THE COLOMBIAN LAND RESTITUTION CASE: BRINGING ELITE CAPTURE INTO THE DEBATE

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ABSTRACT

This paper is a critical assessment of the Colombian Victim's Bill. *Elite capture* is addressed as a potential and still un-debated problem that will constrain land restitution in a further implementation stage if certain factors related to power dynamics are not taken into consideration. Who will be the actors in charge of land restitution allocation, which are the main tensions that can be foreseen as a result of its diverging and often opposing interests and how these tensions could be overcome in the Bill's implementation stage, are thus the main issues that are going to be addressed in this paper. By contrasting data about displaced people, the presence of armed groups in the Colombian territory and the Gini land concentration coefficient, as well as the provisions of the Victims Bill regarding the creation of new institutions to deal with land restitution, a case is built in which paramilitary groups should be regarded as the most important social force capable of endangering the implementation of land restitution initiatives, not only because of direct violence, but especially because of the co-optation of different public institutions in charge of land restitution in their favour. Some recommendations will be provided.

INTRODUCTION

There is a complex relation between land and armed conflict dynamics. Land is related to a wide range of political, social, economic and symbolic factors where power structures and processes shape the outcomes of public policies that intend to overcome conflict and land related issues (Richani, 2002). Also, when the existing institutional arrangements fail to provide land rights security and access, violent manifestations can appear. The creation of institutional frameworks able to overcome this land-conflict problem is of paramount importance in countries like Colombia. Nevertheless, the establishment of new institutional designs might also carry problems if these fail to properly comprehend and address the complexity of land related issues faced in a context specific situation.

Colombia is a country with one of the longest internal armed conflicts in the world (Borrero, 2005; CNRR, 2006). The length of the conflict in Colombia has shaped and reshaped its land and agrarian borders in many ways and many times. Land ownership constitutes one of the main issues that started the peasantry unrest leading to the beginning of the internal armed conflict (Elhaway, 2007). The uneven distribution of land, the inequalities in economic and social terms, and the difficulties governments have faced to bring a solution to this situation, have resulted in the progressive evolution of this conflict (Salazar, 2010). Today, a reform of agrarian land ownership in the form of a land restitution bill is being proposed as a way to end the conflict, repair the damage made to approximately three million of displaced people and re-stabilize the country.

Land restitution policies deal with many obstacles at different stage and at different levels. Up until now, the mainstream research revolving around the mentioned bill has focused on the best policy frameworks to repair the victims of the armed conflict under market efficiency or

land restitution principles like the Deng principles or the Pinheiro ones (Wiig, 2009; Renheim and Wrammer, 2009), on what are the dilemmas of land restitution in Colombia (Uprimmy and Sanchez, 2010; Gomez-Iza, 2010; Saffon, 2010), and/or on which are the weaknesses of the State to enforce property rights along the country (Kalmanovitz and Lopez, 2005). "The problem on how to deal with land allocation has traditionally been subject of profound disagreements between defenders and detractors of land reform policies" (Saffon, 2010:13). Nevertheless, I would argue that the traditional voices (like the authors mentioned above) have neglected a crucial aspect of the problematic nexus between land and conflict in Colombia. Indeed, new light is required over the potential dimensions and distortions of the behaviour of groups and agents interested in the resulting law. By groups and agents I mean those actors involved in the implementation of the bill like public servants, judicial officials and so forth and also those who will be affected by the measures taken by the newly constituted institutions, like the illegal armed groups, business groups or land owners of large states. Most of the authors assume the agents in charge of the implementation of the new rules, once the law has passed, will comply with it. However, hidden problems of the bill will be explained taking into consideration that institutional reforms face tensions coming from social forces conflicting interests that want to maintain the status quo already existent.

In fact, institutional reforms open windows of opportunities for societal actors to behave according to particular motivations based on their contextual experiences (Peters, 1999). Equally, there are conflicting and powerful social forces that might be interested in the continuity of the status quo. These social forces, can constrain and capture the different mechanisms pursued by the Bill and may distort its desired outcomes. Only the awareness of these factors will contribute to the better design of a new law and a consequent public policy capable of altering the current land status quo in Colombia and the mechanisms that will prevent or at least diminish the

possibilities for *elite capture* to happen. The purpose of this paper is to critically assess these unexplored challenges and possible pitfalls of the ongoing land restitution Bill along the lines of the critique that the '*Elite capture*' literature does to Rational Choice Institutionalism explanations'. My focus will be, thus, to identify *who will be the actors in charge of land restitution allocation, which are the main tensions that can be foreseen as a result of its diverging and often opposing interests and how these tensions could be overcome in the Bill's implementation stage.*

I will divide my work as follows: Chapter I will provide a brief background context of the land restitution Bill. Chapter 2 will provide a discussion of the theoretical framework along the lines of rational choice institutionalism and the *elite capture* literature. Chapter 3 will use the forgoing discussion to carry out a critical review of the gaps the current debated Bill has and the proposed methods for dealing with land restitution, especially those connected to the *elite capture* tension. Chapter 4 will review relevant international land restitution experiences and the institutional arrangements put in place to overcome or prevent *elite capture* to happen. In Chapter 5, recommendations will be provided and further venues of research will be put into consideration.

CHAPTER I: BACKGROUND

1.1. The Context

Land reforms have been previously treated in Colombia as a potential tool to overcome the conflict and bring peace to the country. Their main objective has been to reconcile the struggles arising between the landowners, the settlers and the violently dispossessed. Crucially, since the 1930's decade, two official laws have been put in place to surmount issues around land ownership and land concentration in the country. The first one took place in the 30's decade and the second one in the 60's decade, but none of these attempts have achieved a significant transformation in the structure of land ownership in Colombia and a redistribution of it among the involved actors (Berry, 2002) like the current Gini coefficient for land ownership indicates (85.38% according to the World Bank). The armed conflict and its diverse actors have made this work increasingly difficult.

In Colombia, land has a particular special value. Indeed, the possession and acquisition of land is not directly related with wealth, but it is intimately related with status, authority and thus political power (Guillen, 2008). Land property has worked as a means of domination in which it is possible to make others do to what it is in the best interests of a small segment of population i.e. the elite. In fact, power and social status are not the result of the productive use of land but much more the result of the appropriation of the labor skills of the ones upon which domination was exercised on these lands (Colmenares, 2007:37). Thus, in Colombia, land has been a determinant element because of its intrinsic value not only in economic terms but also because of its strategic character (Uprimmy and Sanchez 2010b). The struggle for land in this country is aimed not only to the seizure of the states, but furthermore, on the acquisition of strategic control over territory and thus and specially, over political power. The illegal armed structures are aware of the value land represents for many different purposes and that's the main reason

why they have promoted dispossessions in diverse forms (indeed, paradoxically, the conflict often drives land prices down, but the demand for it never ceases to raise).

This situation makes land restitution to be a challenging issue in the Colombian context. However, the literature on the adoption and implementation of reparation initiatives where massive violations to human rights and infractions to international humanitarian law have occurred, has often neglected, or at least overlooked, this particularity. Much has been said over a number of possible tensions, and recommendations have been made. For example, studied tensions are related to the number and the identification of victims the program is pursuing to repair (Garay, 2009), the political decisions about what to repair and how much this will cost (Kalmanovitz and Lopez, 2005), the security considerations regarding the conditions for the victims to return to the restituted land (Salinas, 2010), how to deal between previous owners and current ones (Renheim and Wrammer, 2009), and finally the institutional capacity to undertake this process (Gomez-Iza, 2010). Nevertheless, it is of paramount importance to also identify the interests and relative power of the public and private actors involved in its implementation and how their behavior can mislead the proposed outcomes of the resulting law. This, again, is the objective of this paper.

For the Colombian case there are several actors that might endanger the land restitution process, even after a new institutional framework is negotiated. There are guerrilla movements and paramilitary groups seeking territorial control whose "main aim is not to expropriate and profit the land, but rather to occupy it for tactical reasons" (Elhawary, 2007:6). Particularly, it has been estimated that paramilitaries have acquired, through the appropriation of large agricultural states, "around 50% of Colombia's most fertile and valuable land" (Elhawary, 2007:5). How these actors might endanger the land restitution process? As it will be demonstrated in chapter 3,

the paramilitary groups are the ones more capable of endangering this badly wanted process in the country, not only through direct violence, but especially through the capture of regional political powers in charge of implementing and regulating the resulting law. Guerilla groups' might also endanger the land restitution process, but more by the means of violence than through capturing regional or local elites.

1.2. The Victim's Bill and its Provisions

In the last two and a half years, failed attempts have been done in order to carry out a (this time hopefully successful) land reform through the principles of victim's rights. In November 2008, under the presidency of Alvaro Uribe Velez (the former Colombian president), the Congress of the Republic almost approved a Bill in which measures for the protection of the victims of violence in Colombia were dictated (Bill 044 of 2008). A specific chapter for the restitution of land to the victims of the armed conflict was discussed as a key aspect in the act of reparation to the victims. The chapter included measures guaranteeing the restitution of land to those victims that lost it as a consequence of forced displacement, or that transferred it under pressure due to violence exercised against them (Saffon, 2010:1). At the end, the Bill was not approved in the last (and supposedly formal) debate in which the text differences among the two houses of the Congress were to be conciliated. Even though the law was not approved, it achieved a lot of national and international attention, and shaped the political landscape for the next-to-be President, rescuing an issue that was disregarded during a long time and that was surrounded by high levels of division among different actors in society (such as the government, political parties and human rights and victims organizations, new and old land-owners,among others). Once again, the role of land in the resolution of the armed conflict is clearly into the fore.

The current 'Victim's Law', as it is commonly known, wants to provide a solid ground for the creation of a public policy to attend, assist and integrally repair more than three million victims[1] of manifested violations to their human rights and the international humanitarian law provisions. The bill includes previous provisions made in the field of attention, assistance and reparation to the victims of the armed conflict and introduces new mechanisms to attain these provisions. Furthermore, this initiative seeks to guarantee equally and effectively the adoption of special measures that recognize the constitutional rights the victims have to the truth, justice and reparation and the opportunity to exercise and recover the lost right to land as a consequence of the armed conflict. The Bill also provides the adoption and establishment of new institutional frameworks and a system that involves national, regional and local institutions as well as control organisms. It also creates a new information system in order to articulate the efforts of different institutions involved in the attention to victims of the armed conflict, especially displaced population. New models for the attention and assistance of victim's needs as well as mechanisms to monitor and follow the application of the bill will be design.

Crucially, regarding the restitution of land, new institutions will be created: the special administrative units for the management of land restitution issues, courtrooms for land restitution issues in the superior district tribunals and in the Supreme Justice Court as well as a presidential agency in charge of the coordination of land restitution initiatives and an advisory Committee for inter institutional coordination. These new institutions provide the fundamental point of attention of this paper. Moreover, it is important to mention that the bill also provides new guidelines to grant property rights over land to victims: beneficiaries of the bill can be victims who formally owned a state but also possessors, occupants and tenants. In this regard,

[1] The Bill has a very concrete definition of what should be understood as a victim. Even though victim is not a neutral adjective and their identification and treatment implies a process of political struggle and negotiation, I won't deal with this highly complex matter in this text, although is a subject that deserves further research and explanations.

the bill adopts the reversal of the burden of the proof and therefore it is for the current occupant of the land to provide information that makes it the legal owner of the state. The mentioned new institutions will be in charge of deciding the allocation of the land under these principles. It should be noted that this is the first time in Colombia that such an initiative is included in a Bill.

This chapter has offered a brief review of the context within which land restitution is taking me in Colombia that such an initiative is included in a Bill. place in Colombia and it has given a brief description of the objectives of the current debated bill. The next chapter will describe the theoretical framework that will place the boundaries of the research and recommendations that will be made.

Chapter 2: Theoretical and Methodological Framework

This chapter will address the theoretical and methodological tools that will be used in order to provide a further understanding of the potential tensions between institutional arrangements and the behaviour of individuals and or groups with interests in it. The aim of the first part of this chapter is to briefly explore the principal ideas of the Rational Choice Institutionalism -RCI- literature and secondly, the concept of *Elite capture*, which will purportedly overcome some of the weaknesses of RCI explanations and bring another view to the weaknesses and pitfalls of the Victims Bill, currently debated in the Congress. The second part of this chapter discusses the methodological framework, and its aim is to detail why I have favoured the *elite capture* approach over RCI, and identify the main sources of my research.

2.1. Theoretical Framework

2.1.1. Rational Choice Institutionalism

For the RCI approach, institutions are "a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances" (March and Olsen, 2006:3). Institutions, thus, can be conceived as structures that provide resources that enable capabilities for acting (March and Olsen, 2006:3); they can constitute a matrix of opportunities and constraints that influence and channel individuals' behaviour and actions. Institutions are therefore designed to shape individuals' behaviour and to produce socially desired outcomes through the establishment of positive or negative stimulus for individuals.

RCI thus conceive institutions as 'means to prescribe, proscribe, and permit behavior' (Ostrom, 1986, 1990) setting the parameters through which human behavior is shaped and human interactions are framed (North, 1990:3). Compliance with rules is possible through different mechanisms but the rationale behind is that rules give individuals the certainty that the same rule is going to apply to other individuals and therefore behavior among them becomes more predictable. Compliance with the rule gives the individuals the sense of belonging or membership. Hence, not only the rule itself is going to be the framework for individual's actions, also the membership to the institutional framework in which the rule is placed will guide them and therefore different sets of institutional limitations can be put in place in order to constrain individuals' self interested behavior.

Nevertheless, RCI recognizes that the rules set by institutions and the character of these rules can be threatened by the non compliance of individuals. For example, some RCI authors point out that "individuals' maximization will produce dysfunctional behaviour such as free-riding and shirking" (Peters, 1999:45); Indeed, these actors will react to the rules in a way in which they are able to maximize their personal utility in a strategic way (Hall and Tailor, 1996). According to March and Olsen (2006:13), "although violation of the rules is unlikely to be a good idea, it sometimes is" because the cost of following the rules is higher than the cost of free-ride. Free-riding behaviour can cost the State not only the success of the policy that wants to be put in place but also the budget it has allocated to do so. As Peters (1999) says, the creation of an institution is by no means 'a cost free activity'. Sometimes the institution that has been put in place is not entirely or not at all recognized by particular individuals or groups of individuals in society. Tensions might emerge, causing members of a group prone or attracted to free-ride. Under this interpretation, it is said that individuals, following their utility maximizing motivations, might not be willing to contribute to the purpose of a specific institution, and this

behaviour can be reinforced by the fact that there might be other individuals that, in the sight of the first ones, are also tempted to free-ride as well (Shepsle, 2006:30).

According to RCI, thus, individuals' rationality can mislead some of the intended outcomes of an institutional framework. The favoured solution to this problem is more rules. Additional rules would be the key instruments for "regulating the behaviour of individuals when their rational pursuit of individual gain might produce outcomes that would be collectively undesirable" (Peters, 1999:48). Given this possible behaviour, it becomes of great importance to have further rules to enhance the possibilities of success of the desired outcomes of a particular policy area i.e. "without those rules the policy area would degenerate into something of the egoistic free-riding and defection" (Peters, 1999:48).

Nevertheless, and as will be shown in this paper, sometimes the rules designed can also be dysfunctional responses to particular problems; sometimes the implementation of rules can be absorbed and co-opted by different power structures in society; sometimes problems arise that cannot be explained only by the deviant behaviour of some individuals or groups of individuals in a free pursuit towards the maximization of its utility; indeed, it is important to take into consideration that not only institutions shape individuals behaviour but also that institutions can be shaped by individual's actions opening the possibility to re-consider the rules endorsed at first instance and therefore influence outcomes in following rounds of design. This can contribute to the design of better rules with higher possibilities to obtain desired outcomes. This, moreover, can be further accomplished through the study of power relations among groups, along the ideas of the *Elite capture* literature.

In sum, as will be shown, the Colombian Victims' Bill seems to be built upon the assumptions made by the RCI approach i.e. most individuals will follow a particular set of rules and will respect them in order to create an environment that is predictable and hence reduces uncertainty. Nevertheless, not necessarily more rules will end in the construction of a more predictable environment and this is relevant for this paper because, as it will be shown, power resources are uneven between individuals/groups in society and certainty potentially turns to be more of a desired dream than of an actual outcome.

2.1.2. Elite Capture

Even though RCI gives insights about the relationship between individuals and institutions and the mechanisms institutions develop to shape individuals behavior and preferences, this account has some theoretical shortcomings showed, for instance, in the *elite capture* literature. *Elite capture* highlights the importance of certain factors that the RCI literature tends to disregard: the uneven power relations among individuals of the same group or between groups and the different institutional affiliations individuals might have. This is especially important for this case because it will explain why the implementation of the victims' bill might encounter obstacles as a result of the uneven power relations and the conflicting interests groups might have. RCI assumes that the different actors in society are roughly equal i.e. there is a market between them and therefore power relations among them are equivalent. Nevertheless, Shepsle, talking about Wagner's work, argues that "particular individuals may make unusually large contributions of time and energy and financial and (especially) logistical resources not (only) because they care passionately about the group's objective but (also) because they see an opportunity to parlay this investment into something personally (read: selectively) rewarding" (Shepsle, 2005:9). This puts in evidence the sometimes limited understanding of institutions and the inadequate understanding of power relations under the RCI approach (Masaki, 2007). Indeed, the behaviour

of some agents might affect the outcomes of an institution more than the behaviour of others, due to differences in relative power and interests. This poses a problem because the "complexity and the unintended consequences of institutional crafting" (Wong, 2010:1) are often overlooked by the institutionalism approach. Hence, while individuals might act following utility-maximizing motivations, not all of them count with the same resources to influence institutional outcomes and not only utility maximization might be the ultimate goal.

The *elite capture* phenomenon has been discussed in a wide range of problems in many policy areas: decentralization, community based approaches, poverty reduction initiatives and anti corruption strategies among others (Platteau and Gaspart, 2004; Hadiz, 2004). The focus of the claim is centered in that the little or deficient knowledge of specific contexts, as well as the need for rapid and visible results, undermines the effectiveness of a particular policy developed to attend citizens needs and expectations. '*Elite capture'* problems endanger the success of the policy by either appropriating a large portion of the resources devoted to the policy or by hindering the process because of the opportunistic behavior of powerful groups dominating particular regions (Platteau and Gaspart, 2004).

Society is not a homogenous configuration and it can be divided into different social actors or forces. Actors might be endowed with resources "in competition with each other or with other groups – the more elite the group the more the amount of capital available to its members" (Lee, Arnason, Nightingale and Shucksmith, 2005:270). RCI recognized that society is constituted by individuals with vested interests, whose individual action might deviate from the desired outcomes of the institutional framework (essentially, through free riding). The *Elite capture* literature goes thus beyond, and argues that within society we can see that there are groups (classes or elites), which have a greater ability to act than others, which have the necessary

contacts, information and initial resources "to appropriate for themselves whatever portion of the resources they need" (Platteau and Gaspart, 2004:2) or to influence the population in order to make them do what is on the best interest of the 'elite'. Society is therefore not constituted by equal actors with even power resources but, on the contrary, there are power structures that have to be taken into consideration when designing an institution and the rules through which expected outcomes are going to be achieved.

For Wong (2010:3) "elite capture is a situation where elites manipulate the decision-making arena and agenda to obtain most of the benefits". Elite can be understood in different ways, but for the purpose of this policy paper they are conceived as "individuals who can exert disproportionate influence over a collective action process" (Beard and Phakphian, 2009:11), either for their privileged position in society, their access to economic resources or land holdings, their level of knowledge or education entitlements. An important feature often highlighted in the *elite capture* literature is that the influence of the elite is continuous over time and it's characterized by its regularity. This pattern of regularity is due do the fact that these elites occupy a spot in society were power come from their call to moral claims and symbolic power that comes from political and religious affiliation, personal history and personality or land holdings among others (Dasgupta and Beard 2007: 234).

For policy makers, *elite capture* problems have been tackled in two different ways that complement the lines of rational choice institutionalism. These look at how sanctions, cooperation and participation might lead to agreements in which elites' behavior is constrained to reach positive outcomes (Plateau and Gaspart 2004; Ostrom, 1990). One of them is the 'counter elite approach' which highlights the necessity to "challenge elites by completely excluding them in the institutional design" (Wong, 2010:2). The second one, the 'co-opted elite

approach', "suggests that cooperation with elites, rather than confrontation, is the solution" (idem). *Elite capture* is therefore a phenomenon that must be taken into consideration when designing and implementing a particular institutional arrangement; for the purpose of this paper, I will try to identify and critically assess the role this phenomenon plays in shaping land restitution at different levels.

2.2. Methodological Framework

As I stated above, the questions I intend to address in this paper are: *who will be the actors in charge of land restitution allocation, which are the main tensions that can be foreseen as a result of its diverging and often opposing interests and how these tensions could be overcome in the bill's implementation stage*. In order to be able to answer this questions I will be engaged with the analysis and identification of the interaction between actors and the parameters set to individual's choices and the mechanisms used to foster cooperative behavior and compliance to the rules of the game. Rational Choice Institutionalism will answer those questions. But, recognizing that this approach gets short in its analysis of social and power relations, the *elite capture* concept will be introduced in order to gain further insights about the problems that land restitution processes face as a result of conflicting interests that are the expression of uneven power distribution and unequal relations between individuals/groups.

This paper is a critical analysis of the current Victims Bill and the governance, political and economic settings that might threat the implementation of this Bill. By contrasting data about displaced people, the presence of armed groups in the Colombian territory and the Gini land concentration coefficient, as well as the provisions of the Victims Bill regarding the creation of new institutions to deal with land restitution will be done. To do so governmental as well as nongovernmental, civil society and international agencies reports and data bases on the land

issue are examined. A comparative perspective will be introduced in order to identify what actions countries that went through a process of land restitution in the framework of transitional justice, developed in order to overcome *elite capture* to happen or to smooth the consequence of this phenomenon in the restitution process. By incorporating a comparative perspective dealing with this tension, context specific recommendations are done for the Colombian case.

Chapter 3. The Colombian Victim's Law and its provisions on land restitution affairs

This chapter's objective is to provide a critical review of the tensions and gaps the current debated bill has, along the ideas provided by the *Elite capture* literature. I want to stress the fact that these are of course not the only gaps and tensions that might appear in the Bill. However, the traditional focus has been over other tensions, and not taking into account *elite capture* issues might also endanger the whole process at its implementation stage.

3.1. The 'space' of analysis

The Victims' bill includes two main types of measures in relation to land related issues. Some of these measures have an administrative character, others a judicial one. The former are aimed to assist and protect the victims in relation with their rights, the latter are intended to create expedited judicial mechanisms for the allocation of land to the victims of the armed conflict in the country.

As we have seen in the first chapter, the victims' Bill provides for the creation of a number of institutions that will be responsible, both in the administrative as in the judiciary, to the restitution component to the victims of the Colombian armed conflict. The Colombian Bill proposes the creation of a new institutional framework to deal specifically with land restitution both under international parameters and under what the Colombian legislation has advanced in this area for the past 15 years. Both new administrative and judiciary institutions will have responsibilities through the land restitution process. These new institutions are the main *space* where problems related to the idea of *elite capture* might arise. Hence, my analysis will be centered

on these new institutions and on assessing their potential vulnerability towards capture or absorption by powerful groups in society. Again, tensions and problems, some of them also related with *elite capture* issues, might be encountered in other spaces of the bill, but I consider that the most important, and neglected ones, lie in the conformation of judges and administrators in charge of land allocation and restitution whose willingness or ability to follow the set of rules might be constrained by the interests of other, more powerful, groups in society.

As has been said in the theoretical framework, institutions are designed to shape individuals behaviour and to produce socially desired outcomes through the establishment of positive or negative stimulus for individuals. The rules that institutions put in place set the 'political space' in which the different actors in society will function in an interdependent way. Nevertheless, as the Colombian case will tell us, the rules set by institutions and the character of these rules can be threatened by its non compliance. This is so because society is not constituted by equal actors with even power resources, but on the contrary, there are power structures that have to be taken into consideration when designing an institution and the rules through which expected outcomes are going to be achieved. *Elite capture* is therefore an important tension that should be avoided both in the structure of the Bill as well as in its further implementation. In the following lines I will detail the identification of the sections in the current Bill that might create window opportunities for *elite capture* to emerge.

3.2. The gaps and assumptions in the Victims' Bill: new institutions for land restitution

The current Bill includes the creation of two crucial new forms of institutionality to deal with the land restitution process. I will argue that these institutions are at risk of been co-opted by actors seeking to hinder the land restitution process and I will base my arguments partly on

the insights arising from the *Elite capture* literature and partly by contrasting data about displaced people, the presence of armed groups in the Colombian territory and the Gini land concentration coefficient, as well as the provisions of the Victims Bill regarding the creation of new institutions to deal with land restitution will be done

Firstly, under article 31 of the Colombian bill, the local administrations (or Municipios for the Spanish name) where land restitution processes are going to be implemented will be now in charge of designing the strategies of public security, with the support of entities at the national level, to provide the conditions for victims, their representatives and the public servants involved in the process to be secure. These administrations have the duty to provide the necessary measures to reduce the risk that both judicial reparation and administrative processes might entail at the local level.

Secondly, article 80 creates a whole new institution: the special judges for the land. These judges, of municipal level, would be competent to hear and decide, in single instance, the processes of land restitution to the stripped people and the formalization of land titles.

The provisions and policy proposals of the Victims Bill regarding the creation of new institutions to deal with land restitution in the country are still too general and do not provide sufficient guidelines in issues that remain controversial. This could open up the resulting law to manipulation of different actors and groups with vested interests in this land restitution process. In its current form, the Victims' bill faces one major risk: the lack of strategies for mitigating the problems that might appear affecting the independence of the new institutions and its governance. Indeed, it seems that the government, naively or not, is making some assumptions, over the expected behavior and independence of its new authorities. Indeed, it assumes that local

administrators have the interest of pursuing the best environment for land restitution to take place and therefore will be engaged in protecting the life or providing safety measures for the victims to have a safe return and their representatives and the judges to count with a safe environment. Equally, it also assumes that the judicial district courts and the judges that will be part of them are equally compromised in providing fair and free decisions. However, as the *elite capture* literature tells us, actors in society do not have the same interests and do not poses the same power resources. In fact, there are groups that have the tools to influence other actors in order to make them do what is on the best interest of the group. In the next sections I will explain how, by whom, and why these new institutions can and plausibly will be captured, undermining the whole process of land restitution in Colombia.

3.3. A troubled matrix of power: forced displacement, land appropriation and illegal armed groups

In Colombia there is a close relation between forced displacement, land appropriation by illegal armed groups and concentration of land in the hands of few (Fajardo 2002:59). Furthermore, the regions with a higher concentration of land in the hands of few (among them land owners, drug dealers and paramilitary groups) are the ones actually having the highest rates of displaced population in the country (Reyes, 2009). Given the previously mentioned facts, it seems of paramount importance to question who are the ones in charge of the land restitution adjudication on the one hand and who are the ones in charge of designing security measures to ensure the safety for the return of the displaced to their land as well as of those that represent their interests and the public servants involved in the process. If captured by particular social forces the whole process of restitution is at risk, not only in terms of land allocation, but also in preventing violence to reemerge and property rights to be ensured. Are these new authorities

susceptible of being captured by particular elites? Certain facts will tell us that these actors are indeed susceptible of being co-opted. In the following lines I will support and give evidence of the likelihood for this to happen in the Colombian context.

The crucial problem, as it will be shown, will be the highly probable cooptation of these civil authorities by the paramilitary groups, i.e. military elites which, not by means of direct violence, but by means of its huge political power, will cover local judicial and administrative authorities.

The study of the motivations that the illegal armed groups have in the control and domination of land will shed light on the probable actions that actors with vested interests will pursue in order to preserve the current status quo regarding land in the country. As it has been said before, illegal armed groups in Colombia have a particular interest in displacing people from their land. First of all, displacement and dispossession has become a key tool for the illegal armed groups to satisfy their strategic military needs. The different illegal groups operating in the country (FARC and ELN guerrillas, and Paramilitaries) seek the control of the land not in terms of wealth, but for the development of military strategies i.e. to guarantee strategic corridors for the mobility of their group and their merchandise (mainly coca and arms) (Gomez-Iza, 2010:20). However, this motivation for land appropriation explains only part of the levels of displacement in the country. In fact, the magnitude in which the different illegal groups cause displacement varies from group to group. As it will be shown, particularly paramilitary groups have a special relation with land, not only for strategic reasons, but as a means to acquire and manipulate long term political power (guerrillas, for its part, tend to be more mobile and the displacements they provoke, albeit equally brutal, are not generally accompanied by a long term dwelling and legalization of the occupied land).

As Graphic 1 shows (see anexe I), from the National Survey for the Verification of the Rights of the Displaced Population, the majority of cases of displacement are due to the action of paramilitary groups.

Moreover, not in relative but in absolute terms, the situation is even more pressing: taking into consideration Map 1, which shows where the paramilitary groups have presence, and contrasting it with the number of people forcefully displaced by regions, disclosed in Table 1, it could be seen that the absolute numbers of displaced people is concentrated in those departments were the paramilitary have a strong presence. This is fundamental, especially when contrasted with the data given on table 2, which shows land concentration levels by regions in Colombia, and shows that where the paramilitaries have major influence, crucially, the land distribution outcome is highly skewed, much more than in the average region of the country.

In detail, according to Map 1, paramilitary groups have a major presence in the departments of Bolivar, Sucre, Antioquia, Meta, Cauca, Chocó, Cordoba, Magdalena, Cesar, Putumayo, Arauca and Norte de Santander. Table 1 shows the departments that count with higher rates of displacement are the ones under paramilitary presence (highlighted in gray). An easy contrast show its overlap

Regarding the relation between displacement and land concentration, some Colombian scholars (Fajardo, 2002; Ibanez y Querubin, 2004; Garay et. al., 2008) have made studies in which they determine the close relation between forced displacement and high land concentration. According to the investigations done by Ibanez and Querubin (2004), there is a strong correlation between forced displacement and higher indexes of land concentration

measured according to the Gini coefficient. The authors of the study found that for the years 2000, 2001 and 2002 (years in which forced displacement happened with more intensity) the municipalities that registered the higher Gini coefficient in land concentration match with those in which forced displacement happened (Ibanez y Querubin, 2004: 70-72) In particular, in the departments of Meta, Cesar, Cordoba, Chocó and Bolivar (with Gini coefficients between 0.76 and 0.83) (BM, 2004), those where there is major presence of paramilitary groups.

The analysis made so far, tell us that there is a close relation between forced displacement, land concentration and paramilitary presence. As have been demonstrated, forced displacement is done with more frequency in those regions where paramilitary groups have strong presence as well as in those regions where concentration of land has become higher, as it has been also recognized by international organizations as the United Nations Program for Refugees (ACNUR, 2003). According to ACNUR, the zones where large states in which the privatization of security and the consequent paramilitary domination have occurred, the consequence has been the displacement of population at higher rates than elsewhere in the country. And it has to be noted that violent displacement has not been the only strategy used by the paramilitary groups in order to gain access to land. Dispossession and forced sales of land have also been other methods of land appropriation used by these actors[2].

How this land accumulation translates into political power? As it has been anticipated, land possession was not only needed for strategic military and economic purposes by the paramilitary

[2] It is worth to explain that paramilitaries are relatively new groups that emerged between 1965 and 1989 sponsored both by landlords and industrials regional elites in order to fight the guerrilla movements. Nevertheless, between the end of the 70's and the early 80's this groups were co-opted by trafficking networks and drug dealers who used them to safeguard coca plantations and that through them exercised violence as a way to acquire land and dominate the territory (Salazar, 2010; Elhawary, 2007). Between the late 60's and the early 80's paramilitary groups, backed by the drug dealers, started to spend the drug revenues in buying land.

actors. There were also political advantages as in Colombia land possession has been linked with political power and status. According to the National Reparation and Reconciliation Commission, "through the military and economic power a new social order at the local and the regional levels started to be dictated by the logics of the hegemonic actor" i.e. the paramilitary (CNRR, 2009:73). The phenomena of the 'para-politics' -as it was started to be known in Colombia- is the better example of this nexus. Under the domination of this new hegemonic actor a new elite emerged. Their power "contributes to the capture of state entities, to the regulation and domination of the population, and the annihilation and cooptation of social organizations" (CNRR, 2009:73) which enables the reconfiguration of the power relations and the emergence of a new elite related with the dynamics of the conflict and drug trafficking structures (Gomez-Iza, 2010:21). This new elites are therefore constituted by local, regional and national political authorities and industrial leaders intertwined with military and economic illegal actors.

Probably one of the most exhaustive studies about the phenomena of 'para-politics' in the country has been done by Corporation Nuevo Arco Iris (New Rainbow Corporation). In a publication in 2007, supported by the Swedish Government and some Research Centers from Colombian Universities, alliances between paramilitary groups and local political elites where deeply researched (CNAI, 2007). The results of this study show that paramilitary groups co-opted and constituted alliances with local, regional and national political leaders obtaining political control over the areas where they exercise presence to advance their expansion, now not only on military and economic terms but also on political ones. In an interview made to one of the most representative leaders of the paramilitary groups, Salvatore Mancuso assured that 35% of the National Congress was under alliances with the paramilitaries –most of them from the mentioned departments- (CNAI, 2007b:17). According to CNAI (2007b) the regions were

paramilitary groups had especial political influence are the departments of Antioquia, Magdalena, Norte de Santander, Meta, Arauca and Magdalena. In total, this study demonstrates that 223 municipalities (out of 1100) and departmental leaders counted with the support of this illegal armed group. The way these groups achieved to influence the political processes, as Gibson (2006:213-214) presents in his study, was through the formation of small political parties in the regions and the national level under the legal bases of the law about electoral process and party formation and the decentralization provisions that also facilitated this process.

But not only local, regional and national political parties have been co-opted. Other institutions and public servants are being investigated by their nexus with paramilitary groups. Actually, paramilitary groups have captured public officials of entities related with the adjudication of land as the Colombian Institute for Rural Development -Incoder- and judicial and registry offices across the country that have facilitated the acquisition of land illegally in those regions where paramilitaries groups have presence. Regarding the cases of Incoder, the National Attorney Office is currently investigating 67 cases of illegal adjudication of 1800 ha of land in the department of Meta. One of the most sounding cases in this region, is the adjudication of a land state to a paramilitary leader demobilized in 2005 under the demobilization process with paramilitary groups the government of the former president has undertaken (CCJ, 2006:60-62). Similar cases have been registered in other departments, like in Cordoba, were the Incoder gave to another paramilitary leader a land state, even under the acknowledgment that the Attorney General Office had issued an arrest warrant.

Unfortunately thus, judicial offices and officials have also been captured by these groups in some regions. The poor results in judicial terms of the demobilization of paramilitary groups in 2005-2006 have brought the attention of some NGO's regarding the role of the judicial system

in Colombia (CCJ, 2006:63). Furthermore, according to studies of the CNAI (2006:272-273), the paramilitaries invest considerable sums of money in payments of bribes and 'favors' to, among others, judicial authorities. The Judicial System in Colombia is one of the poorest in Latin America and faces constraints in many different aspects. For example, the salaries of judicial officers are considered to be low, making them an easy target for bribes and cooptation by local or regional elites (Marulanda, 2011). Even more disturbing is the perception of corruption the judicial system has. According to a study of Transparency for Colombia, a national NGO, 45% of the population describes the judicial system as corrupt, a high percentage if we compared it to countries like Mexico or Brazil. For the Colombian case what can be seen is that the judiciary is not elected without the interference of political leaders, which endangers the legitimacy of this institution. But a further problem is that the judiciary in Colombia is accountable to no one, giving it a high space of maneuver when decisions have to be taken.

3.4. Land Power and the new authorities of the Victims' bill

Regarding the above said, we are now on more solid ground to say that the assumptions the government is doing regarding the involvement of local administrations and the creation of new judicial institutions do not necessarily take into proper account the interests and power of all the actors in the scene. Rational Choice assumes that the creation of new institutional frameworks will reach the expected outcomes regarding a particular problem, even despite individuals who see better utility prospects departing from it. As the Colombian case tells us under the analysis of the current Victims' Bill, there are different actors in society that prefer the current land status quo. Moreover, these actors are not normal or average actors, they are powerful groups invested with military and political power. The absolute compliance by local authorities of the victims' bill would imply high costs for these elites that will not benefit from it. Up until now, paramilitary groups and local, regional and national elites has benefited of the current status quo. As has been

discussed above, to have weak property rights and the ability to capture crucial institutions for land allocation has played in favor of a reduced group of land owners, drug dealers and paramilitary leaders.

As it has also been discussed, the Colombian society is constituted by complex dynamics and relations. Different groups compete for different goals to be achieved: on the one hand, the victims and their representatives fight for their right to reparation for the violation of human rights and infractions to international humanitarian law committed by different actors. The paramilitary groups on the other hand fight for the maintenance of a status quo that have benefited them and have made them able through the uses of military force to have access to land which at the same time is related with political status and economic well being in the country. There are also government officials at various levels and branches that are in risk of being captured to maintain the status quo. And there is of course the will an interest of the government in the approval of the current bill. For the particular case of the victims bill we have seen that within society there are groups (in this case paramilitary illegal armed forces), which have the necessary contacts, information and resources to influence particular groups in society in order to make them do what is on the best interest of this 'elite'. The paramilitary groups have proven to have the political, economic and military power to "manipulate the decision-making arena and agenda [in order to] obtain most of the benefits" (Wong, 2010:3) and therefore to endanger the success of the land restitution policy the government is pursuing and the national congress is debating. The non acknowledgement of this specific context of the Colombian reality undermines the effectiveness of this particular bill at its implementation phase.

In sum, these actors who have accumulated land, thus political power, have exercised, and will continue to do so, intense pressure over the new institutional framework for land restitution.

Once the thorny debates at Parliament have reached some sort of consensus and the law is finally passed, a new stage of pressure will be exercised during its implementation, particularly over the local authorities that have to protect victims and those that have to decide, in a single instance, the allocation of land titles to the victims. These judicial decisions, if rightly captured by the elite, could be more of an opportunity than of an obstacle.

Through the analysis done we can see that the bill seems to be built on a series of assumptions that clearly understate the ability of some elites to capture the new authorities (as they have always done). An insufficient knowledge of the context surrounding the administrative and judicial procedures that want to be developed is a risk that has been neglected over the urgency of other problems. What measures could be put in place in order to overcome, or at least diminish the impact of *elite capture* for the Colombian case? In order to be able to answer this question, I will make a review of three case studies from countries that have gone through similar process and have had (successfully or not) reacted to *elite capture* tensions. In the final section of this paper I will bring some recommendations for the ongoing Colombian process, based on these comparative experiences.

Chapter 4. Elite Capture in International experiences of land restitution.

In the previous chapter we have explained how the interests of powerful illegal military elites in Colombia have traditionally captured crucial institutions for land allocation at different branches and different decentralized levels. As said, this opens the ground to expect this group will capture the institutions that will be created under the Victims' Bill. To prevent, or to avoid this, the Colombian States should set constrains to diminish the impact of this type of behavior at the different levels it might emerge. The purpose of this chapter is to explore international experiences were land restitution processes took place and to look at what measures were taken –if any- by the states in order to diminish the impact of *elite capture* in land restitution processes. Three cases have been selected for this purpose: South Africa, Bosnia-Herzegovina and Kenya.

4.1. The case of South Africa

In South Africa, major land confiscation took place during white minority rule where more than 3.5 million black South Africans were massively displaced to designated homelands (Williams, 2007). As a consequence of this confiscation process land tenure presented a skewed pattern in which 87% of the land was held by a white minority while 13% was held by the black majority. In 1990 the African National Congress -ANC- started a campaign for land restitution and redistribution in order to, according to the White Paper on South African Land Policy (1997: 52) "restore land, provide other redistributing remedies to people dispossessed by racially discriminatory legislation, in such a way as to provide support to the vital process of reconciliation, reconstruction, and development". The ANC pursued the 'market approach' to restitution, in which expropriation should be done in accordance with the section 25 of the Constitution in which it should "either been agreed to by those affected or, decided or approved by a court".

Elite capture concerns in the land restitution processes in South Africa seems to have taken place during the policy formulation stage. During this stage, the ANC reached an agreement with the former National Party and other actors like the white commercial agriculture sector, in order to pursue the 'willing buyer-willing seller' approach to land restitution. Especially the white commercial agricultural sector "has [had] a vested interest in maintaining the status quo in land distribution" (Weideman, 2004:154). By exercising pressure over the government this sector achieved the adoption of the market approach to restitution, which has slowed down the process in favor of the minoritarian white commercial elite. In fact, this approach has placed high constraints on rural restitution. According to the International Crisis Group (2004), the Land Claim Commission has had resolved only 50.000 of the 80.000 claims in 2004. Nevertheless, the burden of these claims were for "urban properties (42.490) rather than rural land (5973) and were settled through cash settlements (59%) rather than in-kind restitution (36%)" (ICG, 2004:164; Williams, 2007:27).

The government, beyond the rhetoric of some of its members, has not been able to withdraw the impact that these previous institutional arrangements have had on land restitution policy. However, it is important to note that In terms of the created institutions that deal with land reforms, some scholars agree that both the Land Claim Commission and the Land Claim Courts have dealt land restitution with a high degree of autonomy and independence. Thus, they blame the dull pace of restitution on the capture of the original negotiation table where the institutional framework has been discussed (Dodson, 2010:43-44). Indeed, given the fact that during the formulation stage some groups were underrepresented in the discussion of what type of land restitution better fitted the problem of righting wrongs, powerful actors were able to influence the policy in a way that restitution has been hardly achieved in rural areas, thus, continuing the land to be concentrated in the hands of few land owners (Khan,2007). No new

mechanisms to speed up the process, or to properly attain the originally desired outcomes over land ownership at the end of the apartheid, had yet been put in place, and a lesson over the right participation of less powerful groups during the design of a new institutional framework has to be learned.

4.2. The Case of Bosnia and Herzegovina

The Bosnian ethnic conflict, whose worse years took place between 1992 and 1995, displaced more than 2.2 million people. The three parties in conflict: Muslim Bosniaks, Orthodox Serbs and Catholic Croats, and especially the last two groups, perpetuated "attacks on civilian population with the goal of creating ethnically pure territorial enclaves" (Williams, 2007). Even though the Bosniaks constituted the majority of the population (43%), an alliance between Orthodox Serbs (31.3%) and Catholic Croats (17.3%) was constituted in order to gain more power and control over the state entities and territories. Paramilitary groups were created with the auspice of different political parties as well as military forces of other countries (like Russia). These forces permeated different levels of government agencies at the national, regional and local level. The end of the war was possible thanks to the mediation of the international community who played an important role in the reconstructions of the country as well as in its transition from war to peace. In order to deal with land restitution and with the return of the displaced people and refugees to their place of origin, the Commission for real Property Claims of Refugees and Displaced Persons (CRPC) was constituted as well as a Human Rights Chamber and the Office of the High Representative (OHR).

The Bosnia and Herzegovina case used a model that combined both the use of already existent institutions as well as the creation of new ones. *Elite capture* under this system took place

mainly at the judicial level. As Martin-Ortega and Herman (2010:238) had pointed out, "the relocation of judges and prosecutors distorted the prior ethnic distribution of professionals and the number of judges doubled because of politically or ethnically interested appointments". The judiciary in the Bosnian context became a source of discrimination given the fact that political elites exerted a high influence over the decisions of judges and prosecutors who implemented and interpreted the law in a "biased and politically influenced way" (Martin-Ortega and Herman, 2010:239), and were distrusted among the citizens. In order to avoid the negative effects of the capture of a judicial institution by groups interested in maintaining the status quo or to preserve or enhance the benefits of the restitution process, a system was conceived to limit the role of these officers to the mere receipt, decision and enforcement of claims under the supervision of international monitors (Uprimny and Sanchez, 2010:250).

In sum, land, or more specifically property restitution in the BiH regained track only thanks to the implementation of a system in which the use of sanctions, training and monthly reported requirements were imposed to overcome the capture by political elites of the institutions involved in the property restitution. The participation, involvement and monitoring of international agencies, moreover, played an important role to prevent *elite capture* to continuing to have so many negative effects.

4.3. The case of Kenya

As in the South African case, Kenya experienced a similar pattern in land disposition by colonial settlers that distributed land according to racial characteristics of the population; the British protectorate was the political entity granting rights to property and uses of the land. In several occasions Kenya has tried to work on legal and administrative frameworks to deal with its past colonial experience that has been pointed out to be the cause of landlessness, poverty and

inefficient use of land as well as a high concentration of it in the hands of few (Land concentration Gini coefficient in Kenya is around 0.77). Landlessness in Kenya accounted for at least 30% of the total population (Ritten, 1994).

Currently, Kenya is working on a new legal and administrative framework in order to deal with its colonial experience. In 2009, the government approved the National Land Policy – NLP- through which it is expected to reverse the consequences of this problem and foster social cohesion and economic growth. The policy, discussed between government officials, NGO's and the general public, pursue many different objectives where land restitution redressing land historical injustices is one of them. Nevertheless, the shadow of past attempts of land reforms in the country remain contentious, and this has made some scholars (Syagga and Nwenda, 2010) to made a negative critical assessment of the relatively new policy on land in Kenya. Experiences of previous land reforms undertaken in this country since 1960's, according to them, have demonstrated that governance maladministration have contributed to the concentration of land in the hands of an elite of African farmers constituted by businessmen, civil servants and politicians (Coutula, et al, 2004:3-5). According to Syagga and Nwenda (2010:1) the NLP is subject to be manipulated "by groups and individuals with vested interests in land" and faces the "lack of strategies for mitigating the governance and political economy risks" that might endanger the purposes of this policy during its implementation stage.

Following these ideas, as it has been noted in the Njonjo Commission report, there is a key aspect that needs to be addressed in order to ensure land restitution to work this time. The institutions created by the NLP, like the National Land Commission, the District Land Boards and the Community Land Boards have to be independent institutions from the executive branch as well as from the parliament, due to the fact that in several occasions both institutions have

been captured by political elites in order to grant land for a reduced portion of the Kenyan population. In this regard, the Report presented to the World Bank by Syagga and Nwenda (2010) made valuable contributions on measures that should be taken into consideration to diminish the impact of *elite capture* on different land institutions. Among their recommendations we find: a) rigorous report requirements, b) clear and enforceable rules to guide the composition and operations of the different institutions involved in the process, and finally c) the involvement of the public in the decision making and monitoring of land transactions.

4.4. Remarks about the cases

The three cases examined above evidence how land restitution issues are surrounded by social dynamics and individual and group vested interests that might endanger the process of land restitution at various levels. *Elite capture* is therefore a problematique that is needed to be taken into consideration if countries want to go through relatively successful restitution land or property policies, not only at the stage o discussion and design, but also, and especially, at the stage of implementation. Also, there are lessons that are of key importance to be taken into account to constrain the behavior of those actors interested in boycotting this type of processes or to take the most advantage of them. In the following and concluding chapter, recommendations will be done to contribute to the design and implementation of the ongoing land restitution process in Colombia. Experiences from these three countries will be taken into account as they shed light on what possible institutional arrangements need to be developed to enhance the success of this process.

CHAPTER 5. CONCLUSIONS AND RECOMMENDATIONS

The recovery of the land stripped to the displaced population and other victims' depends on the ability of the central government, of the control bodies as well as the justice system to get rid of the influence that paramilitaries groups (with their several forms) exercise over local and regional authorities as well as over those "national entities that were delivered as power quotas to politicians associated with the paramilitary groups and leaders" (Reyes, 2009:115). In fact, as it has been exposed in previous chapters, both in the judiciary as well as in the executive and legislative branch of powers there have been individuals involved with members of these groups. It is therefore necessary to guarantee the independence of the bodies that will be involved in the land restitution process and to clear any space were political decision making could be endangered by the capture of this elite.

The current structure of the Victims' Bill is broad and lacks of clear mechanisms and strategies to mitigate *elite capture* related risks. As has been demonstrated, the Bill, in its implementation stage when becoming a law, might be prone to manipulation by groups and individuals with vested interests in land especially the paramilitary groups. These actors have demonstrated to have the resources to influence institutional outcomes. They have been able to manipulate both the decision-making arena and agenda, and the implementation of good-spirited policies to obtain large portions of land states. These groups occupy a particular spot in society where, through their military illegal power, they have been able to obtain land and resources that gave them the necessary tools to gain political power and permeate other instances to enhance its dominion over more land, achieving increasing political power. Is not just that some public officials are rent seekers and utility maximizers, as RCI could have said. It is a more complex absorption of an entire institutional framework by a group with a larger power dimension than most of the others.

Given this problematique and taking into account the lessons that other land restitution processes have taught us, it would be desirable to include in the structure of the Bill, or on further regulation of the law, the following three main recommendations to prevent institutions to be captured by paramilitary groups or their accomplices.

First. So far in the Bill it has not been discussed the Inclusion of the victim's organizations and international organizations in the permanent monitoring of the tasks both judicial and administrative entities undertake in the land restitution process. Equally, a broad participation of victims' organizations, media and international organizations should be allowed during the process of discussion of the bill and, especially, during its stage of regulation by the Government. This would be desirable given the fact that both victims' organizations and international actors are highly difficult to be co-opted by these actors.

Second. The experience of Bosnia Herzegovina has shed light about the possible actions governments can undertake to limit *elite capture*. The use of sanctions, training and monthly reporting requirements can be imposed to the officials by a central authority in order to guarantee the non existence of discrimination through the process as well as to accomplish the target set by the government. But given the fact that national institutions can also be co-opted by individuals or groups with vested powers, as the South African case tells, the participation of international officials with veto points in this central institution is of paramount importance.

Third. It is also necessary a larger control by the national instances to the local judiciaries. The single instance means there are no further mechanisms to challenge the decisions these judges take, harming the victims in a serious way if co-opted by paramilitary groups or other actors interested in restitution to fail. The single instance of the processes of land restitution,

thus, is highly undesirable and should be eliminated or carefully regulated, with proper guarantees for victims at different levels of authorities.

In sum, a broad base of participation, the involvement of international monitors, the creation of a system of accountability and control by larger political authorities, and the elimination of the single instance, are key aspects to prevent a good-spirited law to become void or even to become worse than the illness it was meant to cure. The important discussions that academics and organizations are promoting now in the country over the Victims' bill are necessary and worthy, but they should be joined by this type of considerations. Elite capture is difficult to grasp in the short-term, but for long term results it may be one of the most important considerations that need to be taken into account. If the government and the parliament fail now to provide mechanisms to diminish the impact of the capture of the institutions by paramilitary groups, the problem of violence and the ultimate goal of conflict solution will be undermined. A new discussion is needed under these lines. I hope this paper contributes to spur it.

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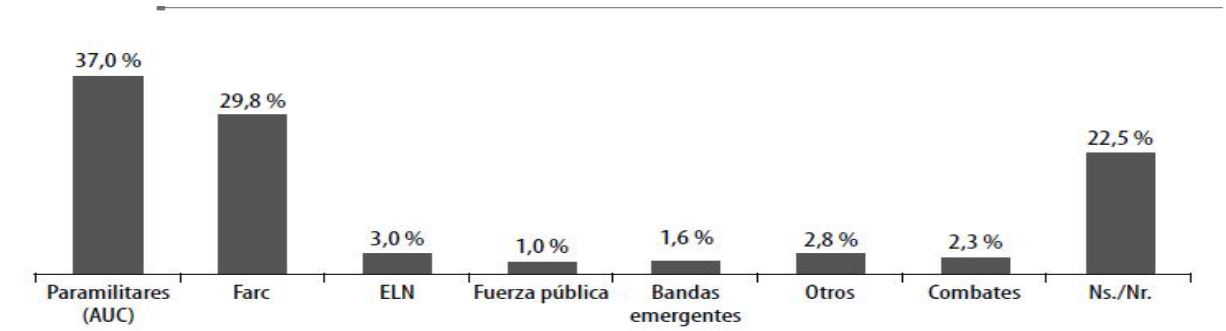
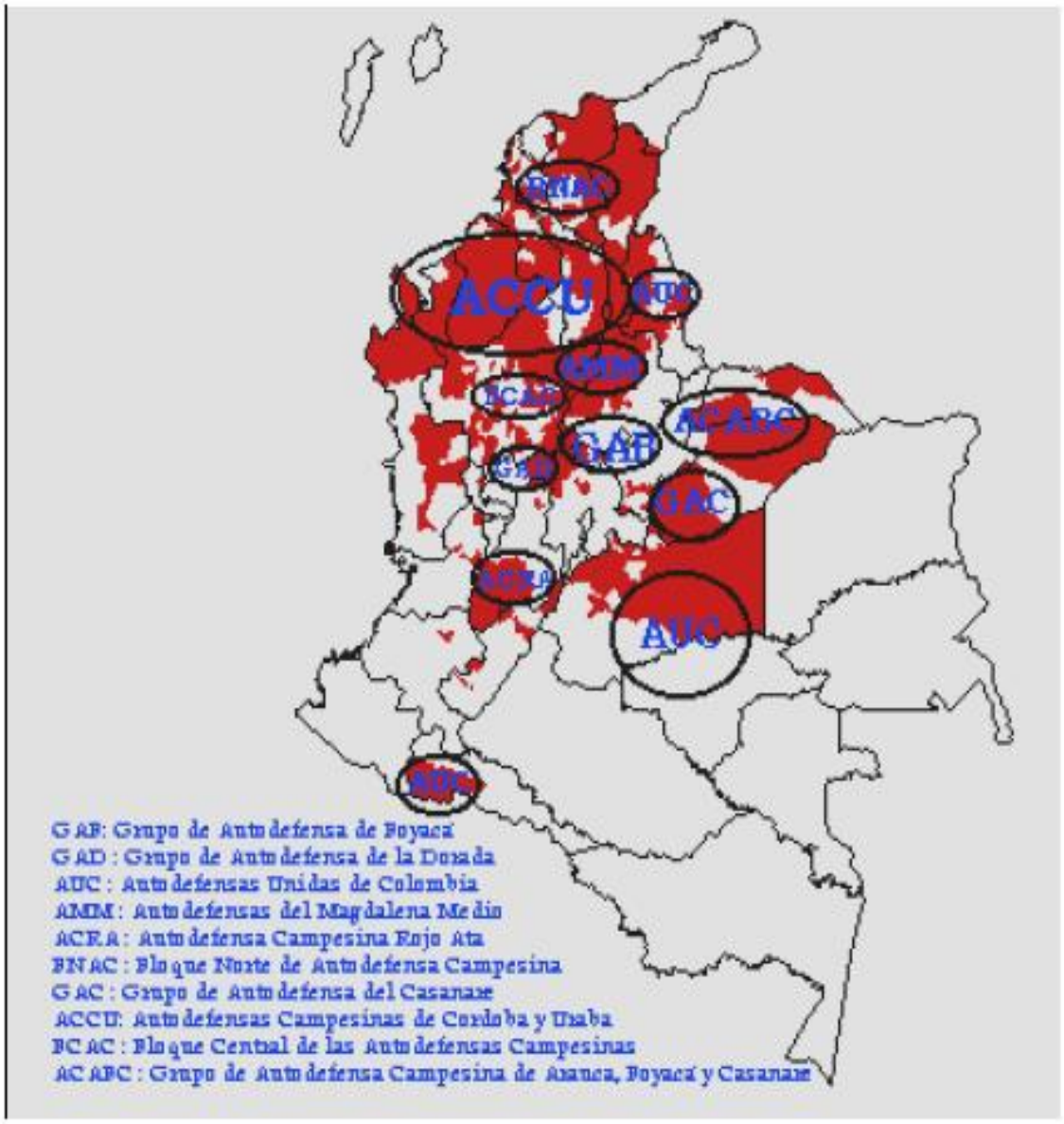
GRAPHIC I. Percentage distribution of family groups included in the Register for Displaced Population –RUPD- according to the possible illegal actor to which displacement is attributed3.



Fuente: Encuesta Nacional de Verificación de los Derechos de la Población Desplazada, Julio-Agosto, 2007. Centro de Investigaciones para el Desarrollo (CID)—Universidad Nacional de Colombia.

[3] Ns/Nr means doesn't know/doesn't want to respond

MAP I: Presence of paramilitary groups in Colombia



Fuente: Policía Nacional

Source: Echandia, Camilo (1999)

TABLE I: Total Displaced People per department according to the RUPD.

Departament	N° Persons	N° households
AMAZONAS	912	225
ANTIOQUIA	670,906	156,659
ARAUCA	67,632	17,048
SAN ANDRES	18	2
ATLÁNTICO	6,652	1,597
BOGOTÁ, D.C.	5,269	1,325
BOLÍVAR	315,782	69,448
BOYACÁ	14,520	3,677
CALDAS	64,659	14,494
CAQUETÁ	179,141	42,190
CASANARE	26,520	6,324
CAUCA	148,237	36,262
CESAR	190,383	38,552
CHOCÓ	207,401	45,616
CUNDINAMARCA	57,728	13,918
CÓRDOBA	145,604	32,568
GUAINÍA	4,100	905
GUAVIARE	48,737	12,831
HUILA	66,994	16,290
LA GUAJIRA	72,724	15,170
MAGDALENA	227,985	48,463
META	131,441	32,371
NARIÑO	180,557	44,563
NO DISPONIBLE	28,944	6,211
NORTE DE SANTANDER	118,093	25,401
PUTUMAYO	146,560	35,528
QUINDIO	7,112	1,854
RISARALDA	21,515	4,800
SANTANDER	87,793	20,506
SUCRE	123,699	26,831
TOLIMA	172,212	41,235
VALLE DEL CAUCA	154,891	33,217
VAUPÉS	3,870	920
VICHADA	13,154	3,451
Total	**3,711,745**	**850,452**

Fuente: RUPD, Agencia para la Accion Social y la Cooperacion International

TABLE II: Gini coefficient for ownership of land Based on Area and Value (WB,2002)

Table 1.1: Gini Coefficient for Ownership of Land Based on Area and Value, Colombia 2002

Department	Original data		Clean data	
	Land	Value	Land	Value
Atlántico	74.54	79.09	72.25	79.33
Bolivar	77.99	76.68	70.21	75.48
Boyaca	81.33	74.32	77.94	73.10
Caldas	81.97	79.38	80.44	78.84
Caqueta	89.62	76.37	50.32	69.52
Cauca	87.85	87.03	80.86	83.07
Cesar	71.47	75.99	65.25	74.42
Cordoba	78.90	77.98	74.79	75.48
Cundinamarca	79.78	81.90	76.38	79.56
Choco	96.35	96.12	75.03	76.02
Huila	79.69	74.79	76.39	72.20
La Guajira	87.79	78.08	67.14	73.58
Magdalena	74.42	72.27	68.74	70.84
Meta	88.79	80.17	86.13	78.22
Narino	86.28	78.77	77.36	73.46
Norte de Santander	77.83	72.84	69.73	69.97
Quindio	81.59	69.60	78.92	67.52
Risaralda	83.13	79.99	77.15	79.61
Santander	79.62	76.03	77.38	74.99
Sucre	79.96	77.91	77.34	76.64
Tolima	79.88	78.19	76.78	77.02
Valle Del Cauca	90.94	85.72	83.06	84.57
Arauca	84.82	71.70	78.22	67.86
Casanare	85.54	79.86	80.95	75.93
Putumayo	90.33	81.97	73.97	69.86
San Andres	71.39	70.31	65.60	65.55
Amazonas	97.13	72.25		
Guainia	86.21	81.62	24.64	40.90
Guaviare	95.93	95.94	43.12	59.67
Vaupes	77.69	56.06		
Vichada	53.53	66.77	40.85	52.77
Nacional	92.69	82.99	85.38	81.63

Source: Computation from registry data based on Offstein, Hillon, and Caballero (2003).