LAND, GENDER and JUSTICE
Property Restitution and Women’s Rights in Colombia’s Transition to Peace

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Photo: Thomas Reuters Foundation March 2012
COLOMBIA’S VICTIM’S and LAND RESTITUTION LAW (2011)
Humanitarian Assistance, Comprehensive Reparations, Land Restitution

**Looking to the past and moving forward: the issues**

- *The Colombian way:* starting transition during conflict

- *land restitution* as a policy for restoring victim’s rights (transitional justice, not land reform).

- *Research scope:* from mechanisms of land grabbing to procedures, workings and accomplishments of a land restitution process, addressing women’s rights

- *How to move on:* gender equity as part of viable and democratic rural development & peace agenda
LAND, HOUSING AND PROPERTY RESTITUTION FOR DISPLACED & REFUGEES (UN’s Pinheiro Principles) in the world: different contexts, similar gender issues

No independent land rights for women in law or in social practice

RESEARCH QUESTION: DOES LAND RESTITUTION CONTRIBUTE TO THE PROMOTION OF GENDER JUSTICE?

How are women’s rights to land accomplished?

What are the obstacles and how are they sorted out?

Are historical gender inequalities in access to land addressed?

What lessons may be learned?
COLOMBIA: 50 YEARS OF VIOLENT ARMED CONFLICT

WHY LAND RESTITUTION? WHO HELD LAND, WHO GRABBED IT?

• Guerrillas, army and paramilitary in their struggles for territorial control

• Armed confrontations, massacres, assassinations, disappearances, land mines, which led to:

• Massive Forced displacement: 5,5 million people mostly peasants, since 1985*


*Data by CODHES, Registro Unico de V’ictimas, Grupo de Memoria Historica (2012) BASTA YA  p.71
Displacement following Massacres: Caribbean Coast, Colombia

Number of **Massacres** and **Displaced** persons in Montes de María, Córdoba and Sucre 1996-2005

Source: CERAC (Bogota), reproduced in Currua & Meertens *Desplazamiento en Colombia* (2010)
LAND ABANDONMENT AFTER FORCED DISPLACEMENT: 8 MILLION HECTARES*

LAND GRABBING AND DISPOSSESSION

RENEWED LAND CONCENTRATION

*Data: Ministry of Agriculture & Grupo de Memoria Historica (2013) Basta Ya p. 76
THE CHAIN OF VIOLENCE AND LAND GRABBING

Armed conflict: Massacres, assassinations, sexual violence
Forced displacement
Abandonment of land

Dispossession: Illegal occupation
Forced selling
Legal ploys
Institutional connivance

Victims: Peasant small holders, many from agrarian reform areas
Indigenous groups
Afrocolombian groups

Beneficiaries: Armed actors (through “straw men”)
Local landholding elites
New (extractive) enterprises

Land concentration & counterreform
390 peasant landholdings (133 redistributed by past agrarian reform efforts): 15,000 has. Now re-concentrated in 20 new enterprises.

Source: Grupo de Memoria Histórica 2010 *La Tierra en Disputa.* p. 169
I. WHAT HAPPENED TO THE WOMEN DURING VIOLENCE?
Bodies and livelihoods under fire

1) Victims of sexual violence:
   - punishment women leaders; control over communities
   - weapon of dispossession: displacement, silence, fractured community
   - permanent threat: perpetrators returning to communities
   - Peak 1998-2003. Impunity 98% (Constitutional Court Cases)
   - How do we know?
     Historical Memory work & documentation by women’s organizations

2) Livelihoods under threat: displaced heads of households, widowhood
   - Extreme poverty
   - No ownership documents: easy to dispossess
   - Family providers: prone to sell at whatever price

OBSTACLES FOR RESTITUTION: SECURITY RISKS before and after
DOING MEMORY: WOMEN'S EXPERIENCE OF VIOLENCE
II. WOMEN and LAND RIGHTS:
“A Real Man is Master of Lands and Women”  *

EQUAL IN LAW, UNEQUAL IN PRACTICE
Male-headed household model: land rights through men
High level of informal land tenure
Women 11% of beneficiaries in land reform schemes
Women 26% of displaced land “owners” (possessors)

OBSTACLE FOR RESTITUTION: NO INDEPENDENT LAND RIGHTS
No legal proof, no social entitlement of land tenure
Patriarchal culture and marital practice: men “rights-bearers”, women “disappear” after family re-composition
In-laws or neighbors claim the land (horizontal conflicts)
Company lawyers intimidate (vertical conflicts)

* Revista Semana May 2014, article about gender violence among political elites in Cesar, Colombia. Quoting a popular saying in the region.
The forgotten history: peasant women organizing

PHOTO: Peasant Women claim land in the 1970s (from “Carta Campesina” 1974)
LAND RESTITUTION AT WORK IN COLOMBIA:

**Aspirations:** restitution original possessor / formalizing land tenure

**Time span:** in 10 years at least 2 Million hectares restituted

**Procedures:** Combined Administrative and Judicial:
- PRIORITY ZONES (HOTSPOTS OF LANDGRABBING)
- SOCIAL MAPPING AND TIME LINES
- CLAIMS & COUNTER CLAIMS
- COURT DECISIONS.

**Special measures** that favor women’s rights:
- PRIORITIZATION WOMEN HEAD OF HOUSEHOLDS
- FLEXIBILIZATION OF PROOF (LAND TENURE, VICTIMHOOD, INFORMAL MARRIAGE)
- INDEPENDENT AND JOINT LAND TITLES
- FORGIVING DEBTS AND ASSISTANCE FOR PRODUCTIVE PROJECTS
- PROTECTION
PRELIMINARY DATA

ACCOMPLISHMENTS 2012-2013*

- 54,000 claims, 3,419,547 hectares
- 39% women claimants
- 900 Restitution Court Rulings delivered in 2 years implementation

RESEARCH DATA IN 10 PRIORITY ZONES, 66 COURT RULINGS:
- Restitution and formalizing titles in 151 cases, 27% women

- Informal tenure of state lands or agrarian reform lands (98%); Proof of tenure resolved through social mapping (but “male” bias)

- Rulings favor victims (counterclaims not honored; no Good Faith accepted in all but 2; but mostly horizontal conflicts).

- Concerns: age, small plots, too many rights bearers (simultaneous and subsequent marital relations): JUSTICE vs. VIABILITY for rural development?

* UNIDAD DE RESTITUCION DE TIERRAS Informe de Gestion 2013
LAND RESTITUTION: A (GENDER) BALANCE

STRENGTHS OF THE PROCESS

- INDEPENDENT and JOINT LAND TITLES FOR WOMEN
- VICTIMS TESTIMONIES ARE EXTENSIVELY LISTENED TO
- RECOGNITION OF THE PAST, FORMALIZING RIGHTS FOR THE FUTURE (Rulings, Web)

WEAKNESSES

- PROCEDURAL: Discrepancy claims vs rulings: slow, complex, case-by-case
  Few vertical conflicts resolved
  No communal/organizational contexts in rulings
  Common imaginary intact in judge decisions (“male bias”)

- CONTEXTUAL: 1. Local governance: insecurity
  Insecurity is gender-sensitive: hampers women’s empowerment and paralyzes community re-building

  2. Post restitution: concentration or democratic development?
  Will women land owners resist selling pressure after 2 years?
  Women are disadvantaged in “vertical conflicts” with companies
  Women need more capacity building for competing in entrepreneurial environment
  Women need more participation for building strong peasant reserve zones
CONCLUSIONS

Does the law contribute to *justice for women* in a post-conflict transition? Is it *transformative* of historical discriminations?

- **YES**, because now women hold formal land titles (before “unprovable” and not recognized)
- **NO**, there is no guarantee for sustainability because of limitations in PROCEDURE, ACCOUNTABILITY FOR GBV, POST-RESTITUTION SUPPORT.

What to do? Law, institutions, civil society, political will

- Speeding-up, coherence, “collectivization” of judge decisions
- Policies for a strong gender-sensitive POST RESTITUTION scenario:
  - LOCAL governments accountable for GBV
  - ORGANIZE WOMEN AS NEW (INDEPENDENT AND JOINT) LANDOWNERS
  - Women participants in a strong, viable and dynamic peasant economy (complementary to entrepreneurial agro-industrial & extractive activities),
  NOT AS VICTIMS OF UNBRIDLED LAND CONCENTRATION
A possible post restitution scenario
Women landowners’ role in democratic rural development:
Enhance protection, combat violence
Claim rights to productive and social services
Transform social practices.