



# ABColumbia LAND BRIEFING

Parliamentary Delegation 2018

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## Overview

### 1.1 Conflict

Colombia is undergoing one of the most decisive moments in its history. The Peace Accord reached on 24 November 2016 with the Revolutionary Armed Forces of Colombia-People's Army (FARC) represents a solid step toward putting an end to the longest armed conflict in the western hemisphere. However, this is the first, albeit major, step to disarm all the illegal armed groups. Colombia's conflict with the second largest guerrilla group, the National Liberation Army (ELN), continues. Peace Talks were initiated with the ELN under President Juan Manuel Santos. The first rounds were held in Quito, Ecuador; then the talks were moved to Cuba. Despite significant efforts to establish a bi-lateral ceasefire before Santos left office, this did not prove possible. There are concerns as to whether these talks will progress under the new administration.

On 7 August 2018, Ivan Duque assumed the presidency of Colombia; he is widely seen as wanting to drive a tougher deal with the ELN. Analysts consider that Duque is most likely to impose conditions on the talks that the ELN would be unwilling to accept (see [Appendix 1](#) for more information).

The other major illegal groups that perpetrate violence, mainly against the civilian population, are the **neo-paramilitaries**. The AUC paramilitary structures officially demobilised in 2005, however, the middle ranking commanders did not; they form the basis of the groups today. They go by a variety of names such as *Autodefensas Gaitanistas de Colombia* (the Gaitanistas Self-defence forces of Colombia) and *Aguilas Negras* (Black Eagles). The latter, *Aguilas Negras*, is widely reported to be different to the other neo-paramilitary groups in that it is in fact a clandestine network inside the security and intelligence services made up of individual security force personnel and intelligence officers. The *Aguilas Negras* are most active in the apparent defence of interests of former paramilitary commanders and their civilian, military and political allies.

[For information on past clandestine operations by the intelligence services against HRDs p 13-15](#)

### 1.2 Human Rights Defenders

Human rights defenders have been the target of threats, attacks and killings and these have escalated uncontrollably over recent years.

When Santos entered office in 2010, that year [32 defenders were killed](#), which was the worst record globally for the killing of HRDs.

Despite the signing of a Peace Accord in 2016

- **121 HRDs were killed in Colombia in 2017** according to the UN Office of the High Commissioner for Human Rights.
- **Colombian Vice President Óscar Naranjo**, speaking to the UN Security Council on 17 April 2017, highlighted the contradiction that, although the country has achieved the lowest murder rate in 42 years, there has been an increase in the number of rural leaders killed.
- To elaborate on the dimension of killings of HRDs, according to Frontline Defenders Global Report, **every third HRD killed in the world in 2017 was Colombian**.

**ABColumbia is calling for Colombia to invite the UN Special Rapporteur on the Situation of Human Rights Defenders to Colombia. It should be noted that whilst Colombia has an open invitation to UN Special Rapporteurs, it has failed to invite even one UN Rapporteur in the last eight years, despite many requests from different UN Rapporteurs.**

### 1.3 Economy

Pushed by booming oil revenues, Colombia's GDP grew rapidly, until the bubble burst in 2014. The global collapse of commodity prices deflated the price of the Colombian peso and the GDP contracted. In the later part of 2014, the bottom fell out of the oil market; at that time, oil accounted for [just over 50% of Colombian exports](#). To absorb this shock, Colombia, supported by the IMF, undertook an Exchange rate flotation, which moved the peso from 1,800 to 3,000 per USD 1.00. So as oil revenue fell, the Colombian currency depreciated, managing the worst of the shock.

However, whilst Colombia has managed shocks to its economy, it has not addressed the issue of inequality. The [2018 World Inequality Report](#) says that Colombia's extreme inequality is "stubbornly high." According to the World Bank, Colombia's top 10% earners received 40% of the wealth that was generated in 2017.

The country's 2017 GINI coefficient of 50.8 remained the second highest in the Americas. Only Brazil is more unequal. [In Colombia a poor family needs 11 generations to reach the average family income according to the OECD](#).

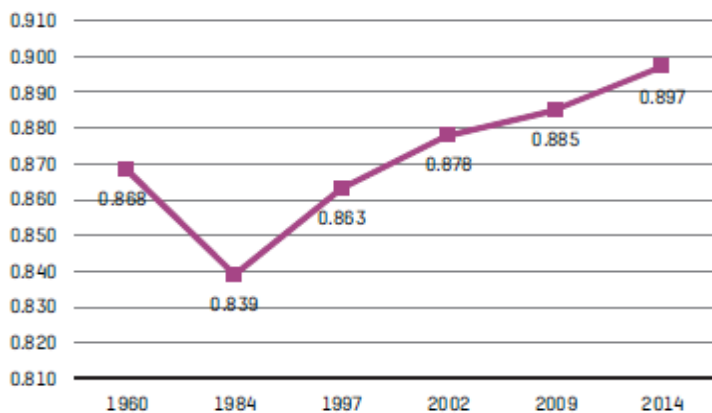
### 1.4 Land and Distribution

[Section 1.4 is a summary of information from: A Snapshot of Inequality: What the Latest Agricultural Census Reveals About Land Distribution in Colombia, Oxfam, May 2017](#) (click on link for full report)

**Social and economic inequality and disputes over land are root causes of the conflict.** Colombia is the most unequal country in the region **for land distribution**. Despite already being extremely concentrated, the internal conflict has served only to worsen this situation.

Economic and geostrategic interests are behind forced displacement and land expropriation in Colombia. This left, according to the UNHCR Global Report 2017, over 7.7 million people forcibly displaced and dispossessed of around 8 million hectares of land - an area the size of Scotland. In the last 20 years, land concentration has accelerated, **leaving 80% of productive land controlled by 1% of the population with the remaining 99% sharing 20% of productive land**.

#### CHANGE IN GINI COEFFICIENT FOR RURAL PROPERTY DISTRIBUTION (1960 TO 2014)



According to the Gini coefficient,<sup>i</sup> which is used in figure 1, land distribution improved between 1960 and 1984, but since then **inequality in land distribution grew unchecked and Colombia is now the worst country in Latin America in terms of land distribution**

[According to a recent Oxfam Study: one million small farmer households have less land than a cow in Colombia](#)

Figure 1: Source IGAC 2012

## 1.5 Victims and Land Restitution Law 1448 (Law 1448)

Inequality in access to land is closely linked to rural poverty as both a cause and a consequence of the internal armed conflict it is no accident that the [Victims and Land Restitution Law 1448](#) (Law1448) was passed in 2011 ahead of the signing of any Peace Agreement. This law provides for 10 years of reparation and land restitution, due to finish in 2021.

There are major concerns about the slowness of this process in returning land to the legitimate owners. Since 2011 there have been [114,148 applications](#) for land restitution; of these, only **7,719** (as of 5 July 2018) have received a judicial ruling; **that is less than 7% in seven years, with only three years remaining for the other 93%.**<sup>ii</sup>

The danger in terms of the rights of the victims to land restitution is

- that the time runs out and their land has not been restored;
- many new policies on development and use of land are in direct competition with the rights of victims to land restitution.

Doubtless one of the greatest challenges is to re-establish the rights of those dispossessed of their land, most of whom are indigenous peoples, Afro-Colombians and small-scale farmers (*campesinos*).

## 1.6 Chapter One of the [Peace Accord](#): Comprehensive Rural Reform

The agreements in the Comprehensive Rural Reform (RRI, to give it its Spanish acronym) are aimed at:

- improving the situation of rural exclusion, by implementing policies that will address poverty and inequality; and
- access to and redistribution of land with an emphasis on development for communities most affected by the armed conflict.
- The whole chapter also has a gender perspective prioritising the rights of women heads of household.

Agreements on land access and distribution were made in the RRI Chapter of the Peace Accord. This Chapter takes a step beyond that of Law1448 and land restitution, to apply itself to one of the root causes of the conflict: that of a more equitable distribution of land. As a result, the Peace Accord envisages 3 million hectares will be redistributed to increasing access to land and 7 million will be part of its programme of registration for the legal title. Amounting to 10 million hectares of land over the next 12 years.

[To achieve this, it has established four mechanisms:](#)

- creation of a “Land Fund” (*Fondo de Tierras*) with three million hectares of land;
- an extensive programme to legalise seven million hectares of small and medium rural landholdings;
- creation of a special agricultural jurisdiction in the judicial system that can offer effective justice by ruling on land restitution cases;
- creation and updating of a land registry in order to have precise, current information on land tenure.

The three million hectares of land that will be placed in the land fund for distribution will come from: the recovery of illegally acquired and occupied land that has been appropriated; unused land that

does not have a social or ecological use, as well as, lands donated or acquired by the State specifically for the land fund.

The Peace Accord establishes 170 Priority areas known as PDETs these will have specific programmes to address issues of development for the regions most impacted by the conflict. Notably, the areas the ABColombia Delegation of Parliamentarians visited in 2018 in Vichada and El Porvenir do not have any designated PDET areas, although they should qualify under the criteria set they have not been prioritised.

## 1.7 Reintegration of the FARC and Productive Projects

In addition to the above, the State will, where necessary, purchase land for cooperative farming projects for FARC members that are reintegrating collectively. On 4 May 2018, President Santos issued a decree enabling access to landownership for former combatants organized in cooperatives. A total of 51 cooperatives were created, with 3,070 members.

FARC members continue to harbour misgivings about whether they will be reintegrated into society in keeping with the promise of the peace agreement. In his report, the [UN Secretary-General states](#) that “the country’s new authorities have the critical responsibility to restore a sense of confidence about the future among the rank and file, the mid-level commanders and the leadership of the former guerrilla group”.

## 2.0 Public Policies in Competition for land

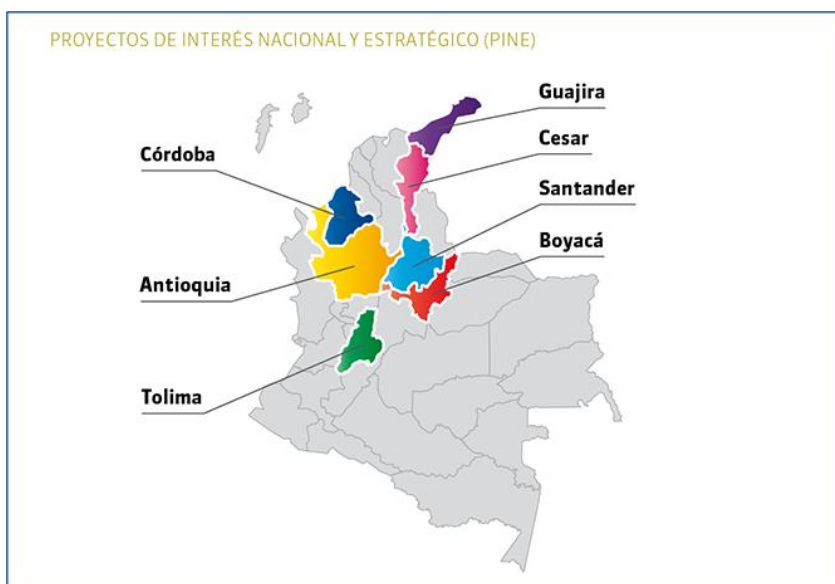
Alongside these initiatives aimed at the victims of the conflict and the reintegration of FARC combatants there are public policies on land and land usage. However, the agreements made in the Peace Accord and Law 1448 are in competition for land with new public policies for land usage that are being/ or have been processed by Congress. This has served to heighten distrust of the Santos Government on issues to do with land. Victims and victims’ organisations are very concerned that having achieved a Peace Accord and Law 1448 which promise to address issues of equality and the rights of victims, that these will never be fully implemented and that those who will lose out will be the communities most impacted by the conflict, namely, indigenous, afro descendants and peasant farmers.

On the one side there are a variety of laws that were created related to the peace process in Colombia, which include:

- **Law 1448** that sets out to return land to those who have been forcibly displaced and dispossessed of their land. Here people were dispossessed of 8 to 10 million hectares of land.
- **Peace Accord** envisages 10 million hectares of land over the next 12 years to address the issues of land access.
- **The programme of legal registration of land titles** of campesinos and collectively owned territories of Indigenous and afro-descendant peoples, which was agreed in the Peace Accord. Land registries in Colombia remain notoriously out of date and many applications for legal recognition of land rights of the poorest have been held up in the system for over 10 years. In part due to poor administration and in part due to corruption.

On the other hand, there have been changes to the law which create Public Policy that appears to contradict these agreements and laws related to the Peace Process.

- **New Ley de Tierras** (Land Law) that was introduced by Santos and is progressing through Congress. This Law sets out to reform Law 160 and create new agricultural zones. Law 160 is the law which allows for *Baldíos* - unoccupied State land - to be adjudicated to land-poor farmers and landless agricultural workers, in order to improve their income and quality of life. The [draft Land Law has been criticized by Colombian NGOs](#) who say that it will exacerbate the concentration of land, enable legalisation of land appropriated through irregular means (especially *Baldíos*), allocate *baldíos* to large mining and energy projects. Such provisions contradict the Peace Accord and would further deepen the existing inequality and exclusion in rural areas, which has been a root cause of the violence.
- **ZIDRES:** The Areas of Interest for Rural, Economic and Social Development (ZIDRES) were created by Law 1776 on 29 January 2016 to promote competitive economic development in rural farming areas, there are over seven million hectares of land so far identified as suitable for ZIDRES projects. These are large areas of rural land that will be given over to agribusinesses. They are designated as ‘public interest’ projects and will be undertaken by national and multinational companies, individuals or associations. If there are smaller farmers already farming in these areas, they will have to become associates of these agroindustry project or may be obliged to sell their land to the project (with few exemptions). ZIDRES are classified as “public interest projects”.
- **Project of National and Strategic Interest (PINE) and Strategic mining area (SMA)**  
**SMAs were a forerunner to PINES.** They are large mineral rich areas parcelled up for auction to the largest multinational bidder. However, they circumvent free, prior and informed consent since it is only after the contract has been won that this is carried out. It is therefore unclear how these constitutional rights could be exercised fully by Indigenous and Afro-descendant communities. They were contested as unconstitutional and subsequently suspended by Colombia’s Council of State (Colombia’s highest administrative court) until the case could be heard by the Constitutional Court. They were then over taken by PINES.
- **Projects of National and Strategic Interest (PINES)** effectively revives the **Strategic mining areas** model, broadening it to include infrastructure and energy projects. Meaning that these mega-projects are likely to have a major impact on the constitutional rights of Indigenous and Afro-descendant Peoples to free, prior and informed consent.



PINES are ‘public interest’ projects created by Article 50 of Law 1753 of 2015. These are for the development of industrial projects including infrastructure mining and energy projects. There are 53 PINES: 29 major infrastructure projects, 15 mining and nine energy.

Those contesting PINES point out that these projects violate the victim’s fundamental right to reparation and restrict disproportionately their right to land restitution. Law 1753 had established that physical

restitution of lands could not take place in PINES areas; instead, victims of forced displacement would only receive compensation.

The only additional right that victims had been granted under Law 1448, was that rather than their land being valued by the state and compensation paid, victims could go to court to determine the terms of expropriation.

## 2.1 Zones of Interest for Economic and Social Development in Rural Areas (ZIDRES) in more detail

The Colombian Government says that the ZIDRES projects will be developed in areas with the highest poverty indicators, a low population density, which are a long way from urban centres, and on land where it is costly to cultivate and where there is little infrastructure. Maps have been publicised

### Resguardos and Ancestral Territory

NB: there is a difference between *Resguardos* and Ancestral Territory. **Ancestral territory** is often – though not exclusively – about expansion of the *Resguardo* to incorporate what was their ancestral territory and which can include their sacred areas.

indicating where these projects are likely to be in the Orinoquía region (as well as the departments of Córdoba, Antioquia, Bolívar, Sucre and Magdalena). In the Orinoquía region there are many groups of Indigenous Peoples who still do not have their *Resguardos* (Indigenous Reserves) and ancestral territories legally recognised. The lack of legal recognition means that they are very vulnerable to losing their rights to that land, if ZIDRES projects are approved on that land, before there is formal recognition of their land title.

**The identification of the ZIDRES falls to the competence of the Unit of Planning of Rural Lands, Adaptation of Lands and Agricultural Uses (UPRA); their delimitation will be the responsibility of the head of the National Council of Economic and Social Policy (CONPES) and its approval will be done by the national Government by way of issuing decrees.**

The Colombian government introduced ZIDRES arguing that only large companies are capable of developing the productive potential of certain areas of the country. This is also the stance of President Ivan Duque; in his inauguration speech and subsequently in other speeches he mainly focussed on the development of agribusiness.

However, if support is given to the small-farm sector in the areas of food production, it is as, if not more, efficient than agribusiness single-crop plantations. It plays a key role in guaranteeing national food security, employment and poverty reduction.<sup>iii</sup> Small-scale farmers represent over 80 per cent of agricultural producers. They provide between 38 and 64 per cent of the staple foods consumed nationally.<sup>iv</sup> This is in spite of State support and agricultural incentives being disproportionately awarded to large-scale commercial agriculture.<sup>v</sup>

This new ZIDRES model proposes to implement regional economic development that is disproportionately favourable to agribusiness. The disparity in the power relationship between MNC or national companies and the small-scale farmers will result in a drastic reduction of autonomy for the small producers. They grow the mono-cultivation requested by the company and will be permitted only 5 hectares of land for food cultivation. The produce of the small farmer on behalf of the MNC will be purchased at a set price by the company and marketed by them. With a few exceptions the small



farmers will have to either become associates of the agroindustry project or be obliged to sell their land to the project. The government would then provide funding to the company to provide credit, technical training, seeds and access to market for the small farmers. Notably, the small farmer cannot get these directly from the government if they are in a ZIDRES area.

### Áreas de referencia como insumo para la identificación de las Zidres

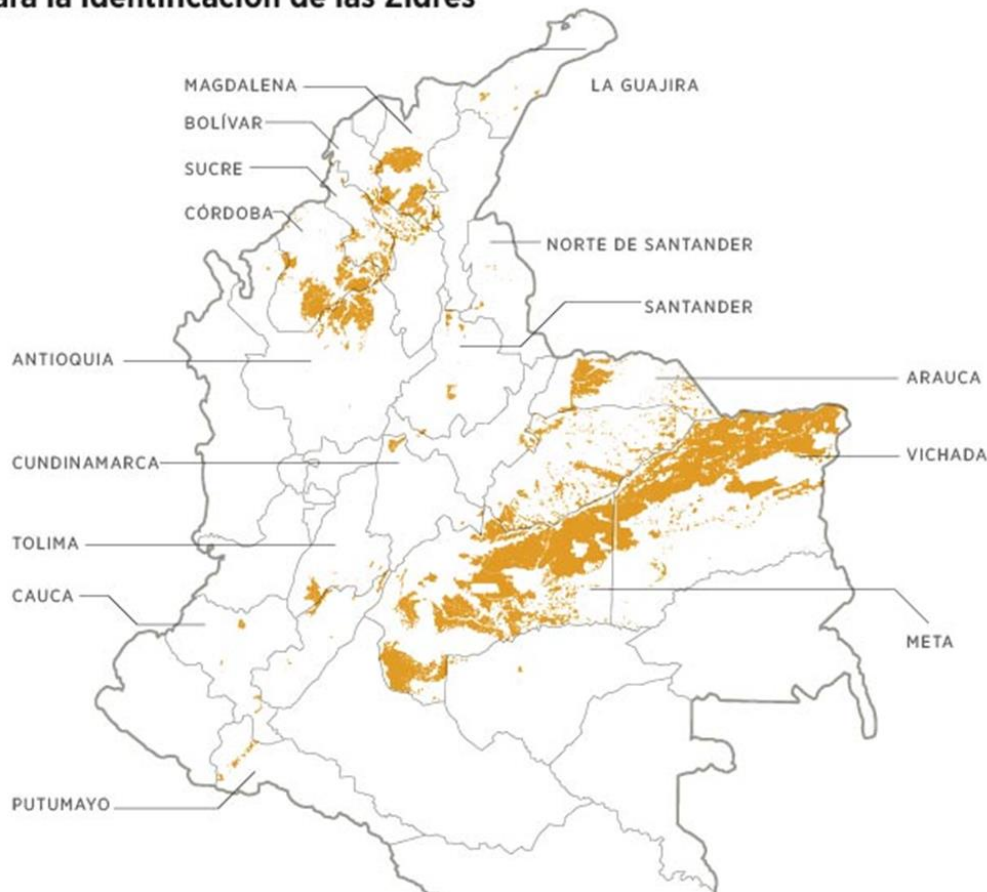


Figure 2 Shaded areas are areas identified as possible ZIDRES

7.278.964 ha (6,4%)

Fuente: UPRA (2018)

## 2.2 Access to land for Peasant Farmers

The principal instrument for 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.

Law 160 of 1994 created the possibility of increasing access to land for resource-poor farmers by adjudicating to them unoccupied State-owned land i.e. *Baldíos*. This was designed to help address rural poverty and to improve living conditions of poorest farmers.

Baldíos land remains the property of the State even if it is occupied. If it is occupied by a subject of agrarian reform i.e. a peasant farmer without land, the State can adjudicate the land to the peasant farmer. If the person occupying it is someone different, for example an entrepreneur, the State must recover the land. Only the state is authorised to allocate the land rights on *baldíos* (vacant lots). The recent introduction in 2016 of ZIDRES has introduced exceptions to this practice.

The amount of *Baldío* land adjudicated to an individual is restricted to the UAF. Their right to sell this land is also restricted to maintain its original purpose. Therefore, plots of land could only be sold to peasant farmers who had a right to land under the agrarian laws. It cannot be accumulated beyond the extent of the UAF. Despite these restrictions, some companies were able to secure possession of multiple plots of land that had been adjudicated under agrarian reform laws after the owners had been forcibly displaced, concentrating land in the hands of large companies which was intended for small-scale agricultural production. ZIDRES and the New Land Law create a possibility for these companies to **legalise** the *Baldíos* that they accumulated during the conflict, even though these were only ever intended for the poorest of peasant farmers.

In his speeches, [President Duque](#) has focussed on agribusiness using this model as a main pillar of his development policies, arguing that this will enable large-scale production of biofuels. The Cosmovision of indigenous and afro-descendant communities in respect to development is very different to that of agribusiness. These communities' value the rights given to them under the Colombian Constitution in terms of autonomy and the right to decide on what form of development they want on their land. They, together with the peasant farmer communities who also have a cultural tradition, by and large are opposed to this model of agroindustry, preferring instead to have autonomy over what they produce.

Figure 1: Map of the natural regions of Colombia



Source: Instituto Geográfico Agustín Codazzi.

**KEY**

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

If support is given to the small-farm sector, it has been shown that in terms of food production it is as, if not more, efficient as agribusiness.<sup>vi</sup> It plays a key role in guaranteeing national food security, employment and poverty reduction.<sup>vii</sup> Small-scale farmers represent over 80 per cent of agricultural producers in Colombia. They provide between 38 and 64 per cent of the staple foods consumed nationally.<sup>viii</sup> This is in spite of State support and agricultural incentives being disproportionately awarded to large-scale commercial agriculture.<sup>ix</sup> Research in other countries has also shown that

micro and small enterprises can deliver growth that increases well-being, is more equitable and more resilient.<sup>x</sup> However, such businesses require public policies and government support that is specific to their sector; policies that benefit big businesses do not automatically help small-scale enterprises.<sup>xi</sup>

## Appendix 1

Duque is proposing changes, adjustments, or modifications which make those processes no longer viable according to the ELN

- a dialogue with the ELN is only possible when the organisation ceases all “criminal activities”.
- That the ELN all gather together in one area of the country whilst the dialogues are taking place.
- ELN leaders guilty of crimes to face meaningful punishment not to have a Transitional Justice System with conditions similar to that of the FARC
- He wants a tough demobilisation process, with the rebels required to hand in weapons under international supervision.

## End notes

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<sup>i</sup> this is the most widely used indicator for **measuring inequality in land distribution**

<sup>ii</sup> According to the Unidad de Tierras -URT (as of 5 July 2018): Since Law 1448 came into force, there have been 7,719 Court sentences, which have led to the restitution of 302,792 hectares of land to approximately 39,011 victims (10,629 families); the URT has presented 46 claims related to ethnic territories; 23,132 decisions on applications for land restitution are currently pending in front of courts.

<sup>iii</sup> Oxfam Report Divide and Purchase, which documents how Cargill acquired its land in Colombia

<sup>iv</sup> Oxfam report on rural women

<sup>v</sup> Oxfam Report Divide and Purchase, p22

<sup>vi</sup> Oxfam Report Divide and Purchase, which documents how Cargill acquired its land in Colombia

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<sup>viii</sup> Oxfam report on rural women

<sup>ix</sup> Oxfam Report Divide and Purchase, p22

<sup>x</sup> See CAFOD (2011) Thinking Small, CAFOD (2013) Thinking Small 2: understanding the needs and priorities of small-scale farmers and business owners.

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