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Abstract

The entanglement of violence and legal institutions in Colombia has led some scholars to argue that the country is characterized by 'law without a state', or that the law has merely a 'symbolic function'. This would explain an apparent paradox: high intensity violence has been accompanied by the preservation of legal institutions and the common belief in their social importance.

Yet, the mobilization of the legal repertoire against violent land grabbing by peasant movements shows their belief in the legitimacy of legal institutions. Instead of measuring the efficiency of these actions, this paper will analyze the interaction between local orders, national legal institutions and collective action. This study argues that legal arenas have served to address land conflict, in a context of egregious violence. With their own dynamics and rules, they have not completely disrupted the logics of violent dispossession, but have opened venues for collective action.

About the Author

Jacobo Grajales is undertaking his doctoral studies in the Center for International Studies and Research at Sciences Po Paris. His research concerns the paramilitary phenomenon in Colombia; he is implementing a socio-historical approach and incorporating field research completed in several regions of Northern Colombia, as well as archival work. He concentrates on the relation between the state and paramilitary groups, which he studies through the analysis of the place of violence in the control of the population, resources and territories, as well as on political and judicial responses to paramilitarism.

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1 Introduction

Colombia is a particularly interesting case for land grabbing analysts, as it combines political and economic incentives to develop agribusiness with a development discourse centered on global markets, while involving criminal actors who are able to use physical violence and bureaucratic connections in order to seize and accumulate land.

Yet, Colombia is also a highly judiciarized polity, with a strong tradition of legal contention and cause lawyering. Moreover, a certain number of formal rights run in favor of the dispossessed peasant population; there is a relatively strong recognition of land rights, which has been reinforced by the recently enacted "Land and Victims Law". Yet, these formal rights suffer from prosaic, underground and violent forms of reaction on the part of the new landowners, often linked to paramilitary militias.

This contribution aims to analyze the use of the legal repertoire as a form of resistance against land grabbing and dispossession. It is centered on contentious practices and on the actors of this legal mobilization: NGOs and peasant organizations, as well as Courts and lawyers. This paper relies on a varied literature, covering issues such as mobilization and repression, legal repertoires and of course land grabbing.

The point of departure of this inquiry is a reflection on the link between violent land grabbing and social contention. Land grabbing in Colombia is characterized by the complex entanglement of legal and illegal strategies and actors. Namely, land grabbing puts together paramilitary militias, business actors and politicians, gathered by common economic interests and by the same narrative on the link between agribusiness and development. Land grabbing, and more broadly agribusiness, has become one of the leading strategies for laundering illegal assets linked to drug smuggling, as well as converting the power of weapons into legal property recognized by the State.

Yet, despite the fact that land grabbing is accompanied by high-intensity violence, resistance under a variety of forms has been organized by local communities to secure or recover their rights over land. Following the analysis of Vincent Boudreau, I argue that modes of protest are associated with specific styles of repression. In other words, particular modes of repressive violence – public or private – encourage and shape specific patterns of political contention. People who participate in social movements, and especially those who define organizational strategies, commonly seek to minimize risks and maximize profits. This is particularly true in contexts of large-scale repressive violence, where people have to anticipate the patterns of repressive violence; as put by Boudreau, they 'calibrate movement practice to navigate between the innocuous and the suicidal' (2004: 3).

Boudreau's reflection on repression and protest corresponds with one of the key interrogations formulated by most studies of social movements, namely, 'how do the structures of political power and institutions and the character of contentious politics interact?' (Tilly, Tarrow 2007: 45). In Colombia, social contention – linked or not to land grabbing issues – has been fashioned by two particular features of the regime. The first one is the judiciarization of politics, characterized by the codification of social and political issues into legal terms, as well as the generalized use of a legal repertoire by political actors. Judiciarization is both a long-term attribute of the Colombian polity, and a medium-term process, mainly linked to contemporary violence. Indeed, since the beginning of the current cycle of violence, defined by most scholars around the late 1970's (Pécaut 2006), the legal arena has become a central locus for political contest.

The second of these features is the fragmentation of the political order; as argued by Jennifer Franco (2008) for the Philippines, the characteristics of local power fields are directly dependent on the process of historical articulation of local and national elites. Historically, the Colombian state has

been characterized by the weight of peripheral elites in the formation and maintenance of local orders. The authority of the center has not been built over the direct control of local institutions, but on a strategy of discharge, leaving the responsibility of peripheral control – including on security issues – with local elites associated with the state. The weakness of the center was partially compensated by the distribution of resources through the national parties, tying the destiny of local leaders to their alliances with the central partisan elites[1]. These local orders are not entirely based on violence, but also on the distribution of resources and services; such domination dynamics have been described by Fox (94) as 'authoritarian clientelism'. This system was disturbed by the rise of a new group of professional politicians linked to drug smugglers and paramilitary militias. Thanks to their shadowy allies, these '*nouveaux riches*' where less dependent on national leaders (Leal Buitrago, Davila 1990; Gutierrez 2007). Consequently, they intended – and sometimes managed – to create peripheral orders relatively autonomous from the center. This process can be described as an instance 'subnational authoritarianism', defined by Gibson as,

> *The existence of a democratic national government alongside a provincial authoritarian government within the nation-state (…). Two levels of government with jurisdiction over the same territory operate under different regimes, understood as the set of norms, rules, and practices that govern the selection and behavior of state leaders.*
>
> Gibson 2005: 103

Land grabbing is tightly linked to these authoritarian 'enclaves'. Violent dispossession needs to be legalized in order to integrate the land into the agribusiness market; legalization is possible thanks to the association of local politicians, business actors and paramilitary groups. Indeed, in most Colombian regions, public institutions are strong enough to create a demand for legal recognition from all social actors. This recognition is particularly relevant for criminal actors, as the sustainability of their operations depends on their capacity to convert criminal profits into legal capital, to 'launder' those assets, i.e. to integrate them into the legal market. Therefore, it does not suffice to occupy a plot; the profitability of land grabbing requires the institutional recognition of property rights over those spurious holdings.

The establishment of these authoritarian enclaves transcends the private/public and private/public division; it is not only a matter of official institutions and formal legal mechanisms, but more broadly it engages a formal and informal 'bundle of powers' (Peluso and Lund 2011; Lund 2011) exercised by different actors gathered by common economic interests. The establishment of these enclaves does not lead to the isolation of local power arenas. On the contrary they are characterized by the overlapping of legal and informal orders (Gibson 2005; Franco 2008).

Strategies of resistance to land grabbing are determined both by the judiciarization of politics and by the fragmentation of the political order. As stated by Gibson, one of the main features of authoritarian enclaves is the struggle between local incumbents (i.e. land grabbers) and opponent movements to control the scope of the local conflict: 'incumbents prevail when the scope of conflict is localized and oppositions are cut off from allies and resources in the national polity. Incumbents are threatened when provincial conflict becomes nationalized' (2005).

As stressed by Monsalve (2012), 'The interaction between social movements and law is deeply embedded in and contingent on specific historic, social, political, economic and legal contexts'. Calling for the intervention of legal authorities has been one of the leading – and most successful – strategies for nationalizing local conflicts around land. Peasant movements and their allies have referred their demands to national and international jurisdictions (namely the Inter-American Human Rights court). They have called for the respect of basic rights, such as life and property, but also collective rights, such as those of Aboriginals and Afro-Colombians (See Cardenas 2011).

[1] This process of discharge is remarkably well described by Lopez-Alves (2003) and Roldan (2002).

The first section of the paper deals with the apparent paradox underlying this story: high intensity violence has been accompanied by the preservation of legal institutions and the common belief in their social importance. Despite the egregious violence that has affected the country for decades, legal institutions have not only been kept alive but also strengthened. Moreover, if the judicial apparatus has been developed for security purposes, legal arenas have been the locus of most of the social movements' achievements. In the midst of violence, courts have been the first vector of democratization and the most effective link between social demands and policies.

T

he second section of the paper examines the specific case of land grabbing issues in the legal system. Colombian judges – specifically the Constitutional Court – have recognized the rights of forcibly displaced communities to recover grabbed land. More broadly, the judiciarization of these issues has been accompanied by its internationalization, with the intervention of the Inter-American Human Rights Court on behalf of the communities. These crossed interventions have put land grabbing on the political agenda, and have been materialized through ambitious policy for the reversal of land grabs – the Lands and Victims Act. Yet, in the absence of effective enforcement and of a strong political commitment to the regions – and not only to the center – the political recognition of peasant's rights will remain an innocuous statement.

2 Violence, justice and human rights

This section deals with the issue of legal responsiveness to human rights claims. Such a focus might seem paradoxical to students of the Colombian armed conflict. Colombia has had, since the beginning of the 1980s, one of the highest levels of violence in the world, and conviction rates for these crimes remain extremely low. The situation is even more dramatic in cases of politically motivated murders, which often involve military officers and paramilitary militias linked to drug traffic.

Yet, the enormous difficulties experienced by the legal system when dealing with political and prosaic violence does not mean that courts and judges have lost their legitimacy to interpret the law (Uprimny 2007). On the contrary, violence has been accompanied in Colombia by the continuous belief in the social role of the legal system, reaffirmed by common citizens as well as by political actors. For some scholars, like Julieta Lemaitre (2009), the reliance of social movements on the law is not only a matter of strategy and repertoires, but of social representations as well. For Lemaitre, in a context of intense violence, the usage of law by social movements and their affiliated organizations helps to give a meaning to violent experiences and to build collective identities. More specifically, the dominant narrative used by these organizations to describe the Colombian situation is international humanitarian law. According to Winifred Tate (2007), the usage of the category of "human rights violations" to describe a particular situation comes down to a categorization of violence and generates specific kinds of social obligations, namely urging the state to protect the population.

The usage of international law as a social narrative has not lead to a marginalization of national law. On the contrary, domestic jurisdictions have interpreted and integrated the international treaties and jurisprudence into their legal reasoning (Cepeda 2005). Colombian judges see themselves as not only recipients, but also as creators of an international doctrine on human rights (Lecombe 2009). In short, even if the Colombian legal jurisdictions have been unable to prosecute a considerable number of human rights violations, they have succeeded in remaining the central political arena for addressing these issues. Of course, land grabbing has not been an exception to this rule.

This section will tackle an apparent paradox, the fact that the judiciarization of politics operated in tandem with the aggravation of the armed conflict. Since the early 1980s, the government, as well as social movements, has asked for judicial responses to violence (Daviaud 2006). In order to

understand this interaction it is necessary to address the complex entanglement of contentious politics, diplomacy and public policies.

2.1 Human rights: subversive or conservative?

The emergence of human rights as a conflict arena has not been the automatic consequence of international pressure, but the result of a joint construction, involving international actors as well as domestic movements (Gallon, 1997). The language of human rights was adopted by social organizations from the 1980s. It seemed particularly attractive, as it was a gate to international arenas, such as the United Nations Committee for Human Rights or the Inter-American Commission on Human Rights (Tate 2007).

Human rights organizations are heir to the 1960s' cause lawyers, who represented the presumed members of guerrilla organizations prosecuted by military justice. At the time, even if the country was governed by civilians, the military had a monopoly on security issues. Individuals prosecuted and charged with 'terrorism' or 'subversion' where under the scope of martial law. Their legal counselors often followed the 'rupture strategy', theorized by French lawyer Jacques Vergès, who represented the members of the Algerian National Liberation Front.

These legal networks constituted the basis of the first human rights organizations. They stayed focused on the defense of 'political prisoners', as well as on the denunciation of police and military brutality and forced disappearance. The strategy of these pioneer organizations was initially focused on domestic courts. At the time, Colombia was seen by foreign countries as a stable democracy on a continent governed by military dictators (Gallon 1997, Pardo, Tokatlian 1989). Consequently, it was difficult to obtain the attention of international advocacy organizations.

Yet, from the end of the 1980s, the development of links between Colombian activists and foreign NGOs became one of the main vectors of professionalization in the human rights arena. For instance, contacts between Colombian lawyers and members of the Geneva-based International Commission of Jurists led to the creation of a Colombian branch of this organization. Such links were the necessary condition for the success of international advocacy campaigns. From the beginning of the 1990's, representatives of the Colombian NGOs lobbied at international forums, such as the UN Committee, and met American Congress members. They also took cases to the Inter-American Human Rights Courts, seeking to provoke a 'boomerang effect' (Sikkink, Keck, 1998), so that international pressure materializes into domestic decisions.

From the end of the 1980s, international NGOs and networks of lawyers, have pointed out the responsibility of the state in the exactions committed by the military and paramilitary groups. In 1988, a judicial observation commission was set up. That same year, four international NGOs – Americas Watch, Amnesty International, International Commission on Jurists and Pax Christi – reported on the human rights situation in Colombia. Amnesty International highlighted specific cases, mentioning the names of the military personnel suspected of murder and torture, arguing that 'the Colombian military forces have adopted a terror policy in order to intimidate and eliminate opposition'.

Under this pressure, the government changed its discourse. The new strategy was aimed at recognizing the gravity of the situation and the commitment of the state to peace and the rule of law. From then on, the human rights frame was progressively incorporated by the establishment, in spite of its contentious origins. Indeed, the human rights narrative started to function as an 'ambiguous consensus', in the fact that it was 'polysemous enough to obtain the support of divergent interest groups and aggregate contradictory interpretations on the basis of the largest possible consensus' (Palier 2003, p. 174).

Yet, the appropriation of the human rights narrative was not limited to discourse. In the middle of a democratization process, which led to the establishment of a new constitution in 1991, a new institutional arrangement was promoted. Human rights started to be considered as the axis of the new democracy and a basis for peace-building. As a consequence, new institutions, such as the People's Ombudsman (*Defensor del Pueblo*), were charged with the implementation of an undefined human rights policy.

The appropriation of the human rights discourse by the government may be interpreted as a propaganda strategy, aimed at the re-legitimization of the ruling elites through an institutional disruption. Indeed, NGOs and activists denounced, from the beginning of the 1990s, the fact that most of the policies intended to guarantee the rights of vulnerable populations were no more than empty shells, without any power or budget, used to enhance the international image of the Colombian government.

However, these reforms have been extremely ambivalent; the works of David Recondo (2007), who has studied the implementation of multiculturalism in Mexico, are very useful to understand the complexity of institutional change. No actor – he argues – even those who implement reforms, has full control over the course of events. Reforms, even those that are instrumentalized by the government, cannot be confined to one single group of decision makers. They involve a variety of actors who will try to direct them for personal benefits. Reforms often result from the convergence of antagonistic interests; as such, their outcome is rather unclear. In a context of democratization, new institutions, initially created to moderate social mobilization, can become fuel for new conflicts, redistributing resources and refining demands.

The case of the first Ombudsman illustrates the ambivalence of human rights institutions. Jaime Córdoba Triviño, a criminal attorney, started his career as an Inspection General's Office assistant. He represented his office at the Supreme Court, and was in charge of the human rights division. As the People's Ombudsman, Córdoba Triviño was extremely active. He organized a series of investigative commissions, charged with determining the responsibility of the military in several murder cases. The most important of these commissions, in charge of the 'Trujillo Massacre', resulted in the recognition by the president of the state's responsibility in the torture and murder of more than three hundred civilians by members of the army and paramilitary groups. Yet, the Ombudsman suffered from the gap between his political visibility and legitimacy and the complete lack of coercive power. His mission was to investigate and report on the human rights situation. The Ombudsman had no judicial function, as denunciations were transmitted to the attorney general's office, the only jurisdiction competent to press charges. Yet, Córdoba Triviño was generally recognized as a human rights advocate inside the state, and his legitimacy as a jurist was recognized by his election as a Constitutional Court justice.

2.2 The Constitutional Court and the issue of internal displacement

Among the institutional reforms introduced by the 1991 Chart, one of the most outstanding has been the creation of the Constitutional Court. This organization, placed at the very summit of the legal pyramid, is defined as the watchdog of the Chart's integrity. It has interpreted civil and human rights in an extensive manner, in order to influence public policies in an extremely progressive direction. According to Blanquer, the Constitutional Court has become a policy maker, compensating the legislator's unwillingness to assume the defense of the rule of law (Blanquer 2002, 56). One of the specific points where the Court's influence has been pivotal is internal displacement. Its decisions have led to the recognition of the specific rights of internally displaced people. One of those specific rights – doubtlessly the most conflictive one – has been the right to recover violently grabbed land.
According to the International Committee of the Red Cross, the internal conflict in Colombia has led

to the displacement of over three million people, which makes it the second country with the largest internally displaced people (IDP) population after Sudan. Yet, partially as a consequence of the fragmentation of the political order, internal displacement was considered for years as a marginal phenomenon. It concerned the poor population from the countryside, generally from segregated peripheries, who migrated to the large cities. According to Lucas Gómez (2012), until the early 1990s, decision makers and journalists had not perceived the link between armed conflict and internal displacement. It was generally thought that IDPs were just the most recent wave of rural migration, something natural in a country marked by an extremely quick urbanization process during the second half of the century.

At the beginning of the 1990s, the growth of internal displacement became undeniable. Peasant families in every corner were the living proof of its magnitude. The political reaction to internal displacement was long and rather chaotic. Initially, the problem was perceived as the inevitable consequence of the armed conflict. IDPs had the same rights as the victims of natural catastrophes, and there was no specific definition of their situation. Internal displacement was defined as the product of an accidental cause, thus closing the door on the establishment of particular responsibilities and/or the procurement of specific rights (Gómez 2012; Rodríguez & Rodríguez, 2010).

As shown by the sociology of public problems, the definition of an issue determines responses and subsequent institutional arrangements, as Gusfield puts it: 'To give a name to a problem is to recognize or suggest a structure developed to deal with it' (1989, 432). The constructionist view on social problems invites us to be attentive to the impact of the definitional activities of social actors. For Spector and Kitsuse, social problems are 'the activities of groups making assertions and claims with respect to some putative conditions' (1973, 415). In that respect, the Constitutional Court's first intervention was to name the problem of internal displacement, to define it as a human rights' violation; thus doing, judges established the state's responsibility and the specific rights of IDPs (Rodríguez & Rodríguez 2010)

The definition of IDPs as human rights violation victims was, in the first place, a claim made by NGOs and social organizations. The qualification of IDPs as a special population, protected by international law, was introduced around 1994, when the UN's special rapporteur for IDPs visited the country. Such international visibility gave a window of opportunity to domestic NGOs to increase the public and policy makers' awareness of the IDPs' lot. Despite large mobilization and despite the number of organizations advocating for the rights of this population, public policies remained innocuous, and did not address the issue of specific IDPs' rights.

The breaking point was a decision of the Constitutional Court; responding to a writ for protection of fundamental rights (*acción de tutela*), the Court stated that internal displacement was a massive and permanent violation of human rights. The Court established that the state was failing in its fundamental duties towards a particularly vulnerable population. The Court established the state had the obligation to elaborate a public policy specifically aimed at the protection of IDPs.

In the aftermath of its decision, the Court established a monitoring process, in order to enforce the rights it intended to protect. Public audiences organized to monitor the situation of IDPs became an institutional arena leading to the mobilization of social organizations and other political actors. The court defined internal displacement as intrinsically linked to constitutional rights and to the maintenance of the rule of law; from that point on, more than a political controversy, internal displacement became a legal issue.

3 Land grabbing and judicial mobilization

According to a study of the Magdalena University, two thirds of IDPs in the Caribbean lowlands were peasants. Whether they had an individual legal title deed over their land or any other form of right (collective titles, right of occupancy, etc.), their forced migration addressed the question of land ownership and land grabbing (Barbosa et al. 2007). The minority of those who tried to return to the countryside, challenging the lethal threat represented by armed actors, found that forced displacement had given way to land grabbing. In some cases, paramilitary militias had repopulated the vacated zones with loyal individuals – friends or family members of their rank-and-file. But in most cases, grabbed land had been integrated into existing farms, frequently contributing to the expansion of the country's flourishing agribusiness. High value crops – oil palm in the first place – started to be produced in those plots forcibly abandoned by small peasants. The perpetrators of this massive land-grab were corporations linked to the paramilitary commanders, directed by their families or front-men. Other companies and businessmen, attracted by the agribusiness El Dorado, were willing to pay an informal tax to these paramilitary entrepreneurs, and profit from this new 'agrarian frontier'.

This section will analyze a specific case of land grabbing and further legal mobilization. Between 1996 and 1998, 17,000 people were forced to leave the region of the Lower Atrato valley, in the Chocó province (North-west); they were fleeing from the violence of a massive counter-insurgent campaign deployed by the military and paramilitary militias. In 2005, after the communities' long-standing mobilization, supported by national NGOs, the case was taken to the Inter-American Human Rights Commission, and a series of official inquiries confirmed the link between force displacement and land grabbing. While the Lower Atrato people enjoyed specific rights as 'Afro-Colombians', the force of weapons was, at least initially, stronger than the force of law; as stressed by land-grabbing scholars (Li 2011), the existence of formal rights is dependent on the structure of the society and the unequal distribution of power. Indeed, it is generally recognized that land rights recognition is not a sufficient asset for communities to protect their access to land (Vermeulen, Cotula 2010). The Lower Atrato case exemplifies the fact that, while 'legal empowerment' has a positive effect on these communities, bargaining capacity is mostly determined by the economic order and its underlying power relations (Cousins 2009). According to the Colombian Institute for Rural Development (Incoder), in 2005 twelve firms occupied more than 26,000 ha, and had planted more than 5,000 ha of oil palm. The rapid development of these crops is linked to the increase in the national demand for biodiesel and to the prospective increase in foreign demand for this commodity.

This case is one of the best-documented instances of violent land grabbing. The abundance of information is mainly due to the intervention of the Inter-American Commission on Human Rights and the Colombian Constitutional Court, both of which called for a variety of official surveys on this issue, mainly from institutions such as the General Controller (*Contraloría General*) or the General Inspector (*Procuraduría General*). The Lower Atrato case illustrates the link between land grabbing and the fragmentation of the political order, as it remained a paramilitary enclave for almost a decade. Consequently, legal mobilization aimed to nationalize (and internationalize) the conflict, in order to revert the legal and political marginalization of this territory.

3.1 Land grabbing and the political order

The Lower Atrato is an extremely marginal region, populated by the descendants of African slaves and located under the scope of influence of different regional poles. In the absence of a regional elite, the paramilitary control of the region was not, as elsewhere in Colombia, the result of an alliance between powerful local actors. On the contrary, it was a sort of 'armed colonization', where violent white/mestizo entrepreneurs got rid of the local black population, whose land was considered 'vacant' (Oslender 2007). As a consequence, the constitution of an authoritarian enclave is not only

the result of the local power holders' strategy. It is also – and mostly – the natural consequence of a situation of geographical, political and ethnic marginality.

The paramilitary advance came from the northern region of Urabá, one of the country's most important agribusiness poles. This armed strategy was crafted as a response to the FARC guerrilla's threat – historically present in the region – as well as the need for vacant land to expand the agribusiness economy of Urabá. The armed occupation started in 1996. Arguing that the locals supported the guerrillas, the paramilitaries blocked the roads and the rivers, robbing and killing local merchants. They burned and occupied some villages and imposed severe rationing. Paramilitary harassment was joined/accompanied by official counter-insurgency operations. From February 1997, military forces from the 17th Brigade deployed intense bombing against presumed guerrilla positions. This bombing was indiscriminate, and forced the population to leave their houses and hide in the jungle. After the bombing, the army troops were brought in by helicopters and entered the villages. They gathered the locals and warned them about the obligation to cooperate with them and provide them with information about the guerrillas.

According to the confessions[2] of the former chief of the AUC in the region, Fredy Rendón, twelve of his men participated in these military operations. They had precise knowledge of the region, and acted as 'guides'. In the aftermath of bombings and harassments, more than 4,000 people left the region and sought refuge in neighboring towns, as well as beyond the Panamanean border.

Shortly after the eviction of the Lower Atrato inhabitants, oil palm crops were planted; they were part and parcel of a violent territorial appropriation project. According to some testimonies, one of the paramilitary leaders' motivations was to colonize this region with demobilized militiamen, while simultaneously making good use of the investment in land for money laundering operations, thus killing two birds with one stone.[3] One of the key men of this strategy was Vicente Castaño, the AUC's head of finance. His business strategy vision was not opposed to that of state institutions; on the contrary, it was intertwined with official statements on economic development:

> *We have palm crops in Urabá. I found the businessmen myself to invest in those projects that are durable and productive. The idea is to bring the rich to invest in such projects in different parts of the country. By bringing rich people to these areas, state institutions will come. Unfortunately, the state institutions only come when you are rich. We must bring those rich businessmen all over the country; that is one of our commanders' missions'.*
>
> Semana, 2005

The creation of the first Lower Atrato palm firm, Urapalma, by Vicente Castaño, took place in 1999. Urapalma's Board of Directors was controlled by his friends and relatives (*El Espectador* 2010). Asoprobeba, another palm firm in the region, was controlled by Sor Teresa Gómez, a Castaño relative and an active member of the AUC. Asoprobeba was supposed to be a non-profit foundation formed by more than a hundred peasant families. The beginnings of palm business also attracted entrepreneurs engaged in agribusiness in other zones of the Caribbean lowlands.

The profitability of the land grab depended on the regularization of title deeds, or at least on the legalization of the commercial exploitation of land. Transfer of property rights was made through clear-cut criminal means, falsifying title deeds for instance. Such practices implied the collaboration of notaries and public officials, and illustrate the entanglement of local institutions and paramilitary groups (Restrepo, Franco 2011). Other methods took advantage of the issue of overlapping title deeds and loose boundaries. For example, a number of plots were purchased from people claiming

[2] Interview of the Verdad Abierta (2010) research project with Freddy Rendón.

[3] Author interviews, Bogota, January and February 2011.

de facto right of tenure, determined by the mere occupancy of land.

Even more complex strategies were equally used. Some agribusiness companies obtained effective land control without purchasing the plots. Land transfer was operated through usufruct contracts or 'strategic alliances'. Usufruct contracts transfered the effective control over land and land-based profits, and were signed by people who claimed title deeds over land or who enjoyed a representative mandate in the community councils. In most cases, the community councils denied that they had granted this mandate to the contractors; some cases might be simple impersonation, while others could indicate divisions among the community councils.

The creation of the legal framework for 'strategic alliances' was among the first responses of the national government to the issues of land grabbing. It permitted the association of local communities and palm oil firms in order to use former collective territories in agribusiness projects. Strategic alliances were initially presented as a remedy to land grabbing issues, thus making the interests of community councils and those of agribusiness firms compatible. One of the consequences of such alliances was the availability of subsidies reserved for projects launched within strategic alliances, which made them even more attractive to agribusiness companies.

As a consequence of the economic importance of the palm oil market, the Colombian government adopted a program of subsidies for the palm industry during the 2000s. These subsidies were abundantly allocated to the Lower Atrato firms, even after severe critiques had been expressed by the Inter-American Commission and the Ombudsman Bureau. Lower Atrato firms received millions in public subsidies for several years. Urapalma, for instance, received substantial credit from Finagro (public fund for agricultural development), for more than $2.5 million. A 2009 Controller Bureau report found that Finagro had approved credit for more than $7.5 million. Urapalma received 89 per cent of all the Rural Credit Incentives distributed in the Lower Atrato. Urapalma even got funds through USAID; thanks to its participation in a program of illegal crops substitution, the firm received more than $6 million from the American government agency.

The economic and financial network promoting agribusiness in the Lower Atrato was completed through political support. Members of the political elites of the provinces of Antioquia and Cordoba had economic interests in agribusiness firms operating in the Lower Atrato. A number of them are currently being prosecuted or already convicted for their links with paramilitaries, and for the electoral profit they extorted. Political alliances were accompanied by a large bureaucratic network. For instance, the local administrations in charge of issuing environmental licenses visited the palm crops several times. Abundant evidence shows they had received information about the land-grabs, yet they issued environmental licenses and provided technical support to the companies in order to meet ecological regulations.

3.2 Legal action

In compliance with the provision of the new 1991 constitution, the Colombian Congress passed Law 70 in 1993, establishing a new legal framework for the protection of collective property and ethnic identity of the black communities of the Pacific coast. The law defined 'black communities' as collective recipients of multicultural rights, thus contributing to create a specific 'black' identity (Cardenas, 2011). Among the possibilities opened by Law 70 was the recognition of property rights over land under the form of collective titles. This provision involved the organization of 'community councils', a local government form aimed to represent the interests of the community as a collective subject. Collective titles have a particularly solid legal protection; they are unalienable and indivisible. Following the mandate of the law, the Colombian Institute for Rural development granted collective title deeds for more than five million hectares of the Pacific lowlands.

Law 70, apparently securing community property rights over land, was expected to revert the land-grabs. Predictably, it provoked harsh opposition among the most conservative sectors of landholders, who even claimed that the law had a 'subversive origin', as stated by a businessman:

> *'We are deeply concerned (…) for the more than 6 million ha. of the Colombian Pacific lowlands that had been conquered with dark purposes by Law 70 and its famous community councils, imposed by the law of the subversive rifle.'*[4]

Using the legal possibilities offered by Law 70, the inhabitants of the Lower Atrato River Valley created the Great Community Council of Jiguamiandó and Curvaradó, coordinating minor councils and paving the way for the procurement of collective rights over their land. A collective title deed was issued in December 2000, apparently securing these communities' rights to land. This achievement, intended to secure the population's rights over the land, was not the automatic result of the provisions of the law. It was also the consequence of a process of collective organization, specially forged in the aftermath of their experience of forced displacement. This shared trauma created solidarity links among the local inhabitants and led to their identification as a collective actor (Rolland, 2007). Moreover, their cause attracted NGOs interested in supporting collective action, and taking the case to legal jurisdictions proved pivotal.

Indeed, the procurement of the collective title deeds did not mark the end of the mobilization, but only the beginning of a new contentious cycle. Indeed, a few months after the signature of the agreements, a new paramilitary offensive caused waves of forced displacement, reducing the recently acquired property right to an abstract claim. Most of those who were already mobilized around the collective titles refused to seek refuge in the surrounding towns, and preferred to stay in the refugee camps, not far from their land. The same pattern was repeated several times between 2003 and 2007, while palm crops were profusely cultivated. Altogether, from 1996 to 2007, 13 cases of massive forced displacement were reported, and 115 civilians were murdered in this zone5.

The community councils and their legal advisor, the Colombian NGO Justice & Peace, required the intervention of competent authorities. They initiated a criminal complaint against members of the 17th Brigade of the army, and most notably its commander at the time of the first bombings, General Rito Alejo del Rio. They also asked for the immediate protection of the lives and lands of the forcibly displaced communities. An action for protection was referred to the People's Ombudsman. Its response – issued in 2002 – was the first intervention of a public authority on behalf of the Lower Atrato communities. The Ombudsman recognized the violations presumably committed by members of the army and paramilitary militias against the local inhabitants. Most importantly, the Ombudsman recognized the link between the forced displacement and the development of palm crops. Its report stated that: 'African palm crops have been illegally developed, by individuals and firms unconnected to the communities (…) thus violating the basic rights of the Black communities.'[6]

This link rapidly became one of the central issues of the controversy around forced displacement and land grabbing. The government was willing to acknowledge its duties concerning the protection of the displaced families – although without taking concrete measures – but was fiercely opposed to establish any link between armed violence and land grabbing.

Despite the recognition by the Ombudsman of the egregious violence the Lower Atrato people had

[4] Source: Comisión Intereclesial Justicia y Paz, Informe 64. Deforestación ilegal hacia el Jiguamiandó, 15 December 2007.

[5] Idem.

[6] Resolución defensorial N° 25, October 2002. Violaciones masivas de derechos humanos y desplazamiento forzado en la región del Bajo Atrato chocoano.

suffered, its report did not trigger any official intervention. Moreover, the criminal case against the military was at a dead end. In 2001, the chief of the human rights unit at the Attorney General's office obtained the indictment of General Del Rio. Following the demand of the victims' representative – Justice & Peace, the already mentioned NGO – the act of indictment mentioned the crime of 'paramilitary conspiracy' as well as the forced disappearance of more than 150 people. Yet, the recently nominated Attorney General, Luis Camilo Osorio, withdrew the indictment, took the case and started a disciplinary investigation against the former prosecutor. Osorio, a jurist known for his conservative positions, had already declared to the press that he considered that the Attorney General's Office had a pro-guerrilla bias and expected to 'redress the balance'. The Del Rio case remained stagnant for three years, and Osorio finally dismissed it in 2004. Subsequently, the case was reopened by the Supreme Court in 2009; the trial should start at the end of 2012.

The lack of protective measures covering the Lower Atrato people, as well as the manipulation of the criminal inquiries, led the representatives of the communities to bring a complaint before the Inter-American Commission on Human Rights. Following the complaints, the Commission organized an official visit in December 2001, a few months after a violent campaign of harassment against the Lower Atrato communities, perpetrated by paramilitary militias and the military. For two years, the Commission accumulated an important amount of data about human rights violations, and especially about the link between violence and land-grabbing. The Commission documented the existence of palm crops illegally planted by the firm Urapalma. The firm, connected to the paramilitary militias, occupied the land that had already been allocated to the communities; its facilities were protected – according to the Commission – both by paramilitary militias and men of the 17th Brigade of the army. The Commission addressed several pleas to the Colombian government, asking for special protection for the Lower Atrato people. After determining that the initial commitments of the Colombian administration had not been respected, the Commission referred the complaints to the Inter-American Court.

In March 2003, after two years of inquiry and monitoring by the Commission, the Court issued provisional protection measures, covering the communities of the Lower Atrato. This legal act compelled the Colombian state to protect the beneficiaries, under the terms of the American Convention on Human Rights. Considering the fact that the prevention measures adopted by the Commission had not produced any effect, the Court summoned the Colombian state to provide effective protection to the Lower Atrato People, and to investigate the criminal facts that had been denounced by the Commission.

The Commission required the recognition of the link between armed violence and land grabbing, and declared that the paramilitary violence, as well as the army operations, were both aimed at facilitating the occupation of the land for purposes of oil palm production: '

> *Since the year 2001, Urapalma Corporation has promoted oil palm crops in approximately 1500 hectares of land belonging to the collective territory of the communities (…) The operations and armed incursions into this territory have pursued the objective of intimidating the members of the communities, in order to force them to associate to palm production or to leave the region.*[7]

The most controversial issue raised by the Inter-American Court's intervention was the link between forced displacement and land grabbing. The Commission's memoranda specifically pointed to land exploitation as the underlying motivation behind the armed operations. Yet, the Court did not mention this issue in its 2003 conclusions. In the aftermath of the first resolution, the Court received diverse monitoring reports from the Commission, as well as the communities' representatives. These

[7] CIDH, March 6, 2003

reports stressed the fact that land grabbing had continued, and was part-and-parcel of the multiple human rights violations endured by the Lower Atrato people. In the meantime, the Colombian government had the obligation of reporting to the Court on the measures taken to protect the communities. The documents produced by the government representatives stated that the monitoring of palm crops was not required by the Court's decision. In addition, these reports affirmed that palm entrepreneurs had respected the limits of the collective lands, and denied any link between palm business and armed violence.

Yet, the Inter-American Court and Commission's intervention progressively led to a series of public inquiries, which shed light on the mechanisms of violent land grabbing. This intervention created a new advocacy and bureaucratic field, and enhanced the legitimacy of the issue as a public policy problem. In 2005, the General Inspector's Office[8] issued an official report recognizing the responsibility of the state as it failed to protect the Lower Atrato communities from paramilitary and military violence. It was the first official conclusion that gave credit to the community representatives' claims. Yet, the link between violence and land grabbing was only marginally addressed, and did not lead to specific conclusions or procedures.

This recognition came from a different public agency. In 2005, the Colombian Institute for Agricultural Development (INCODER) reported the land grab of almost four thousand hectares in the Lower Atrato. The agribusiness investors were depicted as opportunistic actors, who profited from forced displacement to develop palm crops in the collective land. By that time, no reliable information was available on the collusive links between business actors and paramilitary militias, even if the hypothesis was already evoked.

Yet, the immediate impact of this action was reduced; a few months after the publication of the report, a second INCODER document stated that most of the investors' title deeds were legal, and had been legitimately purchased. A subsequent Ombudsman report severely criticized this revocation and confirmed the initial information.

The turning point of the land-grabbing controversy was the recognition by the Inter-American Court of the link between land grabbing and forced displacement. In its March 2005 resolution, the tribunal established that palm crops were the main cause of forced displacement, and a severe obstacle to the local families' return. The Court's intervention accorded a high level of recognition to the NGOs' claims, and broke/denounced the government's official discourse that had refused to link land grabbing and forced displacement.

The internationalization of the IDPs' cause contributed to the creation of a contentious arena for NGOs, as well as domestic jurisdictions. In 2009, the Constitutional Court pointed to the noncompliance of the Inter-American Court's provisions by the Colombian government. In one of the internal displacement monitoring acts, the Court stated that the government had failed to protect the rights of the Lower Atrato people. Based on data provided by the Ombudsman and the General Inspector's offices, the Court dictated the parameters of a specific plan that would address the necessities of the Lower Atrato people. It ordered the relevant ministries and agencies to determine the threats to the collective title deeds.

The Constitutional Court's decision achieved/caused a series of media-exposed and politically sensitive interventions. By the 2010 presidential election, the issue of land grabbing and land-related violence had become a legitimate public problem. Following his election, the new president, Juan Manuel Santos, announced his commitment to the enactment of an ambitious 'Land and Victims Law'. The bill would benefit the several million people who suffered personal or material damage

[8] The General Inspector's Office is in charge of controlling the public servants' compliance with the law.

from the action of organized armed actors, including those whose land was extorted by violent entrepreneurs.

A deep transformation of the armed conflict affected the treatment given to this issue. From 2003, the paramilitary militias' demobilization was the subject of continuous negotiations with the government. Part of the rank-and-file surrendered their arms and entered into a reintegration program. The middlemen and high commanders were subjected to an innovative mechanism of 'transitional justice', allowing them to obtain reduced prison sentences in exchange for their commitment to peace. Their presumed commitment was underplayed based on their contribution to the victims' repair program. Paramilitary leaders were intended to relinquish the grabbed land and transfer it to its original owners.

However, a share of the militiamen never demobilized. They were mainly middlemen who hoped to fill the vacuum caused by the departure of the high commanders. They formed new armed groups, more similar to street gangs than militias, which engaged in a violent competition for the control of money and resources. These groups became one of the main threats to the enforcement of the newly enacted Land and Victims Law. Moreover, in the absence of in-depth judicial inquiries about the links between business actors and paramilitary groups, violence continues to be used as a resource in the protection and procurement of land.

The enactment of the Land and Victims Law opened a window of opportunity for peasant and IDPs' associations. It gave visibility to their cause and it permitted them to point to specific cases of violent dispossession and to obtain media attention. Yet, this visibility also exposed collective and individual actors to violence; according to the Ombudsman bureau, at least 71 leaders of peasant organizations were murdered between 2006 and 2011. In June 2012, more than 15,000 people had filed formal complaints for land restitution. Several hundreds have asked for special police protection, following murder threats linked to their demands.

The assessment of the recently created 'agrarian judge' illustrates the problems associated with land restitution. Two main actors play a role in the policy. First, the Land Restitution Unit is an administrative authority, in charge of receiving complaints of violent land grabbing and of completing the investigations. Second, the Unit refers the complaints to the Agrarian Judges, in charge of deciding who is the legitimate owner of a specific plot. The most innovative aspect of the law is the reversal of the burden of proof from the plaintiff to the defendant. It is a way of overcoming an enormous difference of power between forcibly displaced peasants and new landlords. The Agrarian Judges have special powers associated with the difficulty of their mission; in the name of the extraordinary mechanisms of transitional justice, they can overthrow administrative and judicial decisions affecting a plot. Yet, the concrete application of the judicial decisions is still problematic. Judges are not only responsible for giving a ruling; they also have to enforce judicial decisions, in association with local enforcement agencies. However, local powers remain autonomous from the center, and have legal and illegal resources to resist central policies.

4 Conclusion

The assessment of the linkages between political contention and the legal arena in Colombia has shown the potentialities and obstacles for the use of this strategy in land-grabbing issues. Contrary to Blanquer's analysis (2002), in Colombia there are no 'Laws without state', but more likely a combination of legal and illegal strategies presiding at the distribution of power and resources. Despite the magnitude of violence, legal institutions are not a mere 'veil' that hides the cruelty of dispossession and repression. They are not either intrinsically progressive arenas, essentially opposed to the ruling of violence. Judicial institutions are a central locus of political conflict, governed by specific rules, but as dependent of the global distribution of power as the rest of society.

In such context, land grabbing appears to be a perfect opportunity to large investors and armed actors to launder illegal assets and to transform the power of violence into legitimate capital. The complexity of the legal field has been both an opportunity for land grabbers, and a potential vector of resistance for local communities. The international visibility of the Colombian conflict, and the commitment of international human rights organizations, have given extra resources to domestic actors, and have transformed land grabbing into a public problem in Colombia. Yet, without durable pacification of the country and effective enforcement of the rule of law, land ownership will remain an issue of violent contention.

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A convergence of factors has been driving a revaluation of land by powerful economic and political actors. This is occurring across the world, but especially in the global South. As a result, we see unfolding worldwide a dramatic rise in the extent of cross-border, transnational corporation-driven and, in some cases, foreign government-driven, large-scale land deals. The phrase 'global land grab' has become a catch-all phrase to describe this explosion of (trans)national commercial land transactions revolving around the production and sale of food and biofuels, conservation and mining activities.

The Land Deal Politics Initiative launched in 2010 as an 'engaged research' initiative, taking the side of the rural poor, but based on solid evidence and detailed, field-based research. The LDPI promotes in-depth and systematic enquiry to inform deeper, meaningful and productive debates about the global trends and local manifestations. The LDPI aims for a broad framework encompassing the political economy, political ecology and political sociology of land deals centred on food, biofuels, minerals and conservation. Working within the broad analytical lenses of these three fields, the LDPI uses as a general framework the four key questions in agrarian political economy: (i) who owns what? (ii) who does what? (iii) who gets what? and (iv) what do they do with the surplus wealth created? Two additional key questions highlight political dynamics between groups and social classes: 'what do they do to each other?', and 'how do changes in politics get shaped by dynamic ecologies, and vice versa?' The LDPI network explores a range of big picture questions through detailed in-depth case studies in several sites globally, focusing on the politics of land deals.

'Speaking law to land grabbing': land contention and legal repertoire in Colombia

The entanglement of violence and legal institutions in Colombia has led some scholars to argue that the country is characterized by 'law without a state', or that the law has merely a 'symbolic function'. This would explain an apparent paradox: high intensity violence has been accompanied by the preservation of legal institutions and the common belief in their social importance.

Yet, the mobilization of the legal repertoire against violent land grabbing by peasant movements shows their belief in the legitimacy of legal institutions. Instead of measuring the efficiency of these actions, this paper will analyze the interaction between local orders, national legal institutions and collective action. This study argues that legal arenas have served to address land conflict, in a context of egregious violence. With their own dynamics and rules, they have not completely disrupted the logics of violent dispossession, but have opened venues for collective action.

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