

## **Extreme Inequality: A Political Consideration. Rural Policies in Colombia, 2002-2009\***

**Francisco Gutiérrez Sanín\*\***

### **7.1. Introduction: A Social Problem and a Puzzle**

Colombia has historically had an extremely serious problem of land inequality. This problem was identified by political elites at least in the early 1930s, but weaknesses in the reformist proposal (Le Grand, 1986) and a posterior internal confrontation known as *La Violencia* maintained over decades the old distribution patterns basically untouched. Pacification allowed new reformist intents in the 1960s. While these intents certainly should not be tagged as eyewash, they failed to produce the proverbial qualitative leap. Over the last three decades – when the country entered into a new wave of internal conflict – the situation worsened dramatically, as the displacement of peasants and the usurpation of their land became both an outcome of confrontation and a strategy of some armed actors. This displacement and usurpation more than reversed the modifications of the status quo produced by the rather shy intents of progressive redistribution initiated in the 1960s. According to one author,

[w]hile from 1980 to 1995 the official land reform institution – INCORA – processed a million hectares for distribution to the peasantry, the expansion of drug lands reversed this trend. Drug traffickers bought up between 3 and 4 million hectares, some 12% of land suitable for agriculture. The cumulative effect from 1980 to 1995 was an agrarian counter-reform. But an even bigger change was

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\* This paper was funded by the University of Oslo. I wish to thank Camilo Plata, Andrea González, and María Teresa Gutiérrez for their contributions.

\*\* Researcher, Instituto de Estudios Políticos y Relaciones Internacionales – Universidad Nacional de Colombia.

to come in the next five years: by 2001, the top 3% owned nearly 76% of the land. The concentration rate is even higher if the very biggest property holdings, those over 500 hectares, are reckoned with: in 1984 this 0.4% of landowners held 32.5% of land; in 2001 the top 0.4% held 61.2% of all registered land.<sup>1</sup>

Colombia's state control agencies concur with many aspects of this evaluation. According to a General Comptroller Office report,<sup>2</sup> in the last twenty years, the country has witnessed a "perverse land concentration, equivalent to a gigantic agrarian counter-reform", which has allowed narcotraffickers to take over one million hectares.<sup>3</sup> This figure amounts to 3% of the national territory and 5% of its usable land. According to the *Comisión de Seguimiento a la Política Pública de Desplazamiento Forzado*,<sup>4</sup> this figure is probably a lower estimate.

The human costs of such counter-reform are enormous, as highlighted by the *Comisión de Seguimiento a la Política Pública de Desplazamiento Forzado*.<sup>5</sup> Colombia has one of the highest number of internally displaced people (IDP) in the world. Although there is a large variance in the figures offered by different sources with respect

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<sup>1</sup> Andy Higginbottom, 2005, "Globalization, Violence and the Return of the Enclave to Colombia", in *Development* 48: 121, 123.

<sup>2</sup> Contraloría General de la Nación, "La gestión de la reforma agraria y el proceso de incautación y extinción de bienes rurales", Paper presented at the forum "La extinción de la Propiedad Rural Ilícita. ¿Una vía para la Reforma Agraria?", Bogotá: 7 October 2004.

<sup>3</sup> El Tiempo, "El narcotráfico tiene más de un millón de hectáreas de tierra", 10 June 2005A.

<sup>4</sup> Comisión de Seguimiento a la Política Pública de Desplazamiento Forzado (Garay Luis Jorge, Barberi Fernando, Prada Gladys, Ramírez Clara, Misas Juan Diego), 2008C, "La restitución como parte de la reparación integral de las víctimas de desplazamiento en Colombia. Diagnóstico y propuesta de líneas de acción", *Sexto informe a la Corte Constitucional*.

<sup>5</sup> *Id.*; Comisión de Seguimiento a la Política Pública de Desplazamiento Forzado, 2008A, "Proceso nacional de verificación de los derechos de la población desplazada", *Primer informe a la Corte Constitucional*; Comisión de Seguimiento a la Política Pública de Desplazamiento Forzado, 2008B, "Proceso nacional de verificación de los derechos de la población desplazada. Comentarios a la batería integral de indicadores de goce efectivo de derechos presentada por el gobierno nacional", *Segundo informe a la Corte Constitucional*.

to the magnitude of this problem, it is enormous by any standard: between one and three million people, depending on the count criteria.<sup>6</sup> Furthermore, displacement is one of the few offences whose frequency, according to the main available databases, has not radically decreased in the last years. Indeed, according to some it has actually increased.<sup>7</sup> There is a very strong statistical correlation between land concentration and the displacement of farmers.<sup>8</sup> This correlation is not surprising since nearly 80% of IDPs were land tenants before being evicted.<sup>9</sup> Ibáñez and Querubín also conclude that the presence of non-state armies promotes forced displacement, but that strong institutions and a broad menu of state services mitigate it.

In addition, despite the fact that the country has a working judiciary – which is *not* inconsequential, as will be demonstrated below – the arm of the law has not fully reached the niches where the problem occurs. Only 5% of the cases of forced displacement had been taken to courts by 2005,<sup>10</sup> and only one was eventually adjudicated.<sup>11</sup> As will

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<sup>6</sup> The reasons for this disparity in accounting standards are easy to explain: the government and the main non-governmental source, CODHES, use significantly different methodologies. There have been several debates about the issue (El Espectador, “*Desplazados y Estadística*”, 4 October 2008; Ana María Ibáñez and Andrea Velásquez, 2006, “*El proceso de identificación de víctimas de los conflictos civiles: una evaluación para la población desplazada en Colombia*”, Documento CEDE, 2006-36.) Colombia has 44 million inhabitants, of which 25% (approximately 11 million) live in rural settings. This means that, by the most conservative standards, 9% of the state’s rural population has been displaced.

<sup>7</sup> El Tiempo, “*Desplazados: Un millón más*”, 6 July 2002B; El Tiempo, 2007D, “*Por los desplazados*”, 28 May 2002B; High Commissioner for Human Rights, 2006, “*Annual Report on the Situation of Human Rights in Colombia*”, available online at: <http://www.hchr.org.co/documentoseinformes/documentos/informe2006/documentos.php3?cat=70>.

<sup>8</sup> Ana María Ibáñez and Pablo Querubín, 2004, “*Acceso a tierras y desplazamiento forzado en Colombia*”, Documento CEDE, 2004-23.

<sup>9</sup> Ana María Ibáñez, 2008, *El Desplazamiento Forzoso en Colombia: Un camino sin retorno hacia la pobreza*, Bogotá: Uniandes: 77.

<sup>10</sup> Contraloría General de la Nación, 2005, “*La política pública sobre desplazamiento forzado en Colombia: ¿solo buenas intenciones?*” in *Revista Economía Colombiana* 307: 54-55.

be shown in section 7.4., laws related to forced displacement and land distribution have several imperfections and legal gaps, which have allowed narco-traffickers and paramilitaries, and their cronies and allies, to maintain or even expand their properties.<sup>12</sup> Governmental action has been also extremely modest. Since the late 1980s, one of the most important expectations within Colombian policymaking circles was that the expropriation of criminals would allow the state to redistribute land among the peasants. As will be shown in section 7.3., the state is currently much farther away from that ideal than it was twenty years ago. Additionally, programs to foster the devolution of the land to IDP's in the context of reparation efforts are small. While – as seen above – petty land tenants may have lost at least one million hectares – which with the utmost probability is an underestimate, as it does not take into account selling under threat, the use of figureheads by narcos and paramilitaries, and other phenomena that according to qualitative accounts occurred massively<sup>13</sup> – the restitution plan of the 2002-2006 administration planned to give back one hundred and fifty thousand hectares,<sup>14</sup> a target that was achieved in 2007.<sup>15</sup> This outcome is very modest, even by Colombian standards; until the late 1980s average

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<sup>11</sup> Comisión Colombiana de Juristas, 2006, *Revertir el desplazamiento forzado: Protección y restitución de los territorios usurpados*, Bogotá: Coljuristas.

<sup>12</sup> According to several reports, narco-traffickers and paramilitaries and their cronies and allies hold almost half of the usable land (El Tiempo, “*Narco-traficantes, los dueños del 48% de las tierras productivas*”, 2 September 2003).

<sup>13</sup> Other such phenomena includes the deadweight losses of eviction from the time it occurred until the IDPs are eventually restituted.

<sup>14</sup> El Tiempo, “*Extinción De Dominio Para 150 Mil Hectáreas*”, 8 September 2004A.

<sup>15</sup> To reestablish the status quo ante it would be necessary to retribute between 1.5 and 6.8 million hectares, depending on the estimates (Procuraduría General de la Nación, 2006, *Seguimiento a Políticas Públicas en Materia de Desmovilización y Reinserción, Tomo I*, Manuscript, Bogotá: 185; PMA (Programa Mundial de Alimentos), 2001, *Estudio de caso de las necesidades alimentarias de la población desplazada en Colombia*, Bogotá: CODHES; Conferencia Episcopal de Colombia, 2006, *Desafíos para construir Nación: el país ante el desplazamiento, el conflicto armado y la crisis humanitaria 1995-2005*, Bogotá.)

redistribution was much higher.<sup>16</sup> In other words, restitution during four years compensated for approximately one-eighth of the counter-reform produced by displacement, without touching either the historical redistribution lag or the deterioration caused by other factors different from displacement – and actually lagged behind the already very problematic results of the country in previous years.<sup>17</sup> The situation is quite dramatic in the very terms of the governmental proposal, even if there were no problems with implementation.<sup>18</sup>

Period	Land reallocation	Titulation	Indigenous reserves	Total
1962-1967	98,522	1,560,084	12,615	1,671,221
1968-1972	276,716	1,802,023	61,525	2,140,254
1973-1982	112,529	2,863,960	5,904,267	8,880,756
1983-1987	135,848	1,610,845	3,948,837	5,695,530
1988-1994	574,316	3,460,100	17,661,239	21,695,655
1995-1999	287,655	3,861,503	2,863,971	7,013,129
1962-1999	1,485,586	15,158,515	30,452,454	47,096,555

**Table 1:** Colombia: INCORA results by period (Hectares). Source: Balcázar *et al.*, 2001: 26.

As a result, Colombia is a very unequal country,<sup>19</sup> and its rural sector is even more so.<sup>20</sup> Colombia's rural Gini is 0.84<sup>21</sup> – but once again this may be an underestimation, as there are hundreds if not thousands of figureheads of big properties, and the country's cadastral

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<sup>16</sup> Álvaro Balcázar, Nelson López, Martha Lucía Orozco, and Margarita Vega, 2001, “Colombia: alcances y lecciones de su experiencia con la reforma agraria”, *Red de Desarrollo Agropecuario – CEPAL*, Santiago de Chile.

<sup>17</sup> Table 1.

<sup>18</sup> This is not the case. For official data on government achievements, see SIGOB, available online at: <http://www.sigob.gov.co>.

<sup>19</sup> Mauricio Cárdenas and Luis Javier Buitrago, 2009, *Introducción a la Economía Colombiana*, Bogotá: Alfaomega.

<sup>20</sup> The countryside is dramatically poorer as well (*Departamento Nacional de Planeación, Documento Conpes 3426*, 12 June 2006. Available online at: [www.minagricultura.gov.co/archivos/3426\\_Jun2006.pdf](http://www.minagricultura.gov.co/archivos/3426_Jun2006.pdf)).

<sup>21</sup> In contrast, Japan's is 0.38.

records are extremely inadequate. Certainly, these factors undermine the intent of re-evaluation of Colombia's rural inequality by some studies. For example, Castaño-Mesa argues, based on cadastral records, that Colombia's real agrarian Gini is 0.6.<sup>22</sup> However, his methodology does not hold. One of the main forms of evasion of taxes in Colombia has been registering the property at a fraction of its real value – which can be as small as a tenth – a fact that was already publicly known in the 1950s and that inspired many of the non-expropriatory agrarian redistribution proposals of that decade.<sup>23</sup> And a re-estimation by the World Bank based on the same type of information<sup>24</sup> devolves to the basic figure of 0.85. The real figure must be somewhat nearer to 1; it is hardly possible to go above it. As an illustration of the concrete implications, in a parliamentary debate it was claimed that while eleven thousand landowners accumulated more than 62% of the land, the rest – eleven million – had 38%.<sup>25</sup>

Throughout all this, Colombia has been a democracy. This tag may be challenged for one reason or another,<sup>26</sup> but the competitive nature of its polity cannot. In Colombia, politicians must gather votes, and thus to respond to specific constituencies. Why haven't the 11 million electorally overwhelmed the 11,000? Several additional sticky questions must be considered. Despite the fact that, once again, classifying Colombia as a state where the rule of law has been institutionalized may be more than problematic, the existence of a working judici-

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<sup>22</sup> L. M. Castaño Mesa, 1999, "*La distribución de la tierra rural en Colombia y su relación con el crecimiento y la violencia*", Master's Dissertation: Universidad de los Andes.

<sup>23</sup> The proposed policies would have allowed the state to buy land at its cadastral value. This threat would force landowners to register true values.

<sup>24</sup> World Bank, 2004, "*Colombia: Una política de tierras en transición*", Documento CEDE, 2004-29.

<sup>25</sup> Cámara de Representantes, 2004. And, of course, the top quality land was mainly in the hands of the 11 thousand.

<sup>26</sup> Martín Jiménez and Andrea Carolina, 2008, *Democracia y liberalismo. Convergencias y divergencias en la construcción de la carta política colombiana de 1991*, Bogotá: La Carreta Editores; Jorge Pablo Osterling, 1989, *Democracy in Colombia: Clientelist Politics and Guerrilla Warfare*, Brunswick: Transaction Publishers.

ary cannot be denied. In the period from 2002-2008, the judiciary has taken some crucial decisions, both with respect to IDP's and to land distribution (see section 7.4.). Congress has served as a forum for debate and conflict (see below), and as one of the institutional niches where the paramilitary offensive was more successful, but also as a place where political control has been exercised, in some cases quite effectively. Last but not least, if the international legitimacy of the Colombian state has been permanently questioned in the last decades – due mainly, but not only, to the influence of criminals<sup>27</sup> – an ideal way to recuperate it would be through large-scale anti-criminal and pro-poor reform.<sup>28</sup> Indeed, such reform could have an enormous stabilizing and state-strengthening effect.<sup>29</sup> These potential benefits explain why the idea has produced so much talk – but they do not explain why such talk has produced no decisions (or decisions that actually go in the wrong direction).

In sum, there is genuine competition in Colombian politics – there are true checks and balances, and real incentives that favor the emergence of political forces and trends favoring a redistributive approach. Why then is the outcome so utterly deplorable? This is the main question that I address in this chapter.

However, before starting, I must preempt two potential objections that would indeed weaken the relevance of the question. According to the first one, the answer is obvious. The political class – coalesced around president Álvaro Uribe – not only is substantially linked to the large landowner class, but also has strong regional alliances with paramilitary groups. Less dramatically, it tries to help and protect the

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<sup>27</sup> Tatiana Matthiessen, 2000, “*El arte político de conciliar: El tema de las drogas en las relaciones entre Colombia y Estados Unidos, 1986-1994*”, Bogotá: FES-COL.

<sup>28</sup> Alejandro Reyes, 2009, *Guerreros y Campesinos: El despojo de la tierra en Colombia*, Bogotá: Editorial Norma.

<sup>29</sup> Moreover, such reform would probably be ideal in social and developmental terms. But apart from the normative implications, and thinking only as a self-regarding, rationalistic politician, the benefits of adumbrating such change would not be small either.

rural rich that comprise part of the governing coalition.<sup>30</sup> Thus, the rural policy of the present government demonstrates the capture of key institutions by venal or at least strongly biased politicians. There is more than a grain of truth in this argument, as will be seen below. But the proposition is not fully explanatory. In Colombia and elsewhere, national politicians have many audiences and constituencies, but they sometimes decide to sacrifice the interests of some – even if they are powerful, as has happened in some of the few cases of genuine agrarian reform in the world. Therefore, initiators can be rather unlikely figures (see the cases of El Salvador and Korea).<sup>31</sup> In Colombia, it is clear that the deficit of international legitimacy is a severe burden for the governmental coalition, and that an improvement in this front is passionately desired. Why hasn't there been a bargain between the pressures of a backward and inefficient constituency and the demands of the international community for more transparency? In a more positive light, why haven't the signals of the international community been read adequately? Furthermore, there is an important national system of incentives that might favor a less inert attitude with respect to the agrarian status quo. Politicians can be punished by both judges and voters – and the media – if they go too far in their pro-landowner, and very especially pro-criminal, bias. Why should they take the risk of ignoring these signals? Why, if they do it, aren't they out-competed by other politicians?

The second potential objection is that the agrarian policy of the Uribe administration cannot be described in the terms used above. For example, it might be argued – and correctly so – that investment in the agrarian economy in the last years has been anything but miserly.<sup>32</sup> However, as seen above, the general outcome is not good: not only has restitution not taken place, but actual redistributive action is below the historical average, when between one and three million peasants had

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<sup>30</sup> This includes president Uribe himself. See Mauricio Romero (ed.), 2007, *Parapolítica: La ruta de la expansión paramilitar y los acuerdos políticos*, Bogotá: CEREC – Corporación Nuevo Arcoíris.

<sup>31</sup> Also, unless one incurs in anachronism, Perú.

<sup>32</sup> For example, 1.142 billion pesos were invested in land issues in 2008, which represents almost half of what was invested in national security and defense (the crown's jewel of the Uribe government).



not yet been displaced. Certainly, *adversaries* of the present government might concur with a variation of the theme. Uribe represents nothing new; he simply incarnates a very old trend of complacency of the Colombian state with the agrarian rich. But this is a simplification. As suggested above, there is a new set of crucial factors that characterize the present agrarian situation: a dramatic increase in inequality and criminalization, a loss of redistributive muscle of already weak agrarian policies, the incapacity of the state to neutralize displacement (in contrast with its ability to address other crimes), among other things. The agrarian institutional designs have been substantially changed as well. The two Uribe administrations (2002-2006 and 2006-2010) have exhibited very strong activism in this regard, and also the capacity to push forward important changes.<sup>33</sup> The current situation does not represent business as usual, although of course there is dynamic tension between change and continuity.<sup>34</sup>

The question is, thus, relevant and deserves to be answered. The policies of the two administrations of president Álvaro Uribe have helped maintain extreme levels of inequality and criminalization in the countryside. Why? I suggest the following answer, which constitutes the main proposition of the chapter: three factors converge to preserve extreme inequality in the Colombian countryside.

- (1) The first factor is a political economy: the very conditions of the armed internal conflict have generated a highly criminalized pro-landowner lobby, increasingly connected with the core of the political system.
- (2) The second factor consists of a new institutional landscape, constructed by the first Uribe administration, which used as building blocks concepts and ideas buttressed by the language and values of the international community. The new agrarian institutions

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<sup>33</sup> Carlos Julio Pineda, 2006, “*Apuntes críticos*”, Vision 2019, Bogotá: DNP; Ricardo Sanchez, 2005, *Bonapartismo presidencial en Colombia. El gobierno de Álvaro Uribe Vélez*, Bogotá: Uniediciones.

<sup>34</sup> And business as always was not equivalent to the full capture of the state by agrarian elites, as is implied in many recounts. I drop the issue, as it goes well beyond the limits of the theme of this paper.

created by Uribe held the promise of promotion of transparency, market principles, and participation of civil society. But the true dynamics have been much more complex, and unfavorable to redistribution/restitution.

- (3) Finally, there are key technical issues that remain unresolved. If – be it by weakness or by cunning – they are not brought to the forefront, no positive change in rural affairs is to be expected, even assuming that (1) and (2) did not exist.

In summary, a specific array of institutions, and a set of technical problems, are necessary conditions to explain the present situation of preservation and deepening of extreme agrarian inequality. All three should be taken into account to provide a working explanation of such inequality, and to differentiate between new problems and those that result from historical inertia.

This chapter is organized in the following manner. The first section sketches some basic contextual information about Colombia and the trajectory of the main institutional solutions developed to face the problem of very high levels of agrarian inequality (and inefficiency). The second is dedicated to the political economy of the big landowner lobby. The third discusses the institutional reforms pushed forward by Uribe, their orienting principles, and the way that they have worked. The fourth and last focuses on some of the main technical issues: cadastral records, legal problems, and subnational governments.

## **7.2. The Context**

Colombia has an extremely lengthy history of coexistence between genuinely competitive politics and political violence. In the twentieth century, it only had two rather short-lived military coups (Rafael Reyes, 1905-1910 and Gustavo Rojas Pinilla, 1953-1957). Not only were elections the main method for rotating elites in power, but some basic principles of democratic governance – like the separation of the different branches of government – were fastidiously preserved. Indeed, the country was one of the first to formally introduce constitutional control, and the notion of the crucial role of checks and balances was interiorized very early by the political elites. Colombia, thus, may be a pioneer of the phenomenon of having *simultaneously* high levels

of legalism *and* violent practices, which according to certain accounts have enjoyed fast propagation in recent years.<sup>35</sup> Explosions of violence, some of them related to agrarian issues, surfaced in the early 1930s. President Alfonso López Pumarejo (1934-1938) attempted major reform, and there are different evaluations of its motivations, policies, and outcomes.<sup>36</sup> Furthermore, its political consequences (an increase in the polarization between Liberals and Conservatives) are still understudied. In 1948, a “non declared civil war” that pitted the two main political parties – Liberal and Conservatives – against each other was in full course. It is known in Colombian historiography as *La Violencia*; according to Hobsbawm it constituted the largest peasant mobilization in the western hemisphere in the twentieth century. During *La Violencia*, thousands of peasants were killed and displaced. By 1953, the country had become unmanageable, and General Rojas took over power, promising peace and tranquility. Previous Conservative presidents, and Rojas himself, toyed with the idea of promoting equality via taxes, but the proposals came to nothing.<sup>37</sup>

After the defeat of Rojas’ dictatorship and in the context of a stabilization experiment called National Front (1958-1974), two agrarian reform proposals were pushed forward (in 1961 and 1968). Together, these proposals founded the institutional landscape that would be radically transformed by president Uribe. The 1961 reform (Law 135) was inspired by a set of ideas, tools, and solutions, of which I sketch here the main ones. First, there was an excess of land concentration in the country, which produced both inequality and inefficiency. Second, the real alternative that society faced was not whether to reform, but whether to reform or to wait for a revolution.<sup>38</sup> Third, the state should

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<sup>35</sup> Luis Jorge Garay, 2008, *La captura y reconfiguración cooptada del Estado en Colombia*, Bogotá: Grupo Método.

<sup>36</sup> See, for example, Catherine LeGrand, 1986, *Frontier expansion and peasant protest in Colombia, 1850-1936*, Albuquerque: University of New Mexico Press; Albert O. Hirschman, 1962, *The Problem of Land Tenure and Land Reform in Colombia*, New York: Manuscript.

<sup>37</sup> *Id.*

<sup>38</sup> Jesús Antonio Bejarano, 1987, *Ensayos de historia agraria colombiana*, Bogotá: Cerec.

produce an institutionalization that included the main rural actors. Finally, expropriation was a tool that should be used only in extreme cases. The standard tool for redistribution was the purchase of land by the state. Law 135 created an autonomous agency (INCORA, Instituto Colombiano de Reforma Agraria), which had several attributes, but was primarily focused on spotting inefficient use of the land and negotiating with its owners and eventually with peasant organizations.<sup>39</sup> Both peasant and landowner organizations participated in the INCORA's board.<sup>40</sup>

Despite the large expectations triggered by the Law 135,<sup>41</sup> it did not produce significant change. This prompted the 1966-1970 Carlos Lleras<sup>42</sup> administration to unleash yet another reformist wave. Based on the belief that pressure from above must be combined with pressure from below, Lleras promoted a new peasant organization, the Asociación Nacional de Usuarios Campesinos (ANUC).<sup>43</sup> However, foot-dragging by politicians, and intense landowner pressure, which included violent methods,<sup>44</sup> *inter alia*, stalled Lleras' reformist impulse. In 1972, the new administration signed with the landowners the Chicoral Pact, which in practice meant the termination of the experiment. In the meantime, some downsides of INCORA's activity had surfaced. First, there was corruption by bureaucrats. In exchange for a bribe, INCORA could offer: (a) to expropriate lands and purchase them at above-market prices; or (b) not to expropriate lands. Second,

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<sup>39</sup> INCORA, 1966, "Five Years of Agrarian Reform: Report of Activities in 1966", Bogotá.

<sup>40</sup> Among others: SAC (Sociedad de Agricultores de Colombia), Fedegan (Federación Colombiana de Ganaderos), de la Anuc (Asociación Nacional de Usuarios Campesinos), Anmucic (Asociación Nacional de Mujeres Campesinas e Indígenas de Colombia), Fanal (Federación Agraria nacional), Onic (Organización Nacional Indígena de Colombia).

<sup>41</sup> Hirschman, *supra* n. 36.

<sup>42</sup> Lleras had been the *eminence grise* of Law 135 and other redistributive proposals.

<sup>43</sup> For an excellent historical study of the ANUC, see Leon Zamosc, 1986, *The Agrarian Question and the Peasant Movement in Colombia: Struggles of the National Peasant Association 1967-1981*, Cambridge: Cambridge University Press.

<sup>44</sup> Cristina Escobar, 1983, *Trayectoria de la ANUC*, Bogotá: JC Impresiones.

there was inefficiency. Finally, the reform was unable to make a breakthrough.

Subsequent administrations attempted to implement different models of agrarian development, but the idea of redistribution never again returned to the central position it had had in the 1960s. President Barco (1986-1990) brought the theme back to the political agenda, but in a new manner typical of the period: land expropriation was now conceived of in terms of the fight against criminality. Actually, Barco took a bold step in this direction, issuing a 1989 decree that reversed the burden of the proof for people linked to organized crime by demanding they demonstrate that they had acquired their land legally.<sup>45</sup> However, the Supreme Court declared the decree unconstitutional, and the government – harassed by a very brutal war against narcotraffickers – shelved the issue.

All in all, the reform efforts had produced little. One expert arrives at the following conclusion:

In fact, particularly during the last forty years of attempts of land redistribution, there was not even a marginal change in the property structure nor in the poverty and rural marginality. But the country spent 3.500 million dollars attempting some effect through the actions executed by the INCORA. In almost forty years of agrarian reform the following results were achieved: by acquisition, and almost marginally by expropriation, 1.5 million hectares have been redistributed; almost 102 thousand families were benefited; a bit more than 430 thousand families gained property rights over wastelands; and more than 65 thousand families in indigenous communities profited from the demarcation of indigenous reserves. ... In average, the cost of each benefited family was higher than 35 thousand dollars, and each redistributed hectare cost 2.450 dollars.<sup>46</sup>

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<sup>45</sup> Decree 1893/89; I return to the point in section 7.4.

<sup>46</sup> Balcázar *et al.*, *supra* n. 16.

Thus, by the 1990s, the “old model” – born under the aegis of the CEPAL and the Alliance for Progress – had run out of gas. A significant shift took place with Law 35 of 1982 and Law 30 of 1988, when it was decided that administrative action – say, an INCORA decision – would be replaced by market mechanisms. In 1994, the latter acquired concrete form: peasants would be given subsidies to buy land.<sup>47</sup> However, this market mechanism did not work very well, and new institutional reforms were introduced to reinforce citizen participation in the reform process.<sup>48</sup> A national system of agrarian reform and the national council of agrarian reform were created; these mimicked an institutional solution that had been utilized, with mixed results, since the early 1990s to introduce coherence and agency coordination into many crucial policy domains. However, redistributive results became increasingly weaker.<sup>49</sup> In five years (1995-1999), the land incorporation pace to the *Fondo Nacional Agrario* (the entity that centralized redistributive issues) fell to 286,939<sup>50</sup> and the number of families that benefited from governmental redistributive actions fell to 19,397. Agency coordination could not be achieved.<sup>51</sup>

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<sup>47</sup> Law 160 of 1994.

<sup>48</sup> Absalón C. Machado and Henry Samacá, 2000, *Las organizaciones del sector agropecuario: Un análisis institucional*, Bogotá: TM Editores.

<sup>49</sup> Table 2.

<sup>50</sup> Table 3.

<sup>51</sup> Balcázar *et al.*, *supra* n. 16.

Year/properties	0-20	20-100	100-500	>500
1984	86.2	10.7	2.7	0.4
1996	86.8	10.6	2.3	0.3
2003	87	10.4	2.2	0.4
Years/owners				
1984	85.1	11.3	3	0.55
1996	86.2	10.8	2.6	0.35
2003	86.3	10.7	2.6	0.4
Years/area				
1984	14.9	24.7	27.5	32.7
1996	13	21.5	20.8	44.6
2003	8.8	14.6	14	62.6

**Table 2:** Evolution of the Property Structure 1984-2003 (%). Source: Machado A.: La cuestión agraria en Colombia a fines del milenio, El Áncora Editores, Bogotá.<sup>52</sup>

Period	Purchase	Expropriation	Cession	Total
1962-1967	92,870	5,652	259,339	357,861
1968-1972	251,385	25,331	80,768	357,702
1973-1982	78,781	33,748	9,147	121,859
1983-1987	132,726	3,122	3,564	139,412
1988-1994	573,070	1,246	1,183	575,499
1995-1999	286,118	1,537	0	287,655
1962-1999	1,414,950	70,636	354,001	1,839,988

**Table 3:** Colombia: Land Incorporated to the *Fondo Nacional Agrario* by Period (Hectares). Source: Balcázar *et al.*, *supra* n. 16: 26.

The reasons for the failure of the policies typical of the 1990s are well identified. The provision of subsidies only for land purchase weakened the will of peasants and other economic agents to develop viable productive packages that included technological improvement.<sup>53</sup> There was a political economy of subsidy distribution, which allowed intermediaries – both politicians and bureaucrats – to charge tolls, for their decisions. Though the idea was actually to skip intermediaries,

<sup>52</sup> For 1984 and 1996, the following departments are excluded from the analysis: Antioquia, Chocó, San Andrés y Providencia, Guainía, Vichada, Putumayo, Amazonas, Vaupés, and Guaviare. For 2003, the following territorial entities are also not included: Bogotá, Cali, and Medellín.

<sup>53</sup> World Bank, *supra* n. 21.

peasants were much less organized than their counterparts – in good measure because of the bloodletting to which peasant social leaders had been submitted<sup>54</sup> – so the notion of direct negotiations that had seemed so enticing to the architects of the institutional redesign was quite problematic. Subsidies also did not improve the coordination capacity of the state.<sup>55</sup>

Región	2002	2003	2004	2005	2006	2007	2008*	Total
Antioquia	6						1	7
Arauca	1	1	2		1	3		8
Santander	3					1		4
Huila	2	1	1					4
Cesar	1	1						2
Atlántico		3		2				5
Chocó		1	1		1			3
Putumayo			1	1			1	3
Sucre						2		2
Bolívar						1		1
Cundi-namarca	1							1
Cauca		1						1
<b>Total</b>	14	8	5	3	2	7	4	41

**Table 4:** Peasant Leaders Assassinated in Recent Years, by Year/Department. \* through June. Source: Calculations based on the Noche y Niebla publication, CINEP, January 2002–June 2008.

Thus, when Uribe arrived in power, the situation was the following: the country had a long history of high-levels of agrarian inequality, which had been seriously worsened by two waves of violence – one that began in 1948, and one that began in the early 1980s. With respect to the policy utilized to meet the problem, leaving aside the 1936 experience, successive governments had tried their hand basically with four models. First, the use of an administrative tool – expropriation with compensation, via a specialized agency (INCORA). In this model, agrarian redistribution was given a relatively big political

<sup>54</sup> See, e.g., Human Rights Watch, “Colombia: New Killings of Labor Leaders”, 6 November 2007. Available online at: <http://www.hrw.org/en/news/2007/11/06/colombia-new-killings-labor-leaders> and Table 4.

<sup>55</sup> World Bank, *supra* n. 21.



weight, but crucial issues were negotiated with all actors. Second, the preservation of those tools, but the deflation of the political importance of the issue. Third, the coupling of agrarian redistribution and anti-crime policies. Fourth, the closing the chapter of administrative decisions, and opening of a market-oriented one, with a very low political profile. In which conditions would the reformulation of Uribe's era take place?

### 7.3. The Landowner Lobby

The weight of large landowners in the Colombian political system is one of the obvious reasons that Colombia has not witnessed a significant change in its agrarian property structures. Through opposition or foot-dragging, large landowners could sabotage reforms from above.<sup>56</sup> Through pressure and outright violence – even in the National Front period, which was relatively pacific – they could neutralize pressure from below.<sup>57</sup> Note that even in the most redistributive moments, big landowners had key access to decision-making bodies, including the INCORA board.

The dynamics of the armed conflict worsened the situation in at least three distinct senses. First, the rural elites were empowered in specific areas, like security. States habitually establish working relations with their “natural” clients and constituencies, which are created by need or custom.<sup>58</sup> As cattle ranchers and other rural rich became the preferred target of offences triggered by the conflict – like kidnapping and cattle rustling – networking between them and state agencies appeared or, probably in the majority of cases, strengthened and became more important for both parties. Landowners provided gas, food, and lodging to rural cops and other security agency members.<sup>59</sup> Local secu-

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<sup>56</sup> Gutiérrez and Baquero, 2007.

<sup>57</sup> Cristina Escobar, 1998, “*Clientelism, Mobilisation and Citizenship: Peasant Politics in Sucre, Colombia*”, Ph.D. Dissertation: University of California, San Diego.

<sup>58</sup> Romero, 2005.

<sup>59</sup> Gustavo Duncan, 2006, “*Los señores de la guerra: de paramilitares, mafiosos y autodefensas en Colombia*”, Bogotá: Planeta.

rity forces, on the other hand, were expected to at least pay special attention to the interests of their patrons. At the national level, associations like the SAC (*Sociedad de Agricultores de Colombia*) became privileged and often raucous interlocutors of the state in security issues.

Second, a long-term process of criminalization of the rural elites took place. The two-thronged process by which this occurred has been described in detail by several authors,<sup>60</sup> and here I only provide a very sketchy description. On the one hand, the traditional rural rich, as the main targets of some of the forms of the guerilla struggle (for example, kidnapping) became involved with the creation of self-defense groups. Indeed, a headcount of the creators of early self-defense entities found that cattle ranchers and drug traffickers, together with active and retired members of state security agencies, were prevalent.<sup>61</sup> With the brutalization of the methods of the guerrilla, the direct involvement in conflict became bigger and bigger. According to an opinion poll applied in the Association of Cattle Ranchers,<sup>62</sup> 57% of respondents thought most of the cattle ranchers supported the paramilitary, and 32% thought supporting the guerrillas was the rule. Direct involvement was not rare.<sup>63</sup> Coexistence and continuous interaction with non-state armed groups and drug traffickers – which frequently coexisted and allied – exposed the traditional rich to a new repertoire of methods, visions, and ways of dealing with social conflict. But such interaction also edified the illegal groups. The illegal groups learned that legal entrepreneurs were not only a potential ally – which they eventually could decide to bully and extort, acting as a praetorian guard – but also

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<sup>60</sup> Alejandro Reyes, 1997, “*Compra de tierras por narcotraficantes*”, in (several authors), “*Drogas ilícitas en Colombia. Su impacto económico, político y social*”, Bogotá: Ariel–PNUD–Dirección Nacional de Estupefacientes: 279-346.

<sup>61</sup> Francisco Gutiérrez and Mauricio Barón, 2006, “*Estado, control territorial paramilitar y orden político en Colombia*”, in *Nuestra Guerra sin Nombre*, Bogotá: IEPRI.

<sup>62</sup> Sandra Piedad Castro Contreras, 2008, “*Aproximación crítica al discurso ideológico de Fedegan: 1985-2006*”, Master’s Dissertation: Universidad Nacional de Colombia, Bogotá: 120-22.

<sup>63</sup> Carlos Medina Gallego, 2005, “*La economía de guerra paramilitar: una aproximación a sus fuentes de financiación*”, in *Análisis Político* 53: 76-87.

a bridge to obtain access to the state (beyond security agencies, with whom both paramilitaries and the rural rich had fluid relations). For example, Vicente Castaño – one of the most prominent paramilitary leaders, who did not join the peace process with the government – made the following statement in 2005:

In Urabá we have oil palm crops. I myself have persuaded entrepreneurs to invest in those long-lasting and productive projects. The idea is that rich people invest in those projects in different zones of the country. When the wealthy go there, State institutions follow. Unfortunately, State institutions only participate in these ventures when rich people are involved. We have to take the wealthy to all corners of the country, and that is one of the missions of all our commanders.<sup>64</sup>

On the other hand, the conflict and the full insertion of Colombia in the global coca market provided the conditions that allowed the massive acquisition of land by narcotraffickers and paramilitaries.<sup>65</sup> A substantial part of the land was acquired under the guise of normal purchase, but, as noted above, there also existed violent expropriation and threats. Given the nature of the phenomenon it is difficult to provide a solid quantitative evaluation, but Reyes' guesstimates suggest that narcos held ten million hectares by 1995; if anything, this figure has increased in recent years.

Third, the connection between the political system and this new rural elite – empowered policy-wise and highly criminalized – became increasingly stronger. Certainly, in the old rural Colombia, the alliance between the big landowner, the politician, the mayor, and the priest was commonplace, and informed both literature and early social scien-

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<sup>64</sup> See: <http://doblecero.blogspot.com/archive/2008/06/index.html>, quoting an interview given by Castaño to *Revista Semana*.

<sup>65</sup> Reyes, *supra* n. 28; Absalón Machad, 2004, “*Tenencia de tierras, problema agrario y conflicto*”, Available online at: [www.virtual.unal.edu.co/cursos/humanas/2004945/docs\\_curso/descargas/2da%20sesion/Basica/Absalon%20Machado.pdf](http://www.virtual.unal.edu.co/cursos/humanas/2004945/docs_curso/descargas/2da%20sesion/Basica/Absalon%20Machado.pdf).

tific reflections.<sup>66</sup> However, this picture of total control reflected faithfully only the conditions of extreme cases. Furthermore, local closures were on occasions compensated by some activity from the center. For example, president Carlos Lleras Restrepo named for a few months Apolinar Díaz Callejas, a Liberal radical, as governor of Sucre, one of the most backward departments and a bastion of landowner power.<sup>67</sup> This is an extreme example, and certainly it was not the norm, but it reflects the dynamical tension between rules and objectives of politics at the center, and town, landowner dominated politics. By the late 1980s, the alliance between clientelistic political barons, paramilitaries, and rural rich was producing full closure in certain regions, and acting as the link between the parties and the central state.<sup>68</sup> This trend was reinforced by the transformation of the paramilitary into large, armed machines,<sup>69</sup> which could provide security, punish dissidents, and coordinate the interests of both regional elites and state agencies.

The current situation, thus, is the following. First, there is an already long tradition of interaction between certain legal rural rich – especially cattle ranchers – and paramilitary groups. Second, there is a strong mix of legal and illegal agrarian agents. Third, the first two factors have converged to create and strengthen a strategy of destruction of peasant resistance and eviction of uncomfortable dwellers. Furthermore, rural elites and paramilitary machineries have been able to build relatively stable territorial structures of governance, in which they hold full control. A simple quantitative exercise<sup>70</sup> reveals that there is a very strong and statistically significant correlation between political homicide and displacement, and between paramilitary presence and dis-

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<sup>66</sup> See, e.g., Francisco Leal Buitrago and Andrés Dávila, 1990, *Clientelismo. El sistema político y su expresión regional*, Bogotá: TM Editores; Christopher Abel, 1987, *Política, iglesia y partidos en Colombia: 1886-1953*, Bogotá: FAES; Javier Guerrero Barón, 2007, *Los años del olvido: Boyacá y los orígenes de la violencia*, Tunja: Uptc.

<sup>67</sup> Díaz faced staunch landowner resistance, and eventually resigned.

<sup>68</sup> Leal and Dávila, *supra* n. 66.

<sup>69</sup> Duncan, *supra* n. 59.

<sup>70</sup> Table 5. The quantitative exercise consists of a classical correlation between political homicide ratio per 1.000 habitants, displacement per 1.000 habitants, and the presence of paramilitary groups.

placement – but none between political homicides and paramilitary presence. These results sit well with the qualitative narratives that show how non-state armies and criminalized economic agents can have an interest in providing security and deflating petty crime,<sup>71</sup> while maintaining as a last resort the use of selective violence against social leaders and vulnerable sectors of the population whose assets can be taken away. Fourth, it has been fully proved – by the judiciary, NGO's, and researchers<sup>72</sup> – that in these paramilitarized fiefdoms illegal actors and rural elites have very dense networks involving state agencies and officials. Crucial aspects of this interaction are: the capture of the electoral apparatus;<sup>73</sup> the capture of the entities in charge of the registration of land property (notaries, and the *oficinas de registro e instrumentos públicos* (ORIP)); the capture of many policy making agencies;<sup>74</sup> and, finally, the capture of the agencies in charge of the provision of security.<sup>75</sup> Through this power clearinghouse, rural elites and paramilitaries can combine threat with legal manipulation to override any semblance of genuine political competition. If necessary, the repertoire can be broadened by offering both sticks and carrots. For example, in a meeting organized by Jorge 40, the paramilitary that dominated for years a

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<sup>71</sup> Gutiérrez and Barón, *supra* n. 61; Francisco Gutiérrez and Mauricio Barón, 2008, “Subsidiary Orders. Coca, Emeralds: War and Peace”, in *Colombia Internacional* 67: 102-29; León Valencia, 2007, “Los caminos de la alianza entre los paramilitares y los políticos”, in *Parapolítica: La ruta de la expansión paramilitar y los acuerdos políticos*, Bogotá: CEREC – Corporación Nuevo Arcoiris: 11-59; PNUD, 2003, *Callejón con salida. Informe Nacional de Desarrollo Humano para Colombia*, Bogotá: PNUD.

<sup>72</sup> See, e.g., Gustavo Duncan, 2005, “Del campo a la ciudad: la infiltración urbana de los señores de la guerra”, Documento CEDE, 2005-2; Corporación Nuevo Arco Iris, 2007, “Los caminos de la alianza entre paramilitares y políticos”, *Arca-nos* 13.

<sup>73</sup> Cecilia López Montaña, 2008, “Carimagua, un modelo desplazador”, Manuscript.

<sup>74</sup> Gutiérrez, 2009.

<sup>75</sup> Carlos Medina Gallego, 1994, *La violencia parainstitucional, paramilitar y parapolicial en Colombia*, Bogotá: Rodríguez Quito; Alejo Vargas, 2002, *Las fuerzas armadas en el conflicto colombiano. Antecedentes y perspectivas*, Bogotá: Intermedio.

good part of the Caribbean Coast, the politicians that attended were promised not only a fixed quota of votes but also a percentage of the contracts paid by the municipalities.<sup>76</sup> In exchange, they had to promise fidelity and discipline (for example, abstaining from invading territory allotted to other politicians).

Descriptive Statistics			
	Median	Standard Deviation	N
Political Homicide per 1,000 Habitants	0.11957	0.163229	231
Displaced People per 1,000 Habitants	10.13487	12.812708	231
Presence of Paramilitary Groups	1.29	0.885	231

Correlations				
		Political Homicide per 1,000 Habitants	Displaced People per 1,000 Habitants	Presence of Paramilitary Groups
Political Homicide per 1,000 Habitants	Pearson correlation	1	0.421(**)	0.031
	Sig. (bilateral)		0	0.642
	Square sum and cross-product.	6,128	202,639	1,022
	Covariance	0.027	0.881	0.004
	N	231	231	231
Displaced People per 1,000 Habitants	Pearson correlation	0.421(**)	1	0.135(*)
	Sig. (bilateral)	0		0.04
	Square sum and cross-product.	202,639	37,758.064	351,882

<sup>76</sup> Though, they were warned, with a bound.

	Covariance	0.881	164,165	1.53
	N	231	231	231
Presence of Paramilitary Groups	Pearson correlation	0.031	0.135(*)	1
	Sig. (bilateral)	0.642	0.04	
	Square sum and cross-product.	1,022	351,882	179,983
	Covariance	0.004	1.53	0.783
	N	231	231	231

**Table 5:** Correlation between Political Homicide, Displacement, and Paramilitary Presence. \*\* The correlation is meaningful at 0.01 (bilateral) level.  
\* The correlation is meaningful at 0.05 (bilateral) level.

Fifth, the nature of the connection with the center changed. Leal and Dávila showed that in the late 1980s, paramilitarized leaders could utilize party tags to gather the votes and castigate extra-systemic threats; however, these leaders played a subordinated role in the political system.<sup>77</sup> In recent years, they have come to the forefront because of their ability to also produce intra-systemic exclusion – marginalizing from the competition other traditional politicians – and to sell security to actors. Researchers found that in the 2006 elections, 33 senators out of 100<sup>78</sup> and 50 representatives of the Lower House out of 165 were elected in paramilitary-controlled regions. Summed, these politicians obtained 1,845,773 votes.<sup>79</sup> Of course, it cannot be claimed that being elected in a paramilitary region is proof of complicity, but it is probable that it would not have been possible to get any massive support without some kind of permission.

In an important paper, Acemoglu, Robinson, and Santos<sup>80</sup> found through a series of quantitative exercises that: (a) there is a strong correlation between paramilitary presence and intensity of preferences for

<sup>77</sup> Leal and Dávila, *supra* n. 66.

<sup>78</sup> One hundred and two if the special districts for minorities are included.

<sup>79</sup> *Semana*, “*Para entender la Para política*”, 10 February 2007.

<sup>80</sup> Daron Acemoglu, James Robinson and Rafael Santos, 2009, “The Formation of the State. Evidence from Colombia”, Manuscript.

the president and his allies; (b) politicians who receive the most votes in paramilitary areas have been particularly supportive of crucial Uribe bills (particularly the reelection one).

These factors, in conjunction, demonstrate the development of a new, highly criminalized, agrarian lobby with much greater leverage at the center than it previously had. It is in this context that we can understand the continued stream of initiatives that favored the legalization of the land of the paramilitaries and other illegal or semilegal agents. Here are some examples:

- a. The Rural Development Statute (Law 1152 of 2007) included the possibility of acquiring land for an alleged owner who could demonstrate pacific possession for five continued years.<sup>81</sup> Furthermore, the legalization could only be countered by the oral *in situ* testimony of a witness who declared that possession had been shorter or non-pacific. Because of security and costs issues, this clause prevented evicted peasants from countering spurious claims to the land property by violent actors.<sup>82</sup> The bill was presented by the Agriculture Minister Andres Felipe Arias. Eventually, it was modified to include clauses that guaranteed that the cleaning up could not take place in protected regions or with high rates of displacement.<sup>83</sup>
- b. The Statute also established high thresholds for accessibility to subsidies – implicit, for example, in the demand of presenting viable productive projects – although the government insisted that the peasant requests would be assessed by local and national agencies. Though the Statute was approved in both Houses, it was declared unconstitutional by the Court in March 2009, because it had not been approved with the participation of peasants

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<sup>81</sup> El Tiempo, “Polémica por proyecto que legaliza tierras”, 18 September 2004B; El Tiempo, “Urgen suspender la vigencia de la ley de tierras”, 28 September 2004C.

<sup>82</sup> María Paula Saffon and Rodrigo Uprimny, 2008, “El potencial transformador de las reparaciones. Propuesta de una perspectiva alternativa de reparaciones para la población desplazada en Colombia”, Working Paper.

<sup>83</sup> Article 137.



and minorities (indigenous peoples and Afro-Colombians), as the 1991 Constitution requires.

- c. Law 1182 of 2008. Presented three times (2003, 2005, and 2006) to the Congress for consideration, this initiative originally included the possibility of acquiring land by proving a continued and peaceful occupation of the terrain. This condition prevented the law from passing, as it provided an opportunity for illegal occupation to be legalized. The next two attempts included modifications: the abovementioned procedure was eliminated, and the responsibility for correcting property titles with a false tradition was given to promiscuous judges.
- d. The Law of Peace and Justice (Law 975 of 2005) established that paramilitary leaders should devolve goods acquired through violence or other illegal means. However, it never established how, when, nor the ways in which devolution would be evaluated. Certainly, these details remain unknown today. Decree 3391 calls on the paramilitary to devolve the lands they have snatched, which not surprisingly has not occurred. By the end of 2008, the president of the National Commission of Reparation and Reconciliation, Eduardo Pizarro, declared that: (1) the devolution had been practically inexistent; (2) the paramilitary leaders had cheated; and (3) neither the Commission nor other state agencies had a real estimate of the amount of land that the paramilitaries should give back.<sup>84</sup> No action whatsoever ensued.
- e. A piece of land of 17,000 hectares had been allotted – following prescriptions of the Constitution Court – to displaced people. The decision was reversed by the Ministry of Agriculture. Arguing that the management of Carimagua by poor people would be highly inefficient, the Ministry surrendered it to a group of entrepreneurs. It surfaced afterwards that this group included very

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<sup>84</sup> *Semana*, Eduardo Pizarro Leongomez's talk at the forum "*Destierro y Reparación*", Medellín: 15 September 2008.

well-connected people.<sup>85</sup> Eventually, the government found that its proposal was unviable, and had to find a formula to back off without losing face.<sup>86</sup>

- f. The attempt to legalize land seized by palm oil entrepreneurs in territories owned by Afro-Colombian communities of the Pacific Coast, which is prohibited by law.<sup>87</sup>
- g. In June 2008, 38,144 hectares were allocated in Vichada. Thirty-one cases of irregular beneficiaries were detected. They included people strongly linked to Habib Merheg, at the time, vice president of Colombia Viva (one of the parties supporting president Uribe). For example, Eduardo Javier Parra, Colombia Viva Secretary, received 1,279 hectares, and Carlos Andres Vega Ortíz, Colombia Viva coordinator in Valle, Nariño, Antioquia, Casanare, Caldas, Quindío, and Chocó received a grand total of 1,112 hectares.<sup>88</sup>

## 7.4. Institutions

### 7.4.1. The Assumptions

The reader will note that the previous narratives have a common and rather bizarre pattern. The governmental coalition attempts to push

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<sup>85</sup> For example, Mario Escobar, uncle of a Minister, member of the board of the agency that was to implement the decision, and donor to the presidential campaign.

<sup>86</sup> El Tiempo, “*Expertos dirán qué hacer con carimagua*”, 4 February 2008A. The main debate is captured by two opposing statements. The first one is made by the opposition Liberal senator Cecilia López, “Carimagua: modelo desplazador” (“Carimagua: displaced model”). Agriculture Minister, Andres Felipe Arias, replied to this document with a document entitled: “Carimagua: oportunismo difamador” (“Carimagua: defamed opportunism”).

<sup>87</sup> El Tiempo, “*Afrodescendientes ganan ‘round’ a palmicultores*”, 15 October 2007F; El Tiempo, “*Tensión en tierras de palma de urabá*”, 23 October 2007G. Law 70 of 1993. For additional events of this type, see the next section.

<sup>88</sup> El Tiempo, “*Más de 38 mil hectáreas del vichada pasaron ilegalmente a manos de amigos de senador Habib Mehreg*”, 6 June 2008D. In Vichada, more than thirty-eight million hectares passed illegally through the hands of friends of Senator Habib Merheg.

forward a bill, which eventually fails, basically because of judicial controls (but also, as in the case of Carimagua, because of public outrage). The agrarian lobby is powerful, but not omnipotent.

More is needed to gain a better understanding of the political dynamics that help to explain the extremely unequal outcome of the Colombian rural world. Institutions are the second key dimension to the puzzle. As reported in section 7.1., the redistributive proposals of the 1960s ran out of gas. The governments of the 1990s – following the neoliberal vogue that was so influential in the configuration of institutional designs<sup>89</sup> – conceived of a new set of rules that gave the sector a market orientation. As in other cases,<sup>90</sup> such reconfiguration was based on a diagnosis that was far from unreasonable. The old agrarian redistribution implemented by INCORA involved very high transaction costs. In effect, it did not give a premium to efficiency. The new market rules of the game, however, brought their own problems, which were synthesized in section 7.2.<sup>91</sup> During his first campaign, Uribe made explicit his intent to go forward with pro-market orientation,<sup>92</sup> and in generating new emphases mainly on efficiency rather than redistribution. The latter would still be a component of the Uribe's agenda, but with caveats. First, the land to be bought for agrarian reform should be high quality. Second, it was necessary to avoid “unproductive fragmentation”. Beneficiaries of redistributive policies would also get cheap credit, technology and other assistance to commercialize their products. All of this was clad in a discourse of “fraternity” and equilibrium. Uribe and his team wanted to steer clear of both “feudalistic excesses” and “populist [*agraristas*] discourses that foster class hate”.

Once in government, the whole institutional landscape was reconfigured. The decision to liquidate the INCORA was taken in May

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<sup>89</sup> Peter H. Hall, 2001, *Varieties of Capitalism*, New York: Oxford University Press.

<sup>90</sup> See Gutiérrez, 2009.

<sup>91</sup> The complete evaluation is found in World Bank, *supra* n. 21.

<sup>92</sup> El Tiempo, “*Que campesinos sean empresarios*”, 29 April 2002A.

2003.<sup>93</sup> That same day, a new entity, INCODER (Instituto Colombiano de Desarrollo Rural) was created.<sup>94</sup>

INCORA	INCODER
In 2002 it had 2,300 functionaries.	In 2006 it had 796 functionaries.
It was the main agent of the agrarian policy.	It acts as a policy coordinator through various collegiate scenarios at the regional level.
It was in charge of state property clarification and indigenous reserves matters.	These functions, as the source of major administrative controversy, were transferred to other public institutions.

INCODER was in charge of the coordination of the national system of rural development.<sup>95</sup> Since the promulgation of the Rural Development Statute, it would eventually have to coordinate the *Consejo Nacional de Tierras*,<sup>96</sup> the *Unidad Nacional de Tierras* – in charge on state-owned land, and their subnational entities. Since INCODER was the technical secretariat of the national system and it was a policy to make the agency as bureaucratically thin as possible, land property problems were dispersed among several agencies. The *Dirección Nacional de Estupefacientes* (National Directory of Narcotics) would take the land of the criminals and transfer it to the common fund for agrarian reform (*Fondo Nacional de Tierras*). In 2007, *Acción Social* (Social Action) was – against the explicit will of its director<sup>97</sup> – empowered with the decision-making capabilities to restitute land to displaced people (and the responsibility to follow up throughout the process).

The other two main functions of INCODER are: (1) to allocate public funds to specific projects; and (2) to act as an intermediary between rural producers and financial institutions. Distribution of subsidies and decisions to purchase land would be taken on technical bases,

<sup>93</sup> Decree 1292 of 2003.

<sup>94</sup> Decree 1300 of 2003.

<sup>95</sup> The precedent is Law 160 of 1994, which created the National System for Agrarian Reform and Rural Peasant Development.

<sup>96</sup> National Council of Land, a figure created by the Rural Development Statute, declared unconstitutional in March 2007.

<sup>97</sup> See: *Acta de Plenaria* 56 of 13 June 2007.

would radically deflate transaction costs, put a renewed emphasis on efficiency, and allow for the coordination of market forces and civil society agents. For example, the board of the National Council of Land<sup>98</sup> included representatives of ethnic minorities (Afro-Colombians and indigenous peoples), peasant organizations, civil servants, and representatives of the private sector

#### **7.4.2. Institutional Inertia**

From the very beginning, the reorganization of the rural sector suffered from institutional inertia. There were basically three institutional problems that carried over from the past (and that occasionally expressed long-term trends). First, a supposedly equilibrated participation of different sectors in the agencies in charge of redistribution ended up empowering rural elites, precisely because the conditions of extreme inequality that supposedly were to be dealt with gave them too great an advantage at the outset. Notice that the INCODER and CONATI board compositions – Tables 7 and 8 – are similar, and basically reproduce the INCORA institutional design. The difference is that now, the bloodletting of leadership – which was already a nasty reality in the 1960s, but at a much lower level<sup>99</sup> – put social organizations on even worse footing. Second, the regional and municipal capture of the state by illegal agents, mainly paramilitaries, seriously perturbed the plans to enrich the agrarian institutional life with participatory activity. In particular, the framers of the 1991 Constitution had expected that decentralization, by empowering municipalities, would also empower citizens as decision-makers. In fact, such decentralization instead increased accessibility for paramilitaries. This increased accessibility, of course, has everything to do with property rights and land use. Criminal and/or paramilitary bosses could take mayors of small municipalities under their protection. As such municipal-level figures now had more powers – including, crucially, the ability to set and collect land

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<sup>98</sup> See Table 7.

<sup>99</sup> See Table 3.

taxes<sup>100</sup> – they became a preferred target for illegal agents to gain influence and access to decision-making.

The Agriculture and Rural Development Minister, or his delegate, who leads the Council.
The Environment, Housing, and Territorial Development Minister, or his delegate.
The Inner Affairs and Justice Minister, or his delegate.
The National Lands Agency ( <i>Unidad Nacional de Tierras</i> ) Executive Director.
The Incoder General Manager.
The Presidential Agency for Social Action and International Cooperation Director.
A delegate from the National Commission of Restitution and Reconciliation.
A delegate from the indigenous community.
A delegate from the black community.
A delegate from a peasant organization.
A delegate from an agrarian guild.

**Table 7:** National Council of Land Directive Board.

The Rural Development Office Director at the National Planning Department.
The Commerce, Industry, and Tourism Minister.
The Inner Affairs and Justice Minister, or his delegate.
The Agrarian Bank President.
The Agrarian Financing Fund ( <i>Finagro</i> ) President.
The National Lands Agency ( <i>Unidad Nacional de Tierras</i> ) Executive Director.
A delegate from an agrarian guild.
A delegate from a peasant organization.
A delegate from the National Council of Agriculture Secretaries – CONSA.
A delegate from the black community.
A delegate from the indigenous community.
A delegate from a peasant women organization.

**Table 8:** INCODER Directive Board.

Third, and relatededly, property rights in Colombia are extremely imperfect by nature. Land must be both registered with the notaries and in the ORIP. Though it is difficult to quantitatively evaluate, property values are frequently underestimated at the moment deeds are transferred. A significant portion of small tenants have their lands incompletely registered (for example, only with notaries), or not registered at all. Furthermore, a very large portion of peasants are married under common law, so partners of victims frequently do not have solid proof of holding when seeking to claim lost land. Cadastral records are

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<sup>100</sup> The enforcement of local autonomy in this regard is due to the Law 14 of 1983.

very poor and incomplete. These factors place serious obstacles in the way of reparation-restitution efforts. Moreover, notaries are private individuals, not civil servants, who in many regions have strong ties with the economic elites. Notaries and ORIPs are unevenly distributed throughout the country, and there are broad zones without any coverage. The information provided by notaries to the public is capricious, at best. The president and governors appoint notaries, establishing a direct link between the allocation of property rights and political power. This appointment process promotes Weberian “political capitalism”<sup>101</sup> – in other words, it strongly incentivizes economic agents to seek benefits and property allocation through political favors. Indeed, it is public knowledge that the nomination of notaries is used to pay political favors. There is a regulatory agency in charge of the notaries – the *Superintendencia Nacional de Registro* – but oddly enough its director is appointed by the president: therefore, the director must watch over officials who have been nominated by his boss. Not surprisingly, the *Superintendencia* has played no positive role in the regulation of land property rights.

### 7.4.3. The Outcome

Although the latter institutions were not created by the Uribe administration, some of them have been changed – however slightly.<sup>102</sup> Unfortunately, many of the assumptions on which the new landscape was based proved to be unrealistic and originated the wrong outcomes.

No comparative evidence demonstrates that such high levels of inequality as those prevalent in Colombia can be corrected solely through the use of market mechanisms. Perhaps the introduction of such mechanisms might help moderate certain types of inequality (for example, unequal access to institutions due to political connections). Unfortunately, in the Colombian context the introduction of market rhetoric and principles, at least in the agrarian context, did not even

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<sup>101</sup> Bradford Dillman, 2000, *State and Private Sector In Algeria: The Politics Of Rent-Seeking and Failed Development*, New York: Westview Press.

<sup>102</sup> The Uribe government in 2006 began a process of nomination of notaries by competition.

work in that sense. Since several regions were influenced, and some taken, by paramilitary/criminal networks, practices linked to “political capitalism” very rapidly found their way in the new institutional context. In particular, the pro-efficiency pro-entrepreneur orientation resulted in a wave of allocation of resources to well-connected rural rich. A report by the *Procuraduría General de la Nación* – a state controlled agency – synthesized the problems faced by the new institutions of the rural sector.<sup>103</sup> According to the report, since their creation, ten high-level officials were removed from their posts due to corruption. The majority of these cases were linked with intent to adjudicate land to people who were not entitled to receive it, or who had been condemned in penal processes.<sup>104</sup> Displaced people were supplanted, and the land given to politicians or their cronies.<sup>105</sup> When the intended recipients actually received the land, it was sometimes of very bad quality.<sup>106</sup> In some cases, purchases were apparently made at above market value prices. There was a mismatch between INCODER’s restitution figures and those of other agencies (like the *Dirección Nacional de Estupefacientes*).

The rural lobby was very active in the process of building new institutions, and it was also able to penetrate them. It is relatively easy to understand the mechanisms it utilized. For example, one of the ten officials fired for corruption was Ómar Quessep, the subdirector of INCODER, who distributed land of narcos to rural entrepreneurs (members of his party, friends, and clients, as seen in point (g) of the

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<sup>103</sup> Procuraduría General de la Nación, 2007, “*Análisis a la ejecución de la Reforma Social Agraria y a la gestión del Instituto Colombiano de Desarrollo Rural INCODER*”, Manuscript, Bogotá.

<sup>104</sup> Illustrative information is found in El Tiempo, “*Reforma agraria: 42 años negociando una finca*”, 22 April 2006D; El Tiempo, “*Jefe ‘para’ dice que gobierno sí le dio tierras*”, 12 April 2006E; El Tiempo, “*Tierras ofrecidas al incoder no sirven*”, 8 August 2007E; El Tiempo, “*Venta masiva de tierras en los Montes de María denuncian voceros de desplazados*”, 6 February 2008E.

<sup>105</sup> El Tiempo, “*Gobierno Dio 67 Lotés De Capo A Falsos Desplazados*”, 30 March 2006C. These kind of cases compelled the Agriculture Minister stop land adjudication. However, public pressure made him restart the process, but he withdrew INCODER from the adjudication of the land received from the Directory of Narcotics (2008B and C).

<sup>106</sup> El Tiempo, 2007E, *supra* n. 104.



last section). The land was supposed to be transferred to IDPs and poor peasants. In a phone conversation that was recorded by the authorities, Quessep claimed that he was a minion (*ficha*) of *Colombia Viva* and that Uribe had given INCODER to that party.<sup>107</sup> According to his version, this gave him a margin of maneuverability to distribute good land from the Magdalena Medio at his will. “The political part”, he concluded, is “manageable”. He asked for “modest” monetary retribution for his services.<sup>108</sup>

*Colombia Viva*, incidentally, is one of the political players that has been most deeply penetrated, possibly dominated, by the paramilitary. Senator Jorge Merlano<sup>109</sup> – for whom Quessep claimed to be a puppet – was absolved by a judge who claimed there was not enough evidence of his complicity with the paramilitary in June 2008. Internal Jorge 40 documents that fell into the hands of authorities demonstrated that the latter had a strategy of control of the new rural institutions.

However, the observations of the *Procuraduría* report go beyond the actions of the rural lobby. Another major problem arises from INCODER’s inability to effectively coordinate the rural sector. In the concrete case of property rights and redistribution policies, institutional dispersion has achieved its maximal level.<sup>110</sup> At least the following agencies have a say in the issue:

- INCODER. It was reformed through Law 1152 of 2007. It is an autonomous entity, attached to the Ministry of Agriculture. It is competent on the promotion of agrarian production through programs of land acquisition subsidies, technical and financial support, and production infrastructure.

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<sup>107</sup> Habib Merheg, also a congress member of *Colombia Viva*, together with a group of friends of his city (Pereira), was assigned 38,000 hectares of state-owned land without fulfilling the minimal legal requisites. They were supported by INCODER officials. To install Merheg and his friends, a group of tenants would have been evicted.

<sup>108</sup> El Tiempo, “La grabación que puso a temblar al incoder”, 6 March 2006B.

<sup>109</sup> He was a senator representing the Partido de la U, political party, and also integrating the government coalition.

<sup>110</sup> See Table 10.

- The National Directory of Narcotics. One of its functions is to transfer land from criminals to IDPs and poor peasants. These redistributive actions were a function of INCODER, but due to its high levels of corruption, this function of transferring land to IDPs was assigned to *Acción Social*.<sup>111</sup>
- The National Commission of Restitution and Reconciliation (CNRR). It is in charge of victims' restitution policy design. It deserves to be noted that the CNRR has neither the skills, nor the technical capacity, to face a challenge of the magnitude of quantifying the land snatched by the paramilitary during the conflict, identifying it, and returning it in adequate proportions to the victims. The CNRR, with a very thin bureaucracy, has manifested its discontent with the present state of affairs, but its real capacity does not seem to go beyond its ability to manifest discontent.<sup>112</sup>
- *Acción Social*. It was given – against the explicit advice of its director<sup>113</sup> – part of task b (assigning land to IDPs), and it partially supports CNRR activities. *Acción Social* is in charge of the National Restitution Fund (*Fondo Nacional de Reparación*) whose mission is to restitute victims. This Fund is comprised of properties given by armed actors and those where property termination is applied. But, *Acción Social* has been fairly impotent.<sup>114</sup>
- Ethnic Affairs Direction of the Inner Affairs Ministry. It is in charge of creating, enlarging, and clarifying property rights over indigenous reserves. This office also deals with land issues concerning black communities.
- The National Directory for Reaction to Disasters. This office can buy land to assist affected people by natural disasters.

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<sup>111</sup> El Tiempo, “*Extinción de dominio no ha tocado latifundios ilegales*”, 6 June 2005B.

<sup>112</sup> CNRR (Comisión Nacional de Reconciliación y Reparación), 2007, “*Informe al congreso. Proceso de reparación a las víctimas: balance actual y perspectivas futuras*”, Bogotá.

<sup>113</sup> See *Acta de Plenaria* 56 of 13 June 2007.

<sup>114</sup> Comisión Colombiana de Juristas, 2007, *El espejismo de la justicia y la paz. Balance de la aplicación de la ley 975 de 2005*, Bogotá: Gráficas Editores.

- The National Land Agency. It is mainly in charge of clarifying state property rights. However, it can also promote land acquisition and adjudication programs to the peasant population.

In sum, the new institutional design is characterized by enormous dispersion. According to the Procuraduría report, INCODER had only nine offices in all of the country, and their procedures were slow and sometimes unpredictable. The agency did not have the bureaucratic clout to assume all of the functions of the previous agencies that were scrapped, let alone to coordinate a huge and complex system in which many actors do not have the tools to assume the functions that they have been assigned.

#### 7.4.4. Checks and Balances

The outcome could have been worse had there not been a functioning – albeit imperfect – system of checks and balances. Despite the paramilitary influence, the Congress played an important role in political control.<sup>115</sup> The Constitutional Court, in turn, turned down several important bills<sup>116</sup> and demanded from the government, in peremptory terms, a more aggressive approach towards the restitution of IDPs. The Court defined the unsolved IDP problem as an “unconstitutional state of things”, and created instruments to demand and evaluate policies oriented towards concrete solutions.<sup>117</sup>

Date	Who calls the debate?	Topic
09/03/2002	Senators Héran Francisco Andrade Serrano, H. Senador Jorge Enrique Robledo	Coffee policy
05/14/2003	Senators Carlos Moreno de Caro, H. Senador Samuel Moreno Rojas y H. Senador	Unemployment policy reduction

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<sup>115</sup> See Table 9.

<sup>116</sup> Law 1152 of 2007; Rural Development Statute; Law 1021 of 2006 concerning forest exploitation; and in Law 975 of 2005, the obligatory devotion of armed groups’ properties to victims’ restitution.

<sup>117</sup> Verdict T-025/04.

Distributive Justice in Transitions

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	Jaime Dussán Calderón	
08/12/2003	Senators José Jairo Cuéllar Devia, H. Senador Álvaro Araujo Castro, H. Senador Germán Vargas Lleras, H. Senador Luis Humberto Gómez Gallo	Government position on ALCA and agrarian price regulation
08/30/2005	Senators Ciro Ramirez Pinzón, Hernán Andrade Serrano	Panela producers and alcohol fuel
11/29/2005	Senators José Dario Cruz Salazar, Luis Emilio Sierra Grajales, Aurelio iragorri Hormaza, Ciro Antorio Rodriguez Pinzon	Indigenous opposition to TLC
05/03/2006	Senators Hector Eli Rojas, Bernardo Alejandro Guerra Hoyos, Luis Guillermo Velez Trujillo, Andres Gonzalez Diaz, Camilo Sanchez Ortega, Mario Suarez Florez, Jaime Dussan Calderon, Oswaldo Dario Martinez Betancourt, Edgar Artuduaga Sanchez, Juan Manuel Lopez Cabrales and others	Electoral fraud due to the paramilitary influence
10/10/2006	Senators Alirio Villamizar Afanador, Miguel Pinedo Vidal	Agrarian policy
11/07/2006	Senator Luis Humberto Gomez Gallo	Agro Ingreso Seguro program
09/18/2007	Senators Oscar darío Pérez Pineda, Juan Carlos Vélez Uribe and Gabriel Zapata Correa	Agrarian and macroeconomic policy
03/11/2008	Senators Alirio Villamizar Afanador, Carlos Cardenas Ortiz, Oscar Dario Perez Pineda, Juan Carlos Velez Uribe, Julio Alberto Manzur Abdala, Samuel Benjamin Arrieta Buelvas, Habib Merheg Marun, Jose Dario Salazar Cruz, Luz Helena Retrepo Betancourt and Manuel	The Carimagua affair

	Enriquez Rosero	
04/01/2008	Senators Antonio Guerra de la Espriella and Oscar Darío Pérez Pineda	Measures taken by the Central Bank (Banco de la República) on interest rates
08/08/2008 – 08/12/2008	Senator Nestor Ivan Moreno Rojas	Royalties

**Table 9:** Political control debates in Congress – including the Agriculture Minister.

Thus, checks and balances should be preserved at any cost if improvement is to be expected. Even then, the idea that the solution to extreme inequality is only to maintain and buttress checks and balances, or that positive change can be obtained only by strengthening the judiciary, would be wrong. There must be obstacles to prevent administrations from moving in the wrong direction, but certain latitude to move in the right one. As many of the pro-egalitarian policies will probably imply a certain degree of centralization and concentrated decision-making (see conclusions), too tight a binding might be counterproductive. The best example in the Colombian context is the intent of president Barco to produce a breakthrough, expropriating criminals and redistributing their assets, by Decree 1893/1989. The Decree was overturned by the Supreme Court, with consequences that will be considered in the next section.

### 7.5. Technical Challenges

Intent to push forward redistributive policies in Colombia has encountered severe technical problems. The unawareness of the existence of such problems is likely to have fatal consequences in the future, as well.

The old model of agrarian reform had to face the disarray of cadastral records; initially, it was supposed to overcome it, but it never did. The restructuring of the manner in which land is registered and property rights are regulated is also a major lingering issue. The current system of notaries and ORIPs is extremely disorganized, and it is the best way to allow the capture of property rights regulation by very backward regional elites. But perhaps the most eloquent instantiation of the importance of carefully considering technical capacities is ap-

parent in the twenty years of failure to transfer assets from criminals to peasants.

The adequate regulation of property rights can be sabotaged by corruption or intimidation: (1) violent agents can buy off or intimidate the personnel in charge of regulation. Since the *Superintendencia de Notariado y Registro* is inert by design, actors can partake in this behavior without legal consequences. For example, in 2005 only fifteen notaries were sanctioned despite overwhelming evidence of widespread irregularities;<sup>118</sup> (2) the decrease in the value of land due to the internal conflict fatally attracts illegal investment.<sup>119</sup> But forbidding land sale in conflict zones is nearly impossible. Nine hundred and eighty-four out of 1,001 Colombian municipalities are affected by displacement.

Sanction	30 days	60 days	90 days	120 days	150 days	180 days	Others
Suspended from office	5	-	1	-	-	-	-
Dismissal	-	-	-	-	-	-	1
Acquit	-	-	-	-	-	-	3
Fine	-	-	-	-	-	-	-
Total archival	-	-	-	-	-	-	1

**Table 10:** Disciplinary decisions adopted in 2005. Source: Superintendencia de Notariado y Registro, [www.supernotariado.gov.co](http://www.supernotariado.gov.co).

Different redistributive alternatives are affected by poor cadastral records and lack of bureaucratic power of key agencies. There are only 190 ORIPs in the country, some of them having to cover more than 10 municipalities. For example, the Florencia (Caquetá) ORIP covers 14 municipalities, the San Martín (Meta) one covers 18, and the Quibdó one is in charge of 14. All of these municipalities are high-intensity conflict areas. In 90 ORIPs, information is stored manually, 57 use the

<sup>118</sup> See Table 10.

<sup>119</sup> El Tiempo, “Carmen de Bolívar Renace tras muerte de Martín Caballero”, 26 November 2007H; El Tiempo, “Uribe pide frenar presiones para venta de tierras en Montes de María”, 10 August 2008F.

computer without networking, and only 40 make use of a national network system.<sup>120</sup>

As reported above, the idea that the criminalization of the countryside could be seen as an opportunity, and that redistribution could be increased as an anti-criminal policy, was already present in the second half of the 1980s. President Barco was unable to implement his model, but in 1996 – through Law 333 – the state obliged itself to expropriate<sup>121</sup> narcos and other illegal agents and to use these goods to support social policies and redistribution. Short time limits were established: instead of the more than six years that a process took, the operation could be performed in three or four months. The Colombian government, and the United States ambassador, claimed that the new law “divided the Colombian history in two”.<sup>122</sup> The United Nations also hailed it as a model in the anti-crime struggle. However, five years later the state had not advanced an inch in the redistributive use of the assets of criminals. Criminal organizations were able to set up stiff legal defenses. Moreover, in many cases the state was on the verge of having to offer massive reparations to the targets of the *extinción de dominio* offensive,<sup>123</sup> but INCODER revealed itself even more important in this regard. In 2007 it was reported that to legalize 14 properties for the state – nine in the department of Meta, three in Córdoba, and two in Valle – 12 top-notch lawyers had to work for nine straight months.<sup>124</sup> There were also political issues, and, notably, the government’s intent to offer some “narco-goods” to IDPs was met with hard

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<sup>120</sup> There is no information about three ORIPs.

<sup>121</sup> More precisely, to terminate their dominion (*extinción de dominio*). The point is important as simultaneously the right of the state to expropriate legal private property were being removed from the Constitution.

<sup>122</sup> El Tiempo, “*Extinción con más dientes*”, 21 December 2002D.

<sup>123</sup> State action was even contradictory as long as it created a program of land adjudication to former paramilitary members. INCODER Administrative Agreement 48, 2006 ruled the process (El Tiempo, “*Ex ‘paras’ podrían vivir en tierras que auc usurparon*”, 14 February 2006A).

<sup>124</sup> El Tiempo, “*Las plagas de la reforma agraria*”, 26 May 2007A; El Tiempo, “*Mechoacán: 4.700 hectáreas en las que convergen todos los males de la reforma agraria*”, 26 May 2007B.

criticism. Why not guarantee the IDPs safe return instead of trying to install them in new places, and in plots where full legalization was still an issue?

By this time, the Uribe administration was fed-up and it chose to separate the anti-criminal and agrarian reform policies. It was so complicated to legalize and then to manage the goods confiscated from the mafia that it was not practical to try to use them in a redistributive framework.<sup>125</sup> Thus, the fourth and last agrarian reform model – and a promise that had marked Colombian policy making for almost two decades – petered out.

## 7.6. Conclusion

El Retiro is a plot of land placed near Peque, a small municipality of the department of Antioquia. INCORA decided to transfer it to poor peasants in 1964. Yet, in 2007, no decision had been taken. INCODER had inherited the assignment, but its officials did not even know the size of the plot: was it two, three, or four-thousand hectares? The officials ignored the landowners since Peque is a municipality disputed by several non-state groups. The director of the cadastral records of Peque reported that INCODER officials had called him during nine months to gather information, but had not once visited the area. Security conditions were complicated.<sup>126</sup> The episode illustrates both the failure of agrarian redistributive policies in Colombia, and the dynamic tension between change and continuity over the last eight years.

Albert Berry has claimed that successful agrarian reforms succeed quickly or they do not succeed at all.<sup>127</sup> If this observation is true – and Berry offers very strong evidence – timing is essential. The redistributive efforts of the Colombian state in the 1960s were marred by an excessively gradualist approach, which institutionalized the power of agrarian elites in key sectors. The criminalization of the countryside created a crisis but also an opportunity. New models of agrarian redis-

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<sup>125</sup> A very small door was left open: goods confiscated from the mafia could be traded for other goods, and these could be used for agrarian redistribution.

<sup>126</sup> El Tiempo, 2006 D, *supra* n. 104.

<sup>127</sup> Albert Berry, 2002, “¿Colombia encontró al fin una reforma agraria que funcione?”, in *Revista de Economía Institucional* 4(6): 24-71.



tribution were tried, in general rather timidly. Uribe bet on a full institutional reconfiguration, emphasizing market mechanisms, globalization, and efficiency as objectives. The result is an appalling distributive disaster, which is increasingly difficult to solve. The four models of agrarian change that were attempted in the last five decades have been dismissed, and nothing has appeared in their stead.

Why? First, war and criminality changed the agrarian lobby, giving it an even more backward and illegal character; but at the same time they empowered it. So there is a political economy of negative redistribution. This is a very important variable, but does not fully explain the current situation. Second, the new institutionalization favored very high levels of dispersion, with uneven and uncoordinated priorities, and without matching functions with bureaucratic muscle. In the context of long-term state failure to regulate agrarian property rights – expressed in the organizational and institutional weaknesses of notaries and ORIPs – the effect of this was to bury any state capacity for restitution/reparation/redistribution. It should be noted that the new institutional landscape adopted basic elements of the international community’s rhetoric and recipes. Any serious evaluation of the Colombian process, as described above, should carefully consider this phenomenon. In this case, a substantial portion of the signals sent by the international community, even if adorned by the language of transparency, decentralization, and civil society participation, were deeply counterproductive. Third, there are sticky technical issues, which have appeared cyclically as technical obstacles to redistribution/restitution. While it would be naïve to consider them apolitical – in the sense that they are activated, evaluated and solved in typically political contexts – they have a core technocratic/bureaucratic component. Decisive action in this realm is necessary. Also, experience seems to suggest that international support should favor focused and decisive actions with short-time horizons. Checks and balances should be preserved at all costs, as they have played a crucial role in preserving the rights of voiceless sectors of the population; but they constitute the proverbial necessary-but-insufficient condition to produce redistributive policies. Modalities as a special jurisdiction for criminalized assets, with fast-track decisions and the inversion of the burden of proof, in the spirit of Barco’s

intent, should be seriously considered. Agency re-centralization, with high levels of international accountability, seems necessary as well.

Redistribution and restitution are as important as ever. As in the 1930s, property rights over land in Colombia are both terribly apportioned and unstable: an explosive condition.