Land Restitution in Colombia: proceeding to regional development

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Abstract

One of the causes of the Colombian armed conflict was the lack of institutional security for land tenure in rural areas. Since the 19th century, the national government faced several struggles for managing and surveying public domains, which reflected a strong land agglomeration by regional elites and a systematic exclusion of local peasants. This situation conduced to a social confrontation for land access along the 20th century, being intensified in three periods. The first one, after the 1960’s, was characterized by a direct confrontation between peasants and elites by the invasions of private tenures. Afterwards, in the 1980’s and the 1990’s, it was the conflict between guerrillas and paramilitaries that transformed the rural areas into war scenarios, in which land grabbing was a mechanism of territorial dominion. And the last one was the systematic process of land grabbing by institutional arrangements. Under this scope, this paper would focus in the regional impact of land grabbing, trying to understand the influence of housing and land rights into regional development. This would be done by a case analysis of the Colombian land restitution program in the municipality of Chivolo (Magdalena).

Keywords: Land restitution in Colombia, peacebuilding processes in Colombia, Land grabbing in Colombia.
Introduction

In 2010, the Colombian government, under the idea of integral reparation for the victims of the socio-political conflict, began the implementation of a public policy for land restitution that was managed by the Ministry of Agriculture and the National Agency for Rural Development (Incoder). The initial phase was known as “Plan de Choque de Formalización y Restitución de Tierras” whose aim was to restore and formalize peasant’s land rights that were undertaken by ‘administrative land grabbing’; being focalized in five areas were the paramilitary structures were demobilized between 2004 – 2007. (Verdad Abierta, 2011).

A year after, it was approved the law 1448 / 2011, commonly known as Victim’s Law, in which the Chapter III of the Title IV (in which are described the mechanisms for reparation) is focused in the instruments needed to guarantee land restitution for the victims of the armed conflict. Its main focus is centred in restoring land rights as a mechanism to promote rural development in the areas that were most damaged by the armed conflict, mainly by the violent land grabbing processes that were made by illegal armed groups (guerrillas and paramilitaries), either by violent coercion of these structures or as a legal process by their political influence in several governmental land agencies.

Following this context, one of the main challenges for the Colombian post-conflict scenario is how the government will cope with the reparation, return and restitution of land rights of the victims. This is a complex process because it questions the sociocultural role of land rights, as a life-project for displaced communities and by its scope in rural development, as a transition on land’s signification, from a military asset into an economical one. Under this idea my main concern is related in how can be characterized the principal elements of territorial reorganization originated by the armed conflict, and how it adapts and evolves in the post-conflict scenario. I would do this by the analysis of the case of the municipality of Chivolo, contrasting the evolution of the land conflicts with the role of land restitution program in this area.
1. From land grabbing towards land restitution: initial framework

The conflict for land access and its formalization in rural areas has been a continuous dispute between social groups, being observable by the lack of effective mechanisms for guaranteeing the land tenure system. These areas, since the 19th century were the scenario of intensive processes of land agglomeration by local elites, who took advantage of the absence of an effective rural cadastre. As a consequence, along the 20th century, the central government tried to promote a wide-range of institutional arrangements in order to guarantee land’s distribution, initially as a strategy to mitigate the social tensions that emerged, and also as a policy to reorganize these areas under the ideal of intensive agricultural production and the transition from large-scale to small-scale land tenure system.

Under this perspective, the conflict for land has become a socio-political conflict, being targeted by several political discourses. At a first glance it would be a social claim, were guerrillas tried to capitalize their discourses by focusing in the role of land redistribution from a large-scale elites’ land into a small-scale peasant owned. On the other hand, the paramilitary forces used the land issue as a mechanism to consolidate several networks of territorial domain, in which the idea of “consolidar el control de los territorios, liberados de las guerrillas, para proveer de recursos a partir del negocio de las drogas ilícitas, la explotación de recursos naturales, la producción agropecuaria a gran escala y el contrabando de armas y gasolina” (Centro de Memoria Histórica, 2012, p. 57 citando a TSDJ, 2010-b Jorge Iván Laverde). Finally it could be understood as a social tension noticeable by the relationship between forced displacement and land grabbing, being a major challenge the mechanisms of voluntary return and integral reparation.

In that way the process of land grabbing, associated with paramilitary forces, can be typify in two practices. The first one, defined as coercitive land grabbing, is characterized by violent incursions of military forces in peasant’s land forcing them to abandon their properties. Usually this initial stage is concentrated in small-scale lands that were granted by governmental arrangements (adjudicaciones), creating a ‘territorial vacuum’. The
principal aim is to ‘clean up’ from any trace of left-wing sympathisers or relatives that could lead to a direct confrontation with the guerrillas. In this idea, the Centro de Memoria Histórica explains that this condition seeks to be “una maniobra de vaciamiento de poblaciones para consolidar territorios y corredores estratégicos, reconquistar parcelas adjudicadas por el Estado y atesorar tierras, también fue una estrategia para apropiarse de zonas ricas en recursos naturales, y/o zonas en las que se planeaban o ejecutaban proyectos de desarrollo y de plusvalía” (Centro de Memoria Histórica, 2012, p. 65).

The second practice, denominated illegal formalization, is the mechanism by which an emergent social group, strictly bonded, with paramilitary forces (some of them active members) agglomerate the lands that are located in the territorial vacuum. Their principal aim is to concentrate land by its social, economic and political value. In this phase we can find out the ‘innovations of land grabbing’, in which the illegal groups use several governmental land agencies to legalize the land’s rights, showing their political, military and economical capability. This process can also be understood as the institutional overlapping, in which the absence of a strong government is taken by irregular and illegal organizations in order to guarantee territorial dominion.

Considering these practices, the Colombian case of land grabbing has been typified in two main categories: a) judicial land grabbing, in which “a través de documentos públicos se transfiere ilegalmente la propiedad, por medio de la coacción, constreñimiento, falsedad, suplantación, etc “; and b) material land grabbing in which “no media una transferencia jurídica de dominio, sino que de hecho a través del constreñimiento o del desplazamiento forzado, se obliga a abandonar el predio o se ocupa el mismo contra la voluntad del titular” (Observatorio de Restitución y Regulación de derechos de propiedad agraria, s.d.). The first one is more complex by the multidimensional conditions it acquires under the scope of ‘legitimacy and legalization’, in which the central claim is how land rights are negotiated in the land tenure system; while the second one focuses in the concrete practices of forcing land owners to abandon their properties.
1. The municipality of Chivolo

This municipality is located in the central area of the department of Magdalena, in the North Coast of the country. It was one of the first places in which the land restitution program initiated because it was part of the territorial dominions of the paramilitary forces. One of their commanders, Jorge 40, concentrated almost all its operations in this area, focalizing in land agglomeration by land grabbing. This allowed him to fortify its illegal activities, being capable of extending its political dominion into the governmental spheres, by establishing new municipalities (Sabanas de San Ángel), and also by participating in the political arena with the political movement ‘Provincia Unida’ and financing political parties and their candidates (Pacto de Chivolo).

The beginnings of the land conflict in this area can be traced to the 1970’s with the emergence of a strong peasant’s mobilization promoted by the ANUC\(^1\) and their direct confrontation with local elites. Initially it was for the invasions of private properties, which ended in the 2000 with a systematic process of territorial vacuum made by paramilitary forces, and nowadays with the struggles between the returned victims and the actual tenants.

Imagen. 1 Localización geográfica del municipio de Chivolo, mapa obtenido de google maps.

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\(^{1}\) Asociación Nacional de Usuarios Campesinos.
For understanding this process I divided the conflict in four (4) periods, showing the principal characteristics and agents of land conflict.


During the decades of 1960 and 1970 began the first attempts for land reform in Colombia. Its principal aim was to distribute large-scale and unproductive areas that were concentrated in a few land tenants to local peasants. As a counter-policy, local elites promoted a scheme in which their lands should be bought, either by government or by peasants, which ended in an overrate of land’s prices that impeded peasant’s access to it. This motivated the first land invasions in the southern areas of Chivolo, promoted by the ANUC, whose aim was to distribute the land to the people who really needed, under the premise ‘la tierra es pa’ el que la trabaja’.

Becerra&Oyaga (2011), exposed that the invasions were located in leased lands, facing directly to large-scale owners. Under these circumstances, the elites began to organize private armed groups in order to secure their land rights, and also as a mechanism to protect themselves from a direct confrontation. Its remarkable that in this period, the ANUC was able to create alliances with other organizations, principally by the support of left-wing organizations as the Alianza Obrero Campesina Popular –AOCP-. This organization was a key for the entrance of guerrillas into the region, using the land distribution discourse as a mechanism to attenuate the social tensions and capturing their ‘audience’ in the local inhabitants.

2.2. The guerrillas in the 1980’s

By the failure of the land reform, in the 1980’s the government promoted a new institutional framework to guarantee peasant’s land access. This was made by the formalization of public domains to peasants. This process was made by conforming local committees, recognized by the ANUC and national agencies of land, in order to be benefited by a land right, becoming small-scale land owners. In that way the large-scale
dominios as La Palizua, La Pola, Bejuco Prieto, Canaan and Parapeto were redistributed, being small-scale dominions (Corporación Jurídica Yira Castro, 2011).

However, the influence of guerrillas in the committees generated a tension with local elites, who observed that local inhabitants were being politized and armed, becoming a menace for the traditional land ownership. In that way began the attacks of the guerrillas to the elites, and the private armed groups acquire a principal role in defending not only land rights, but also the menace of being kidnapped or menaced.

2.3. Guerrilla and paramilitaries: 1990 – 2004

For the 1990’s the social conflict acquires a major magnitude. The private armed groups began to fortify themselves, and their intention was to systematically eliminate any guerrilla network. In that way they associated with paramilitary forces promoted by la Casa Castaño, which was known as AUCC and later on as ACU. The land became a military asset for establishing dominions, the routes were monitored, and land grabbing was a strategy for vacuum.

The rural area was transformed into a battle field, in which peasants were in the middle of a direct confrontation between guerrillas and paramilitaries. Is in this period that the most of the inhabitants were displaced, forcing to leave their properties and in many cases the titles and subsequently their land rights. In that way, an emergent elite associated with the paramilitaries gain the control of strategic lands, initially by a military dominion and later on by the legalization of their titles by illegal sales.

2.4. Demobilization and return

After the demobilization of the paramilitaries many of the victims initiated the process of return. They began by reconstructing the social tissue, this means by the contact of the social leaders that were displaced along the country. Then they began to enter in the region, initially by a recognition of their lands, later organized in committees for pressing the
government to attend their needs, specifically restoring their land rights and guaranteeing their security. In this process they find the support of the new born agency for land restitution, which by the management of the registry of land began the process of formalization/legalization of land’s titles and the subsequent support programs for restoring their life projects.

However the main challenge continues, in the way that most of the territory was sold to new peasants, not necessarily associated with the conflict or armed groups, who claim the same land rights as the victims.

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