, 2004).

The conflict has been particularly detrimental for civil society organizations and their influence on policy making. Both paramilitaries and guerrilla groups have targeted peasant, ethnic and human rights organizations that disagree with their agendas. According to Buendía the guerrillas have been responsible for the lack of social movements in Colombia. The persistence of the armed conflict and the lack of political motivations of the FARC have justified the need to prohibit and penalize any form of social mobilization. The FARC also became a major drug

³² Particularly some human-rights groups such as CINEP, PBI and others call the bands "neoparamilitaries" and argue that the murders of community activists, particularly of land restitution leaders, and land evictions are designed to exert social and political control over territory, just as the former paramilitaries used to do.

trafficking organization and carried out many kidnappings for ransom to help finance their belligerent activities. This made it easy for people to see or imagine guerrilla complicity in any form of mobilization (Gómez-Buendía, 2012). Public opinion dramatically changed and many came to justify any act against the guerrilla and their ideals. Paramilitary groups received greater support particularly from the elite and drug traffickers and engaged in a persecution against the guerrillas and their sympathizers. The attacks of the paramilitaries against civil society contributed dramatically to the debilitation of peasant organizations in the country³³ (Reyes 2009, 80). One of the consequences of the conflict and the violence, in addition to the damage caused to the people and their social fabric, is that victims have been shamed into silence and social invisibility.

The internal conflict continues despite the peace agreement signed with the AUC in 2006 and despite the number of successful attacks that led to the elimination of numerous guerrilla top commanders and the reduction of guerrilla troops. After years of combating the parastatal groups in Colombia it has become evident to many scholars and government officials that focusing on military strength has not in any way provided a solution (CINEP, 2010). According to Reyes (2009) “land policies are conditioned to macroeconomic and sectarian policies and also to the national and international conjunctions- political, economic and social” (pp.185). Land per se is not as important for the elites in today’s context; yet the control of territory and the population signifies having control over a social, economic and political unit that could serve their societal project. Machado (2009) suggests that the conflict over land confronts the needs and rights of the rural population with the power of the local elites.

³³ The Peasant Movement was at its best position during the 20s and the 70s with the creation of the ANUC, yet the movement has not had the strength of other Peasant movements such as in the case of Bolivia, Brazil, Mexico or Ecuador. Several studies agree that the dispersion, the repression, and the cooptation on the side of the government in place have been responsible for frustrating the attempts of a massive peasant mobilization.

Parastatal organizations have also benefitted from economic growth and foreign investment. The alliance between large agro-business and parastatal groups has been recognized internationally, particularly after the case of Chiquita Brands, which in 2007 was condemned in the United States and forced to pay 25 million dollars after admitting it paid the AUC for protection³⁴(Albán, 2011, 338). According to many the economic structures that support parastatal groups remained unchanged and any peace-building policy should involve elements that affect the incomes of the armed groups as well as improves the well being of the population of the zones under control of the insurgency (Diaz, 2008, 25)³⁵.

³⁴ The company paid approximately \$1.7 million between 1997 and 2004 to the United Self-Defense Forces of Colombia (AUC), in exchange for protection for its workers.

³⁵ Diaz (2008) argues that “A wider political reform, a series of policies aiming at reducing the inequality created by the conflict, and a land reform that counteracts the problems formed by the war are needed; Otherwise, any solution (military or political) will not be sustainable in the long term” (pp. 26).

Chapter 4: The Current Restitution Program

4.1 Land Restitution: The State is Back

The current land restitution program is established as part of the Victim's Law passed in June 2011, which dictates measures to assist and compensate the victims of the armed conflict. Chapter three of the victim's law states all the provisions affecting the victims of displacement, which should be implemented in a ten year period. Although the Victims Law recognizes all people that were victimized and will provide administrative reparation measurements since January 1985, it was agreed in congress that the Land Restitution Chapter will only be applicable to victims that were displaced after January 1991. Law 1148/2011 will also compensate the victim's family and recognizes expressly as victims the victim's partner, or other first degree relative, and first degree relationship at the time of the victim's disappearance or assassination³⁶. The law also creates the Land Restitution Unit (LRU) which is responsible for leading the process and assisting victims during the land recovery proceedings. In order to access the assistance and reparation measures the victims must request their inscription in the victim's registry and to access the land restitution program the property must be registered in the land displaced registry (Confidential interviewee 15, February 9, 2012). The government destined close to \$30.1³⁷ million to finance the implementation of the Victim's Law.

To facilitate the implementation of the land restitution program the government created the Land Restitution Unit. This unit was made up of the team previously responsible for the Land Protection Project created during the former government to avoid land dispossession in areas particularly affected by the forced displacement phenomenon (Confidential Interviewee 13,

³⁶ It also recognizes as victims those who were victimized when trying to prevent victimization or protect a victim in danger and second degree consanguinity relatives when first degree relatives are absent.

³⁷ The law is estimated to cost approximately \$54 billion Colombian Pesos.

February 3, 2012). A registry of lands abandoned as a result of the conflict was also created. The Land Restitution Unit began implementation of the restitution program in January 2012. Since the approval of the Law, in June 2011, the Unit has begun to collect land restitution applications. The goal is to resolve 15,000 applications in four years. From the beginning of 2012, the Unit has received 13,824 applications and 1,040,000 hectares have already been claimed (Dinero, 2012). Specific zones have been strategically chosen to begin the implementation of the land restitution program. Approximately 22 offices are intended to begin to operate by the end of 2012 and five are already open to the public in some of the Country's major urban centers such as Bogota and Medellin . There are cases of displacement that are known to the Land Restitution Unit (LRU) from previous work done by the Land Protection Project and so these cases will be now considered. Agrarian judges have been trained to operate in the agrarian tribunal and to dictate rulings on land displacement cases. In total 22 agrarian judges have been nominated and 15 magistrates to initiate the judicial processes. The government expects to have 124 judges and 60 magistrates assigned to implement the Land Restitution Chapter (Monroy, 2012, 6). However, only five judges are currently assigned to rule on the first restitution cases. The government has declared that by the end of this year 140,000 cases of land restitution will be resolved. So far the Institute of Rural Development has release to the public the decisions made in cases of land titling and formalization without explicitly defining which of these cases constitute land restitution. According to official sources, one million hectares have been adjudicated and titled benefitting 42,057 Colombian families (INCODER, 2012).

The Land Restitution Unit is also responsible for the operation of the Unique Registry of Dispossessed Lands; a registry to keep track of land displacement case. The victims that wish to get their land back must register their land at the LRU in order to have access to the land

restitution process. The LRU will progress gradually and there are some macro zones that have been prioritized to start with the implementation of the programs to guarantee the safety of the returnees (confidential interviewee 15, February 03,2012). Other applications will be received but will be processed once the zone is considered safe for the victims to return. The Land Restitution Unit is responsible for the return of land to the victims but works along with other institutions at the national and local level to guarantee the articulation of rural policies to ease the return of the beneficiaries to their communities. Accordingly, local governments are to include land restitution in their regional development plans. INCODER will also support the implementation of productive projects. In addition, there is a program in place run by the Ministry of Defence to ensure the safety of the returnees. The LRU has also some funding for the implementation of productive projects and for housing the returnees.

According to the guidelines set up in the Land Restitution Chapter of the Victim's Law, the restitution of land should benefit land owners or land possessors and also those who informally occupied public idle land that were forcefully dispossessed of their land or abandoned their land as a result of human rights abuses or as a consequence of direct and indirect violence cause by the internal armed conflict (Victims Law 1448/2011, Article 3). In addition, land restitution is possible with respect to lands that were dispossessed through legal transactions that involved coercion and intimidation. One important provision of the Land Restitution Chapter is that it establishes that any transaction involving allegedly dispossessed assets should be presumed to be illegitimate³⁸. If the current land owner is unable to prove the legality of the land transaction, the victim, represented by the government agency in charge of land restitution will be able to obtain the land entitlements and return to the land. This reversal of the burden of

³⁸ This provision is known as the reversal of the burden of proof and it is found in Chapter 3 article 64 of the Victims' and Land Restitution Law. Current landowners are now required by the land restitution courts to demonstrate that they acquired the land legally, without coercion or threats.

proof implies that the victimizer must prove the legality and transparency of the land transaction and relieves the victim from the process of acquiring proof and titles that they might not have or be able to obtain. However a third party with entitlement to the assets could intervene and if they proved their 'good faith' they could be allocated the land. The Law guarantees the compensation of all victims who ever the victimizer may have been.

The law authorizes the president to introduce a legislative decree in order to design specific reparation programs for ethnic groups. The law gives the president six month to go through a consultation process and to expedite a decree that satisfies the specific needs of Afro-Descendants and indigenous groups. The National Government also issued a decree in February 2012 which created the Superintendency Delegated for Land Protection, Restitution and Formalization³⁹. This agency which belongs to the National Superintendency of Notary and Registry Services is in charge of providing information about land displacement and clarifying land titles throughout the country. The delegate of the Land Protection, Restitution and Formalization Unit, Jairo Alonso Mesa, explained that the agency had just acquired a mobile unit that will be going throughout the country equipped with computers and personnel in charge of clarifying land titles and organizing and improving local land registry offices. The British government is providing the technical support for the operation of the Mobile Unit that aims to get to the most vulnerable population with a registration office to register and formalize their land title. It is a way for the state to reach the most vulnerable populations and deal with the issue of informal land ownership. The government aims to operate three mobile units by the end of

³⁹ Decree N° 0238 was issued in February 1, 2012 to ensure the cadastral system is modernized and takes into consideration the lands that will be return and formalized with the implementation of the land restitution program.

the year. In addition to this initiative, the unit is responsible for RUPTA which is a national file record of landholdings that have been abandoned because of the conflict⁴⁰.

4.2 The Case: Reaching the Land Restitution Consensus

During the policy decision process actors were grouped around specific political ideologies embracing neoliberal or neopopulist principals of land reform. During the approval of the Victim's Law, two alternative policies were also considered. One was the alternative bill proposed by the Polo Alternative Party which supported a more inclusive Victim's reparation bill⁴¹. The other was the proposition of those supporters of the former government who opposed the Victim's Law and continued to support the existing programs available to assist the victims. It is important to highlight that these two political forces, which represent the two political extremes, came together against the Victim's Law during its final approval in congress (Urrego, 2012). The Liberal Senator Juan Fernando Cristo explained that all parties that agreed to land restitution had to give up their views about specific policy mechanisms in order to reach consensus and approve the bill (Urrego, 2012). Many agree that the land restitution consensus was built on this idea that the government has the direct responsibility to compensate the victims of violence. Gerardo Vega the director of Forjando Furturos, agrees that land restitution program aims to return the situation to the previous state. According to Vega, those who follow a more demanding sense of restitution ultimately harm the victims (G. Vega, personal interview, March 12, 2012). Vega explains that NGOs and victim organizations united and agreed to land restitution and promoted an open interpretation of the law which includes different measure for

⁴⁰ There are two different files one for land owners and one for occupiers or tenants. In cases where land was occupied informally INCODER takes over this information.

⁴¹ Luis Carlos Avellaneda presented an alternative Victim's law that would cover a more diverse number of victims since 1980s.

land restitution that could permit people to return to their land and their territory. For instance, many have criticized the fact that the government is including land formalization as being restitution, but according to Vega if those who were displaced are given titles, even if the land is presently abandoned, this constitutes restitution and should be supported by all those who believe in improving the living conditions of the victims. The land restitution processes that have taken place in pilot projects also demonstrate Vega's position. For instance in the case of San Francisco, Antioquia, the regional government of Antioquia directly returned the land to the victims and people were able to return to their lands. Also, in the region of Urabá, land formalization has taken place and has allowed people to return to their land in a more secured manner (G. Vega, personal interview, March 12, 2012). The coalition in favour of land restitution reflects the neopopulist interpretation of land reform which aims to ultimately allow peasants to access land and to be able to take control of their territory.

Others actors such as those represented in congress by the left leaning party the Democratic Pole although supporting the land restitution initiative held more restrictive views of how the land restitution policy had to be implemented and refused to agree with the initiative supported by the majority in congress. Nonetheless, the law was approved by the majority in both the Senate and the House of Representatives and the government approved and committed to return the land to the millions of victims that were forcefully dispossessed as a result of the internal armed conflict⁴².

⁴² Although some argue that land restitution will not dramatically impact the land tenure structure I consider this strategy a pro-poor redistributive land reform since it aims at returning land to those that have been displaced and that today make up the most vulnerable population in Colombia.

4.2 The Consolidated Land Reform Coalition

The claim in favour of land restitution began in the late 1990s, particularly from national NGOs and victim's groups that understood the massive rural exodus that was taking place as the conflict exacerbated in the countryside. International organizations became aware of the problem and have also publicly supported land restitution as a necessary measure to respond to the victims of the conflict. A report published by the World Bank in 2004 titled "Colombia Land Policy in Transition", estimates that the amount of land abandoned by internally displaced populations from 1999 to 2004 was almost three times more than was distributed through government land reform programs since 1961⁴³. In addition the report insists that land displacement set in motion a massive agrarian counter-reform and contributed significantly to land concentration and inefficiency because those taking over the land do not effectively utilize it. The report adds that those who are displaced from their land become particularly vulnerable since "their agricultural skills tend to be of limited use in the urban and peri-urban areas" (World Bank, 2004, 9). According to CODHES the majority of displaced persons make less than a dollar a day and about 40 percent are unemployed.

Before the approval of the land restitution program the government had made some minimal efforts to deal with the massive land displacement phenomenon. Beginning in 2003 the government began the implementation of a policy to prevent land dispossession and to prevent the legal transfer of properties in areas of the country declared to be at risk of forced displacement. The international community supported this initiative and international donor agencies such as USAID provided funding and technical expertise for the implementation of the program. To this end the government created a registry system to include certain properties in areas at risk of land dispossession or requested to be included in the registry by individuals or

⁴³ The report uses the smallest number of disposed land: 4 million hectares.

communities who have been victims of displacement (Saffon, 2010, 129). Once the property was included in the registry it could not be transferred to a new owner. Nonetheless this initiative had a very limited scope and a minimal effect in assisting the displaced population (Saffon, 2010, 129). Since 2006 many national organizations such as Tierra y Vida, The Association for Land and Restitution (ASOVIRESTIBI), and Forjando Futuros, came together to support the government with the implementation of small land restitution pilot projects in areas affected by violence. These projects were supported by international agencies such as the International Organization for Migration (IMO) and the Peace Process Support Mission of the Organization of American States (MAPP-OAS), and many donor government agencies such as USAID and CIDA. In this way the extent of land displacement and the forces that facilitated this phenomenon became visible.

Since 2001 the government, pressured by the courts, has designed many programs to assist the victims of the internal conflict (see Appendix E for a more detailed explanation of the court cases)⁴⁴. However, only in 2009 with the Project for the Protection of Land and Patrimony of the Internally Displaced Population, has the Colombian government with the help of the international community institutionalized a program that could directly show the extent of land dispossessions in the country. The government, in conjunction with the key national stakeholders and the support of the World Bank through the Post-Conflict Fund elaborated a program in order to protect the land of those people that were forced to abandon their lands or lived in areas of conflict and risk of displacement. Other international agencies such as the Swedish International

⁴⁴ In 1997 Law 387, aimed at preventing displacement and providing IDPs with assistance and protection. One of the strategic issues included in this law was the legal protection of land and patrimonial assets of IDPs and the creation of a special register of abandoned land and properties (RUP, later called RUPTA). In 2001, this law was complemented by Decree 2007, which expanded the scope of protection to all types of land rights (e.g., owners with legal title, possession without title, occupants of State lands, individual tenure, and collective tenure in the case of ethnic groups).

Development Cooperation Agency (SIDA), the United States Agency for International Development (USAID), the European Commission and the Spanish agency for International Development Cooperation also collaborated with the implementation of the project (D. Huerta, personal interview, January 27, 2012; J. De Franscisco, personal Interview February 7, 2012). The program included two procedures to protect the property rights of the IDP: one for those already displaced (called the “Individual route”) and another for municipalities and territories with massive displacement or risk of displacement (called the “Collective route”). Through the first procedure, any displaced person could request the protection of his/her abandoned or disposed property. Through the second procedure, the Municipal Committee for Comprehensive Assistance of IDPs could declare an area as affected by displacement or at risk of displacement, therefore protecting all properties. All the land and properties affected were registered in the Unique Registry of Land and Properties (RUP), and these properties could not be sold or bought. A second phase of the Project was approved by the Post-Conflict Fund and implemented from September, 2005, to March, 2008 (Acción Social, 2010, 15-16). The institutions built for this project were adapted to begin the implementation of the land restitution program.

A crucial report was presented in 2011 by the UNDP in Colombia which focuses on the rural situation. According to the report in the last decades the state neglected the rural economy and focused on modernizing the urban centers and rapid industrialization. The report considers that the land restitution is very important because it brings up the rural topic and puts a focus on the rural population specially the most vulnerable groups and most affected by the conflict: women, peasants, and Afro-Colombian groups⁴⁵ (C. Chica, personal interview, February 2, 2011). In addition, the Victim’s Law is important, according to the UNDP report, because the state in a direct manner is on the side of the victims and not the victimizers. From a political and

⁴⁵ According to the UNDP report 94 percent of the territory is considered rural

social point of view land restitution is important because the law initiates a discussion on how to compensate the rural population (C. Chica, personal interview, February 2, 2012). Nonetheless, the report highlights that there is a need to go beyond the land restitution law and look at the agrarian structure, which is related not only to land access but land use.

Victims' and human rights organizations have claimed for many years that the absence of adequate restitution measures is an obstacle to ensuring the rights of the displaced to return to their place of origin and to have access to adequate housing. As a result this is considered to constitute a violation of the rights of the displaced population (Saffon, 2010, 132). These beliefs are prominent in international discourses and have attracted new actors to the pro-land restitution coalition such as international organizations like the International Organization for Migration (IOM) and donor agencies that support the restitution process. In the national arena the pro-land restitution coalition also has been very proactive at using the legal system to promote its demands⁴⁶. Victims, particularly in class action lawsuits and in many instances with the support of NGO's such as the Colombian Commission of Jurists have been able to win cases at the Supreme Court level that obliges the government to provide proper reparation measures (see Appendix E for a more detailed explanation of the court cases). Land restitution, according to the courts, is a fundamental right and the government has a direct role in returning to the victim's their lands and other assets (Noriega, 2011; Gomez-Isa , 2011, 153).

Other human rights organizations which were key actors in monitoring and evaluating the government progress in assisting the displaced population prior to land restitution also supported the land restitution policy. Nonetheless, they have been very active in looking at the bill's weaknesses and its implementation. The Bureau on Human Rights and Displacement (CODHES)

⁴⁶ In 1997, the government presented the Bill 138 to try and tackled the still dormant displacement phenomenon without much success. The Bill established a mechanism to accompany people returning to their communities, yet since then millions of Colombians were displaced from their lands and their territories.

is an organization funded in 1992 by academics studying human rights and international humanitarian law. CODHES is today one of the largest organizations that studies the displacement phenomenon in the country, While CODHES seeks peaceful alternatives for Colombia and has stressed the importance of the law it criticizes many aspects of the law and has been very proactive in providing alternative models of policy implementation that will guarantee true compensation for the victims of violence⁴⁷. The Colombian (Confidential interviewee 5, February 9, 2012) Association, which has also monitored the land dispossession phenomenon, declared the importance of approving the law despite its weaknesses. These organizations regard land reform as necessary to guarantee the rights of the displaced population to enjoy their lands and territory. They also support a wider land reform program that will enhance the livelihood opportunities of the rural poor, particularly in a country with extremely high levels of land concentration.

At the local level other initiatives emerged that strengthen the land restitution coalition. Diego Herrera Duque Director of the Popular Training Institute (IPC), a human right observatory in the region of Antioquia, described the departmental dialogue table of the victims. This is a space which includes all kind of victims of human right abuses such as land mine victims, displaced persons, and others. There are victim leaders and other victim companions including national and international NGOs⁴⁸. Local NGO's and researchers have begun to conjoin in order to find links of cooperation that could promote the correct path to land restitution. An alliance has formed between NGO's which have united to support the land restitution program and to

⁴⁷ In November 2011 CODHES presented the document 'Proceso de Reglamentación de la Ley 1448 de 2011, Ley de Víctimas y de Restitución de Tierras' which is intended to provide an alternative model for the implementation of reparation measures mandated by the Victim's law

⁴⁸ The victim laws brought some tensions to the table because some topics became prioritized and others left behind.

help organize the displaced population in order to facilitate the implementation of the program⁴⁹. Other research institutes such as the Centre for Research and Popular Education/Peace Program CINEP and the Popular Training Institute (IPC) have been very proactive on the topic and have monitored the implementation of the pilot projects that have been implemented.

During the 1995 Conference on Hunger and Poverty organized by the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, it was resolved to create a coalition of civil society and intergovernmental organizations to put land back on national, regional and global agendas. The Land Coalition was created and today Colombian organization such as the CINEP form part of this coalition. Another NGO called Rural Dialogue Group (GDR) also participated in the land restitution discussion. All these international organizations propose a more democratic land restitution program that will guarantee the returnees access to their land and territory in order to create sustainable rural communities.

The new elected President who seemed to share the same political and economic convictions as his predecessor has differed particularly concerning the land issue and its importance for conflict resolution in the country⁵⁰. Santos appointed as his Minister of Agriculture, Juan Camilo Restrepo, a technocrat who is knowledgeable about the rural conflict and the needs of the agricultural sector. He has also publically defended the important role of land restitution and has criticized the previous government's way of dealing with the land issue (Saffon, 2010, 113). At the same time, the government's rhetoric began to change dramatically in the first year of the Santos Presidency. In January 2011, the Colombian President asked

⁴⁹ The Alliance of NGOs is formed by Redepaz, Codhes, IPC, Fundación Forjando Futuros, Corporación Nuevo Arco Iris and la Asociación Tierra y Vida (Interview Gerardo Vega, March 12, 2012)

⁵⁰ To some this government represents the modern progressive right.

forgiveness to the victims of a massacre by the paramilitaries in Putumayo, a department located South West of the country which was heavily affected by the conflict. During Santo's public declaration the President defended the programs to compensate the victims, stating that the Victim's Law has to be a priority in order to build a better future for the country (El Tiempo 2012, 4). The government also insisted during a national mobilization, in the city of Barranquilla to support the land restitution program, that this was a demonstration together the peasants and the government will ensure the success implementation of the Land Restitution Chapter of the Victim's Law (El Tiempo, 2012, 4). National and international organizations welcomed the government's initiative and considered it a key pillar which could provide a more just compensation to the victims of violence. The current government has committed not only to the victims of violence but also to the international community to implement the land restitution program. Two demonstrations to support the land restitution program took place in Barranquilla and Necoclí this year. During this demonstration the President, Juan Manuel Santos, together with his cabinet reiterated his commitment to the land restitution program. The current Minister of Agriculture Juan Camilo Restrepo, states that the current land tenure structure in Colombia is defined by three models: the growing concentration of land, land fragmentation, and tenure informality (Restrepo, 2012). He has openly discussed the need to use land policies for the benefit of the rural poor drastically changing the government's rhetoric⁵¹.

Once the government in place supported land restitution the coalition in favour of land reform was able to enjoy greater political resources and greater access to the policy process. The

⁵¹ The Minister has proposed different alternatives to implement a pro-poor land reform. He states that the land issue could be solved by starting to distribute the lands that INCODER already has in the national land bank, lands that has been taken from drug traffickers, lands that were never allocated during the previous land reform attempts, lands that were illegally taken from the state which have to be reverted and finally lands that will be given back to the victims and those that will be formalized (Restrepo, 2012).

minority land restitution coalition was able to push for a broad government commitment to land restitution that was not previously endorsed and win a fight against the other policy alternatives presented. It as argued by Saffon (2010) that the minority coalition sacrificed its struggle for a broader land reform policy. But supporting the current land restitution program may have been the only strategy available.

The coalition for land restitution, according to Saffon (2010), could end up promoting the efficacy of a land restitution project⁵². In addition, Saffon (2010) argues that land restitution was not the first choice either of the government or the victims to deal with the issue of land. This is because the government embraces an agrarian model that benefits primarily large landowners while the victims embrace a more profound land reform. The consensus was reached, Saffon (2010) hypothesises because both coalitions “decided to support the project of land restitution in order to be publically perceived as motivated by the desire to promote restorative justice mechanism while surreptitiously promoting their own interests and their conceptions of justice” (pp. 163). Nonetheless Saffon (2010) argues, the land restitution coalition if able to lead a land restitution project could discourage the discussion about land allocation in the country, as it would show that the problem is being dealt with through restorative justice mechanisms. Other research organizations also express the importance of land restitution. Raquel Victorino the sub-director of the online journal *Razon Publica* (Public Reason) explained that she views the land restitution policy⁵³ mostly as a symbolic instrument. Colombia recognizes the internal conflict and recognizes politically the victims. The law recognizes that 10 percent of the population is directly impacted by the internal conflict (R. Victorino, personal interview, February 15, 2011).

⁵³ Public Reason Foundation in a non-profit organization that combines journalism and academic research to analyze the social, political and economic issues of Colombia and disseminate this information to the general public in order to also influence policy making .

It could be a first step to reconciliation if it is implemented successfully. The Colombian elite for the first time in many years demonstrates a serious effort to support the victims.

The important role that the government played in the approval of the law also shows the fragility of land restitution in the long term. Particularly for the victims of land dispossession a more profound land allocation reform is needed. Peasant organizations which have been present in the land struggle through the years also belong to this coalition. Jose Martinez, the President of the Peasant Association (ANUC) for the region of Meta, explained that the process of land restitution is an important one for the nation. The recognition of the conflict in Colombia, land displacement, and victimization is a positive start (Confidential Interviewee 2, February 8, 2012). The peasant organization movements (ANUC) have strengthened in recent years. It still has old leaders from old land struggles during the 80s but most of the leaders were assassinated. Now there are also new leaders. In the case of ethnic organizations, they are articulating new forms of land and territory reclamation. A new movement of displaced persons named Peasant Organizations of Displaced Population (Espacio OPDS) in the Caribbean region, has also been strengthened and promises to be a strong organization (J. Herrera, personal interview, February 6, 2012). The organization was vital in persuading the government to designate a new Peasant Reserve Zone in the region of Montes de Maria.⁵⁴

Different sectors have also publicly supported the land restitution program. The President of AUGURA proposed to the government the establishment of a land restitution dialogue table in the region of Urabá. These dialogue tables would take place as organized meetings to generate an open discussion on the preferred implementation of the land restitution program in the region of Urabá (R. Hoyos Ruiz, personal interview, March 15, 2012). On February 1st the first dialogue

⁵⁴ Other international organizations such as the Latin American Institute for an Alternative Right and Society (ILSA), The UN Agency for refugees (ACNUR- Colombia), Intermon-Oxfam and the Spanish agency for International Cooperation and Development (AECID) also support these process.

table took place and was very informal but included representatives from the government and NGOs. There are other tables organized for the following months. He also proposed to create a table of production projects. According to the association returning the land is not as hard as establishing agricultural projects for those who are returning to these rural communities⁵⁵.

Many universities are also encouraging a public dialogue on the land restitution topic and helping the victims of violence. Recently The University of Antioquia designed a program to help the victims recompile periodical documentation that could help to provide some indication of how the displacement occurred and facilitate the access of services for the victims⁵⁶. This service is free of charge and the victim only needs to provide a digital device to save the information that can then be presented to Social Action, the Presidential Program for Social Action and International Cooperation which is in charge of coordinating the national system for the assistance of the displaced population (Confidential Interviewee 3, February 22, 2012)⁵⁷. The Environmental and Rural Studies Department at the Universidad Javeriana has also worked supporting particularly indigenous and afro-descendent groups in their claims to their territory. Juan Felipe Garcia, a professor of the University Javeriana explained the role that the university has played in the land restitution problem (J. F. Garcia, personal interview February 10, 2012). In 2006 the NGO, formed by Francisco de Roux a Jesuit priest to work with the vulnerable populations of these communities to improve their living conditions began to realize that there is

⁵⁵ Implementing productive project for returnees was tried in the 80s with the reinsertion of the EPL who now are banana and plantain exporters. This process includes establishing alliances between large and small farmers. There are models to establish successful agricultural projects. According to AUGURA director the banana sector has logistics and knowledge of the markets to help small farmers succeed in the international markets and they are willing to cooperate to implement a successful implementation of the land restitution program (Interview, March 15, 2012).

⁵⁶ Victims make an appointment by calling the University of Antioquia library and schedule an appointment. During the appointment a librarian helps the victim to find news papers from the region from the period when victimization occurred

⁵⁷ Today this information can also be provided to the Unit of Land Restitution which recently opened in Medellin, Colombia. The University keeps periodical records since 1970 but according to the person in charge of running the program most people look for events that occurred from the late 80s and 90s (Interview, February 22, 2012).

strong pressure for the land and peasants do not have titles to their lands. They organized an office to ensure that peasants were granted proper titles. They found that it was really hard to win their legal battles. The university was helping these processes and assumed the legal battle of one case the Pavas Hacienda. The case of the La Hacienda las Pavas started when the natives or colonizers are displaced from this property after being threatened by the paramilitaries who arrived to the area. Although the peasants that worked the land did not own the land INCODER began a process of land adjudication since the peasants claimed that the land has been abandoned from its former owner for many years. In 2005 the paramilitaries demobilized and the peasants returned and tried to obtain the land titles. However, the formal owner returned, forced the peasants to leave, and sold the land to palm oil producers. The peasants insist that the owner had abandoned the property for many years and that they have the right to the land. They believe that the displacement was a plan to allow these big corporations to have access to their lands.

Religious organizations have also played an important role in distributing information about land displacement. Caritas a church organization, which works together with the Episcopal conference of Colombia, engages in an effort to help resolve social conflicts in the country. The organization controls RUPTA, a data registry that looks at the conditions of the displaced population and identifies tendencies and variable of the displacement phenomenon in the country (Confidential Interviewee 4, February 8, 2012). After the approval of the law the organization started an education campaign together with the ACNUR, and the UN Office of the High Commission for Human Rights called ‘the victims have the right of an honourable life and land restitution’⁵⁸. This campaign aims to sensitize people and ensure that the victims are aware of their rights. According to Caritas the new government created an opportunity by introducing the

⁵⁸ OHCHR-Colombia distributed 92,000 copies of publications; issued 37 press releases and started a campaign on the right to life and restitution of lands, including a radio commercial that was broadcast more than 1,000 times, among other activities for the promotion and dissemination of human rights.

law although some of its articles are still problematic. The organization is trying to monitor the implementation of the law and has tried to increase victim's participation in the Law's implementation. The campaign will also take place at the local level since local dioceses will advertise the land restitution law through local radio stations. At the local level this is important because there is trust in the church and its support of the law. The church trusts that the victims have become the principle actors and this creates an opportunity for peace building in the country.

4.3 The Dominant Coalition

The process of paramilitary demobilisation undertaken in 2003 to 2006 under the Justice and Peace framework could have been a window of opportunity for introducing reparation measures that included land restitution, but at the time there were no indications that this was a priority in public policy. In fact, the government continuously looked at implementing policies for emergency assistance to displacement victims but abstained from seriously considering policies that would guarantee the victims right to the return of land. Since 2005, Justice and Peace Law 975 generated expectations but not a lot happened and the neoliberal agenda put aside any effort to implement a land restitution program. In addition, the aggressive language against social organizations inhibited the efforts of victims, peasants, indigenous and afro-Colombians to organize and advocate for a land restitution measure (Confidential Interviewee 5, March 12, 2012). Parastatal groups that control certain local institutions and territories opposed the land restitution law. According to Santiago Perry, Executive Director of the PBA Corporation⁵⁹, there was less interest in compensating the victims and returning their lands during the Uribe

⁵⁹ PBA Corporation works with international cooperation agencies and national organizations to help small farmers consolidate agricultural (interview, March 02, 2012).

administration because the government policy preferences were in favour of securing economic investment and viewed land restitution as an impediment to investment (S. Perry, personal interview March 2, 2012). Uribe's government opposed the land restitution project that was previously introduced. The former President issued a statement to congress asking congressmen to abstain from voting in favour of the bill for two basic reasons: the state lacked fiscal capacity to compensate all victims of violence and the bill went against the democratic security of the nation by placing victims of parastatal groups and victims of the state at the same level. The government was particularly critical of the land restitution measures included in the bill suggesting that the state lacked the necessary financial resources and institutional capabilities for its implementation (Saffon, 2010, 140).

Interestingly, the coalition that strongly opposes the land restitution policy and which tends to dominate is not comprised only of traditional *terratenientes*. As explained in Chapter 3, when discussing the evolution of conflict in Colombia, since the 1980s, the control for territory and consequentially of the population has been disputed by the drug cartels and paramilitary groups fighting with guerrilla groups for the control of strategic areas; this has exacerbated the conflict over land, debilitated peasant movements and led to a massive wave of displacement and land dispossession (Machado, 2009). In the past the need for any type of land reform became shadowed by the need to win the fight for the control of territory and continue with the neoliberal agenda that supported foreign investment and economic liberalization. Nonetheless, the coalition in favour of land restitution was able to bring about the consensus to pass the law in congress and begin the implementation of a program that aims to return the lands of those dispossessed in the last twenty years. The government continued to appeal to the masses and to the international

community in an effort to gain the support necessary to pass and implement the land restitution program.

4.4 The Role Played by the International Community

As seen in with other land restitution cases and particularly with the cases of Bosnia and Guatemala the international community plays a crucial role in the successful implementation of land restitution programs. In June 2011 the newly elected President, Juan Manuel Santos, together with the presence of the UN Secretary-General Ban Ki-moon, gave final approval to the Victim's Law (Law 1448). The new President, who many thought would continue to follow the political agenda of his predecessor, committed to implement a challenging land restitution program. In the past, the Uribe's government tried to boycott any attempt to pass the law, first trying to modify certain aspects of the law and then by declaring the law was fiscally impossible (Valvidia & Mejia, 2011, 4). It is argued especially by international organizations that "this law would mark a major advancement in fully recognizing victims' rights" (López & Mejia, 2011 10). In addition, the international community, particularly organizations such as the OIM, UNDP, Human Rights Watch recognized the situation of the displaced population in the country and the need for the Colombian government to take action to improve its human rights record in order to meet the standards set by those governments which had pending free trade agreements with the country.

The international community has monitored the land displacement situation in Colombia and has strongly promoted the need to return land to victims thus supporting the implementation of a land restitution program. International institutions such as the United Nations Development Programme (UNDP), The Internal Displacement Monitoring Center (IDMC), The UN's refugee agency (ACNUR) and Norwegian Refugee Council have presented reports on the current

situation of the victim's of violence and the land displacement in the country side (Norwegian Refugee Council-IDMC, 2007; ACNUR-UNDP, 2011;). Interestingly, the UNDP published in September 2011 a report titled "Rural Colombia: Reasons for Hope" (UNDP, 2011). This report unlike past human development reports focuses on rural Colombia and provides a holistic view of the vulnerabilities and capacities of the rural population and the need for a transforming rural reform.

International donor agencies see the land restitution effort as an initiative to bring peace. According to the USAID representative David Huerta, there is a need to empower state institutions at the local level. USAID together with other government agencies are running a program to improve these agencies at the local level and prepare them to help implement the land restitution program (D. Huerta, personal interview, January 27, 2012). The representative of the European Union development fund stated that their efforts in Colombia were all directed at achieving peace and reconciliation. The institution was involved in various projects such as the laboratories for peace of the Magdalena Medio and the land protection project directed by Social Action, the Presidential Agency for Social action and International Cooperation. Today the Fund has granted approximately 3 million Euros for the implementation of the land restitution program which are destined to help improve local institutions and provide training for the specialized judges, ultimately responsible for ruling on the land restitution cases. In addition USAID and the Canadian government have also provided funding and technical support to the Colombian government for the implementation of the land restitution program.

It is important to highlight that for the international community there are international standards in place that should be followed to support land restitution. The 'Pinheiro Principles' on Housing and Property Restitution for Refugees and Displaced Persons, introduced in 2005 by

the UN Sub-Commission on the Protection and Promotion of Human rights, are a guideline on the international standards of the mechanisms for implementing a land and property restitution program. It incorporates transitional justice mechanisms for reparation and reconciliation in recognition of the direct links between land and property restitution and peace and reconciliation. The principles call upon international organizations to work with national governments to share expertise on the development of land and property restitution policies and programmes. They also call for help to ensure national compatibility with international human rights, refugee and humanitarian law and related standards. Finally, they call for the monitoring of the implementation of the national programs. Restitution rights are widely viewed as key elements of a constructive and sustainable peace-building strategy and therefore the land restitution program has been supported by many governments which are involved in development or peace-building projects in Colombia. These principles are followed by the many international government organizations that work in the country and support the government's peace initiatives.

Chapter 5: Conclusion

5.1 Discussion: Land Restitution and the Hegemonic Neoliberal Model

The literature reviewed in chapter 2 on land restitution reiterated the need to support the economies of those returning to their lands. In the case of Guatemala, for instance, the lack of post-restitution support for small farmers contributed to failure of the overall objectives of the land restitution program (Bailliet, 2002). As proposed by Hall (2009) when discussing land restitution in South Africa, poor returnee communities “are expected to emulate existing production systems in a capital-intensive farming sector, as a collective, and to compete with the established commercial farming class and increasingly powerful and oligopolistic agribusiness sector” (13). It is important to highlight that restitution without redistribution occurs when the government carries out a program to transfer the rights to the land to the poor when in reality “the latter have no significant effective access to or control over land resources transferred” (Borras 2010, 270). Exploring the relation between the rural development model and land displacement in Colombia demonstrates that the rural development model provides the biggest impediment to implementing a successful land restitution program.

By looking at the rural development model embraced by Colombia I deduce that national and international investors in the mining and the agro-business industries driven by the global demand for extractive resources and biofuels will set the rural development conditions and therefore the future of the returnees. During the congress debates prior to the approval of the Victim’s Law, it became evident that land restitution touches the interests of many sectors of society. The Land Restitution Chapter of the Victim’s Law has a provision which guarantees the protection of large agroindustrial projects that have taken place in dispossessed lands. Article 99, “Contracts for the Use of Return Property”, applies specifically to companies that are

implementing large agro-industrial projects on land that was acquired after the original land possessors were displaced (Victim's Law, Chapter 3, Art 99). Companies must prove that they acted in good faith when acquiring the land in order to continue to carry out the project. However, "when corporations fail to prove good faith, the agro-industrial project is turned over to the Administrative Unit [Land Restitution Unit], which will pass it on to a third party that will manage production" (Summers, 2012, 232). In these cases, the profits made will be given partially to the intended beneficiary of restitution and used to design and implement victims' reparation programs in the local communities (232). This provision guarantees some monetary compensation to the victims but obstructs their capacity to return to their lands and territory. Coronado, a researcher for CINEP, also showed his scepticism of the law per se, confessing that some clauses of the law protect the interests of investors and postpone a real restitution process⁶⁰ (S. Coronado, personal interview, January 27, 2012). Moncayo (2011) argues that the phenomenon of displacement in Colombia has been related not only to the internal conflict between illegal actors and the state but also by the cultivation of illicit drugs, large scale agriculture, mining and the construction of water dams for the production of energy (Moncayo, 2011, 41-42).

The anti- land reform coalition that today opposes the restitution program includes the private sector that benefitted economically from land displacement and had established mega projects in rural communities affected by the conflict. For instance, it is likely that some groups of the banana sector were involved in financing the paramilitary forces. In fact, Chiquita Banana has been sentenced to pay \$25 million by a Court in the United States for paying illegal armed groups in the regions where the company grew bananas. In addition, the federal prosecutors said, Chiquita made payments to the National Liberation Army (ELN) and the leftist Revolutionary

⁶⁰ He is referring particularly to article 99 "Contracts for the Use of Return Property"

Armed Forces of Colombia (FARC), as the control for the territory where the company grew bananas shifted. The Company's subsidiary, a corporation with the name of BANADEX, has been accused of directly funding paramilitary activities in the region of Urabá from 1997 to 2005 (Bohn, 2007)⁶¹. In addition, paramilitaries or their supporters have also been accused of investing in sectors such as oil palm and mining, sometimes acquiring the financial incentives provided by the government (Grajales, 2011, 783). Various examples demonstrate the relation between agricultural expansion, measures of agricultural development and modernization, and violent land displacement. The case of Curvaradó and Jiguamiandó, where 29,000 hectares were stolen from the Afro-Colombian communities, 7,000 of which have been illegally planted with African oil palm demonstrates how land that was illegally seized during the conflict has been used to expand the agro-industrial rural development model embraced by the Colombian government (Confidential Interviewee 1, February 12, 2011). In 2010, the attorney general in charge of investigating this case ordered the arrest of 24 businessmen, dedicated to the oil palm business, accused of having close relations with the paramilitaries and being responsible for the displacement of this community (CODHES, 2012, 6). The connection between businessmen involved in large scale agriculture and the paramilitaries have been denounced since early 2000. The Colombia government has at the same time provided the incentives for these projects to thrive. For instance in 2002, the Ombudsman Bureau (Defensoria del Pueblo) declared that oil palm businesses had received large government support, "in spite of the well known

⁶¹ It is important to highlight that land restitution, just as the initiative taken by some NGOs to propose that 3 cents per bunch of banana exported be granted to compensate the victims of violence in the zone, was strongly opposed by some banana producers and supported by others (Confidential Interviewee 1, March 14, 2012)

denunciations of forced displacement, assassination and forced disappearance” (Grajales, 2011, 788) ⁶².

It seems that to distribute, return or formalize the ownership of land without a solid agricultural policy will not do much to increase agricultural productivity and improve the conditions for the rural population (Ibáñez 2011). According to Dario Fajardo, an expert on the Colombian land conflict, there is no articulation in the National Development Plan of the objectives of the land restitution law (Fajardo, 2012). Land restitution must be integrated with other agrarian policies that guaranty the sustainability of small farmers. The lack of extension services at the moment due to the restructuring of INCODER and the National Development Plan which has an emphasis on promoting neoliberal policies that aim at supporting foreign investment particularly in the mining sector will not protect these farmers that wish to return to their lands (S. Coronado, January 27, 2012). The restructuring of INCODER integrated four entities with distinctive roles as a way to cope with a reduced budget. According to Absalon Machado (2009) the creation of INCODER in 2003 was part of the government’s initiative to minimize rural development policies but this institution was designed without an organic structure and a clear conception of rural development (180). The National Development Plan (2010-2014) clearly states the need to internationally promote Colombia as a mining country (279). One of the government goals is to increase mineral extraction such as gold from 48 tons in 2010 to 72 tons in 2014 (296). According to Peace Brigades International (PBI) in 2011 “168 mining licenses were granted in indigenous reserves, and 978 requests are currently pending” (pp.15). The Government reformed the 2001 mining code with the approval of law 1382 in 2010. This policy increased the amount of areas protected from mining concessions, including

⁶² This was extracted from a resolution published in 2002 by the Colombian Ombudsman Bureau, titled *Human rights and human rights violation in the Choco and Lower Atrato*, retrieved from <http://defensoria.org.co/red/anexos/pdf/02/res/defensorial/defensorial39.pdf>

moorland and wetland ecosystems recognised by the Ramsar system. This initiative was funded by the Canadian International Development Agency. Although the law was declared unconstitutional by the Constitutional Court for lack of previous consultation with indigenous and Afro-Colombian communities, an exemption was given, since the law had important provisions to protect forests and moorlands, to postpone the introduction of a new mining code until 2012. This has allowed mining operations to follow the 2010 mining code. The new mining code is currently being discussed in congress and is expected to be approved by the end of the year.

Criminal organizations and guerrilla groups continue to have control over certain territories and intimidate the local population and will have the opportunity now to permeate these economic sectors. According to the Peace Brigades International (PBI) one can easily look at a map of Colombia and realize that the location where armed groups operate coincides with areas of mining operations. Mining has become a source for supplementing the income of armed groups (2011, 5). This is the case of the region of Sur de Bolivar where two massacres presumably by members of the National Liberation Army (ELN) took place in 2011 killing approximately 5 people in a mining area characterized for settlements of informal and artisanal mining for the control of natural resources (OCHA, 2011; PBI, 2011).

It is important to note that those areas where land dispossession takes place are also where large mega projects are planned or where important corridors to transport illegal drugs are located. For instance, according to the Commission to Monitor Public Policies on Forced Displacement, in the Urabá region, an area located in the pacific coast with access to the Pacific and the Caribbean ocean, 2 million hectares were forcefully taken from their rightful owners. It is estimated that in the area 60 percent of the money made in drug trafficking comes from

protecting the drug corridors and for many it is likely that drug traffickers would oppose this law if their drug corridors are compromised⁶³ (Confidential Interviewee 1, March 14, 2012). In the Urabá region, an area located on the west side of the country, along the Pacific coast, with access to the Pacific and the Caribbean ocean, 52.6 percent of the 76 concessions or mining titles have been granted to international corporations (32 of them to the South African multinational Anglo Gold Ashanti). This broad coalition that formed around land restitution will gradually diminish over time and will not be strong enough to push forward other rural development policies to guarantee the sustainability of the land restitution program since the rural development model embraced provides strong barriers to guarantee returnees access to their land, territory and natural resources.

Although, there is a strong pro-land restitution coalition, there is a lack of knowledge and support for what is needed to really improve the conditions of rural families. As professor Albert Barry explained many people do not understand the role that small farmers have in the country's economy. Large-scale farming and mining provides few jobs causing rural families to migrate to cities and engage in informal activities in order to survive (A. Berry, personal interview, April 16, 2012). The informal sector which is already large in Colombia will increase dramatically. Land displacement causes this phenomenon since many rural families leave their land and their occupation to move to urban centers and engage in informal jobs (A. Berry, personal interview, April 16, 2012). CODHES (2011) suggests that the neoliberal approach that the government is taking in respect to agriculture could result in more cases of rural displacement (p.7). As Moncayo (2011) insists: "nor the economy of large scale agriculture, nor the economy based of

⁶³ There are rumours that an anti-restitution army has been created to prevent the implementation of the land restitution program.

mining have ever allowed for the formation of an internal market , even less when these are based on foreign investment” (p. 42).

5.1.1 Neoliberalism as the Model Guiding Rural Development

Since the 90s the government has supported economic liberalization policies increasing foreign investment in sectors of the economy such as mining and agriculture. The interests of large national and international investors for the land is obvious, this explains why the zones where megaprojects are planned to take place have become areas where the population has been displaced. Millions of Colombians have been expelled from areas that possess mineral and energy resources such as gold, copper, emeralds, coal, and oil (Corporación YIRA CASTRO, 2007, 5). Displacement had three objectives: the gratuitous acquisition of goods, the military and economic control of the territory, and the indiscriminate exploitation of natural resources (Corporación YIRA CASTRO, 2007, 6). The Colombian Jurist Commission has followed closely the case of the Cootragroblam Cooperative, in the region of Turbo, Antioquia, a group of peasants who were able to access land in the 90s with the help of the government of Holland. They acquired approximately 116 hectares destined to develop a series of productive projects aimed to improve the conditions of the community. The peasant cooperative at the time had rice, yucca, and plantain and corn plantations while approximately 30 hectares were available to rent for cattle ranching (Vega, 2011, 107). In 2001, however, they were forced to transfer their land to a paramilitary leader from the region. Families from the region were, under coercion, forced to sell their properties at low prices or simply abandon their land. The paramilitaries were able to make their land transfer legal at the local notary without the authority of the cooperative leader

by counterfeiting his signature. In 2005, after performing an investigation, the local attorney's office declared that the land title had been falsified and ordered that the land titles be immediately transfer to the original owners (Vega, 2011, 112). The cooperative members demanded a thorough investigation of those involved in falsifying the documents and allowing the land dispossession to take place. However, the threats against the cooperative members have not ceased. Paramilitary leaders who remain in the area continue to intimidate the cooperative members and some have even been assassinated. The case was brought to the Inter-American Commission of Human Rights in 2006 but the threats continued and a thorough investigation of the dispossession case has not taken place (Vega, 2011, 115). The struggle for land today also involves the actors who directly benefitted from land displacement in the first place since they were able to buy lands in areas affected by the conflict at reasonable prices and establish their own productive projects.

In the National Development Plan (2010-2014) the government proposes to continue on the same path as the former government and promote foreign investment in sectors such as mining and large agroindustrial projects by facilitating land concessions. In the eight years of Uribe's Government, the hectares of land with mining titles went from 1.13 million to 8.53 million (Osorio, 2010). A common practice, particularly in the regions of Urabá and Magdalena, is that the land was bought by multinational agribusinesses at reasonable prices and converted to the production of energy crops such as oil palm. Large multinationals continue to invest in mega projects for the production of bio fuels. Cocomopoca is an autonomous ethnic-territorial organisation that represents the Afro-Colombian population of different communities in the Pacific Coastal region of Colombia that have been claiming their right to their territory, The case demonstrates how concessions are given for the cultivation of energy crops in regions affected

by displacement. The Government granted the community 72, 000 hectares in 2011; however, 50,000 of those hectares have already been conceded to the British Registered multinational mining company, Anglo Gold Ashanti. Concessions were granted without a prior and informed consent process with the Cocomopoca communities, violating their legal rights (Semana, 2011). For instance in the case of coal mining, most of the concession for its exploitation are inside or surrounding indigenous territories, yet these communities have little influence in the decision making process. One of the most emblematic cases is the one of the Wayúu indigenous community which is located next to one of the larges coal mines in the Country, El Cerrejon⁶⁴. According to some of the members of the community in the last 30 years the mine has bought the land that surrounds the reserve and this has affected the ability of the Wayúu people to enjoy their territory. Their livelihood opportunities have directly been affected by the coal extraction, some complain that the community's river, río Rancherías, the most important river of the peninsula, is today contaminated, and unable to provide the community with potable water and fish (PBI, 2011, 33). Coal extraction continues to expand in the region, last year it was announced that the Canadian company Pacific Coal bought a coal mine in the municipality of Barranca, despite the fact that some estimate that 70,000 Indigenous persons from the Guajira Department and the neighbour Cesar department have been displaced as a result of mining extraction in the region (PBI, 2011, 36).

The Colombian government has been very receptive to these large scale projects and has committed to build the infrastructure required for the implementation of these projects (Alvarez, 2008, 174). According to Clancy, Lovett and Marin (2011), in 2001, Law 693 was approved for

⁶⁴ It is estimated that this mine produces 89.000 tons of coal daily and that the Colombian government has received 1.461 million dollars in the last 25 years from *El Cerrejon*. Nonetheless approximately 70 percent of the population of La Guajira Department, where the mine is located lives in Poverty (PBI, 2011, 34).

the promotion of ethanol while in 2004 Law 939 was put in place to stimulate biodiesel production. In addition the government adopted new legal instruments such as income tax exemptions, agricultural subsidies, agricultural soft credit and obligatory blending targets specifically aimed at supporting and stimulating biofuels consumption and production (Clancy, Lovett and, 2011, 5). These legal instruments were vital to develop the rural development model promoted by the government and it “constituted the first steps of an ambitious biofuels strategy that estimates more than 7 million hectares of land as the potential area for biofuels crops (palm oil and sugarcane)” (Clancy, Lovett and, 2011, 5). Alvarez (2008, 176) reiterates that the large scale projects for the production of agro fuels contributes to displacement and the destruction of the peasant economy. The church organization Pastoral Social has stated that the majority of dispossessed land coincides with areas where mega projects such as large scale projects of oil palm are located. In addition, the number of hectares established for the implementation of agroindustrial projects (oil palm, forestry and illicit plantations) has increased dramatically in the region of Urabá (Pastoral Social, pp. 41). In Turbo, Antioquia a pilot project to return the lands in four villages, Calle Larga, La Teca, California and Nueva Union, revealed that in this region peasants had obtained collective titles to their land in 2002 and 2004 and were then forcefully displaced by the paramilitaries. In the region now prevails the cultivation of banana, plantain, rice and cattle ranching; the levels of land concentration also increased due particularly to the expansion and the emergence of megaprojects (CNRR, 2010, 37; Gaviria & Muñoz, 2007, 25). In the region of Urabá peasants now return to their lands to find large extensions of monocrops particularly of oil palm (Reyes, 2009, 230). Large and prestigious companies have also been accused of buying land in areas where land dispossession occurred. This is the case of Cementos Argos, a company that produces cement, ready-mix concrete and aggregates, which has been

accused of buying around 11,200 hectares for reforestation in order to comply with its social responsibility program, in regions where as a result of the conflict millions were dispossessed or abandoned their lands (Zapata, 2011, 19). As a result of these accusations, the company declares itself to be a third party able to prove their “good faith” in the acquisition of the property (Zapata 2011, 19).

Many methods have been used to illegally access resource rich land. There are illegal and legal mechanisms that facilitated and generated land displacement. Illegal mechanisms include the use of a *testaferro* (front man), falsification of public or private documents, forcing people to sell at prices well below the land’s real commercial value, the breaking up of properties in order to avoid one’s resources being detected and, finally, outright robbery (UNDP, 2011, Corporación Yira Castro 2007). For instance, in the region of el Bajo Cauca former AUC leader , alias ‘Macaco’⁶⁵, acquired massive amounts of land that he was able to transfer to *testaferros* (Front men) (Reyes, 2009 231). In the case of Maria La Baja, in November 2009 a large amount of land was purchase in the region by businesses in what some have categorized as a suspicious manner (UNDP, 2011, 275). The land which was still mostly abandoned, after the region endured years of armed conflict, was bought for reduced prices and used mostly for the production of oil palm cultivation. It is estimated that 4,865 hectares were abandoned in the region (Machado et al., 2010). This directly shows how land displacement was used as a way to support the rural development model in place.

On the other hand, the Colombian state facilitates land displacement by allowing state financial institutions to take possession of the lands of those peasants unable to repay their loans that were granted to them to invest in agriculture, or by allowing the implementation of mega

⁶⁵ In 2008, alias Macaco was extradited to the United States for not complying with the requirements imposed by the government's amnesty legislation, the Peace and Justice Law (Reyes 2009, 232).

projects that affect directly the surrounding communities and cause people to abandon the area (Corporacion Yira Castro 2007). The latter is the case of large hydroelectric projects that build dams that could inundate an entire community. The case of the Urrao hydroelectric dam clearly shows this process of displacement. The Embara-Katio indigenous community in Urrao were directly affected by the building of the hydroelectric dam which obstructed their access to fish and agriculture in the area of the Sinu River. Most important is the fact that this mega project affected their culture and traditions which are directly connected to the water and the forest (Corporación Jurídica YIRA CASTRO, 2007, pp 34). Similarly, mining concessions have been granted in indigenous territory without proper previous consultation. The Ministry of Mining granted in 2009 two mining titles in the municipality of Acandí in the Choco Department inside the territory of the Embera indigenous community without previous consultation with this community (Vega, 2011, 159). Illegal armed groups that operate in the area have continued to threaten the community. The situation has been acknowledged by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization (ILO). The committee proclaimed that mining concessions should not be granted in the Embera territory without previous consultation and ordered the Colombian government to take action to protect these communities and their territory (Vega, 2011, 161).

The consensus built between victims, the government, NGOs and the international community seems fragile when one looks at the conceptions of rural development that are being pursued and promoted. The Third Way approach that Santos has publicly supported for governing Colombia permeates his administration's international and social policy direction. He is a proponent of Bill Clinton and Tony Blair's "third way," which combines a blend of right-

wing economic policies and left-wing social policies⁶⁶. Unlike his predecessor who established a right-wing agenda, the Santos government's approach has clearly emulated the market economics and social ideals of the third way in Colombia. When presenting the UN's Human Development Report Santos declared: "we represent a new modern current of opinion, in which the focus is in the market when possible and to the state when necessary" (Santos, 2011). The government continues to implement a neoliberal approach to land efficiency which encourages foreign investment in sectors such as mining and large agro- industrial projects. The government has facilitated and speed up the process for acquiring mining concessions and from 2000 to 2020 the area that adjudicated to mining topped 5.8 million hectares, more than the area dedicated to agriculture in the country (UNDP, 2011, 97). The North American multinational Cargill has invested in viability studies for a megraproject in the country probably for the production of oil and the Colombian government has assigned 50,000 million pesos, approximately 27 million dollars, in order to prepare the Meta River for navigation in order to provide incentives to the investors (Alvarez, 2008, 173). Other governments benefit from the neoliberal policies promoted by the Colombian government and so their support for a more serious effort to solve the unfair distribution of property seems unlikely. The global rush for energy and minerals supports the rural development model being implemented in the country. For instance, the EU with their efforts to reach their mandatory biofuel blending targets has inspired the Colombian government to aggressively promote oil palm expansion and provide incentives to support agro-industrial projects in the country in anticipation of European markets for biofuel (Borras, et al., 2012, 863). Borras and Franco (2010), exploring the politics of global land grabbing, highlight the preoccupation on the (in)direct land use change that can be cause by EU's policy on mandatory

⁶⁶ Santo's co-authored a book with Tony Blair in 1999 called "La tercera vía, una alternativa para Colombia" in which he defined how the third way approach is beneficial for Colombia.

biofuel blending with fossil fuel (pp.15). In order to satisfy this demand large areas of land are needed to establish large scale mono-cropping industrial operations to produce biofuel and biodiesel. Concordantly, there has been an increase in foreign investment particularly for the cultivation of oil palm, sugar beets, sugarcane, soya, rice, corn, forestry⁶⁷ (extracted from Gomez, 2011, in Borras et al. 2012, 848). According to Borras et al. (2012) in a quest to go beyond the food-centred/food crisis-centred analysis of land grabs explained that “the key mechanisms of land grabbing arise from this: food security, energy/fuel security, climate change mitigation strategies, and demands for natural resources by new centres of capital” (pp. 846). With this in mind it is observable the preference in the global South for monocrop plantations that have multiple purposes including food, feed, fuel, industrial materials such as soya, sugarcane, oil palm and corn (Borras et al. 2012, 851).

Victim’s and human rights NGO’s and international governing bodies such as the UN continue to express the need to ensure the sustainability of the land restitution program with the design of articulated rural development programs. But as Absalon Machado (2009) states, the competition for land is today between businesses, transnational corporations, commissioners, drug- traffickers and parastatal groups and excludes peasants, indigenous, and Afro- Colombians from the enjoyment of the territory and its resources. Therefore, a large portion of the rural population is today excluded from the land, which is the primary resource for their survival and well-being (UNDP Report date, 37). The Project of Rural Development now being discussed, dismisses alternative routes of rural development funded in the peasant and small farmer economies. The project provides clear incentives for companies to use lands for agro-industrial projects without the threat of land reform. A market oriented land reform is once again being proposed indicating that the subsidy available for those that qualify to buy land will increase

⁶⁷ Borras et al (2012) specify that the sudden increase in foreign investment is a region wide phenomenon.

from 70 percent to 100 percent (Machado, 2009, 183). As of today the final text of the project has not been released but the Rural Development Law is expected to be discussed in congress by the end of 2012.

5.2 Concluding Remarks

Given my interest about how land reform policies are made and implemented in Colombia I chose to analyze the Land Restitution Program, the most recent government attempt to shift the land tenure structure in the country. It is evident that the land problem has not been resolved and that today we are dealing with a conflict which includes very different players in a transformed context. Reforming the land tenure structure has not been possible despite the recognition of the need to address the vulnerability of peasants and ethnic groups that had historically been ostracized from the processes of modernization. The three previous attempts to redistribute land in the country have failed. As argued in Chapter 3, with the past land reform efforts, the land problem was not resolved because every initiative was counteracted by a dominant coalition whose economic and political interests were able to impede efforts to distribute land more evenly. Nonetheless, today's situation appears to have changed dramatically and deserves to be studied with attention to the new global land trends. According to Albán (2011) today's land displacement situation transcends the national legal scope because it reflects human right violations and crimes against humanity which international attention now differentiates from the silence of the past (Albán, 2011, 12). In addition, Colombia's economy has grown substantially in the last twenty years despite the levels of inequality and violence⁶⁸.

⁶⁸ For instance the GDP increased 2.8 percent from 2001 to 2011 <http://www.banrep.gov.co/documentos/presentaciones-discursos/Uribe/2011/andi.pdf> during this period a large wave of land displacement also occurred. the largest number of displaced persons reported in the RUPD in a year

Nonetheless, Albán argues that inequality, which is directly reflected in the land tenure structure and in the land re-concentration that occurred since 2002, has had major repercussions for the country's democracy such as high levels corruption, a weak judiciary and the cooptation of institutions at the local level (329). As a consequence, Albán (2011) believes the deficiencies of the democratic state inhibit the benefits of economic growth (330). Many scholars agree that land inequality is responsible for the violence that has permeated the country since its consolidation as a republic.⁶⁹ Unlike other cases of land restitution previously discussed, such as the one in Guatemala or Bosnia the land restitution program in Colombia is being implemented, prior to a peace agreement. Nonetheless, the international community, as discussed in the previous chapter has also accompanied the Colombian government in the process of designing and implementing the program. It is important to highlight that without a peace treaty in place the prolonged internal armed conflict continues to affect primarily the rural population. Those who benefited from the land dispossession phenomenon and the economic model that the country has embraced continue to threaten returnees. In addition, the international economic system continues to support neoliberal policies embedded in the rural development model that supports large mega projects in the extractive and biofuel industry. This will impede a successful land restitution program as envisioned by many, which aims to guarantee that the victim returns to the situation he or she was prior to the dispossession.

Land restitution will face violent resistance particularly by those who benefitted from the processes of land displacement. The International Federation of Human Rights (IFHR) based on

were in 2001, 2002 and 2007, 395,412, 448,950 and 307,975 persons respectively

<http://www.dps.gov.co/documentos/Retornos/Informe%20Desplazamiento%20Forzado%20a%20Junio%202010.pdf>

⁶⁹Transitional justice policies have been described as mechanisms to ensure the transition from a conflict situation to one of normality. In 2005 the Justice and Peace Law was introduced however “this comprehensive scheme of TJ mechanisms was put in place with the aim of achieving a partial peace by focusing primarily on one of the armed actors in the conflict: the paramilitary groups” and not of repairing the victims of the conflict (Jemima Garcia-Godos Knut Andreas O. pp. 488). The land restitution bill has been introduced to provide and integral reparation to the victims of the armed conflict.

the results of an international observation mission in 2011, indicated that the victims of violence in Colombia have changed and encompass primarily land restitution leaders and others who opposed mining and agroindustrial projects (Dinero, 2012). Nonetheless, the government has made this policy one of the top priorities because it is believed to be a counterinsurgency policy and a sine qua non for the success of any peace building process (Ramirez 2011, 52). It is argued by some that the land restitution is mostly symbolic because most internally displaced persons do not want to return⁷⁰ to their land but it is evident that “without further guarantees of physical security and non-discriminatory access to public services, conditions hardly exist for choices on return to be made in a free and informed manner” (Williams, 2005, 450).

5.3 Suggestions for Further Research

In April 2003, the Peasant Reserve Zone of the Cimitara River Valley was suspended, though in February 2011 the Colombian Government gave the legal green light to reactivate these 184,000 hectares that benefit 8,935 families. The reactivation of this zone means that the small-scale farmers can exercise their right to use and collectively own the land, which prohibits the expropriation of this land for transfer to transnational corporations. This demonstrates the shift that the Colombian government has experienced promoting, although at a small scale, what I have declared a more neopopulist land reform project: in a way supporting civil groups that continue to resist neoliberalization in their struggle to reclaim the control to their lands and territories and vindicate an alternative development path. Recently, in Colombia’s Southwest Cauca Department, the Nasa, an indigenous group of about 115,000, frustrated of being caught in

⁷⁰According to CODHES, in Colombia, only 5.8% of victims would currently like to return: 34.9% are afraid to do so, and 12.7% believe the conditions that led to their original displacement persist. Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *Informe de Verificación sobre el Cumplimiento de Derechos de la Población en Situación de Desplazamiento* 39, 41 (December 2010), available at http://www.codhes.org/index.php?option=com_docman&task=doc_download&gid=168.

the crossfire as the government and the guerrilla fight for the control of their territory initiated a resistance campaign to refuse the presence of the armed forces and the insurgency in their territory. Although this has infuriated many who believed the Nasa support the guerrilla insurgency it demonstrates new local forms of resistance coming from some of the most vulnerable populations. Todd Howland (2012), The United Nation's Human rights representative in Colombia, affirmed that the displacement phenomenon continues to affect in particular the indigenous population that suffers directly the effects of the armed conflict in this region. Howland adds that indigenous peoples have the right to be consulted by the government on how to use their territories. This shift, I believe, needs to be further investigated. These 'struggles for land (re)possession' (Borras and Franco 2010) are equally important to those of land dispossession and must be explored. The political shift that the country experiences could be an opportunity to implement conciliatory reforms which could strengthen linkages between the government and vulnerable rural populations and help to empower local civil groups.

In addition, there is a need to analyze the land restitution initiative within the larger context of Colombia's rural development model which Lund and Peluso (2011) suggest is determined "by globalizing political economies, patterns of investment, movements of labour, capital, and ideas" (pp. 676). Although the coalition that supported the more progressive approach to land restitution was able to win an initial battle and successfully pass the chapter of land restitution included in the Victim's Law, the political and economic forces that support neoliberalism remain strong. Perhaps the proposed development model materialized in the form of land tenure and land use policies for Colombia, as in the case of Chile "will allow the culmination of the long-postponed transition to modern capitalism, promoting the rise of agribusiness and an export agriculture integrated into the new world economy" (Bellisario, 2008,

190). Nonetheless this model will cause land restitution to fail. A comparative analysis with Chile could provide new insights on the case of agrarian change that is taking place in Colombia in the present.

Another topic for further research regards the role of non-state promoters of progressive public policies including distributive land reform. Many, particularly scholars and researchers continue to argue that an integrated land reform program is necessary for the country. It will be interesting to explore how these non-state actors provide resistance to the land tenure structure imposed by the current rural development model being supported by the global market and embraced by the Colombian government.

Finally, from a gender perspective it will be interesting to analyze the role of women in the formation of local social movements that promote an alternative rural development model. Indeed, women groups, such as La Ruta Pacifica de las Mujeres por la negociación política de los conflictos (Women's Peaceful road for the political Negotiation of the Conflict) and the Alianza iniciativa de Mujeres Colombianas por la Paz (IMP, the Alliance of Colombian Women's Initiative for Peace), have been vital for developing alternatives to construct peace and promoting a more democratic developing model within Colombian society (Cockburn, 2005, 19). In addition, many women have led the struggle for land restitution. This is the case of the Cocomopoca leader, Mélida Esther Guevara; the leader of the largest victim's organization Tierra y Vida (Land and life), Carmen Palencia; and the leader of the peasant movement claiming the right to land restitution in the Cordoba Department assassinated in May 2011, Martha Gaibao. These women have become an example of courage to the many women whose lives have been directly affected by the armed conflict and who struggle to regain control of their lands and territories.

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Appendix A: Glossary

ELN: A revolutionary army officially formed in 1964. The ELN advocates a combination of Communist ideology of Marxism and Liberation Theology in order to create a more equal society. The insurgency army has been headed by Roman Catholic priests who advocate liberation theology and scholars who have been openly critical of the unequal distribution of income among the social classes of Colombia.

FARC: The leftist Revolutionary Armed Forces of Colombia were created in 1964 with the objective of overthrowing the Colombian government and establish a Marxist-Leninist regime. The FARC brought together communist militants and peasant self-defense groups in the effort to represent the rural poor against the Colombian government. The organization has committed to a Bolivarian platform and has proclaimed a political agenda based on agrarianism and anti-imperialism.

Land Formalization: Refers to a form of land reform which focuses on granting legal recognition of informal land rights and practices which are usually unwritten, inherited, or customary. Proponents of land formalization argue that granting land titles to individuals and families will increase land tenure security.

Land reform: refers to any attempt to formally or informally change the land tenure system of a country.

Land restitution: a policy that aims to shift the land tenure structure to reproduce and improve the land tenure conditions that were present before land dispossession took place.

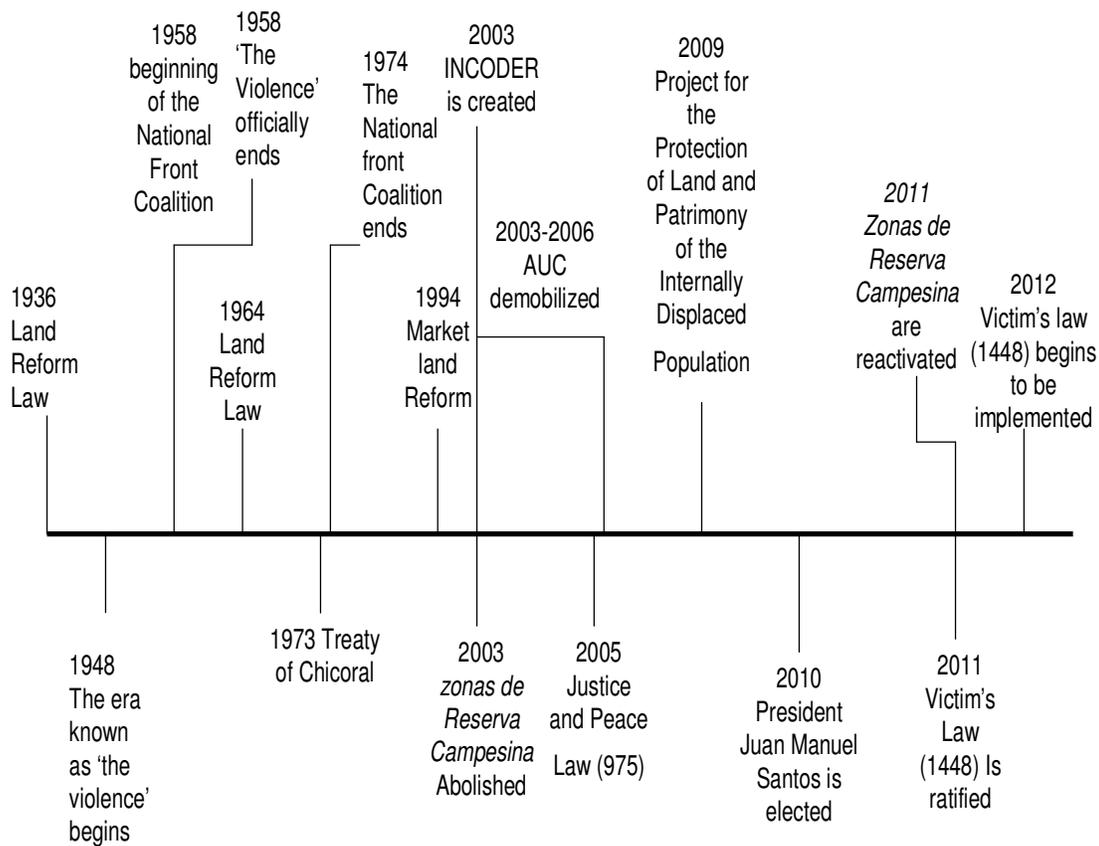
Latifundios: From the Latin word latifundium (latus broad + fundus landed estate). A large landed estate especially one in Spain or Latin America. In the past, latifundios were frequently worked by slaves or people of semiservile status. In the present, the term is used to refer to large agricultural properties particularly in Latin America.

Minifundio: Land which is too small or of bad quality and therefore unable to satisfy the basic necessities of a family.

Paramilitaries: Counterinsurgency armies created to protect the interests of large land owners and drug traffickers from the attacks of the guerrilla rebels. The paramilitaries were able to form a unified front, known as the United Self-Defence Forces of Colombia (AUC), in the 1980's. The AUC were persuaded to disarm between 2003 and 2006. In the present criminal organizations that many have come to name neoparamilitaries have begun to operate particularly in zones that were under the former paramilitaries' territorial control.

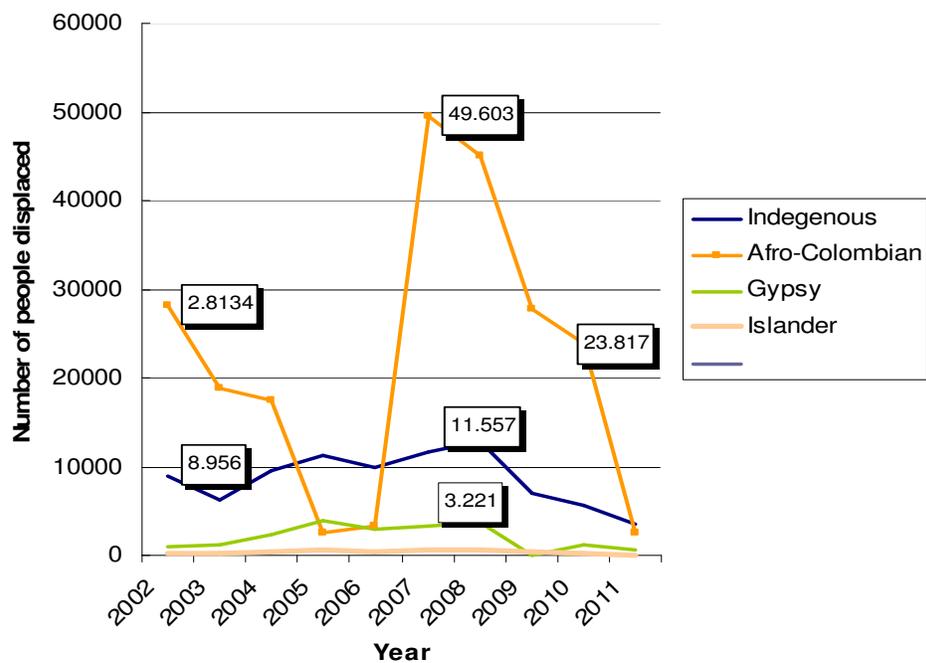
Terratenientes: large Landowners. It describes those who belong to the powerful land owning class that have strong political influence and can exercise political power.

Appendix B: Timeline of Events



Appendix C: Interview List	
Interview #	Interviewee
1	IPC Researcher
2	ANUC Representative
3	Universidad de Antioquia Library employee
4	Social Pastoral Employee
5	Colombia Jurist Commission Employee
6	Sergio Coronado
7	Mauricio Uribe
9	Diana Muños
10	David Huerta
11	Albert Berry
12	Santiago Perry
13	Ministry of Agriculture Employee
14	Carlos Chica
15	Land Restitution Unit employee
16	Jairo Alonso Mesa
17	Johana Herrera Arango
18	EU employee
19	Juan Felipe Garcia
20	SAC Director
21	Paola Andrea Posada
22	Gerardo Vega
23	Roberto Hoyos Ruiz
24	Jairo Alonso Mesa
25	Maria Victoria Duque
26	Universidad de los Andes Professor

Appendix D: Land Displacement by Ethnicity (2002- 2010)



Source: Data from the Registry of the Displaced Population (RUPTA)

Appendix E: Government Bills and Court Rulings Concerning Land Restitution

Justice and Peace Law (Law 975) 2005	The Law was design in order to provide a framework of the procedures to be followed for those demobilized members of illegal armed groups who had been excluded from the existing amnesty procedures and establishes judicial benefits based on their contribution to justice and reparation. One of the basis for granting judicial benefits for demobilized members of illegal groups was to indicate all illegally gained property and goods, which were to be delivered to the Victims' Reparation Fund. The Law discusses land restitution as a reparation measure and proposed a framework to return the lands to the victims of violence that had been forcefully dispossessed. The law established regional property restitution commissions in charge of studying and analyzing possible restitution mechanisms.
Ruling C-370 May 18, 2006	Several human rights and victim-survivor groups filed lawsuits with the Colombian Constitutional Court challenging The Justice and Peace Law (Law 975) constitutionality. The Constitutional Court ruled on the merits of this challenge upholding the law in general terms but declaring some articles partially or wholly unconstitutional.
Ruling C-370 2007	The ruling defined more profoundly the application of the law to protect the right of the victims to true justice and reparation and their rights to participate in these processes and the need of the victimizers to respond to the victims with their legal and illegal acquired assets (Confidential interviewee 5, 2011).
Ruling T-821	With this ruling the Constitutional Court declared that the state has the responsibility to inform the displaced population of their property and land possession rights and of the mechanisms available to protect their lands, as established by international standards on the subject (Gomez-Isa, 33).
Ruling C-1199	The Court referred specifically to the rights of the victims to reparation and specified the difference that exists between this and other social and humanitarian services that the state provides. The Attorney General delegated for the prevention in subject of human rights and ethnic affairs goes a step further in issues of reparation stating that it should not be reduced to property restitution or the mere economic indenisation without recognizing the caused damages, sanction those responsible and clarify the causes of land displacement (Gomez-Iza, 36).
2009 (Writ 008),	The Colombia Constitutional Court aggregated the constitutional complaints (<i>tutelas</i>) of 1,150 displaced families and released a decision that declared that the humanitarian crises caused by

	forced displacement and the systematic inability of the state to protect the rights of the displaced population constituted unconstitutional state of affairs.
Ruling T-025-04 of 2009	The court orders the creation of a land registry to ensure the protection of the lands of the displaced population