

DIVIDE AND PURCHASE

How land ownership is being concentrated in Colombia

Colombian law sets limits on the purchase of land previously awarded by the state to beneficiaries of agrarian reform processes, in order to avoid concentration of ownership and to preserve the social function of this land. Yet between 2010 and 2012, Cargill – the largest agricultural commodity trader in the world – acquired 52,576 hectares of such land in Colombia’s Altillanura region through 36 shell companies created for that purpose. As a result, Cargill may have managed to evade the legal restriction through a method of fragmented purchases, exceeding the maximum size of land permitted by law for a single owner by more than 30 times. The resolution of this and other similar cases that contribute to rural unrest will test the policy coherence of the Colombian government, which has recently faced major national protests over agrarian problems, while having committed itself at peace talks to a more democratic distribution of land and to strengthening the small-farm economy.

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EXECUTIVE SUMMARY

Land distribution in Colombia is extremely unequal, with concentration of land ownership among the highest in the world, and second highest in Latin America after Paraguay. Inequality in access to land is closely linked to rural poverty, and is both a cause and a consequence of the internal armed conflict that has ravaged the country for more than half a century. During this period, violence and forced displacement have caused dispossession involving up to 8 million hectares – more than the area currently devoted to agriculture throughout the country.

Attempts to reverse the concentration of land ownership have so far been unsuccessful, as large estates have never been affected. The principal instrument in improving access to land and implementing agrarian reform has been the award of state land, *baldíos*, to small-scale farmers and agricultural workers – often land in remote regions with low production potential and lack of infrastructure.

In 1994, Act 160 was passed, with regulation of these processes of adjudication among its principal objectives. This law was inspired by a constitutional mandate ordering the state to provide access to land for the rural population with least resources. It established the „Family Agriculture Unit‘ (UAF) – the amount of land considered necessary for a family to obtain a decent livelihood – as the maximum the state may award to a single person. To avoid the concentration of this land awarded at one time as *baldíos*, the law forbade the accumulation of such tracts of land above the limit set by the UAF.

However, Act 160 has not succeeded in preventing national and international companies from concentrating huge expanses of land by dividing their purchases. Between 2010 and 2012, Cargill thus acquired, through 36 different shell companies, 39 properties in the Department of Vichada for the production of corn and soy. Together, these properties comprise a total area of 52,576 hectares, exceeding the maximum size of a UAF in that Department by more than 30 times.

These investments have taken place in the Altillanura, an isolated region with high levels of poverty, lack of public services, an absence of state institutions, and serious human rights violations due to the presence of various armed groups, as reported by the Office of the Ombudsman of Colombia. Recently, the area has been considered by some as the final agricultural frontier in Colombia. This view, along with government development plans, has attracted interest from private investors. The government would like to reproduce the Brazilian *Cerrado* model in the Altillanura. However, this large-scale plantation model runs counter to the fact that much of the land in this region has already been allocated to small-farm production.

The government argues that only large companies are capable of developing the productive potential of the Altillanura region, and therefore seeks to establish incentives and legal reforms that will pave the way for domestic and foreign investment. However, the small-farm sector has been shown to be as, if not more, efficient – particularly if its contribution to food security, employment and poverty reduction is taken into account.

Both public and private investment in the Altillanura region are undoubtedly necessary, as they both play a key role in overcoming production limitations and exploiting the potential of the region. However, investment should be carried out in a responsible manner that takes into account the specific Colombian context. This means, among other things, respecting existing rights and legislation relating to land use and basing investment on comprehensive assessments of social and environmental impacts at both local and national levels. The land acquisition practices of Cargill in Colombia described in this report should be reviewed in light of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, whose implementation the company states it supports. These guidelines stipulate that any transaction should respect legitimate tenure rights and other human rights and be carried out in a transparent manner, and consistent with the objectives of social and economic growth and sustainable human development, focused on small-scale farmers.

The concentration of vast tracts of land in areas which have been destined by law for small-scale agriculture exacerbates social inequality and conflict and worsens the country’s existing problem of concentrated land ownership. The recent national agrarian strike that has mobilized tens of thousands of small farmers, Afro-Colombian and indigenous peoples, as well as urban dwellers, to

demand structural reforms in rural areas illustrates the importance of this problem in Colombia. This situation is particularly worrying at a time when the country is striving to move forward a peace process and to make full reparations to victims; including the legal and material restitution of land they were either forced to abandon due to violence, or which was taken from them.

Equitable access to land is at the centre of discussions at the peace talks taking place in Havana between the Colombian government and the FARC. In those talks, the government has shown willingness to move towards a comprehensive rural reform and agrarian policy that strengthens the small-farm economy. But its response to recently reported cases of accumulation of *baldíos* challenges the consistency of its position.

The state has the responsibility to act to resolve cases where the law may have been violated, and it has legal instruments and institutions to do so. However, if it allows land that was once distributed to small-scale farmers and agricultural workers to remain concentrated in the hands of large companies, including the world's largest agricultural commodities trader, it is allowing the reversal of hard-won progress towards the redistribution of land, and delivering state assets into the service of private capital.

1 INTRODUCTION

Large-scale land acquisition has become a major threat to global food security, as well as to the livelihoods of families living in poverty. Since 2000, nearly 800 large-scale land deals covering 33m hectares globally – an area one-third the size of Colombia – have been recorded.¹ These deals help exacerbate inequality in countries where the distribution of land is already extremely uneven.² While investment in agriculture is necessary and positive when carried out responsibly, the Food and Agriculture Organization of the United Nations (FAO) and other agencies have warned of the risks associated with large-scale investment, which include the displacement of small farmers, loss of livelihoods, and the degradation of natural resources.³ In several countries where it operates, Oxfam has found that these investments sometimes result in dispossession, human rights violations, and the destruction of the livelihoods of the most vulnerable people.⁴

These kinds of investments are often merely speculative, and in many cases do not even reach the stage of agricultural activity. It has been estimated that approximately two-thirds of foreign agricultural investment in developing countries is carried out with the aim of exporting all of the produce, which is often destined for biofuels or animal feed, and not for basic food supplies. Thus, such activities rarely contribute to food security, and much less to the food sovereignty of the countries where they operate.

Through the GROW campaign – which seeks to achieve a more equitable distribution of resources, greater environmental sustainability, and greater resilience⁵ – Oxfam works to promote investment in small-scale food producers and to stop land grabbing and land concentration by multinationals and powerful countries. In order to contribute to a more informed debate on this issue, Oxfam has studied the impact of private investment in agriculture and the role of some foreign investors in the acquisition of land in developing countries.⁶

Interest in analysing Cargill's investment in Colombia arose when Colombia's President, Juan Manuel Santos, announced that one of his government's objectives was to achieve agro-industrial development in the Altillanura region, and made a subsequent call for foreign investment.⁷ After the President's declaration, the Colombian press reported information about large-scale investment by Cargill in this region, which would affect an area of up to 90,000 hectares.⁸

The aim of this study is to promote more informed public debate by demonstrating practices that can put at risk family and small-farm production and equitable access to land. It thus seeks to draw the attention of the government, legislative branch and administrative agencies to the need to properly regulate the large-scale acquisition of land, improve existing legislation, and safeguard laws and constitutional principles. While not the only case of large-scale land acquisition in Colombia, Cargill's was illustrative because its national impact could be very significant, given the size of the corporation and the large amount of land it acquired.

The lack of transparency about corporate transactions, as well as the limited information available about their investments, entails research to acquire a better understanding of how they operate and the impact of their activities. Unlike publicly listed companies, private companies like Cargill are not required to make public their operations. The investment instruments through which they often act (Black River Asset Management in this case) are similarly not required to report publicly on their activities.⁹ Therefore, in this case, the only way to confirm possible land acquisition was to conduct research in Colombia, and specifically in the Altillanura region itself, where the purchase of land by Cargill could be verified.

The research methodology combined local identification of the land acquired by Cargill with the review and analysis of public documents. First, a team of researchers in the field located land parcels that had been acquired by Colombia Agro (a Cargill subsidiary in Colombia). This information was obtained from indirect informants, as significant logistical limitations and security risks prevented direct access to the previous owners of the properties. Later, detailed information was obtained from the Superintendence of Notary and Registry Offices about the size of the properties, their owners, and the transactions involved. Land registry certificates enabled verification of whether the properties had been *baldíos* – that is, previously awarded by the state to beneficiaries of agrarian reform. After identifying the current owners of each property, information on each of the companies involved was obtained from the Bogota Chamber of Commerce through the respective certificates of incorporation and legal representation.

This methodology was complemented by interviews with local people who had knowledge of the region. Meetings were held with experts regarding legal matters and the status of land and rural development in Colombia. Cargill staff in Colombia declined an invitation from Oxfam to be interviewed for the study.¹⁰ A dialogue was held later with company officials from corporate headquarters in the United States to learn the perceptions and opinions of the company with regard to this report.

The study focused on examining the way in which land acquisitions were made by Cargill. Other issues were outside the scope of the research, so further studies would be required to answer some questions. Among other matters, the following would be of interest: evaluation of the impact of the investments on the local population and environment; analysis of the working conditions on the land under production; investigation into the reason for large differences in sales prices recorded in public documents for some properties; and learning whether state incentives were granted to Cargill and its subsidiaries.

The practices employed by Cargill to acquire land in the Altillanura are one among various strategies used by Colombian business groups operating in that region, such as Riopaila Castilla and Sarmiento Angulo,¹¹ or those of other foreign investors such as Semillas Mónica, Poligrow,¹² and The Forest Company.¹³ Therefore, through the analysis of Cargill's case, Oxfam hopes to contribute to the public debate about rural development and access to land in Colombia and the protection of the rights of rural producers and small-farm sectors.

This report comes at an historic moment for agrarian issues in Colombia – in political, economic and social terms. The national agrarian strike that began in August 2013 has mobilized tens of thousands of people – small farmers, Afro-descendant and indigenous peoples, rural women, and urban dwellers – for more than 20 days in several cities and municipalities to demand structural solutions to rural problems in Colombia. President Santos has acknowledged that his government faces a storm caused by the neglect of, and lack of policies to support the agrarian sector “for which we are now paying the consequences.”¹⁴ This neglect, along with the inequitable distribution of land and disputes over territory, gave rise to the continent's most prolonged armed conflict.

The debate about rural development is now more necessary than ever, in light of the national agrarian strike and civil society mobilization without recent precedent in the country, the Comprehensive Rural Reform being the first item on the agenda of the peace negotiations between the Colombian government and the FARC, a new Rural Development Bill under discussion, and various current legislative proposals on the table that aim to regulate large-scale land purchases by foreign entities.

2 CONTEXT

The issue of land in Colombia

More than half of rural households in Colombia live in poverty,¹⁵ due in large part to the extremely unequal distribution of productive resources, especially land. Both rural poverty and inequality in access to land helped trigger an internal armed conflict that has become the longest-running such conflict in Latin America and is still ongoing. During more than half a century of violence in Colombia, 220,000 lives have been lost (8 out of 10 of them civilians), more than 25,000 people have disappeared, and 5.7 million people have been forcibly displaced, most of them small farmers and agricultural workers, indigenous and Afro-descendant peoples.¹⁶ In the process, it is estimated that between 6.6 million and 8 million hectares have been taken from their owners, „a phenomenon which exacerbated the historical hoarding of land by large landowners, drug traffickers, paramilitary forces, and big business’.¹⁷

Attempts to reverse the concentration of land tenure in Colombia have until now been ineffective. An important milestone was the creation of the Colombian Institute of Agrarian Reform (INCORA) in 1961, which is now the Colombian Institute of Rural Development (INCODER). Nevertheless, since it has had no effect on large estates, this institution has so far failed in its objective of modifying the structure of land tenure.¹⁸ Neither has it been able to generate the information needed to address the problem; the last agricultural census in Colombia dates back to 1971, and there is no updated land registry and no information system on the land awarded. No doubt the ruling elites, with their considerable political influence, prefer reality to remain invisible, so that society does not attempt to change it.

However, it is known that about 80 per cent of land in Colombia is in the hands of 14 per cent of land owners.¹⁹ Concentration of land ownership is on the increase: the Atlas of Rural Property Distribution in Colombia shows how the Gini index worsened from 0.841 in 1960 to 0.885 in 2009. This figure puts Colombia in 11th place worldwide among countries with the worst distribution of land, and the second worst in Latin America after Paraguay.²⁰ Women face even greater difficulties in accessing land. While the absence of sex-disaggregated data impedes measurement of the problem, the third National Verification Survey of the Rights of Displaced Persons, carried out by the Monitoring Committee of Public Policy on Forced Displacement, notes a historical trend of lack of access to land for women.²¹

Historically, land in Colombia has been underutilized. Of the 114 million hectares that make up its territory, 42 million (37 per cent) are considered suitable for agriculture; of which 10 million are suitable for crops, 10 million for cattle, and the remaining 22 million suitable for agro-forestry or pastoral use.²² In 2009, extensive cattle ranches – one of the least efficient forms of land use – occupied 40 million hectares, while crop farming covered only 5 million hectares.²³ This distribution pattern may be changing, as the growing demand for biofuels has stimulated the conversion of large livestock farms into sugar cane and oil palm plantations.²⁴

Furthermore, according to some reports, 40 per cent of Colombian territory is under some type of contract with, or is being solicited by, multinational corporations to develop mineral and crude oil mining projects.²⁵ Colombia ranks fifth among the 17 Latin American and Caribbean countries where the FAO has found large investments of foreign capital in crop farming.²⁶ In a recent report, the FAO warns that „there are obvious trends in the foreign tenure of land, favoured by the absence of limits on land acquisition and incentives due to domestic regulations’. Specifically, the report

highlights „US cooperation in the expansion of oil palm crops, and the collaboration of Brazilian state agencies in implementing the ‚El Cerrado‘ model in Colombia‘.²⁷

Legal limits to land acquisition

Currently in Colombia, there are no general restrictions on the number of hectares that an individual or entity (whether Colombian or foreign) can possess, although Congress has debated proposals to limit the extent of land that foreign individuals or entities may acquire. However, limits do exist in particular cases: properties that have been adjudicated as *baldíos*,²⁸ land acquired with a comprehensive subsidy (*Subsidio Integral de Tierras – SIT*); land in coastal areas; land within a 5km radius around mining exploitation; and, in the case of foreign investors, land in international border zones.²⁹

Act 135 of 1961, or the Agrarian Reform Law, established that *baldíos* could be awarded only to individuals, not companies, and not in excess of 450 hectares, with some exceptions. In certain regions defined by INCORA that are far from populated areas and lack access roads, the limit was extended to 1,000 hectares, and to 3,000 hectares in natural grassland savannahs where ‚seeding for artificial grazing crops was not economically feasible‘, including the Eastern Plains or Altillanura (now the departments of Meta, Vichada, Casanare, and Arauca). Since Act 160 of 1994 took effect, the maximum area that can be awarded by the state became known as the Family Agriculture Unit (see Box 2 below).

Act 160 of 1994: a law to prevent concentration of tenure

In 1994, Act 160 was passed with the aim of: creating the National Agrarian Reform and Small Farm Rural Development System; establishing a subsidy for farmers to facilitate the acquisition of land; and reforming INCORA (now INCODER), enabling it to implement activities that the law envisaged and adopt decisions on the allocation of state land (*baldíos*) to the rural population with limited resources. It also announced other regulations (see Box 1).

Box 1: Rationale and objectives of Act 160

Act 160 of 1994 was inspired by Article 64 of the Constitution of Colombia, which ‚directs the State to promote progressive access to the ownership of land for agricultural workers with limited resources and to other rural public services, in order to improve the income and quality of life of the rural population‘.

The first article of the law defines the following among its essential objectives:

„(a) Reform the agrarian social structure through procedures rectified to eliminate and prevent inequitable concentration of rural land or its anti-economic fragmentation, and give land to: the men and women small-scale farmers with limited resources over 16 years of age who do not possess it; smallholders; households headed by rural women; indigenous communities; and beneficiaries of special programmes established by the National Government.

(b) Promote the appropriate development and social utilization of water and rural land suitable for forestry and agricultural exploitation, and uncultivated, vacant, or poorly exploited land, through programmes that afford its orderly distribution and rational use.

(c) Promote, support, and coordinate the economic, social, and cultural improvement of the rural population, and encourage the participation of small farmers‘ organizations in the comprehensive process of agrarian reform and rural development for small-scale farmers, in order to strengthen them.

(d) Regulate the occupation and use of the *baldíos* of the nation, giving preference in their allocation to farmers with limited resources, and establish small-farm reserve zones for the development of small-scale property, subject to policies for environmental conservation and renewable natural resources, and to rural land use criteria set forth herein.'

Since 1994 and the entry into force of Act 160, the factor restricting the size of land (*baldíos*) awarded by the state has been the Family Agricultural Unit (UAF, see Box 2). In the ninth paragraph of Article 72, declared legitimate by Colombia's Constitutional Court, this law expressly prohibits the accumulation of properties larger than one UAF in the case of *baldíos*:

'No person shall acquire ownership of land initially allocated as baldíos, if the expanse exceeds the maximum limits indicated by the Board of Directors for the Family Agriculture Unit in the respective municipality or region. Also null and void are any acts or contracts under which a person cedes to a company or association of whatever nature the ownership of land awarded as baldíos, if as a result such companies or associations consolidate ownership of such land in surface areas exceeding that fixed by the Institute for the Family Agriculture Unit [UAF].'

According to this prohibition, transactions that exceed the UAF unit by accumulation are considered legally void. Consequently, notaries and registrars are expressly prohibited from facilitating such transactions, „under penalty of incurring in misconduct punishable by dismissal'.³⁰

In order to manage rural land use, especially in areas with a predominance of *baldíos*, Act 160 of 1994 empowered INCORA to select and delineate two types of zone: Small-Farm Reserve Zones (Art. 80 and 81) for the promotion of small-scale rural property; and Business Development Zones. With regard to the latter, entities recognized by the Ministry of Agriculture as being specialized agricultural sector firms can apply for and obtain allocation of *baldíos* through operating contracts, whose award, access, and extension are subject to regulations, limitations, and special arrangements established by the Institute (Art. 82 and 83). However, by August 2013, only six Small-Farm Reserve Zones had been constituted, and these are not yet operational because, among other reasons, they have been stigmatized by some sectors as areas of guerrilla control. This is one of the most controversial points in the peace talks in Havana.³¹ The Business Development Zones have not yet been implemented because an attempt to reform them was declared unconstitutional by the Court as being inconsistent with the principle of progressive access to land for small-scale farmers.³²

Box 2: Family Agriculture Unit: protection for some, obstacle for others

The Family Agriculture Unit (UAF) was created through Act 135 of 1961, known as the Agrarian Reform Law, and was defined as „the basic agriculture, livestock, aquaculture, and forestry business, whose expanse, according to agro-ecological conditions of the area and using appropriate technology, allows the family to remunerate its work and obtain surplus capital that contributes to the formation of its assets'. The UAF is not the same for the whole country, but varies according to municipalities, depending on production potential and other factors. INCODER (formerly INCORA) is the body responsible for setting the size of the UAF, using a method which divides the country into „relatively homogeneous zones' in which productivity is considered equivalent.³³

In the Altillanura region, due to the low productivity of the soil and limited infrastructure, a much larger area is considered necessary for a viable family agricultural business. Therefore,

the UAF in this region can reach a maximum expanse of 1,725 hectares in some municipalities – much higher than the national average.

In addition to adopting the UAF as the maximum expanse of *baldíos* that can be awarded by the state,³⁴ Act 160 of 1994 also prohibited any individual or legal entity from accumulating more than one UAF of this land if it had been previously adjudicated as *baldíos*. The spirit of this rule is to ensure that state property is distributed as democratically as possible, and also that this land may only be transferred from one small farmer to another – never to third parties which may accumulate the land.

However, the UAF is not endorsed by all: for some, it represents an obstacle to investment. According to a report by the US Department of Agriculture (USDA), the UAF is ‘the largest barrier to development of commercial, large-scale agriculture in Colombia’, as it limits the agricultural area that an individual or company can own.³⁵ In the same vein, the Santos Government Plan refers to the UAF as ‘a bureaucratic limitation which slows agricultural progress’.³⁶

For this reason, the current Colombian government and previous governments have tried (unsuccessfully so far) to relax or even eliminate the UAF limit, basing their arguments on the need to create economies of scale and attract investments to develop agricultural zones in regions such as the Altiplanura. In 2008, an unsuccessful attempt was made, by means of an INCODER Agreement, to amend Act 160 and permit the purchase of up to 30,000 hectares.³⁷ One of the most recent attempts was the inclusion, in Act 1450 of 16 June 2011, of three articles that permitted exceeding the restrictions of the UAF. Act 1450 enabled adoption of the National Development Plan 2010–2014.

Some Members of Congress from opposition parties contested these articles, claiming that they pave the way for the massive purchase of land by foreigners and exacerbate concentration of land ownership in the country. The Constitutional Court ruled in their favour, declaring the articles unenforceable, being contrary to the constitutional duty of the state to ensure access to land.³⁸ For its part, the Ministry of Agriculture considered that this decision may have meant a constraint on foreign investment in Colombia, estimated by the Colombian government at more than USD 800m.³⁹

The application of the UAF to *baldíos* remains contentious. The government has recently announced a draft bill to regulate this land and to grant legal security to private property. It will most likely contain the executive’s proposal to modify the UAF.⁴⁰

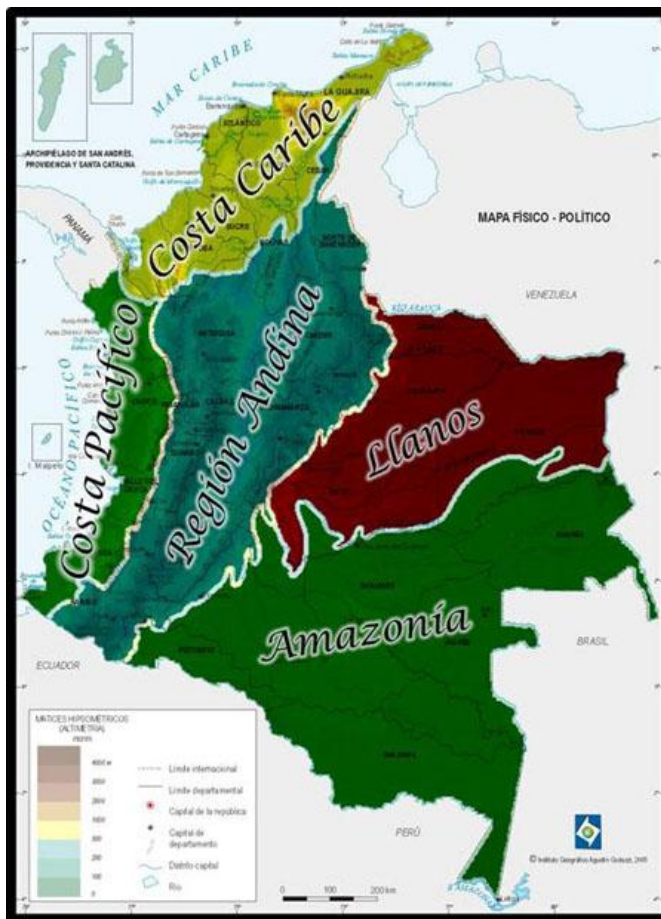
The Altiplanura in the spotlight

The Altiplanura, also known as Orinoquía or the Eastern Plains, is one of the six natural regions that make up Colombia. It borders Venezuela and Brazil, and covers a good part of the departments of Meta, Vichada, and Casanare (see Figure 1). The area is one of low-lying plains (between 150 and 250 meters above sea level) and contains one-third of the country’s water resources. It has a very low population density: just 0.3 per cent of the Colombian population (133,000 people) live in around 12 per cent (13.5 million hectares) of the country’s territory. Sixty per cent of the region is home to indigenous peoples, who make up 30 per cent of the population.⁴¹

The living conditions in the Altiplanura region are precarious, which results in 67 per cent of its population being unable to satisfy their basic needs. This figure is even higher in the municipalities where the Cargill purchases are located: more than 80 per cent in La Primavera and Cumaribo, and between 50 and 70 per cent in Santa Rosalía.⁴² There are major limitations in access to public services: only 32 per cent of the rural population have electricity and 18 per cent have drinking water (compared with 77 per cent and 47 per cent respectively at national level). The transport

infrastructure is also very poor: many of the roads are passable only during the summer months (December to April), and the Meta River (the main river transport corridor) is navigable for only eight months a year. This results in high transport costs and contributes to the region's isolation.⁴³

Figure 1: Map of the natural regions of Colombia



KEY

<i>Costa Pacífica</i>	Pacific Coast
<i>Costa Atlántica</i>	Atlantic Coast
<i>Región Andina</i>	Andean Region
<i>Llanos</i>	Plains, equivalent to the Altillanura;
<i>Amazonía</i>	Amazon Region

Source: Instituto Geográfico Agustín Codazzi.

The productive potential of the Altillanura soils is affected by problems of high acidity, low organic matter and nutrients, and poor drainage. Consequently, Act 135 of 1961 allowed adjudication of up to 3,000 hectares per Family Agriculture Unit in this region, while in the rest of the country the limit stood at 450 hectares. Currently, the UAF in the Altillanura ranges between 36 and 1,725 hectares.⁴⁴

The Altillanura economy is mainly based on oil exploitation and extensive cattle farming. Most of the land is used for livestock, forestry, rubber plantations, and rice cultivation, combined with family plots for household consumption. The greater part of the oil and mineral resources mined in Colombia are being extracted in this region: more than 30,000 hectares already have mining licences, and applications have been made to license a further one million hectares.⁴⁵

According to the US Department of Agriculture (USDA), in 2009, a relatively small area of the Altillanura – 22,000 hectares – was cultivated with soy and corn, and a further 106,000 hectares with oil palm. However, the area with potential for agriculture without the need for deforestation was estimated at 4.5 million hectares.⁴⁶ It is reported that poor infrastructure, strict legislation on land tenure, and insecurity in the region due to the presence of the FARC and paramilitary groups made

it difficult to implement two major projects recently installed in the region: one for soybeans and corn, and another for biofuels.⁴⁷

The Colombian government⁴⁸ and the USDA⁴⁹ have called the Altillanura region „the final Colombian agricultural frontier’. However, the experts consulted during the research for this study believe there is land far more suited to crop development available in other regions of the country. That land, currently occupied by cattle ranches, represents the true agricultural frontier in Colombia. Yet because of „unproductive hoarding related to extensive cattle ranches’ and high prices due to land speculation in such areas, the Altillanura has become a much more attractive alternative as an area for expanding crop farming.⁵⁰

After the global food crisis of 2007/2008, the Colombian government began to focus on the Altillanura region, with the idea of turning it into a centre of agricultural development with intensive production for the export market.⁵¹ The government’s goal for 2014 is to convert a total of 5 million hectares into large plantations: of corn, soy, oil palm, sugar cane, rubber, rice, and sorghum (2 million hectares), technically managed livestock (2 million hectares), and forestry (1 million hectares).⁵²

The National Development Plan recognizes that: „The Altillanura is seen as an opportunity for the country’s growth; taking advantage of this opportunity requires an important effort on the part of national and local governments. This projection is in part a reaction to the recent interest from companies and investors who see in the Altillanura an opportunity to respond to the increase in demand from international markets for agricultural and energy commodities.⁵³ Furthermore, the National Business Association carried out a study in 2011 on the competitiveness of corn and soy in Colombia’s Altillanura, which put forward the need for investment to improve the soil, irrigation and transportation infrastructure to promote these crops.⁵⁴

In this transformation, Colombia aims to adopt a model similar to that applied in Brazil, known as *Cerrado*. In fact, the Altillanura has been referred to by some as „the Colombian *Cerrado*’.⁵⁵ The government intends to promote agricultural development based on a large-scale intensive model, with major agribusiness companies playing a central role. During Alvaro Uribe’s first period as president (2002 to 2006), a proposal was put forward for development in the Altillanura and embodied in the project titled „Rebirth of the Colombian Upper Orinoquía’.⁵⁶ This initiative led to at least 250,000 hectares changing hands between 2005 and 2010 alone.⁵⁷ However, the greatest impetus to change in the region has been given during the present government of Juan Manuel Santos, whose National Development Plan 2010–2014⁵⁸ mandates the formulation of a policy for the development of the Altillanura through the Council of Economic and Social Policy (CONPES).⁵⁹

The Altillanura forms part of the Andean axis of the South American Regional Integration Initiative (IIRSA). This axis connects Venezuela and Colombia through an inter-oceanic corridor along the Orinoco River (see Figure 2, which shows the Orinoco region circled). The Initiative is a regional plan to promote trade and develop economic activities centred on oil extraction, fishing, forestry, agriculture, large-scale livestock farming, and the steel industry.⁶⁰ It has been another factor that has helped to raise investor interest in the Altillanura region.

Figure 2: Regional integration axis showing the Colombian Altillanura



Source: Departamento Nacional de Planeación (Colombian National Planning Department), 2011

In light of these developmental efforts, environmental organizations have warned of the threat posed by monoculture expansion and new infrastructure to an area declared by the World Wildlife Fund (WWF) in 1998 as one of the 'eight strategic ecosystems for humanity'.⁶¹ Orinoquía has traditionally been considered an area of environmental conservation, as it is one of the few unspoiled regions of the planet, and because it contains the highest diversity of birds in the world, the greatest reserves of freshwater fish, and a variety of ecosystems.⁶² In the absence of land-use regulations, the expansion of agriculture, forestry, and mining activities threaten to cause serious environmental impacts on a fragile ecosystem where there is weak or no state presence.⁶³

In addition to this fragile environment, one of the major obstacles to large-scale investment is the occupation and current use of Altillanura land. Initially, this region was designated by the government for colonization processes involving small-scale farmers from other regions of the country. In the decades between 1960 and 1990, land was distributed among rural families. This turned the region into an area for small-scale farming rather than large-scale agricultural enterprise. However, despite the legal prohibition on accumulating more than one UAF, large enterprises have operated in the area for many years.

Factors such as the plans to convert the Altillanura into a centre for agricultural development, investment in infrastructure, and an influx of private capital for land acquisition have caused a significant rise in the price of land, and growing speculation. This has exerted pressure on population patterns. According to the Office of the Ombudsman of Colombia, large agribusiness investment projects in the Department of Vichada, along with oil exploitation and mining, have caused 'the depopulation of rural areas and the migration of the local population to urban centres or new frontiers of colonization, given the incursion of a development model that excludes traditional livelihoods in the region'. The new industries have also led to a rapid increase in the local population, and a consequent need for basic services that are not guaranteed in the region, especially in health care.⁶⁴

The entry and expansion of new interests in the Altillanura could lead to social problems. For example, new conflicts centred on land and the investment boom could arise due to increased

competition between settlers and large agribusiness interests. Furthermore, the indigenous population may demand the recognition and extension of their territories, at the same time that victims of forced displacement and land dispossession are filing claims for restitution, one of the main policies of the Santos government.⁶⁵

The Department of Vichada and unprotected human rights

The Department of Vichada has been and remains the scene of serious human rights violations. As in other regions of Colombia, the armed conflict and socio-political and economic violence, linked to disputes over drug trafficking, have led to the presence of armed groups fighting each other over territory and the economic activities carried out within each area.⁶⁶ Isolation, and the size and location of this department, have favoured the intensification of illicit crops, which the government has sought to eliminate through aerial spraying. Geographical conditions, which link the area to the borders with Venezuela and Brazil, make it a strategic corridor for outgoing traffic in narcotics and incoming traffic in arms, supplies, food, and fuel, particularly for the armed groups.

Disputes between armed groups have resulted in human rights violations and breaches of international humanitarian law (IHL) that mostly go unreported, so official statistics tend to be significantly underestimated. Forced migrations due to the conflict have obliged small farmers and indigenous peoples, including the Puinave, Sikuaní, and Kurripacos, to abandon their land and territories. In some cases people have been dispossessed by force, fraud, or purchase at a price lower than the real value of their land.⁶⁷ Between 2003 and 2008, the number of forced displacements in the Department of Vichada increased dramatically from 321 to 8,608.⁶⁸

In this department, indigenous people, small-scale farmers, and settlers from various parts of the country coexist with cattle, timber, and agricultural enterprises. According to the Office of the Ombudsman of Colombia, large agribusiness projects for the production of biofuel crops, timber, and rubber, together with the oil exploration process, have triggered social conflicts over land, which in turn nurture and transform the armed conflict at the local level.⁶⁹

The risk of massive violations of human rights and IHL is considered high across the whole department. A report by the Ombudsman's Office delegate for prevention of risk of violations of human rights and IHL indicates that illegal armed groups in the region, calling themselves the 'Liberators of Vichada', take advantage of a lack of clarity regarding property rights for *baldíos*. These groups 'may be offering their services in order to influence the resolution of [land] disputes by promoting displacement and the abandonment of land by settlers, using intimidation, threats, and harassment'. The report also states that 'actions promoted by this illegal armed organization to appropriate land that has been occupied for years by poor small-scale farmers cannot be ruled out'.⁷⁰ It notes the purchase of land by oil palm and forestry companies as being responsible for both the displacement of small-scale farmers and indigenous populations and the increased presence of armed men. Furthermore, the report mentions the risk of the FARC carrying out violent acts of extortion against new agricultural investment projects.⁷¹

Lack of institutional capacity for the protection of property rights for smallholders and indigenous peoples and the resolution of state land adjudication processes, together with a rapid appreciation of land prices, may lead to further conflict. According to the Ombudsman's Office, in the municipality of Cumaribo:

'The sources of threat to the rural, settler, and indigenous population lie in 'lack of clarity regarding property rights, the slow process of land titling for farmers, confusion regarding the boundaries of the [indigenous] reservations, requests for extension of these into traditional territories, and the lack of legal resolution of some of these. This context could be exploited to foment disputes over land and territories that could be supported by post-demobilization

*paramilitary groups of the Autodefensas Unidas de Colombia (AUC), which may support acts involving territorial dispossession, abandonment, or forced sale of titled farms to people from outside the region. It could also be exploited by the FARC, who have announced their resistance to the entry of this type of project.*⁷²

In a scenario in which armed groups are fighting for territory, the population is unprotected, and land rights are not guaranteed, large-scale land purchase may exacerbate both the conflict and the risk of human rights violations. As recommended by the Voluntary Guidelines on the Responsible Governance of Tenure of Land, agreed internationally in 2012, and especially in such contexts, any investment company must 'include appropriate risk management systems to prevent and address adverse effects on human rights and legitimate tenure rights'.⁷³

Public investment in the service of private interests

National and international investors, along with trade associations such as the Colombian Society of Farmers (SAC), the National Federation of Cereals and Oilseed Growers (FENALCE), the National Federation of Oil Palm Growers (FEDEPALMA), and the Foundation for Development of the Colombian Altillanura (FUNDALLANURA), have demanded that the government provide investment in infrastructure, public services, access to credit, and flexibility over the size of the UAF in the region. A document being prepared by the Council of Economic and Social Policy (CONPES), outlining policy guidelines for development and investment in the Altillanura region, is still in the process of institutional approval.

Yet the government has pressed forward with the development of infrastructure for the expansion of large-scale industrial agricultural production in the region, with a focus on investments in the following areas:

- **Transport:** the National Development Plan (2010–2014) envisages a major road which crosses the Altillanura region, connecting Puerto Gaitán (Department of Meta) with Puerto Carreño (Department of Vichada), as well as new ports of embarkation and dredging of the Meta River. These kinds of infrastructure projects may be beneficial for the whole population. However, it is significant that they have been carried out only when the private sector has shown interest in this region.⁷⁴
- **Research and technology:** in 2011 a technical and scientific cooperation agreement was signed between the Colombian Ministry of Agriculture and Rural Development (MADR), the Colombian Agricultural Research Corporation (CORPOICA), and the International Centre for Tropical Agriculture (CIAT), to form a centre for research and agricultural technology in the Altillanura region.⁷⁵ The centre is expected to develop new seed varieties and advance research on soil remediation, pest management, and climate change adaptation, focusing primarily on corn, soy, rice, rubber, and agro-pastoral systems.⁷⁶
- **Access to land:** the government has promised potential investors greater security of land tenure, and has been working on two aspects: the formalization of property; and arranging (so far without success) the removal of constraints on the acquisition and exploitation of former *baldíos* by softening or eliminating the existing restrictions in Act 160 of 1994. With regard to the former, in 2012 alone, more than 240,000 hectares were given titles in the Department of Vichada, accounting for half of all those registered nationally during that period.⁷⁷ Regarding the removal of constraints on land acquisition, the government has been attempting to eliminate the prohibition on acquiring *baldíos* previously awarded by INCORA and in excess of the stipulated UAF size, and also to remove limitations on the transfer of such land to those not eligible to be agrarian reform beneficiaries (both defined in Act 160 of 1994). This would be put into effect through a new bill intended to change the existing regulations.

- **Economic and fiscal incentives:** among the incentives and exemptions envisaged for investors in the Orinoquía region are discounts on energy tariffs, privileges in water use, tax exemptions, and subsidies for transport. Other incentives provided for agricultural investment are the Rural Capitalization Incentive, the Certified Forestry Incentive, and the Rural Development with Equity Programme, which provides continuity for the previous Agro Ingreso Seguro programme.⁷⁸ These incentives would apply to both Colombian and foreign companies.

Public investment is crucial to providing the services, infrastructure, and institutions required for viable agricultural production. However, if this investment is to represent a real benefit to both female and male small-scale producers, it should be carried out in a way that adequately meets their needs, and in particular, the needs of rural women.⁷⁹

3 THE CASE OF CARGILL IN COLOMBIA

The profile of Cargill in Colombia

Founded in 1865, Cargill is the largest agricultural commodities trader in the world⁸⁰ and the largest family business in the United States.⁸¹ Four major agricultural commodity companies – Archer Daniels Midland, Bunge, and Cargill of the United States, plus France’s Louis Dreyfus (known collectively as ABCD) – control 90 per cent of world trade in cereals.⁸² Cargill employs 140,000 people in the 65 countries where it operates, and has a wide range of products and services grouped into five business lines: agricultural services; food ingredients; acquisition, processing, marketing and distribution of agricultural commodities; financial services and risk management; and industrial applications.⁸³

In 2003, Cargill established its subsidiary, Black River Asset Management, currently one of the largest investment funds operating in the agricultural sector. The identity of all Black River’s investors and the total amount of funds it manages could not be determined through this research, as the company is not required to make such information public.⁸⁴ Nevertheless, publicly available information from various sources indicates that in 2012, Black River managed about USD 5bn in assets for Cargill and other investors. Among the latter are: UTIMCO, which manages funds for the University of Texas and Texas A&M University; the Dutch pension fund PGGM; and the Teachers’ Retirement System of the state of Illinois.⁸⁵

According to information available in the Bogota Chamber of Commerce, Cargill established several subsidiary companies in Colombia beginning in 2004, among the largest registered in the country (see Table 1), as well as 36 smaller shell companies under a recently created Colombian legal entity (*Sociedades por Acciones Simplificadas – SAS*)⁸⁶ (see Annex).

Table 1: Cargill subsidiary companies in Colombia

Name	Business type	Date established	Business objective	Capital (USD)
Cargill Trading Colombia	Limited liability company	2004	Wholesale trade in agricultural commodities and live animals	205,263
Black River	Simplified company (SAS – Colombian legal entity)	2005	Activities related to the stock market and other business support services	615,789
Cargill de Colombia	Limited liability company	2008	Wholesale trade in agricultural commodities and live animals	5,507,052
Colombia Agro	Simplified company (SAS – Colombian legal entity)	2010	Cereal cultivation (except rice), leguminous crops, and oil seeds	11,650,526

Source: Certificates of incorporation and legal representation, Bogotá Chamber of Commerce

Three of the Cargill companies share the same address, Colombia Agro SAS being the exception. The four companies also share board members and the same legal representation. Furthermore, there have been transfers of resources among the companies, according to the Bogotá Chamber of Commerce.

How did Cargill acquire land in the Altillanura?

Oxfam's research revealed that between 2010 and 2012, through 36 shell companies, Cargill acquired 39 properties in the municipalities of Santa Rosalía, Cumaribo, and La Primavera in the Department of Vichada. These properties together have a total expanse of at least 52,575.51 hectares, (equivalent to approximately six times the area of Manhattan). To acquire them, the Cargill business group made an investment of COP 73,000m, equivalent to USD 38.5m.⁸⁷ The Annex to this report identifies each of the properties acquired, its size, the company or companies involved in the purchase, and the price paid in the transaction.

Certificates⁸⁸ for each of these properties show that all of them had been previously awarded to agrarian reform beneficiaries between 1991 and 1998 – that is, they are historically within the category of *baldíos*. Ten of them were awarded under Act 160 of 1994 and the rest under previous agrarian reform laws: Act 135 of 1961, Act 4 of 1973, and Act 30 of 1988. Therefore, all the properties are of a size equal to or smaller than the permitted maximum, which is the UAF unit designated for each particular area.⁸⁹ The properties acquired adjoin one another and, according to statements obtained in the field, comprise two large extensions of land.

The creation of multiple companies to acquire land

To acquire land in the Altillanura region of Colombia, Cargill resorted to the creation of 36 shell companies. Cargill was advised in this process by the law firm Brigard & Urrutia, which had apparently recommended the same strategy to other companies on previous occasions. Two cases in point are the Colombian company Riopaila Castilla, which created 28 shell companies to acquire more than 42,000 hectares in the Department of Vichada,⁹⁰ and the Brazilian seed company Mónica, which formed several companies to buy more than 13,000 hectares in the Department of Meta.⁹¹ Media coverage of these cases of massive purchases of land (*baldíos*) previously awarded to small farmers, in which the Brigard & Urrutia firm was involved, led to the resignation of the Colombian Ambassador to the United States, Carlos Urrutia, on 23 July 2013. Several members of the Colombian Congress from the *Polo Democrático* party had denounced the activities of the law firm, of which Urrutia had been senior partner when the purchases were made, for having advised these companies on how to acquire land formerly classed as *baldíos* in the Altillanura region.⁹²

According to the respective certificates held at the Bogotá Chamber of Commerce, Cargill created the 36 shell companies between May 2010 and October 2012. They share the following significant elements:

- the same address in the city of Bogotá;
- the same economic activity: „cultivation of cereals (except rice), leguminous crops, and oil seeds“;
- the same sole board member, one principal legal representative, and secondary legal representation shared among three people;
- statutory audit by the same legal entity, KPMG;
- a name that matches the property that was acquired within a period of between one week and two months after the establishment of the respective shell company.

All land purchases were registered in the same notary's office, just two months, one month, or even a week after the formation of the corresponding shell company at the Bogotá Chamber of Commerce.

Each Cargill shell company bought a single property, with an average area of approximately 1,300 hectares and a maximum of 3,000 hectares, with the exception of three companies that each acquired two properties. In most cases (25 of the 39 purchases) the shell companies purchased the land from intermediary companies, which were also created as simplified Colombian legal entities (SAS) and had acquired the properties from the initial *baldíos* beneficiaries or their heirs between 2010 and 2012. The origin of these intermediary companies has not been identified in the present research. However, it is known that they held the land for very short periods of time, and apparently, most of them were constituted specifically to carry out the purchase and subsequent sale of the property (judging by the dates they were created and the dates the properties were acquired).

A vast increase in prices

The data recorded in the Superintendence of Notary and Registry Offices show how, in successive transactions, there were huge price increases and a large disparity in prices per hectare among different properties. Between 2010 and 2012, the Cargill shell companies bought land at prices ranging between COP 370,000 (USD 195) and COP 3.7m (about USD 2,000) per hectare. On average, the Cargill companies paid approximately COP 1.5m (USD 800) per hectare. These figures contrast with the average purchase price prior to 2006, which was COP 45,500 (USD 24) per hectare. The average price had multiplied by 33.

Some cases stand out particularly because of enormous price increases over short periods of time. For example, in 2010, Cargill bought a 3,000 hectare property called Los Alpes for around USD 3.6m, 140 times more than it had sold for two years earlier (USD 26,000). The 1,105 hectare parcel of land at Villa Rosenda was acquired by Cargill in 2012 for around USD 2m, when earlier in the same year it had been sold for about USD 10,500 – that is, the price of this property had multiplied 200 times in less than a year. The Annex lists the value at which some of the parcels were bought and sold by the SAS intermediaries.⁹³

Some perceptions of Cargill from the local population

Difficult conditions that limit access to the area of the Cargill investments impeded the task of obtaining information directly from the affected population. There is a high level of insecurity in the area due to the activity of armed groups, a scant presence of authorities or civil society organizations outside of urban centres, and the existence of illicit crops. This, coupled with logistical difficulties, obliged the researchers to resort to indirect and anonymous sources and to protect their identities, in order to try to understand perceptions of the company and its activities among the local population.

The people interviewed knew little about Cargill, which is actually referred to locally as Colombia Agro (a Cargill subsidiary). They indicated that the company was set up in the Department of Vichada in 2008, the year company executives of Argentinian and Brazilian nationality began negotiations to acquire land. They observed that work had been carried out on infrastructure, roads, and storage silos to prepare for the cultivation of corn and soybeans. People with knowledge of the area also indicated that the company possesses sophisticated machinery, uses genetically modified seeds, and applies aerial spraying. Although the final destination of the products is unknown, they understand that the grain is transported from the local silos to Villavicencio, capital of the Department of Meta.

People reported that the labour force employed by the company consists mainly of workers from the Pacific coast, Antioquia, and Valle del Cauca, with hiring schemes similar to those used in the oil

sector: three continuous weeks of work followed by a week of rest. Since workers are not from the region, there is a high turnover.

For its part, Cargill has stated that its current production is destined for the domestic market. With regard to employment, the company told Oxfam that it hires workers from the surrounding area as well as from other parts of the country and provides them with transportation home each month. The company also affirmed that it respects labour laws, that living conditions at its operations are well above local standards and include recreational and exercise facilities, and that all workers are trained on their jobs, including full safety education, and have the opportunity to acquire new professional skills.⁹⁴

4 LEGAL AND POLITICAL IMPLICATIONS

Cargill's actions in the light of Colombian law

Within or outside the law?

To legally assess whether the actions of Cargill and its subsidiary, Black River, violated Colombian law is beyond the scope of this research. However, analysis of the findings and the assessment of experts in the field provide some insights.

The central question is whether, with these fragmented purchases, Cargill violated paragraph 9 of Article 72 of Act 160 of 1994, which prohibits the same owner accumulating an area of more than one Family Agriculture Unit (UAF) in the case of land which had been previously adjudicated as *baldíos*. According to the findings documented in this report, Cargill acquired, through its business group, at least 52,576 hectares in the Department of Vichada. With the purchase broken down into small parts, each shell company would not individually be in violation of the legal restriction. Nevertheless, in the certificates issued by the Chamber of Commerce, it is seen that the 36 shell companies formed by Cargill have the same business partners and the same business address. Furthermore, if it is proven that the company exercises dominion over all the properties acquired, the owner would ultimately be Cargill.

It has often been argued that *baldíos* awarded before 1994 would not be subject to the prohibitions contained in Act 160.⁹⁵ However, the Ministry of Agriculture in its Directive of August 2012 removed any possible doubt on this issue by clarifying that „the restriction applies to all properties adjudicated as *baldíos* without regard to whether adjudication was made before or after Act 160 of 1994 came into force, as it affects the conditions for the exercise of property rights as stipulated in Article 28 of Act 153 of 1887”.⁹⁶

The experts consulted also agree that the prohibition on accumulating *baldíos* should be applied both to the properties awarded prior to the issuance of Act 160 of 1994 – some of which exceed the size allowed since 1994 (UAF) – as well as those awarded after Act 160, none of which exceed the UAF measure. This does not imply a retroactive application of the law, as the acquired property rights of beneficiaries prior to Act 160 continue untouched or remain valid even under the new law.⁹⁷

In order to properly interpret legislation, it is essential to understand its rationale. As explained above, Act 160 of 1994 was passed in order to preserve the social, economic, and legal stability of the property of small-scale farmers established under the land reform process, and to comply with the constitutional mandate to provide the rural population of limited resources with access to land. Any interpretation of this law should respect its spirit and the objectives with which it was enacted, which were: to eliminate and prevent unequal concentration of land ownership; to encourage adequate exploitation of water and rural land; to strengthen the small-farm sector; and to regulate the occupation and use of *baldíos*, giving preference to small-scale farmers.⁹⁸

In fact, since its enactment in 1994, this law has been implemented in Colombia without setbacks or allegations of suspicious circumstances or breaches in its interpretation and regulation. That held

true until the recent cases were made public of accumulation by domestic and foreign companies of state land previously awarded to small-scale farmers (*baldíos*).

Policies that can help or hinder the concentration of land

Public policies should always respond to the common good. But unfortunately, they are often oriented towards the interests of certain interest groups with the ability to influence decision making. In an effort to generate foreign exchange, many governments facilitate the exploitation of natural resources, including mineral and energy resources, and prioritize an agricultural export model. Legislation and the investment of public resources are thus directed towards the needs of large-scale private investors.

By supporting small-scale agricultural producers, governments can help some of the world's poorest people to improve their livelihoods. To accomplish this, they should: invest in strengthening producer organizations; protect fundamental rights, such as the right to land; regulate agricultural markets; and provide incentives for commercial investment in agriculture that includes small-scale producers.⁹⁹ However, evidence shows how public policies often tend to favour large-scale agriculture at the expense of family and small-scale production.¹⁰⁰

Discriminatory public investment policies

The United Nations Development Programme (UNDP) has warned of the discriminatory and exclusive nature of investment policies in the agricultural sector in Colombia.¹⁰¹ In order to develop and be competitive, small-scale agriculture, in the same way as industrial agriculture, requires suitable conditions: the infrastructure and public services that enable access to productive and financial resources, technology, information, and markets. Various studies have shown that low profitability of many small-scale farms is due not to their own characteristics, but to a deficit in public assets, and economic and territorial constraints.¹⁰² In the Altillanura region, scant public investment has led to a lack of infrastructure and limited access to public services. Without these, the difficulties faced in production can make virtually any agricultural venture unviable.

Big companies like Cargill often argue that only they, with their financial means, are able to make the investments necessary to exploit the productive potential of the Altillanura. However, evidence has demonstrated that small-scale producers can be as, if not more efficient than large-scale industrial agriculture: with the difference that they make a greater contribution to local economic development and the reduction of rural poverty.¹⁰³ Despite this, and the fact that small-scale farmers represent more than 80 per cent of agricultural producers in Colombia and provide between 38 and 64 per cent of the staple foods consumed nationally, the greater part of state support and incentives is directed towards commercial agriculture, particularly large-scale production.¹⁰⁴

Paving the way for private investment

The Santos administration is seeking to increase foreign investment in Colombia by all available means, particularly in sectors such as agriculture, where investment so far has been low (most foreign investment has been concentrated in the oil and mining sectors). According to the Colombian Central Bank, of the USD 13,297m invested in the country in 2011, only USD 154m (or 1.2 per cent of the total) was in agriculture.¹⁰⁵

In the view of the present administration, development in the Altillanura region calls for the greatest possible foreign investment. The vision for this region, as previously mentioned, is to replicate what some have called the 'miracle of the Brazilian Cerrado', with huge expanses of monoculture. The government uses stimuli of various kinds to attract investments, such as the creation of duty free zones, tax incentives, investment in security, and the development of infrastructure.

Policies on land acquisition

The government has tried, without success, to relax the size limit of the UAF, as described earlier. Another way to open the door to large-scale land purchases and validate many of the irregular transactions that have already taken place is to restrict the application of the UAF to *baldíos* awarded after 5 August 1994, when Act 160 came into force. A provision to that effect has been included in a draft of the new bill on *baldíos* that the government is preparing.¹⁰⁶ It is estimated that between 1900 and 2012, the Colombian state awarded around 24.3 million hectares of *baldíos*, of which only 5.8 million were awarded after 1994. If the proposed provision were to be enacted in the new law, it would remove from restrictions three-quarters of the land that was formerly *baldíos*.¹⁰⁷ Yet such an action departs from the concept issued by the Council of State, one of the highest Colombian courts.¹⁰⁸

One government proposal to overcome the restriction in the Altillanura and other regions of interest to investors, and at the same time resolve situations already created regarding the accumulation of *baldíos*, involves the use of leasing contracts for periods of up to 30 years. The charge for these contracts would be a token amount, from which the cost of the investment made on acquisition of the land would be deducted. In this way, companies which have irregularly accumulated land would lose their title but maintain the use of the land, in exchange for a commitment to invest in infrastructure and form partnerships with farmers, not only through the hiring of their labour. This formula, however, raises concerns because it would maintain control of the land in a few hands, thus aggravating concentration of land ownership. In practice, such land would cease to be used to develop the rural economy, thereby losing its social function.

Lack of agreement regarding the enforcement of Act 160 within the government itself has become evident with the resignation on 10 September 2013 of the INCODER deputy director for rural land. Among her reasons for leaving her post, Jhenifer Mojica mentions the pressure and harassment to which she has been subjected due to the importance of some cases and the interests affected in the process of recovering *baldíos*, as well as her disagreement with certain changes in agrarian law that the government expected to make.¹⁰⁹

Proposals for reform from a contrasting point of view have also been made, whose objective is greater control of foreign investment in agriculture to prevent speculation and land grabbing. At least four bills to this effect have been proposed during the last year; by opposition parties as well as by the government coalition, but to date none has been discussed by the legislature. They could receive more support now due to the impact of the recently disclosed cases.

In addition, small farmer and indigenous producer organizations in the Roundtable for Agrarian Unity¹¹⁰ have put forward a proposed Alternative Law for Rural Development. The proposal seeks to promote the de-concentration and more equitable distribution of land to benefit rural communities, as well as to prioritize policies that promote food production to meet domestic demand, support the small-farm economy (such as through targeted subsidies and access to credit), and ensure appropriate soil management and environmental sustainability. Such proposals, which have yet to be taken into account in the design and discussion of rural development policies, are included in the platform of demands put forward by many organizations in the context of the recent national agrarian strike.

The debate over large-scale land acquisition in Colombia is far from over, and the issue is undoubtedly key to achieving equitable development and making progress in the dialogue towards peace.

What can the state do in cases of accumulation of *baldíos*?

The state has instruments to enforce the law and thus avoid infringement of the constitutional provisions and regulations on access to land ownership that are currently in force. INCODER is empowered by Act 160 of 1994 to carry out administrative proceedings involving agriculture to enforce the social and ecological function of property, ensure control and preservation of public assets, and correct irregular or illegal situations regarding appropriation of such property, even when it has left the state domain. These proceedings include

1. clarification of the status of the land for the purpose of determining whether or not it is within the domain of the state;
2. the return of awarded *baldíos* to the domain of the nation when there is proof of violation of the rules and breach of the conditions and obligations under which the award was made, or when the property is not used for the intended objectives.

According to a recent report by the Ministry of Agriculture and Rural Development, between 2010 and 2013, INCODER has investigated 14 cases of undue accumulation of *baldíos* in the country that affect 231 properties covering a total of 87,424 hectares.¹¹ This is illustrated in Table 2.

Table 2: Cases of undue concentration of UAF previously awarded as *baldíos*

Case	Department	Municipality	Number of properties	Area (hectares plus square meters)		Maximum limit of UAF, hectares	Area that exceeds UAF, hectares
				Hectares	Meters ²		
FONDO GANADERO DE CORDOBA	ANTIOQUIA	Turbo, Necocli	106	3,770	2,725	68	3,702
MULERO	MAGDALENA	Plato	1	299	4,735	35	264
MULAS ALTAMACERAS	MAGDALENA	Plato	17	403	1,750	74	329
BIOAGROINDUSTRIAL	NORTE DE SANTANDER	Tibú	21	1,040	8,700	36	1,004
INVERSIONES PALMA ORIENTE	NORTE DE SANTANDER	Tibú	4	526	2,392	36	490
ECOPALMA	NORTE DE SANTANDER	Tibú	2	65	4,250	36	29
POLIGROW COLOMBIA	META	Mapiripan	3	5,577	5,800	1,840	3,737
MONICA SEMILLAS	META Y VICHADA	Puerto Gaitan and Puerto Carreño	9	8,866	5,042	1,107	7,759
SOCIEDAD INVERSIONES ETERNAS	META	Fuente de Oro	5	221	2,197	46	175
SOCIEDAD VILLA DIANA	META	Mapiripan	3	4,655	5,342	1,840	2,815
EL BRASIL	META	Puerto Gaitán	16	27,715	6,486	920	26,795
PALMA VISTA O FINCA LAS PALMERAS	META	San Juan de Arama	2	210	9,519	138	72
VERACRUZ	VICHADA	Santa Rosalía	42	34,077	9,013	1,294	32,783
TOTAL			231	87,424	67,951		

Source: Deputy directorate for rural land, INCODER, 'Implementación de la Política Integral de Tierras 2010–2013' (Implementation of the Comprehensive Policy on Land), Ministry of Agriculture and Rural Development, May 2013.

In those cases where a breach of the law was shown, administrative measures were applied in order to reverse concentration of ownership, including the following:

- request for **disciplinary investigations** to the Attorney General and the Superintendence of Notary and Registry Offices, in cases where it was detected that registrars of public instruments registered purchases of public land that failed to observe Article 72 of Act 160 of 1994, which prohibits the concentration of UAF parcels;
- the filing of lawsuits for **annulment of contracts of sale**: due to violation of the prohibition of concentration under Act 160 of 1994, 12 lawsuits have been filed to nullify presumably illicit contracts on properties previously adjudicated as *baldíos*;
- request to the Superintendence of Notary and Registry Offices for **administrative proceedings**, to obtain the revocation or cancellation of the registration of the purchases that led to the undue concentration of land, and to identify irregularities in the registry that might arise in the same region as the identified cases;
- notification, by INCODER, to Ministry departments of information necessary for **suspension or exclusion from aid programmes or rural development subsidies** of those companies or individuals who fail to comply with the regulations; this also applies to the properties that were involved in the illegal concentration of land ownership.

These proceedings set important precedents. Nevertheless, the government's position has been contradictory regarding recent cases that have been reported by the political opposition and made public. The former Minister for Agriculture, Francisco Estupiñán, said at first that companies which had accumulated large estates comprised of land formerly belonging to agrarian reform beneficiaries had engaged in acts „with criminal implications’. A few weeks later, the Minister rectified his position, stating that a solution to these cases would be sought to enable „co-existence among farmers and entrepreneurs’. Furthermore, he announced a bill to give „legal security’ to investments and „preserve and increase productive projects and major investments that have generated growth, welfare, employment, and even improved tax revenue in the departments’.¹¹² However, many see the new legislative proposal being drafted as an attempt to legalize land accumulation above the limit established by law.

5 CONCLUSIONS

Findings from Oxfam's research on large-scale land acquisitions in the Altillanura region of Colombia, and specifically in the Department of Vichada, show that Cargill acquired at least 52,576 hectares of land that had been previously allocated by the state to agrarian reform beneficiaries, and therefore was intended only for small-farm production. The company fragmented the purchase through 36 shell companies so that each individual transaction did not exceed the legal limit.

In this way, Cargill seems to have evaded the restriction imposed by Act 160 of 1994 on state land intended for agrarian reform use. This law was inspired by the constitutional mandate to facilitate access to land for agricultural workers. It established a restriction on size precisely to avoid concentration of land ownership and to preserve the social function of land. To deliver a legal assessment of the Cargill case is beyond the scope of this study. However, the evidence found supports the argument that, with this land purchase, the company violated the spirit of the law by accumulating an area at least 30 times greater than the permitted limit.

Concentration of land in the hands of companies whose business consists mainly of producing agricultural commodities using a large-scale industrial monoculture model, in this case for the production of corn and soy, has significant consequences for food security, the environment, rural development, and the consolidation of opportunities for the small farm economy. Statistics show that under trade liberalization, the area producing staple foods has steadily decreased while the area producing agricultural commodities using industrial monoculture has expanded in the country. As a result, there is greater dependence on food imports, and the food deficit has worsened since 2006.¹¹³

This competition for access to land and water harms the small farm sector, which produces a significant portion of the staple foods consumed domestically, reducing options for improving family farm income. Cargill's investment in land acquisitions in Colombia described in this report should be reviewed in light of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, which the company affirms it supports. These guidelines stipulate that any transaction respect legitimate tenure rights and other human rights and be carried out in a transparent manner, consistent with the objectives of social and economic growth and sustainable human development, focusing on small-scale farmers.¹¹⁴

Both public and private investment in the Altillanura region are undoubtedly necessary, and both play a key role in overcoming limitations on production and taking advantage of the region's potential. However, investment should be made in a responsible manner with regard to the specific Colombian context. This means, among other things, respecting existing rights and legislation on land use and basing investment on comprehensive assessments of social and environmental impacts at local and national levels.

In a country where land ownership is already extremely concentrated, the further concentration of vast tracts in areas destined for small-scale agriculture exacerbates inequality and social conflict. This is particularly worrying as the country struggles to resolve sustained and massive protests and civil society mobilizations in support of small farmers and to overcome an armed conflict that has devastated Colombia for more than half a century and is closely linked to land disputes. Such further concentration of land ownership has also taken place at the same time as efforts to make full reparations to victims of the conflict. These reparations include legal and material restitution of the land that victims abandoned due to violence, and which was usurped from them.

It is no coincidence that access to land is the first item on the agenda of the peace talks taking place in Havana between the Colombian government and the FARC. The first and only agreement reached in these talks aims to democratize access to land and strengthen the rural economy.¹¹⁵ However, while the government is willing to move towards a Comprehensive Rural Reform in these talks, the cases of land concentration that have been made public test the consistency of the government's position. Transferring land that was once distributed to small-scale farmers and agricultural workers into the hands of large national and international companies would constitute a complete turnaround in a redistributive process that has cost a great deal of effort to achieve.

Regardless of whether or not Cargill acted according to Colombian law, the facts show that the state failed in its duty to preserve the social and environmental function of land distributed through the agrarian reform process. The government must act immediately and with maximum transparency on this and other cases in order to clarify the legality of the transactions involved. Such action should be based on the spirit and purpose of the law, and not on interpretations tailored to suit particular interests. Furthermore, if it is demonstrated that the process of awarding titles to land was irregular, INCODER, the Superintendence of Notary and Registry Offices, and the judicial entities, among the other institutions responsible, should act to reverse the irregularities and return the land to its legitimate function.

Failure to adequately resolve these kinds of cases may derail the efforts made by the Colombian government to boost a real structural rural reform that will benefit both female and male small-scale farmers, compensate the victims of the conflict, and provide a basis for a peace process. It would send the message that, rather than commit itself to closing the inequality gap among the rural population and strengthening the small-farm economy, the government will protect powerful national or foreign agribusiness interests, even at the expense of the rural, indigenous, and Afro-descendant population. The resolution of the Cargill case and others like it is a test of the policy coherence of the Colombian government.

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ACRONYMS

CONPES	Consejo de Política Económica y Social (Council of Economic and Social Policy)
COP	Colombian Pesos
DNP	Departamento Nacional de Planeación (National Planning Department)
FAO	Food and Agriculture Organization of the United Nations
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo
IHL	International humanitarian law
IIRSA	Iniciativa de Integración Regional de Sur América (South American Initiative for Regional Integration)
INCODER	Instituto Colombiano de Desarrollo Rural (Colombian Institute for Rural Development)
INCORA	Instituto Colombiano de Reforma Agraria (Colombian Institute for Agrarian Reform)
UAF	Family Agricultural Unit
UNDP	United Nations Development Programme
USDA	United States Department of Agriculture

ANNEX

Table A1: Land areas, buyers, and prices of transactions made by the SAS shell companies formed by Cargill

Municipality	Name of parcel	Area in hectares	Initial beneficiary of the parcel	Date of adjudication	SAS intermediary	Value and date of the previous transaction ¹ (COP)	Cargill SAS purchasing shell company (present owner of parcel)	Value and date of the purchase by the Cargill shell company (COP)
Santa Rosalía	La Perla	1,300.8	Jairo Humberto Torres Arango	19/06/1992 Adjudication <i>Baldíos</i>	Puerto Bello SAS.	23/01/2012	La Perla Vichada	05/03/2012 2,861,760,000
Santa Rosalía	El Arbolito	1,056.343	Pedro José Pinzón Rodríguez	19/06/1992 Adjudication <i>Baldíos</i>	Grupo Nuevo Paraíso, Inversiones Gemsval, Inversiones Sarah y Luna 14	05/12/2012	El Arbolito	20/02/2012 2,112,686,800
Santa Rosalía	Mi Ranchito	489.0956	Evaristo González Morales	30/03/2011 Division	None	None	Mi Ranchito Vichada	978,191,200
Santa Rosalía	Los Almendros	489.0956	Evaristo González Morales	30/03/2011 Division	None	None	Los Almendros Vichada	978,191,200
Santa Rosalía	La Seguridad	489.0956	Evaristo González Morales	30/03/2011 Division	None	None	La Seguridad Vichada	978,191,200
Santa Rosalía	Las Gaviotas	489.0956	Evaristo González Morales	12/05/1992 Adjudication <i>Baldíos</i> Succession of Zolotlan property	None	None	Mi Ranchito Vichada	978,191,200
Santa Rosalía	Tayrona	489.0956	Evaristo González Morales	12/05/1992 Adjudication <i>Baldíos</i> Succession of Zolotlan property	None	None	Los Almendros Vichada	978,191,200
Santa Rosalía	La Kirpa	489.0956	Evaristo González Morales	12/05/1992 Adjudication <i>Baldíos</i> Succession of Zolotlan property	None	None	La Seguridad Vichada	978,191,200

¹ In some cases the data are available for a transaction prior to the purchase by the SAS intermediary, which subsequently sold to the Cargill Group SAS.

Santa Rosalía	Arizona	1,733.333	Clara Elisa Vega Ditterich	08/01/1993 Adjudication <i>Baldíos</i>	Godesia y Bangui	11/08/2010 Promedio: 10,000,000	Arizona 1	10/09/2010 3,293,333,270
Santa Rosalía	Terranova	952	José Humberto Vega Ditterich	08/01/1993 Adjudication <i>Baldíos</i>	Morus	11/08/2010 61,505,314	Terranova 1	09/09/2010 1,808,800,000
Santa Rosalía	La Estancia	2,993.390	Henry Barthel Luddeckens	03/07/1991 Adjudication <i>Baldíos</i>	Sociedad Agropecuaria Chiribico cedés to Agropecuaria Guacacias	15/06/2010 24,000,000	La Estancia 1	24/06/2010 1,496,695,400
Santa Rosalía	Cimarrón	2,025	Hilda Fuzs Santos	07/12/1994 Adjudication <i>Baldíos</i>	Inversiones Dinámica	08/06/2010 50,000,000	Cimarrón 1	01/07/2010 1,113,750,000
Santa Rosalía	La Esmeralda	2,967.482	Edelmita Ditterich De Vega	12/10/1990 Adjudication <i>Baldíos</i>	Astania y Espiria	23/08/2010	Don Pacifico 1	10/09/2010 5,638,215,800
Santa Rosalía	El Cariaco	1,226.924	Angélica Morales Salgado	17/03/1999 Adjudication <i>Baldíos</i>	Comercializadora BS & M	2009: 9,000,000 25/06/2010	El Cariaco	09/07/2010 644,135,205
Santa Rosalía	Los Alpes	3,000	Alonso, Alejandro, José Humberto and Clara Elisa Vega Ditterich, Carmen Lucia Vega De Llanes, Martha Vega León	12/10/1990 Adjudication <i>Baldíos</i>	Zinia, Salvia, y Avarua	2008: 50,000,000 11/08/2010	Los Alpes 2	09/09/2010 6,929,650,930
Santa Rosalía	El Boral A	1,136.876		17/03/2006 Division		In 2006 the beneficiary of the division sold at 18,300,000 and the purchaser sold in 2010 at 100,000,000	El Boral C	1,626,767,334
Cumaribo	El Samán	757.244	Álvaro Mosquera García	30/05/1991 Adjudication <i>Baldíos</i>	None	None	El Samán 1	1,703,999,000
Cumaribo	El Rastro	1,576.434	Victor Felix Mosquera García	30/05/1991 Adjudication <i>Baldíos</i>	None	None	El Rastro 1	3,546,977,000
Cumaribo	La Revancha	1,042.528	Carmen Sofía Marfoi Rodríguez	05/10/1993 Adjudication <i>Baldíos</i>	Cession to Entramar - one part has another owner, 322 ha.	2010: 60,000,000	La Anita 2	1,369,003,200
Cumaribo	(Caicara) Los Gansos	1,356.963	Raúl Vageon Mantilla	19/10/1993 Adjudication <i>Baldíos</i>	Agroexpeditions	23/03/2010 376,000,000	Los Gansos 1	14/02/2011 1,423,800,000
Cumaribo	Villa Rosenda	1,105.475	Ángel Octavio Suárez	04/05/1992 Adjudication	La Rozenda 2020	17/10/2012	La Rosenda Vichada	06/11/2012

			Salazar	<i>Baldíos</i>		20,000,000		4,090,260,830
La Primavera	Las Lagunas	1,335.2	Yolanda Torres Arango	19/06/1992 Adjudication <i>Baldíos</i>	Grupo Nuevo Paraiso, Inversiones Gemsval, Inversiones Sarah y Luna 14	05/12/2011	Las Lagunas Vichada	20/02/2012 2,670,400,000
La Primavera	El Boralito	1,406.8	Emilia Arango De Torres	19/06/1992 Adjudication <i>Baldíos</i>	Comercializadora Torres Marulanda	23/01/2012	El Boralito Vichada	05/03/2012 3,094,960,000
La Primavera	Aguazul	1,427.1	María Elena Torres De Llanos	19/06/1992 Adjudication <i>Baldíos</i>	InversionesTorreoriente	23/01/2012	Aguazul Vichada	05/03/2012 3,139,620,000
La Primavera	Pato Loco	1,292.6	Ricardo León Torres Arango	19/06/1992 Adjudication <i>Baldíos</i>	Grupo Nuevo Paraiso, Inversiones Gemsval, Inversiones Sarah y Luna 14	05/12/2011	Pato Loco Vichada	20/02/2012 2,585,200,000
La Primavera	Las Guacamayas	1,335.2	Edgar Jesús Torres Arango	19/06/1992 Adjudication <i>Baldíos</i>	Inversiones El Tuparro	23/01/2012	Las Guacamayas Vichada	05/03/2012 2,937,440,000
La Primavera	El Recreo	1,179.291	Aníbal Gasca	11/12/1996 Adjudication <i>Baldíos</i>	Recreo Vichada (dissolved in Cali) sold to Bastet Vichada	24/12/2010 80,000,000 2011: 79,807,975	El Recreo Primavera	18/08/2011 1,688,631,704
La Primavera	La Cristalina	814,5559		22/05/1997 Adjudication <i>Baldíos</i>		Average 5,000,000	La Cristalina 1	301,385,683
La Primavera	Bonanza	1,183.444		27/02/2008 Adjudication <i>Baldíos</i>			Bonanza 1	1,123,892,180
La Primavera	La Ponderosa	1,168.005		27/02/2008 Adjudication <i>Baldíos</i>			La Ponderosa 1	1,109,605,415
La Primavera	La Carpeta	905,9722		22/05/1997 Adjudication <i>Baldíos</i>		Average 30,000,000	La Carpeta 1	335,209,714
La Primavera	La Chiquita	1,103.694		08/06/1992 Adjudication <i>Baldíos</i>		Average 43,000,000	La Luci 1	1,103,694,400
La Primavera	Nazareth	3,000	José Bernardo Torres Restrepo	15/07/1994 Adjudication <i>Baldíos</i>	Emisiones e Inversar Valores	01/07/2010 60.000.000	Nazareth 1	14/02/2011 1,650,000,000
La Primavera	El Relato	2,590.7	Cupertino Godoy	10/12/1996 Adjudication	Inversiones Espinosa Builes y CIA cedes to	2008: beneficiary sold for 50,000 and	El Relato 1	10/09/2010

				<i>Baldíos</i>	Bonetes	Espinosa ceded 11/08/2010 for 55,558,939		2,461,165,000
La Primavera	Los Gualandayes	2,780.590		21/02/1995 Adjudication <i>Baldíos</i>			Los Gualandayes 1	1,028,818,596
La Primavera	Santa Cruz	630	Everardo Chamarravi Ponare and Meida Lucía Pelayo Sibó	26/12/1997 Adjudication <i>Baldíos</i>	Antila	In 2009 beneficiary sold for 20,000,000 - purchaser ceded 11/08/2010 for 21,000,000	Santa Cruz 1	09/09/2010 598,500,000
La Primavera	La Estrella	1,056	Isidro Oros Cardozo	03/12/1997 Adjudication <i>Baldíos</i>	La Estrella Vichada sold to Dendera Vichada	2010: 19,838,031 18/07/2011	La Estrella Primavera	684,600,881
La Primavera	Monterralo	1,064.550		18/09/1997 Adjudication <i>Baldíos</i>		2009: 50,000,000	Monterralo	18/08/2011 1,011,322,880
La Primavera	El Boral B	1,136.876		17/03/2006 Division		In 2009 the beneficiary of the division sold for 120,000,000, the purchaser El Boral Vichada ceded for 122,246,566 in 2010	El Boral B	1,533,718,260
TOTAL HECTARES		52,575.95				TOTAL RESOURCES IN THE TRANSACTIONS		COP 73,164,770,481 USD 38,507,773

Source: Superintendence of Notary and Registry Offices, Colombia.

NOTES

Except where otherwise indicated, all web sites were last consulted in September 2013.

- ¹ This data includes only transnational deals which have been 'concluded', based on the Land Matrix, an online database of land deals involving more than 200 hectares, where land has shifted from smallholder production, local community use, or ecosystem service provision to commercial use. The data is accurate as of 13 August 2013. However, the Land Matrix is constantly updated as new information becomes available. See: <http://landmatrix.org/>
- ² Geary (2012).
- ³ FAO (2012).
- ⁴ This has been documented by Oxfam and other organizations in other case studies. See, among others: Tandon and Wegerif (2013) and Zagema (2011).
- ⁵ For more information about the GROW campaign, see <http://www.oxfam.org/grow/what-is-grow>
- ⁶ See Humphreys *et al.* (2013) and Geary (2012).
- ⁷ Although it is not a new idea, the Santos government has given greater impetus to a goal set out earlier by former president Álvaro Uribe: to encourage foreign agricultural investment in the Eastern Plains.
- ⁸ In June 2011, Representative Wilson Arias reported that Black River Asset Management, through its newly formed subsidiary in Colombia, Colombia Agro SAS, had acquired six farms for USD 6.2m, covering a total of 25,000 hectares in the Altillanura for the expansion of soy production. <http://www.grain.org/attachments/2457/download> In January 2012, the newspaper El Tiempo reported that Cargill had invested USD 55m to acquire 90,000 hectares for grain production in the Department of Meta. <http://www.portafolio.co/economia/inversion-extranjera-pone-el-ojo-el-campo> and <http://nacla.org/blog/2012/4/10/sovereignty-sale-corporations-own-rights-40-colombian-land>
- ⁹ The majority of US companies that invest in developing countries do so through investment funds which provide information only to their own investors. Thus, most of the information relating investment funds to specific investors or land deals is limited to what is published in the media or made public by the country where the investment occurs. See Oxfam (2013a).
- ¹⁰ On 15 February 2013, the research team sent an interview request by email to the legal representative of Cargill Trading in Colombia, who responded by telephone that they do not give interviews as they prefer to maintain a low profile in the country.
- ¹¹ See *„Sarmiento Angulo despoja a campesinos y captura recursos del Estado, denunció en debate el congresista Wilson Arias“*; (*„Sarmiento Angulo disposessees farmers and captures state resources, denounced in debate by Congressman Wilson Arias“*) published by the Polo Democrático Alternativo party on 6 June 2013 in www.polodemocratico.net.
- ¹² See *„El negocio “baldío” de Poligrow“* in La Silla Vacía, 18 July 2013; Daniel Coronell, *„La ley es (casi) para todos“*, in Revista Semana 15 June 2013; María Jimena Duzán, *„Los nuevos llaneros“* in Revista Semana, June 2013.
- ¹³ For more information, see the article *„La Altillanura está de moda“* (The Altillanura is in fashion) in Revista Económica Supuestos, May 22, 2011, <http://revistasupuestos.uniandes.edu.co/?p=2055>.
- ¹⁴ NoticiasCaracol.com, 29 August 2013.
- ¹⁵ According to the National Statistics Department (DANE), income poverty data using traditional methodology for 2012 was 56.6 per cent in rural areas, although, by changing the methodology, this percentage dropped to 46.08 per cent for the same year. DANE - National Statistics Department - Press Release 18 April 2013.
- ¹⁶ Figures recently released by the *Centro Nacional de Memoria Histórica* (National Centre for Historical Memory) in its report *„¡Basta ya! Colombia: memorias de guerra y dignidad“*, (Enough! Colombia: memories of war and dignity), filed July 24, 2013. This was the result of six years of research covering the period between 1954 and 2012.
- ¹⁷ Figures of the Monitoring Committee of Public Policy on Forced Displacement (2011), cited in FAO (2011) p 156.
- ¹⁸ UNDP (2011)
- ¹⁹ Figure for 2010, in Ibanez, A. and Carlos Muñoz (2011).
- ²⁰ Instituto Geográfico Agustín Codazzi (2012).
- ²¹ For more information see UNDP (2011).

- ²² Instituto Geográfico Agustín Codazzi, cited in Lopez *et al.* (2010).
- ²³ Ministry of Agriculture and Rural Development of Colombia (2010), cited in FAO (2011).
- ²⁴ A commitment that has been strengthened between 2001 and 2009, with government incentives for production, tariffs, and trade zones, as well as mandates for consumption to stimulate demand through the National Biofuels Programme. More information about this programme in the Ministry of Environment and Energy of Colombia (2008).
- ²⁵ See, among others, 'Sovereignty for sale: corporate land grab in Colombia', by N. Richani in *Cuadernos Colombianos*, 10 April 2012, <http://nacla.org/blog/2012/4/10/sovereignty-sale-corporations-own-rights-40-colombian-land>
- ²⁶ Borras *et al.* (2011).
- ²⁷ See FAO (2011), p. 178. Agricultural development in the Brazilian *Cerrado* has been described as a 'miracle' by some media, having transformed thousands of hectares of savannah with severe soil limitations into large-scale intensive plantations which produce corn, soybeans, cotton, and other agricultural raw materials, due to high investment in technology to increase fertility, and adapted crop varieties. In ten years (between 1996 and 2006), this expansion led to an increase of the area cultivated by one-third, and a 365 per cent increase in the value of Brazil's agricultural production. See 'The Miracle of the Cerrado' in *The Economist*, 26 August 2010.
- ²⁸ These lands (*baldíos*) are defined in Article 675 of the Colombian Civil Code: 'Assets (*baldíos*) of the Union are all those lands situated within the territorial limits which have no other owner'. Furthermore, the Constitutional Court ruled that 'they [*baldíos*] are public assets of the Nation catalogued under the category of allocable fiscal assets, on the grounds that the nation conserves them to award them to those who meet all the requirements established by law'. The vocation of these lands [*baldíos*] is imposed by the concept of the 'social function of property', which 'in the case of rural *baldíos*, the said social function results in the obligation to exploit the land economically and destine it exclusively to agricultural activities, not to exploit it if it is designated for reserve or conservation of renewable natural resources, etc., in short, the social function is that property rights must be exercised in a manner that does not harm but rather benefits society, giving [land] destination or use in accordance with collective needs and respecting the rights of others'. See Constitutional Court ruling 1995 C 599.
- ²⁹ For more information on these restrictions see Barberi *et al.* (2013).
- ³⁰ See: Superintendencia of Notary and Registry Offices '*Normatividad Agraria y Registro*', Powerpoint presentation: <http://www.supernotariado.gov.co/supernotariado/images/smilies/Noticias2011/talleresregistrales2011/agrarioregistro.pdf>
- ³¹ See, for example, '*Republiquetas, no; zonas de reserva campesina, sí* (Small republics, no; small farm reserve areas, yes), *El Tiempo*, 23 March 2013, http://www.eltiempo.com/opinion/columnistas/juancamilorestrepo/ARTICULO-WEB-NEW_NOTA_INTERIOR-12709742.html
- ³² Article 62 of Act 1450 of 2011, the National Development Plan 2010-2014, was an attempt to change Article 83 of Act 160 of 1994, in order to exploit *baldíos* in Enterprise Development Zones through leasing contracts, long-term leases, concessions, or other means that do not involve the transfer of ownership. The Constitutional Court Judgment C 644 of 2012 declared this article unconstitutional, as this type of use of state land reduces the number of hectares available that can be granted to landless rural workers.
- ³³ In Resolution 041, INCORA, 1996, UAF sizes were determined for the different areas of Colombia, dividing the country into 'relatively homogeneous zones'.
- ³⁴ According to Article 66 of Act 160 of 1994: 'Since the enactment of this law and as a general rule, with the exceptions established by the Board of Directors, the land (*baldíos*) will be titled in Family Agriculture Units, as is defined in Chapter IX of this statute. INCORA will indicate for each case, region, or municipality, the maximum and minimum allocable extensions of basic production enterprises, and declare, in case of excess of the permitted area, that there is improper occupation of the lands of the Nation.'
- ³⁵ See USDA (2009).
- ³⁶ Point 69 of the Santos Government Plan says: 'No more officious limitations for farmers: we will allow agricultural producers and small-scale farmers to define the necessary areas for their crops, without the bureaucratic limitation of the Family Agriculture Unit (UAF), respecting economic characteristics of crops and the land.' See '*Buen gobierno para la prosperidad democrática. 110 iniciativas para lograrla*'. <http://redescolombia.files.wordpress.com/2010/08/plan-de-gobierno-juan-manuel-santos-09-34-50.pdf>.
- ³⁷ Agreement 148 of July 29, 2008, repealed by Agreement 149 of September 3, 2008, enacted during the administration of Alvaro Uribe Velez. See: http://www.incoder.gov.co/documentos/Normatividad/Acuerdos/Acuerdos%202008/acuerdo_2008_148.pdf and http://www.incoder.gov.co/documentos/Normatividad/Acuerdos/Acuerdos%202008/acuerdo_2008_149.pdf.

- 38 According to the court, „such measures are regressive, as they are conducive to the concentration of land ownership in a country with a scarcity of land, to the detriment of agricultural workers, who would no longer be owners, and imply a reversal in the state’s duty to promote progressive access to ownership for these workers, furthermore, they can reverse the efforts that have been made in land titling.’ See Constitutional Court ruling C 644 of 23 August 2012 declaring articles 60, 61, and 62 of Act 1450 of 2011 unenforceable.
- 39 „Orinoquia: el frenazo a la altillanura’ (Orinoco: the slowdown in the Altillanura), *Revista Semana*, September 29, 2012, <http://www.semana.com/economia/orinoquia-frenazo-altillanura/185533-3.aspx>.
- 40 Statements by the Minister of Agriculture in the debate in the Colombian Senate, August 13, 2013.
- 41 Departamento Nacional de Planeación (2011).
- 42 Office of the Ombudsman of Colombia (2012).
- 43 Departamento Nacional de Planeación (2012).
- 44 The UAF is calculated on the basis of the amount of property that can guarantee generation of at least two minimum salaries. For the Altillanura region, the size of the UAF was determined by the Board of INCORA through resolution 041 of 1996. Currently, the varying sizes of UAF in the Altillanura range from 36 hectares in Puerto López to 1,725 hectares in the north of Puerto Carreño. See Departamento Nacional de Planeación (2013).
- 45 Departamento Nacional de Planeación (2012).
- 46 Departamento Nacional de Planeación (2011).
- 47 USDA (2009).
- 48 Interview with the then Minister for Agriculture and Rural Development, Juan Camilo Restrepo, in *Revista Semana*, 6 November 2010, <http://www.semana.com/nacion/multimedia/la-altillanura-ultima-gran-frontera-agricola-ganadera-queda-pais/143922-3>
- 49 See USDA (2009).
- 50 According to rural development experts in Colombia consulted for this research, land speculation associated with this hoarding by livestock farmers causes the price per hectare in some regions to reach COP 200m pesos (more than USD 100,000), while the Altillanura land can be purchased for up to COP 1.3 million (less than USD 700). For more information on land hoarding by extensive cattle ranches, see Forero (2012).
- 51 Previously, the private sector had designed a plan for engagement in the Altillanura that took shape in 2000 with the „Peace Mission’ (*Mision-Paz*) and sought government support beginning in 2007. The orientation towards agro-export is clear in the words of President Santos, when referring to one of the goals of his government which is, „to better use our land, to take advantage of this rich soil we have to supply food for the world. We cannot forget that, according to the FAO, more than half of the land that could be converted to global agricultural production is located in only seven countries, and one of them is Colombia’: remarks of President Juan Manuel Santos at the Fourth Forum for the Colombian Altillanura, Government Information System, July 22, 2013.
- 52 FAO (2011).
- 53 Departamento Nacional de Planeación (2013).
- 54 La producción de maíz y soya podría competir en mercados internacionales’ (Production of corn and soy could compete in international markets), *Legiscomex.com*, 18 April 2011, <http://www.legiscomex.com/BancoConocimiento/R/resultados-maiz-soya-articulo/resultados-maiz-soya-articulo.asp?CodSeccion=>.
- 55 See, for example, the article in *Semana* (Colombian magazine) of November 6, 2010, „El “Cerrado” colombiano’.
- 56 Colombian Ministry of Agriculture and Rural Development, „*El renacimiento de la Orinoquia alta de Colombia: un mega proyecto para el Mundo*’ (The rebirth of the Colombian upper Orinoco: a mega project for the world), Powerpoint presentation, <http://es.scribd.com/doc/22487815/EL-RENACIMIENTO-DE-LA-ORINOQUIA-ALTA-DE-COLOMBIA>
- 57 FAO (2011), p. 169.
- 58 Adopted in Act 1450 of 2011, which states as one of its goals „the creation of conditions for productivity and economic competitiveness of the Altillanura, by: improving road infrastructure, communications and marketing; promotion of research; and strategies to ensure sustainable development’.
- 59 This document has not been issued publicly despite announcements by the administration of President Juan Manuel Santos.
- 60 For further information, see Departamento Nacional de Planeación (2011).

- ⁶¹ Of the 991,588 km² of the great Orinoco River basin, 65 per cent is in Venezuela and 35 per cent in Colombia. See Departamento Nacional de Planeación (2011). For more information see Alexander von Humboldt Biological Resources Research Institute (2009) 'Report on the state of biodiversity in Colombia from 2007 to 2008' available at http://www.humboldt.org.co/publicaciones/uploads/205_INFORME_ORINOQUIA_FINAL_2009_1.pdf.
- ⁶² Becerra *et al.* (2010), cited in FAO (2011).
- ⁶³ Humboldt Institute (2013).
- ⁶⁴ Office of the Ombudsman of Colombia (2012), p 22.
- ⁶⁵ See Act 1448 of 2011 and Decrees Acts 4633, 4634, and 4635, of 2011, Leyes de Víctimas (Laws on Victims).
- ⁶⁶ Among the illegal armed groups operating in the department of Vichada are: the 16th Front of the FARC, at times the FARC's 39th and 44th Fronts in the south of Cumaribo, and a dissident group of the *Autodefensas Unidas de Colombia* (AUC) known as 'Los Cuchillos' that has expanded and formed the *Ejército Revolucionario Popular Anticomunista* de Colombia (Popular Revolutionary Anti-Communist Army of Colombia - ERPAC), several fractions of which operate in Vichada. Office of the Ombudsman of Colombia (2012).
- ⁶⁷ See: Constitutional Court, Auto 005 of 2009 and 382 of 2010.
- ⁶⁸ Observatory of the Presidential Programme for Human Rights, Statistical Diagnosis of Vichada, <http://www.derechoshumanos.gov.co/Observatorio/DiagnosticoEstadisticoDepto/de/2003-2008/vichada.pdf>.
- ⁶⁹ Office of the Ombudsman of Colombia (2012).
- ⁷⁰ Ombudsman's delegate for Prevention of Risks of Violations of Human Rights and Humanitarian Law, Early Warning System - SAT, Tracking Note No. 014-12. Second reference at Risk Report No. 018, 8 October 2010.
- ⁷¹ *Ibid.*
- ⁷² Office of the Ombudsman of Colombia (2012), p 22.
- ⁷³ FAO (2012), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, 11 May 2012, Rome, article 3.2.
- ⁷⁴ As demonstrated by the words of President Santos: 'Few are aware that the Altillanura leads to Colombia's third outlet to the sea, through the Meta and Orinoco rivers to reach the Atlantic Ocean, and by this route we arrive at the markets of Central America and Europe,' remarks by President Juan Manuel Santos at the Fourth Forum on the Colombian Altillanura. Government Information System, July 22, 2013.
- ⁷⁵ This agreement was ratified by the President during his speech at the Fourth Forum of the Colombian Altillanura, held in Puerto Gaitán, Meta, on 2 and 3 December 2011. President's speech at: http://wsp.presidencia.gov.co/Prensa/2011/Diciembre/Paginas/20111202_11.aspx
- ⁷⁶ For details on these projects, see: <http://www.futuro-orinoquia.org/index.php/proyectos-convenio-investigacion-ciat-corpoica-madr/>
- ⁷⁷ See http://www.INCODER.gov.co/documentos/A%C3%91O_2013/GESTION_INCODER/Informes_Gestion/Consolidado_Hect%C3%A1reas_DIC_31_2012.xls
- ⁷⁸ The *Agro Ingreso Seguro* (Secure Agricultural Income) programme was an agricultural subsidy initiative created by the Alvaro Uribe government in 2007, ostensibly to help farmers compete in a scenario of free trade with the United States. However, it mainly benefited medium and large-scale producers, who sometimes took advantage of the fragmentation of their land to be eligible for subsidies in an irregular manner. When in 2010 the Attorney General's Office found irregularities in the implementation of the programme related to contracts without proper studies, irregularities in contracting methods, corruption, undue benefits to some large landowner families, lack of oversight of the programmes, loss of public funds, and an unjustified increase in resources allocated to the programme, it was cancelled and replaced by the *Desarrollo Rural con Equidad* (Rural Development with Equity) programme. See, among others, 'Agricultural Income Insurance: The Story of a Colombian countryside fraud', *El Espectador* <http://static.elespectador.com/especiales/2011/06/b827b0c8725d045e3274e6948355e22f/index.html>
- ⁷⁹ For more on the role of public policies and investment in agriculture in strengthening the small farm economy, see Vorley *et al.* (2012).
- ⁸⁰ 'America's largest private companies: Food'. *Forbes*, 17 November 2011. <http://www.forbes.com/sites/andreamurphy/2011/11/17/americas-largest-private-companies-food/>
- ⁸¹ According to *Forbes*, Cargill occupies first place in the list of the largest private companies based in the United States in 2012. See <http://www.forbes.com/largest-private-companies/list/>

- ⁸² Murphy *et al.* (2012).
- ⁸³ <http://www.cargill.com>
- ⁸⁴ See discussion of limitations and obstacles to transparency in private land investments in Humphreys *et al.* (2013), pages 14–15.
- ⁸⁵ See ‚Black River Asset Management chooses new overall investor relations global head’, Pensions & Investments, 3 June 2013; ‚Cargill unit Black River plans \$ 400 m Asian food fund’, Reuters.com, 18 April 2011; ‚Illinois Teachers targets up to \$ 1.4 billion in private equity’ Pensions & Investments, 24 June 2011.
- ⁸⁶ Act 1258 of December 2008 created the SAS entity for establishing companies, also called ‚company by contract’, to ease the formation of corporations and promote domestic and foreign investment in the context of globalization and free trade. One of the entity’s main features is that the liability of members or partners is limited to the amount of their contributions, leaving them expressly exempt from responsibilities for labour, tax, or those of any other nature. For more information, see <http://www.ccc.org.co/servicios/registros-publicos/mercantil/tramites/constituciones-reformas-y-nombramientos/sociedad-por-acciones-simplificada-sas>
- ⁸⁷ Throughout the report the exchange rate used is USD 1 = COP 1,900.
- ⁸⁸ The *Certificado de tradición y libertad* (Certificate of conveyance and clearance) is a Colombian public document that contains all the legal information on a property and on the current and previous ownership of it. Legal acts appear listed in chronological, consecutive order, and indicate the name of the owner or owners of the property, and all its history since it was registered at the Office of Public Records. The properties with a history of being *baldíos* carry a specific notation on the certificate. Any natural or legal person may request the issuance of the Certificate of conveyance and clearance of a property in the Office of Public Records. For more information see: Superintendence of Notary and Registry Offices https://www.supernotariado.gov.co/supernotariado/index.php?option=com_content&view=article&id=3319:expedicion-certificados-&catid=64:tramites
- ⁸⁹ In the Department of Vichada the UAF currently ranges between 1,294 and 1,725 hectares, depending on the municipality.
- ⁹⁰ See: communication from the President of Fedegán (Colombian Livestock Farmers’ Federation), Jose Felix Rivera Lafaurie, to the Leader of the Colombian Government Negotiation Team at the peace talks with the FARC, Humberto De La Calle Lombana, of June 26, 2013, <http://www.indepaz.org.co/wp-content/uploads/2013/06/CartaLLAFAURIE-DELACALLE-1.pdf>
- ⁹¹ This case was reported by Wilson Arias Castillo, Representative to the Lower Chamber of Colombia. For more information see: http://www.wilsonarias.com/index.php?option=com_content&view=article&id=1307:las-tierras-de-monica-semillas&catid=64:medios&Itemid=158
- ⁹² For further information on this resignation, see ‚Lo que está detrás de la renuncia por escándalo de baldíos’ (What’s behind the resignation over the *baldíos* scandal) in El Tiempo.com, 23 July 2013. See also the article that helped motivate the resignation: ‚In Colombia, an Alleged American Land Grab Sets Off a Political Storm’, in Time Magazine, July 10, 2013, or the interview with Congressman Wilson Arias, http://www.youtube.com/watch?v=hM6bu_xqrXY&feature=youtu.be
- ⁹³ It exceeds the scope of this study to find out who benefited from the high prices and why there were such large price differences in some cases.
- ⁹⁴ Written communication from Cargill to Oxfam on 5 September 2013.
- ⁹⁵ See, for example, the editorial in El Tiempo, July 20, 2013, ‚Seguridad jurídica en el campo’ (Legal security in rural Colombia).
- ⁹⁶ Directive 00001 of 10 August 2012, Ministry of Agriculture and Rural Development of the Republic of Colombia.
- ⁹⁷ In the opinion of legal experts consulted by Oxfam, August 2013.
- ⁹⁸ Objectives expressed in Article 1 of Act 160 of 1994. See previous section on legal limits to the acquisition of land in Colombia.
- ⁹⁹ For more information on public policy recommendations that favour family and small scale production, see Thorpe and Sahar (2013).
- ¹⁰⁰ See Vorley *et al.* (2012).
- ¹⁰¹ UNDP (2011)
- ¹⁰² See, among others, Lopez *et al.* (2010).
- ¹⁰³ According to the FAO, the growth of small-scale agriculture has a positive effect on the poorest people, up to two times greater than growth in other sectors. See FAO (2009) and Garay *et al.* (2013).

- ¹⁰⁴ López *et al.* (2010).
- ¹⁰⁵ Data from the Bank of the Republic of Colombia, cited in the statement on the purpose of the bill on foreign investment in agriculture, *„Por la cual se expiden disposiciones generales sobre inversión extranjera en el sector agropecuario, y se dictan otras disposiciones*, and in the article on the government's change of position, *„El viraje del gobierno por la inversión extranjera en el campo*, in La Silla Vacía, 12 de marzo de 2012.
- ¹⁰⁶ This is the fourth version of the bill, *„Whereby are issued regulations for the national lands (baldíos) and other provisions* (*Por la cual se expiden normas relacionadas con Baldíos Nacionales y se dictan otras disposiciones*) drafted in August 2013 by the government, which announced it would be presented to Congress in September 2013.
- ¹⁰⁷ Garay *et al.* (2013).
- ¹⁰⁸ See: *Consejo de Estado, Sala de Consulta y Servicio, ‘Límites a la adquisición de bienes baldíos: Unidad Agrícola Familiar*’ (Council of State document, *„Limits on the acquisition of baldíos*) 11001-03-000-2012-00063-00. M. P. Luis Fernando Álvarez, November 29, 2012.
- ¹⁰⁹ In her resignation letter, Jhenifer Mojica stated: “Due to the delicate nature of the administrative actions undertaken, to the interests that were affected, and to some emblematic cases taken up, a series of tense and harassing incidents have taken their toll on me in carrying out the job. At the same time, the national government has expressed an interest in reforming aspects of agrarian law that are the basis for what was the comprehensive policy on land carried out from the beginning of this government by the Ministry of Agriculture and INCODER. I have participated in my capacity in the implementation of those policies on land, and now that their reformulation is being discussed, I believe it is time for me to step aside so as not to be an obstacle to that change. I shared a serious professional and personal commitment with Minister Restrepo and Director Villegas, working in support of land, to correct the mistakes and shortcomings in INCODER and to implement Act 160 of 1994 and guarantee its respect in terms of addressing and resolving problems of family farmers, those who are displaced and in poverty who have never received a response from the state.” See *‘Por presiones renunció la subgerente de tierras rurales del INCODER*’ (Deputy Director for rural land of INCODER resigned due to pressure) in *Elespectador.com*, 11 September 2013.
- ¹¹⁰ The Roundtable for Agrarian Unity (La Mesa de Unidad Agraria, MUA), formed by over 20 rural grassroots organizations from across the country, developed a legislative proposal in 2012 for a general law on land, agrarian reform and comprehensive rural development that contains 255 articles.
- ¹¹¹ Ministry of Agriculture and Rural Development of Colombia (2013).
- ¹¹² See the articles: *„Si tengo que rectificar, lo hago: Ministro de Agricultura*’ (If I have to rectify, I will: Minister of Agriculture), *Portafolio*, 5 July 2013, and *„No hay que estigmatizar a los empresarios del campo*’ (Do not stigmatize rural entrepreneurs), *Revista Semana*, 6 July 2013.
- ¹¹³ With regard to Colombia's agricultural and agribusiness sector imports: vegetable products (flowers, vegetables, fruits, coffee, cereals, among others) account for 74.16 per cent of imports; industrial food products (prepared items including meat, fish, sugar, cocoa, cereal, vegetables, drinks, tobacco, and so forth) account for 20.24 per cent; fats and oils for 3.76 per cent; live animals and animal products for 1.09 per cent; and cotton for 0.75 per cent. López *et al.* (2010).
- ¹¹⁴ According to these guidelines, *„All forms of transactions in tenure rights as a result of investments in land, fisheries, and forests should be done transparently in line with relevant national and sectoral policies and be consistent with the objectives of social and economic growth and sustainable human development focusing on smallholders.*’ *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security*, May 11, 2012, paragraph 12.3.
- ¹¹⁵ The first item on the Agenda of the General Agreement for the Termination of the Conflict and Construction of a Stable and Lasting Peace entitled: *„Hacia un nuevo campo colombiano: reforma rural integral*’ (Towards a new Colombian countryside: comprehensive rural reform). See the first joint report on the talks between the Government of the Republic of Colombia and the Revolutionary Armed Forces of Colombia - People's Army. Havana, 21 June 2013.

This report is based on research carried out in Colombia for Oxfam in 2013. The research team involved several people, including some in the field. In addition, Colombian experts in rural development and in legal issues were consulted for the report. Their names are not listed for security reasons, in light of the recent threats received by people in Colombia who have been working to address the issue of *baldíos* and the concentration of land ownership.

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