

Context, figures and trends in governance of land tenure in Colombia

LANDex- Pilot experience

Main researcher: Johana Herrera Arango

Co-researchers: Adriana Beltrán, Pablo Ramos, Mauricio González, Lina Abella, Ana María Sierra, María José Guerra, Andrea León y Juan Manuel Bustillos.

Key messages

- Colombia is located in the northwest corner of South America. It is the twenty-ninth most populated country in the world, with 45.5 million inhabitants.
- The country has had a sustained growth for more than 10 years [Central Bank, 2018 (Banco de la República)]. Although this has allowed reducing poverty according to the National Administrative Department of Statistics 2018 (DANE for its acronym in Spanish) it continues being a country with unequal income distribution and an extractive development.
- In Colombia there are 114 millions of hectares distributed in 45 million productive area of private tenure (39,47%), 5.5 million belong to community land of blacks / afrodescendants (4.82%) and 31.6 million to indigenous communities (27.7%), 15 million are in Natural National Parks (13.15%) and 16.9 million do not have any description about the property (14.82%) according to the Super Intendence of Notaries and Registration, 2015; and The National Center for Historical Memory, 2018 (CNMH for its acronym in Spanish).
- Recent studies indicate that 0.44% of the Colombian population owns 46% of the productive land, which means that more than half of the total land is in the hands of 1% of the Colombian population (OXFAM 2017).
- There is a high level of informality in land tenure, approximately 60% of the rural population do not have property title, in the case of rural women only 25% have ownership.
- The peace agreement signed on November 24th 2016 between the Revolutionary Armed Forces of Colombia-Army of the People (FARC-EP for its acronym in Spanish) and the Colombian State proposes an agrarian and rural transformation of huge relevance to process the social conflicts linked to the land tenure. However, the current moment is one of regression and little knowledge and implementation of the peace agreement by the current government.
- During the execution phase of the Dashboard pilot, experts with high level profiles in 4 sectors: the academy, the State, the civil society and the private sector were contacted.
- In a general balance, more than 90% of the indicators are adequate to monitor the governance of land in Colombia.

1. Key Data Context

Colombia is located in the northwest corner of South America. It is the twenty-ninth most populated country in the world, with 45.5 million inhabitants DANE 2019, (The National Administrative Department of Statistics). The land extension of Colombia is 1'141.747 km² continental and 928.660 marine territory in the Atlantic and Pacific Oceans (Colombian Commission of the Ocean -CCO, 2017). The geography of the country is marked by the presence of the cordillera of the Andes, which divides it into mountainous areas and valleys. The location of the country in the tropical zone together with the variety of mountainous terrains has resulted in ecological and cultural diversity. According to the Alexander Von Humboldt Research Institute (2017) Colombia is the second most biodiverse country in the world, with 91 types of general ecosystems, of which 70 correspond to natural ecosystems and 21 to transformed ecosystems according to the Institute of Hydrology, Meteorology and Environmental Studies (IDEAM, et al., 2017). In addition to this ecosystem diversity, cultural diversity is made up of 106 indigenous peoples according to the National Commission of Indigenous territories (CNTI, 2019) Afro-Colombians and the Rrom (gypsies) population (DANE, 2007).

The economy in Colombia is on the rise, from a simple perspective. According to the data of the Bank of the Republic, the Gross Domestic Product (GDP) of the country has had a sustained growth for more than 10 years (Banco de la República, 2018). Although this has allowed the reduction of poverty (DANE, 2018), the country still has an unequal distribution of income (Acosta Navarro, Azuero Zúñiga, Concha Llorente, 2017). From a multivariable perspective, this phenomenon of sustained growth has occurred from the reprimarization of the economy (Ávila Forero and Jaramillo Arenas, 2016), in accordance with a model of extractivist development in which mining and agro-industry are constituted as main economic activities to obtain export products (Ávila Forero and Jaramillo Arenas, 2015).

Colombia is a country with a constituted presidential regime, according to article 1 of the Political Constitution of 1991 as "a social State under the rule of law, organized as a unitary, decentralized Republic, with autonomy of its territorial entities, democratic, participatory and pluralist". The government in Colombia is divided into 3 branches of government, which are the executive, legislative and judicial, and state agencies for control, electoral control and others (Administrative Department of Public Administration, 2006). Within the executive branch is the president, the governorships and the mayorships; in the legislative branch is the Congress, composed in turn by the House of Representatives and the Senate of the Republic; finally, in the judicial branch is everything related to justice (Administrative Department of Public Function, 2006).

The Land Tenure and the Territories

In Colombia there are 114 millions of hectares distributed in 45 million productive area of private tenure (39,47%), 5.5 million belong to community land of blacks / afro-descendants (4.82%) and 31.6 million to indigenous communities (27.7%), 15 million are in Natural National Parks (13.15%) and 16.9 million do not have any description about the property (14.82%) according to the Super Intendence of Notaries and Registration, 2015; and The National Center for Historical Memory, 2018 (CNMH for its acronym in Spanish). In the collective territories, the land has a specific vocation: 56.7% corresponds to natural forests; 38.6% is from areas of agricultural use; 2.2% is for non-agricultural use and 2.5% is for other types of uses (sacred spaces, spaces of cultural importance, among others). Of the lands designated for agricultural use, 80% are pasture and stubble cover and only 19.7% of this land is used for agricultural activities (DANE, 2016), so it can be inferred that the land for agricultural use in its majority is destined to the herding of animals.

The problem of land tenure in Colombia has colonial origins. A high concentration of property that has become more acute in recent history, the problem of unequal distribution of land, and the lack of guarantees to access and usufruct it, has been one of the structural causes of the armed conflict that the country has experienced during the last 70 years. Since the creation of the Political Constitution of 1991, the right of agrarian workers to access land ownership and territorial rights of ethnic communities in traditional occupation spaces has been recognized (National Center for Historical Memory, 2018). With the intensification of the conflict between guerrilla and paramilitary groups, the land problem worsened, leaving 8,771,850 victims, among these 7,457,949 victims of displacement (Unique Victims Registry, 2019)¹.

According to a report by OXFAM (2017), 0.44% of the Colombian population owns 46% of the productive land, which means that more than half of the total land is in the hands of 1% of the Colombian population. At the same time, there is a high level of informality in land tenure, approximately 60% of the rural population do not have property title, nor do they have documents that support their permanence in the land. In the case of women who own land, only 25% have ownership.

Among other problems on access and use of land, it is identified that the size of the productive surface has been concentrated in the larger Agricultural Production Units, on the other hand, the small units have been fragmented and have lost ground, decreasing the size of these productive plots (especially in the Andean region). (OXFAM, 2017).

¹ Statistics of the Colombian State of the Victims Unit (cut 01 Feb. 2019)

The Peace Agreement and its Relation with the Land

The Final Peace Agreement signed on November 24, 2016 between the FARC-EP and the Colombian State, during the government of Juan Manuel Santos (2014-2018), contains 6 points²: Point 1. Comprehensive Rural Reform, aims to contribute with the structural transformation of the Colombian countryside, creating conditions of well-being and good living for the communities, where it develops the components of: access and use of land, Development Programs with Territorial Approach - PDET- and National Plans for a Comprehensive Rural Reform. With respect to access and use of land, the creation of a Land Fund, the creation and promotion of subsidies and credits to access land, formalization plans for rural property and the construction of a multipurpose cadastre are contemplated. Regarding the formulation of the PDET, it recognizes the prioritization of 16 subregions for the implementation of the National Plans for a Comprehensive Rural Reform.

Currently and as part of the normative advances for the materialization of the Final Peace Agreement, specifically referring to the land issue and to the development of the territories, two Law Decrees have been approved. Decree Law 902 of 2017 that creates the Land Fund and some measures are defined for the implementation of land access, however, this norm is not clear on the actions that must be carried out for the implementation from the territorial approaches of the communities; and Decree 893 of 2017 where the PDETs were formally created, which currently has advances in the formulation in 155 municipalities of the 170 prioritized by this decree (Instituto Kroc de Estudios Internacionales de Paz, 2018)

Since the transition of the governments of Juan Manuel Santos and the now new president Iván Duque, many discussions have been generated about the feasibility and continuity of the implementation of the Peace Agreement. In the country, there is mistrust of the actual political will of the current president to comply with what has already been agreed and endorsed by Legislative Act 01 of 2016. This mistrust is given for different reasons that can be evidenced in the National Development Plan, Pact for Colombia: 1) there is a militarist vision, where it is proposed to make a consolidation plan under the figure of Strategic Zones of Integral Intervention (ZEII for its acronym in Spanish); 2) the resources defined are not sufficient for the implementation of the Final Peace Agreement and do not correspond to the Implementation Framework Plan agreed upon during the government of Juan Manuel Santos; 3) its approach is to boost the development and productivity of the countryside to agro-industrial values where large agricultural developments are promoted

² 1) Integral Rural Development, 2) Political Participation, 3) End of the Conflict, 4) Illicit Drugs, 5) Victims of the conflict and 6) Compliance, Verification and Endorsement (Government of Colombia and FARC-EP, 2016)

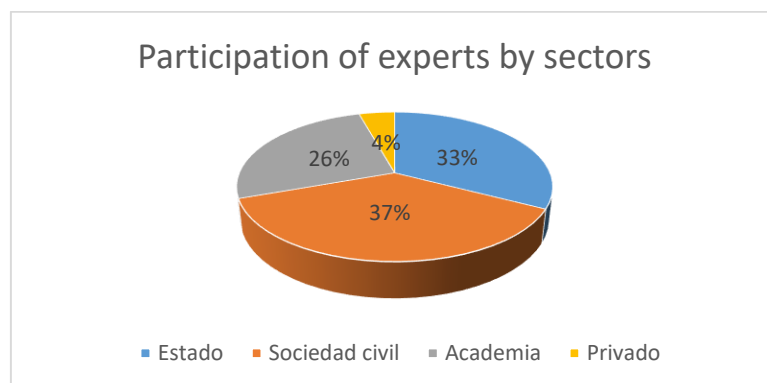
and the peasant economy nor the development are taken into account from a territorial and community approach (National Planning Department, 2019).

2. The Implementation of the Dashboard Pilot

Expert analysis phase

During the execution phase experts were contacted with high-level profiles in 4 sectors: academia, State, civil and private society. Efforts were made to convene the widest possible diversity of experts, with profiles such as: very experienced researchers, directors and advisors of state entities, university professors, private sector entrepreneurs and leaders of social organizations that worked on the issues that each indicator required within its methodology. The experts interviewed have significant expertise on the central theme of the Dashboard, especially regulatory, institutional and implementation aspects related to the governance of land and natural resources. Interviews were conducted with 47 experts (58.70% men and 41.30% women).

The different profiles show the richness and diversity of perceptions. i) teachers and researchers from universities in different regions of the country ii) directors of dependencies and advisors of ministries and State agencies (Ministry of Environment, Ministry of the Interior, Ministry of Agriculture), as well as control bodies (Attorney's Office and Comptroller) ; iii) social leaders and advisors of national and international non-governmental organizations (Fensuagro, FIAN, Lutheran World Relief, ACNUR, ANZORC, PCN, among others), iv) directors, founders and advisers in private³ companies (Colombia Rural and Ecopetrol) . In summary, 15 experts from the State (33%), 17 experts from Civil Society (37%), 12 experts from the academy (26%) and 2 experts from the private sector.



³ It is important to note that in spite of making a broad and permanent call to actors from the private sector, their participation was minimal.

Data bases and Information Systems

For the quantitative analysis, databases of different entities in the country were consulted. In total, five databases were consulted assigned to State entities, 3 databases of academic research and civil society instances; and two databases of guild federations.

Commitments / indicators	Sources
2B	National budget for agriculture of the Ministry of Agriculture. The National Administrative Department of Statistics - DANE - was consulted about the indicator
2C1	2C1 information was collected from DANE on the number of agricultural owners and the distribution between men and women. In the second part of the indicator, information was reviewed regarding land for agricultural use in the Rural Agricultural Planning Unit - UPRA
2C2	National Agricultural Survey of 2016 of the DANE and also to the unions grouped in federations of coffee (National Federation of Coffee Growers), plantain (FEDEPLACOL) and cane (CENICAÑA) on the crops in the country
4B	Information about land equality rights was DANE
5C2	Observatory of Ethnic Territories and Peasants - OTEC, National Land Agency (State) and the National Commission of Indigenous Territories (CNTI)
6B	System of environmental information of Colombia about the POMCAS (Basin Management Plans)
9B1 y 9C2)	Land Matrix platform. Queries without reply to entities of the UPRA State and the Superintendence of Notaries and Registration

3. Main Results

In a general balance, more than 90% of the indicators are adequate to monitor the governance of land in Colombia as indicated in illustration 1. In some cases, the quality of the State's information sources (type of data, updating, coverage) and the lack of public information, prevent knowing the reality of land and natural resources at a national level in terms of access, management, transactions and effectiveness of public policy on the matter. Some indicators that are analyzed below allow us to know and evaluate the national reality in agrarian and environmental matters.

	1	2	3	4	5	6	7	8	9	10
A	80,15	31,87	78,33	69,45	86,71	37,5	27,78	60,61	37,04	89,58
B	60,1	33,36	33,33	29,39	44,44	52,42	62,92	42,59	ND	56,61
C	61,6	43,68	0	67,5	ND	67	28,89	ND	51,39	ND
D		ND			8,03				ND	

Illustration 1 Dashboard result indicators for Colombia

The result of commitment 1 suggests that the rights to land in Colombia enjoy a great normative development (1C = 80,15). This is consistent with the legal reality of the country characterized by the existence of sophisticated regulatory frameworks, with high standards of property protection, but with significant deficiencies in implementation. In contrast, indicator 2C allows analyzing elements of the structure of rural land tenure (number of owners of registered agricultural land), its result could be discussed with relevant context elements, among which, the most significant, is that Colombia is the most unequal country in Latin America in land distribution. The results of indicators 1B and 1C are consistent with the national reality; since in the last decades of modernization of the State, it has been impossible to achieve a successful rural reform that responds to the needs of the peasants and allows to close the gaps of inequality⁴.

⁴ According to the National Agricultural Census (2014) and studies of OXFAM (2018), in 1960 29% of Colombia was occupied by farms of more than 500 hectares, in 2002 the figure rose to 46% and in 2017 the number escalated to 66%. 0.1% of the farms that exceed 2000 hectares occupy 60% of the land. The

The performance of commitment 2 allows to discuss key aspects of family⁵ farming that are in the first order of discussion on the part of the social organizations of peasants and ethnic groups of the country. And 31.87% shows that the institutional treatment in this matter is precarious, the budget for financing this type of agriculture is scarce and there is a setback in the current government that has not given importance to family farming, in the face of advances of previous years. Therefore, a negative trend in commitment 2 is confirmed.

The commitment 3 on diversity in the tenure systems, was evaluated with a very poor rating, especially in the implementation (33.3). The experts consulted emphasized the few advances made by the current government, mainly due to the lack of political will, the reduction of resources allocated for formalization processes, land titling, clarification of property rights and restitution. This indicator is perhaps the most symptomatic of the current political context characterized by a lack of clarity regarding land policies and the comprehensive rural reform agreed in the Peace Agreement.

Regarding equal rights to land for women (commitment 4), the most negative trend is at the level of implementation. In addition, the proportion of women among owners or holders of rights to agricultural land, disaggregated by type of tenure only reaches 29.39%. It should be noted that Colombia recognized for the first-time equal rights to land ownership in 1988 (Law 30 / Agrarian Reform). Thanks to the impact of women's organizations, with the recent Peace Agreement, there is a significant advance in Law 1900 of 2018, through which gender equity criteria are established in the adjudication of vacant land, rural housing, productive projects, as well as procedures for land⁶ access and formalization.

Regarding the protection of territorial rights to ethnic groups (indigenous and Afro-descendant), the legal framework is perhaps one of the most developed in the world. It is not surprising that the 5A shows a positive trend (86.71) in contrast to the 5B that is

previous government (period of Juan Manuel Santos), was interested in characterizing the land situation in Colombia and through a program called Misión Rural produced a complete radiography of land tenure and its use in Colombia. Available in: <https://www.dnp.gov.co/programas/agricultura/Paginas/mision-para-la-transformacion-del-campo-colombiano.aspx>

⁵ In Colombia through Resolution 464 of 2017, the first and only normative advance was made that recognizes the concept of family farming. In this resolution, strategic guidelines for public policy for Campesino, Family and Community Agriculture were adopted. But there is no regulation or political will to operationalize and materialize the protection and promotion of family farming.

⁶ Only until Law 30, in agrarian reform programs, land titling and adjudication had to be made in the name of the couple, whatever their marital status was; provisions were also included for female heads of household, giving them priority access to vacant land and the equal inclusion of women in community enterprises created by the agrarian reform.

reduced by almost half. The recognition of collective land rights of ethnic groups is not limited to titling; it is important to clarify the rights of use, the mechanisms of participation in the national development models in order to guarantee the effective enjoyment of territorial rights.

Finally, the result is significant in the commitment to local management of ecosystems (6), since it shows gaps in national public policy. Interviews with experts reveal that the concept of Neutrality in the Degradation of the Lands of the United Nations is not known or taken into account. In the 6B the result was of 52.4 what indicates that there are great learnings and opportunities to improve in the implementation of the normative instruments of management of ecosystems. This indicator took into account the Watershed Management and Management Plans (POMCA) as they are the instrument through which the planning of the coordinated use of soil, water, flora and fauna and the management of the watersheds.

At last, the pilot test of the indicators of commitment 10 of the ILC on the Protection of Defenders of Territorial and Environmental Rights shows that there is a functioning legal and institutional framework at the national level to protect defenders of land and the environment very well valued by the experts. The score obtained reflects the reality of the constitutional and legal recognition of the rights of human rights defenders, at least formally. Regarding the obligations of public authorities, the average score obtained was 32 points out of 36 possible. The high score obtained could be interpreted as a sign of the recognition of the obligations of the authorities through commitment to international human rights instruments and the promulgation of a wide range of regulations. However, this score should be interpreted with the help of references from civil society actors and the high number of threats and killings to land claimants and human rights defenders. The Ombudsman's Office is the state agency that has dedicated the greatest efforts in documenting and recording information about violations of human rights defenders. On its website, it reports 431 social leaders and human rights defenders killed between January 1, 2016 and December 31, 2018. So far in 2019, 17 social leaders have been killed and 300 have been threatened, according to the same source.

4. References

Acosta Navarro, O. L., Azuero Zúñiga, F., & Concha Llorente, T. (2017). *Income distribution in Colombia. Households or enterprises Who has to pay?* [El ingreso y su distribución en Colombia Hogares o empresas ¿Quién debe tributar?] Bogotá: United Nations.

Administrative Department of Civil Service. (2006). *Colombian State Composition. In: Colombian State Structure* [Composición del Estado colombiano. In Estructura del Estado colombiano] (pp. 17–20). Bogotá: Publicaciones - SENA. Retrieved from <https://goo.gl/mcXzt1>

Ávila Forero, R. A., & Jaramillo Arenas, C. A. (2015). *Competitiveness and sectoral policy in Colombia: an analysis for discussion* [Competitividad y política sectorial en Colombia: un análisis para discusión]. Friedrich-Ebert-Stiftung.

Colombia's Central Bank. (2018). *GDP [PIB]*. Banco de la República Colombia. Retrieved on March 14th 2019, from <http://www.banrep.gov.co/es/pib>

Colombia's Government and Revolutionary Armed Forces of Colombia – People's Army (FARC-EP from its acronym in spanish). (2016). *Final Agreement for a stable and lasting peace construction* [Acuerdo Final para la construcción de una paz estable y duradera.]

Kroc Institute for International Peace Studies. (2018). *Second report on Colombia's Peace Agreement effective implementation. December 2016 – may 2018* [Segundo informe sobre el estado efectivo de implementación del acuerdo de paz en Colombia diciembre 2016 – mayo 2018]. Keough School of Global Affairs. Notre Dame University.

National Center for Historical Memory (CNMH - from its acronym in spanish). (2018). *Land, review of the contribution from Memory National Center to historical clarification* [Tierras, balance de la contribución del CNMH al esclarecimiento histórico.] Bogotá: CNMH.

National Planning Department (DNP – from its acronym in Spanish). (2019). *National Development Plan (2018-2022): Plan Nacional de Desarrollo (2018-2022): Covenant for Colombia, covenant for equity* [Pacto por Colombia, pacto por la equidad] .Bogotá: Gobierno de Colombia.

National Statistics Department (DANE – from its acronym in Spanish). (2016). *Third agricultural / livestock national census* [3er Censo Nacional Agropecuario]. Bogotá: Departamento Nacional de Estadística.

National Statistics Department (DANE – from its acronym in Spanish). (2018). *Information for all* [Información para todos]. Retrieved on March 14th 2019, from <https://goo.gl/KfZWCo>

Ocean Colombian Commission (CCO – from its acronym in Spanish). (2017). *How is maritime development doing? In Ocean and Coastal Areas National Policy (PNOEC – from its acronym in Spanish) [¿Cómo estamos en materia de desarrollo marítimo? En Política Nacional del Océanos y de los Espacios Costeros PNOEC]* (págs. 19-21). Bogotá.

OXFAM. (2017). *Inequality's x-ray: what the last national agricultural / livestock census says about land distribution in Colombia* [Radiografía de la desigualdad: lo que nos dice el último censo agropecuario sobre la distribución de la tierra en Colombia.] OXFAM INTERNACIONAL.

Super Intendence of Notaries and Registration (SNR – from its acronym in Spanish) (25th March 2015). *World Bank Forum on Land Property Security: This is Colombia land distribution* [FORO DEL BANCO MUNDIAL SOBRE SEGURIDAD DE LA PROPIEDAD: Así está distribuida la tierra en Colombia]. Bogotá, Colombia.

World Bank. (2019). *World Bank Databank* [Banco de Datos del Banco Mundial] Retrieved on March 13th 2019, from <https://databank.bancomundial.org/data/reports.aspx?source=2&country=COL>

Jurisprudence referenced

National Political Constitution, 1991
Decree Law 902, 2017
Decree Law 893, 2017