



SECURING
WOMEN'S
RESOURCE RIGHTS
THROUGH GENDER
TRANSFORMATIVE
APPROACHES



IFAD

Investing in rural people



WOMEN'S LAND RIGHTS IN COLOMBIA





ABOUT THE INITIATIVE

**SECURING WOMEN’S RESOURCE RIGHTS
THROUGH GENDER TRANSFORMATIVE APPROACHES**

In 2020, the International Fund for Agricultural Development (IFAD) invited a consortium of the Center for International Forestry Research and World Agroforestry (CIFOR-ICRAF), the International Food Policy Research Institute (IFPRI) and the Alliance of Bioversity International and the International Center for Tropical Agriculture (CIAT) to work with selected IFAD projects to promote and strengthen women’s land rights through the integration of gender transformative approaches (GTAs) in rural development interventions by improving policies, tools and practices.

<https://www.cifor-icraf.org/wlr>
https://www.ifad.org/en/gender_transformative_approaches

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Background

This series of socio-legal reviews summarizes the legal and policy documents related to women's land tenure in seven countries: Kyrgyzstan, Uganda, The Gambia, Ethiopia, Niger, Bangladesh and Colombia. These synthesis documents, part of the IFAD Initiative on Women's Resource Rights, are designed for researchers and policymakers seeking to improve women's land and resource rights in these target countries.

WHAT IS A SOCIO-LEGAL ANALYSIS?

A socio-legal analysis focuses on reviewing laws in the context of particular social problems that the law aims to address (Schiff, 1976; Creutzet et al., 2019). Findings draw on the analysis of country legal and institutional frameworks that recognize women's land rights, and information on existing procedures and processes for implementing tenure interventions. These analyses provide the basis for identifying incongruencies, overlaps, gaps that pose barriers to the recognition and enjoyment of women's rights to land and productive resources.

Colombia

The Gambia

Niger

Ethiopia

Columbia

Kyrgyzstan

Bangladesh

THE REVIEW COVERS:

- **A general characterization of land and resource tenure systems** at national, regional, and local levels
- **Existing institutional and regulatory frameworks** for land and resource tenure, and the extent to which these are inclusive of women
- Implemented **land tenure interventions**, and the extent to which these benefit women
- **Barriers and constraints** affecting women's ability to access rights
- Mechanisms for **dispute resolution**, and how these engage women and address their concerns



Introduction: Women's land rights in Colombia.

Colombia is often cited for its long history of extreme land inequality as well as related waves of violence and internal displacement, phenomena that have had particularly harmful impacts on rural women. However, in recent decades, Colombia has also offered examples of innovative policy reforms that target women's inequality as well as the underlying causes of insecure property rights with the intention of increasing women's opportunity and wellbeing. Although these progressive reforms have often fallen short, they have improved security in some cases and offer useful lessons for addressing women's land rights.

Colombia has struggled with critical land issues stemming from its colonial agrarian past and modern history of conflict. The country has been plagued with violent land disputes and brutal conflict with rebel groups and paramilitary militias established by landowners, local elites, and drug traffickers (Oxfam, 2019). The armed conflicts provoked one of the highest rates of internal displacement globally, with about 3 million people having fled their land since 1985. Land distribution remains highly unequal in Colombia, with a concentration of ownership amongst the highest in the world. In rural areas, land distribution has remained unequal, with less than 1% of the population owning 62% of country's best land (Oxfam, 2019). Over 68% of Colombia's rural population was living below the official poverty line at this point (USAID 2017).

Land tenure insecurity has been greatest among smallholder farmers, afro-Colombians and indigenous communities and women-headed households, in particular, have been forcibly displaced at disproportionately high levels (Meertens, 2012.; Von Au, 2013; USAID, 2017; Camilo Suarez 2023). Colombia continues to have one of the largest internally displaced populations (IDP) in the world, reaching almost 7 million at the end of 2022, with more than 1 million new displacements since the signing of the 2016 Peace Agreement (UNHCR 2023). Successive government interventions to foster land reform have been largely ineffective due to the complexity of resolving contested claims in a post conflict context, a lack of financial and human-resource capacity to implement ambitious reforms and corruption in a context of weak government institutions responsible for reform and powerful economic interests, some of whom are violent and involved in illicit trade (Faguet et al., 2017; Sánchez, 2019; Baranyi et al., 2004). Securing women's land rights is an essential step to addressing the inequality that has resulted from more than 50 years of internal conflict. Currently, men own 64% of rural land in Colombia compared to only 36% owned by women (DANE 2022). Statistics suggest that about 47.14% of the total rural population are women and remain one of the most affected groups within the seven million internally displaced people (Bose et al., 2017).

This paper reviews land governance in Colombia to examine how legal, institutional, and cultural frameworks influence women's land rights. It reviews existing statutory regulations and institutional structures defining land rights in Colombia and their relevance for women. It will examine tenure interventions in Colombia and the existing gaps and constraints that prevent women from exercising their land rights. Finally, it unpacks access to justice and land dispute resolution mechanisms and the ability of women to access justice mechanisms in Colombia.



Land tenure in Colombia

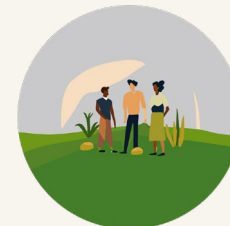
In Colombia, the Civil Code (2015) recognizes three types of land tenure systems:



State property: Public land owned by the nation including protected areas, cultural and archaeological heritage sites, right of way for public infrastructure, vacant land, and fiscal property.



Private property: Land owned and used by individuals or under joint ownership between spouses.



Communal land: Collective land owned or possessed by groups, for example Indigenous reserves (*resguardos*), Afro-descendant territories, or associations of small producers.

The Colombian land system recognizes four categories of land rights for private property, which include ownership for those that have registered titled deeds, possession when the holder had documentation of the transfer of a title in another person's name, occupancy for those living on land where no title had ever been issued, and tenancy for those living on land under agreement with the owner (García-Godos and Wiig 2014). However, outside of these formal categories, most land is held informally with approximately 60% of land tenure in the country held under informal arrangements (Bartel et al. 2016).

As will be discussed in the next section, Colombia has legislation favorable to gender equity, as it allows women to own land legally. Men and women have equal land rights, and the law also allows for the recognition of joint titles owned by couples (USAID, 2017). However, while substantial legal reforms have been made, women in rural and indigenous communities still have limited access and property rights to forests and agricultural land (Bose et al., 2017).



Institutional and regulatory framework

There has been a long history of agrarian law and reform over the past century in Colombia that has attempted to extend land and property rights to women and ethnic groups as part of efforts to address inequality in land distribution in the country. This paper concentrates on reforms during the last decade of the 20th Century and the first decades of the 21st Century to review key changes to the legal and institutional frameworks that influence the contentious issues over land and equity in Colombia. In this section we will summarize key policy changes in chronological order. In later sections, the paper returns to these policies when examining women's access and rights in greater detail.

In recent history, several legal reforms in Colombia have recognized and expand women's rights to land and resources. Colombia's 1991 Constitution (Art. 58) recognized that men and women are equal before the law and have equal rights of access and own land without distinction of gender and provides couples the opportunity to hold joint title to their land (USAID, 2017). The constitution guarantees all citizens' right to private property while promoting and protecting associative and joint forms of property. It classified some public properties as inalienable including natural parks, communal land of ethnic groups, security zones and archaeological sites.

Colombia's constitution also recognized collective land rights for indigenous peoples giving their authorities jurisdiction and a certain level of autonomy over their territories. Indigenous people have the right to exercise their authority within their territory based on their laws and procedures if it does not contradict the country's laws as stated in the Constitution (Art.

246). The Constitution (Art. 63) classified communal lands of ethnic groups as inalienable and not subject to seizure (Cuskelly, 2011).

In 1994, Colombia enacted Law 40 (Ley de Negritudes) that created a pathway for recognition of collective property right to Colombia's Afro-descendent communities. Law 70 recognized collective tenure rights of Black Communities in rural "vacant" lands to continue traditional production practices. This law defined the Community Council as the mechanism for internal decision making processes and other administrative functions (Peña et al., 2017; Tobin, 2013). Land for collective purposes remains non-transferable, non-mortgageable except for areas allocated to family groups that can be transferred (Art 7; USAID, 2017).

In 1994, the government enacted Law No. 160, the Agrarian Land and Policy Law, to regulate a national agrarian reform process to address the problem of land concentration across the country. The Agrarian Land and Policy Law (1994) prioritizes land allocation to peasant families affected by war and violence, including women. It also created Colombia's National Land Reform System intended to address inequality in land ownership and to promote land transfers to smallholders to bring underutilized land into productive use (USAID, 2017). The law recognized women as a vulnerable population in need of land rights and allows land allocations to be made in couples' names irrespective of their marital status. (Deere & Leon, 2001).



In 2000, in an attempt to promote greater participation of women in governance and government institutions, the government enacted Law 581, known as the Quota Law. This law states that women must hold at least 30 per cent of positions at the highest decision-making levels in all three branches of government and other national, departmental, regional, provincial, district, and municipal public offices. A related law, enacted eleven years later, in 2011 (Law 1475), required that political parties include women in at least 30% of the political parties' electoral lists established (UNDP, 2011)

In 2002, Colombia enacted Law 731, commonly known as the Rural Women's Law, intended to address discrimination against rural women, improve their quality of life and to promote equality between rural men and women. To reach these objectives the law focused on four thematic pillars: 1) improving women's access to land, credit and technical assistance, 2) encouraging women's participation in governance, 3) improving their wellbeing in terms of education, health, employment and housing, and 4) monitoring the laws progress. The the Rural Women Law recognized the rights of women (whether married or co-habiting) to own land parcels issued under agricultural reform. While this promising law did bring improvements for women in terms of equal rights and protection, it has not been fully implemented and has not generated the expected outcomes (Cristiano Mendivelso 2022).

Between 1997 and 2003, women-headed households increased from 26% to 31% in Colombia, and approximately 35-50% of all displaced households were headed by women. Together with female-headed households, Afro-Colombian women continue to suffer from displacement more frequently, and often live in informal settlements with little chance of claiming their rights (Bose et al., 2017; Faguet et al., 2017; García and Bermudez, 2005; Meertens, 2015).

In 2011, as Colombia began to emerge from internal conflict, the government enacted Law 1448, known as the Law of Victims and Land Restitution, which targeted the restitution of land to internally displaced people (Esquirol 2022). The law contained measures that recognized the differentiated effects on women as victims of dispossession and/or abandonment of land, and identified them as a vulnerable group along with children, elderly, and people with disabilities (USAID, 2017; Garcia-Reyes & Wiig, 2020). The law established the "Register of Land Forcibly Abandoned and Deprived" to facilitate the process of identifying people displaced due to armed conflict. However, restitution focused on people who could demonstrate their rights as owners or possessors of the land, not simply past occupation. This tended to exclude women in cases where they were not listed in documentation, for example women widowed during the years of violent conflict (Esquirol 2021). However, as Law 1448 had a dual purpose of restitution and formalization, one unintended consequence of granting titles could be the subsequent displacement when powerful interests pushed the poor to sell newly titled lands, often at low prices (Esquirol 2021).

Land titling interventions

Colombia has taken several approaches to the titling and registration of individual and collective lands with some land tenure interventions intended to recognize women's land rights security (Plant & Hvalkof, 2001; USAID, 2010; Bose, 2017). Legislation in recent decades established processes for the formalization of land rights through land registration and titling. These policies included the Law 70 for Afro-descendent communities of 1993, the Agrarian Land and Policy Law No 160 of 1994, and the Victims Law of 2011. Given the historical context of violent conflict and displacement, the restitution process has been considered a crucial formalization process, intended to resolve contested ownership, particularly for internally displaced persons. It created institutions to prioritize the needs of Internally Displaced Peoples (IDPs) before other claimants and applicants (García-Godos & Wiig, 2014).

Formalizing rights over a land parcel required a farmer to apply through the Colombian Institute of Rural Development (INCODER). The primary function of INCODER was to measure the land, set borders, and check whether formal requirements were met before adjudication (adjudicación) (García-Godos & Wiig, 2014). However, formal documentation, such as a deed, ruling, or a resolution of assignment were necessary to register land (Bose, 2017 Esquirol, 2021).

The property rights claim was then submitted to the Superintendence for Notaries and Registries (SNR), including documents certifying his/her relationship to the land. Once verified by SNR, the claim, a document known as 'Folio de la Matricula Inmobiliaria', was issued, including the property in the National Registry (Registro de Instrumentos Públicos), and subsequently a Title Deed (Certificado de Libertad) (García-Godos & Wiig, 2014). The title deed issued together with a summary of the ownership records for the land property and a map from Colombia's geography institute IGAC¹ was required to add the property into the National Land Cadastre. Based on the four categories of land rights under the Colombian land system, only right holders of a title (propietarios) are registered in the National Registry. The registration is done under an individual's or corporate name, and the right holder is considered to establish Ownership or Property Rights (García-Godos & Wiig, 2014). However, it is still common to have title deeds in the public registry but under a previous owner's name. The law, however, makes provision for someone in possession of a title in another person's name under the status of rightful possession (posesión) (Garcia and Bermudez, 2005; USAID, 2017).

In cases where no formal title deed had been issued on land worked by a farmer, the landholder is considered to have occupancy rights and can claim legal rights to land through land adjudication. The land adjudication process required the individual to show evidence that they had used the land for one year on state land and ten years on individual property, to explain why they needed to land, and to demonstrate that they did not

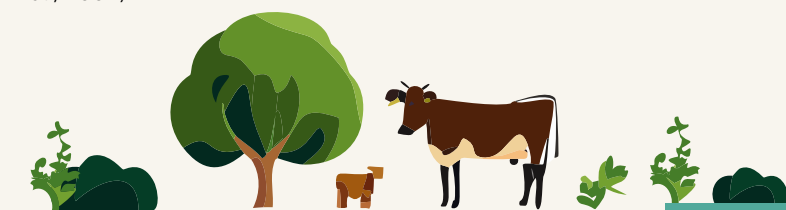
have other plots (described as an Agricultural Family Unit -UAF). Tenancy rights holders (tenedor) often have oral agreements with large landowners who lend out land in exchange for free labor when needed. This creates challenges to registration for smallholders or IDPs who may have only oral evidence of their land rights (USAID, 2010). Tenants are not covered under the Victims' Law because they did not have rightful claims to the land and were excluded from the land restitution process (García-Godos & Wiig, 2014). According to a 2005 UN-HABITAT report in Colombia, of the rural land registered in the cadaster, 52% was privately owned, 23% was held by indigenous communities, 22% was State-owned, and 3% was held by Afro-Colombian communities (Garcia and Bermudez, 2005).

Other innovative elements in the reforms on tenure interventions included joint titling to couples (also for informal marital relationships) and giving priority for individual titling to female household heads and other women displaced by violence (Baranyi et al., 2004; Meertens, 2015). The prioritization of joint titling and the inclusion of female-headed households potentially improved women's rights; however, there is no specific requirement for joint titling in both spouses' names when registering private land (Garcia, 2005). While land formalization in the name of female owners was encouraged to reduce the gender gap in land tenure, Colombia's Rural Agricultural Planning Unit, estimated that 50% of land formalized was only in the name of male owners (Bose, 2017).

Colombia's constitution also recognized right holders at the communal level, where land is held collectively by peasant, afro-descendent or indigenous communities (Art. [246, 313]1991). In the early 2000s, a few well-funded government programs were explicitly geared to the demarcation and titling indigenous lands through collaboration between the government, and indigenous organizations to develop georeferenced maps for boundary demarcation to formalize communal land ownership (Plant & Hvalkof, 2001). This process to date, however, remains slow. Some communities without collective titles have succeeded in designing and promoting rules and procedures to manage their resources, which co-exist with de facto individual landholdings (Velez, 2011).

Within communal territories, the government recognizes and respects the autonomy of traditional customs and practices concerning authority and the internal distribution of resources. However, how women's rights are secured in these collective systems has remained an area of concern since customs and practices tend to be discriminatory against women (Baranyi et al., 2004).

¹ Geographic Institute Agustín Codazzi



PROGRESS OF IMPLEMENTATION

Since the 1990s Colombia has launched three national land titling programs to consolidate individual private property rights to promote access to land ownership (del Pilar Peña-Huertas et al., 2018). As del Pilar Peña-Huertas et al note, the stages of land titling programs were:

- **The National Development Plan² from 1996-to 2004 which sought to provide a legal and economic alternative to small producers of illicit crops, including indigenous people and their families. The program had two focus areas: First, legalizing and normalizing property rights so small producers could have access to credit. Second, provide technical assistance, infrastructure, and services to the public by the government.**
- **The Presidential Programs for Property Formalization and Modernization of Property Rights³ from 1997 to 2007 boosted land markets through land titling programs. They also upgraded the cadastral and registration system, which had been prioritized during the 1994-1998 government.**
- **The National Programs of Property Formalization of Rural Lands⁴ from 2010 to present, which aimed to promote access to land ownership, improve the smallholders' quality of life and regularize individual and collective tenure of rural properties.**

For many years, land reform policies reinforced the male as the breadwinner-and-rights-bearer model. The male-headed peasant family long remained the basis for rural development and land acquisition, s only 11% of land reform beneficiaries between 1961 and 1999 were women (Meertens, 2015).

The government has increasingly recognized and formalized indigenous land rights and reserves through collective tenure policies. By 2005, Colombia had legalized 647 indigenous reserves, covering 31 million hectares (Ruiz, 2018). A study in one municipality in Valle del Cauca) showed that collective titles represent 18% of all titled Indigenous communities at the national level and more than 6,000 families, encompassing almost 340,000 hectares (Velez, 2011).

A 2010 nationwide survey on IDPs found that only 18% of displaced farmers had formal property rights to their agricultural land (García-Godos & Wiig, 2014). To address tenure insecurity in rural communities, the government developed a National Land Formalization Program in 2012 under the coordination of the Ministry of Agriculture and Rural Development. This program developed, in partnership with international donors like USAID, a quick process for resolving the lack of legal documentation by owners of urban or rural

properties. Furthermore, it provided legal security to those who possess registered titles with legal deficiencies, enabling them to fully clear their rights (USAID, 2017).

The program was implemented in two phases between 2012 and 2021. One of the most welcome outcomes has been the ability to move away from demand-driven titling to a more systematic program where land titles are provided as a public service in rural areas (USAID, 2017). In 2015, Colombia's Land Formalization Program (LFP) estimated that 48% of the 3.7 million rural parcels in the National Cadaster did not have registered titles and approximately 1.7 million rural properties did not have formal property records (USAID 2017).

The formalization of rural property as established in Art. 64 of the Constitution further supported joint titling to improve rural households' income and quality of life. This systematic application of land rights for women in the restitution process has been welcomed by women's organizations as the first step to empowerment (Marteens, 2015). For widows and female-headed households, the land title has given them a sense of security but no direct benefits in marketing coffee and agroforestry products or receiving a mortgage from banks (Bose, 2017) and it has had limited impact on women's decision-making power as men and women still practice traditional roles.

The Victim's Law also promoted land restitution programs across the country. Due to failure in the ordinary judicial process to address reparations, victims organized to pressure the government demanding "adequate and effective remedies to claim reparation." (Camilo Sánchez and Sandoval-Villalba 2020). Law 1448 addressed both individual and collective land claims and included decrees with force of law to regulate reparation rights for indigenous people and afro descendants (Decrees 4622/2011, and 4635/2011). During the first two years of its implementation, over 54.000 victims filed claims; 39% (15.523) of them were women, and more than half of them (8.675) presented the claim with a spouse and about 44% (6.848) did it alone, with 4370 of them being widows (García-Godos & Wiig, 2014). These figures represented an ambitious land and property restitution program for the more than 5 million internally displaced people no longer in their homelands due to the internal armed conflict since 2011 but by mid 2014, only 20.000 hectares of land had been restituted (García-Godos & Wiig, 2014). As of 2020, only about 10% of the approximately 7 million victims have received compensation (Sánchez and Sandoval Villalba 2020).



WOMEN'S PARTICIPATION IN LAND GOVERNANCE STRUCTURES

Historically, women's participation in governance structures in Colombia has been low, both in elected and appointed positions. However, in recent decades several legislative efforts have attempted to change this situation.

The Quota Law (Law 581), enacted in 2000, stated that women must hold at least 30 percent of positions in the highest decision-making levels in all three branches of government and other national, departmental, regional, provincial, district, and municipal public offices. However, the Constitutional Court established that this rule only applied to positions that had become vacant, which often complicated or delayed access by women (Garcia, 2005). It also ruled that specific organizations are hardly compatible with the quota system, for instance, boards of directors of some institutions, which consist of the representatives of member entities who do not necessarily nominate women (Garcia, 2005).

A UNDP report noted that between 2002 and 2006, the percentage of women in elected positions was low and diverse across national structures. For example, women made up 8.8% of Senators and 12.1% of deputies at the national level following a 2005 survey, while at the department and local levels, only 6.25% were governors, 13.84% delegates to Department Assemblies, 7.3% mayors, and 12.89% local councilors, based on a 2003 survey (UNDP, 2011). The women-in-parliament indicator of 0.25 female-to-male ratio suggests to what extent, at the national level, women's political participation was promoted (Bose et al., 2017). Women's low participation and representation reflected challenges in women's access to senior and decision-making more widely in Colombia (UNDP, 2011).

In response to this problem, in 2011, Law 1475 was enacted and filled a gap left by the Quota Law of 2000 by requiring political parties to include at least 30% women as candidates on electoral lists and assigned monetary incentives for women's inclusion, and measures for capacity building for women's political empowerment (UNDP, 2011; Ruiz 2019). Despite these affirmative measures, political affiliation and a male-dominated political culture remain significant barriers, especially at senior levels.

The National Roundtable for Political Advocacy, a rural women's platform, was part of the consultations for the government's National Development Plan (NDP) for 2014–2018. The platform supported campaigns for public policies on women's rights, and for creating a National Office for Rural Women with indigenous and afro-descendant organizations (Bose et al., 2017). Interventions for indigenous people are done through the National Indigenous Lands Commission which further encouraged the participation of community representatives and other advocacy groups such as the National Association of Rural and Indigenous Women of Colombia (ANMUCIC). Nevertheless, women's participation and gender equality continued to present severe limitations for development planning (Garcia, 2005).



² Plan Nacional de Desarrollo

³ Programa Presidencial para la Formalización de la Propiedad y la Modernización de la Titulación Predial

⁴ Programa Nacional de Formalización de la Propiedad de los Predios Rurales

TENURE SECURITY

Colombia's 1994 Agrarian Law prioritized land allocation to peasant women impacted by war and violence in the country (Peña, 2017). However gender outcomes have been difficult to identify in statistics on settled land restitution cases. . By 2013, about 3500 individuals have benefitted from restitution, 49% women and 51% men (García-Godos & Wiig, 2014). However efforts for joint titling seem to have increased women visibility in farming and other economic activities.

Women's participation and representation in the peace processes resulted in positive outcomes for communities. For example, women have used their seats at the table to address issues related to land restitution and the right to justice and reparations for victims (Bigio et al., 2017). They successfully included provisions for the rights of women and indigenous groups in the agreement to secure land rights and promote women's political participation (Bigio et al., 2017). To find lasting solutions for peace in post conflict Colombia, government policy sought to improve women's land rights, and as a result, the land restitution program's collaboration with civil society organizations has been the most popular mechanisms used to guarantee women's access to land (Cramer et al., 2017).

On the other hand, limited and unequal access to property has been particularly damaging to women in post- conflict situations, particularly when displaced widows return home to find that they have no legal land title and thus, no means of earning a livelihood (CEDAW Committee, 2013:17). Given such situations analysts have argued for transformative change to address the "structural inequalities that led to the violations of women's rights, respond to women's specific needs and prevent their reoccurrence" (CEDAW Committee, 2013 22)



Barriers and constraints to the recognition of women's land tenure rights in Colombia

Meaningful progress has been made in recognizing women's land rights within Colombia's legal and institutional frameworks guiding land reform and tenure formalization programs for individual and collective rights. Nevertheless, barriers continue to affect women's land rights security. These barriers are primarily related to 1) implementation gaps linked to an inadequate land management system; 2) overlaps and contradictions between formal institutional arrangements and customary regimes; 3) social norms and practices that hinder women from exercising their rights and that limit the recognition of their legal rights.

ONE | IMPLEMENTATION GAPS

While Colombia has passed progressive legal reforms and created institutions to implement innovative policies for improved equity in land tenure, there have been significant gaps between the promised reform and the actual outcomes. These implementation gaps are due to a variety of factors including ineffective policies, failure to disseminate laws and decrees, inadequate technical support, corruption within institutions, and conflicts from paramilitary groups,. (García-Godos & Wiig, 2014; USAID, 2017; Garcia, 2005). In addition, the implementation of land policy reform does not fall within one ministry. The lack of clarity and precision on how to coordinate the management of institutions related to land hinders policy implementation.

While in theory Colombia's policies prioritize equity, the Colombian land management system lacked an explicit gender approach to prioritizes women in land registration. Therefore, when the law does not explicitly refer to women's access to land, planning laws and regulations do not usually include a gender dimension (Garcia, 2005; USAID, 2017). The result has been that regulations that favor rural women under Law 731/02 (2002) are often not applicable (OHCHR & UN Women, 2013; Garcia, 2005). Similarly, even when laws are clear, the lack of dissemination of laws and decrees further limits the achievement of land reforms. Frequently, rural women in Colombia do not know the various types of land tenure rights available to them and have limited awareness of legislation clarifying their rights (e.g. Law 1448 or Resolution 181), which hinders their accessing assistance from relevant institutions (UN OHCHR, 2013; García-Godos & Wiig, 2014; Robustelli, 2018).

Colombia's Land Cadaster is not yet fully centralized or computerized, making it difficult to locate material evidence for those registering land (Perez, 2008; García-Godos & Wiig, 2014). The lack of a digitized land registry system has resulted in unequal land distribution in favor of large landowners and elites, making it easier for land to be concentrated in the hands of a few. It also creates and reinforces avenues for corruption by government departments which erodes public confidence in government institutions (USAID, 2017). Officials in both registration systems sometimes delete existing titles from the registries, leaving the rightful owners at best with a physical title deed to prove their rights (García-Godos & Wiig, 2014). The unequal distribution of land and corruption erode public confidence in government institutions (Perez, 2008; USAID, 2017; Robustelli, 2018).

Limited cartographic, cadastral, and technical resources result in severe deficiencies in the formulation and implementation of land regulations. The absence of a digital system allows overlapping and inaccurate boundaries which increase conflicts (Garcia, 2005). Limited cadastral resources often means that land parcels appear in only some registries but not others (García-Godos & Wiig, 2014). The incomplete cadaster and property registration systems in rural areas has led to about 48% of the country's plots not having formal titles, with more women holding only informal rights (Meertens, 2015).

The limitations of the Colombian Institute of Agrarian Reform (Instituto Colombiano de la Reforma Agraria -INCORA) were noted in the early 2000s when a study confirmed that the law was incapable of reforming the agrarian structure and in 2003 INCORA was replaced by the Colombian Institute of Rural Development (Instituto Colombiano de Desarrollo Rural-INCODER). However, there was apparently little institutional change because the strategy to build the peasant economy was not reactive enough given the armed conflicts in the country (Baranyi et al., 2004).

The armed conflicts have provoked over 3,000,000 internally displaced people, of whom almost 50% are women (Robustelli, 2018). The formalization of property rights often increases conflicts between communities and right-wing paramilitary groups (Plant & Hvalkof, 2001; USAID, 2017; Robustelli, 2018; Ahmed et al., 2020). Threats to land rights defenders and violence against them have further halted land restitution processes, undermining indigenous communities' efforts to claim and secure land rights (San Pedro, 2019). For example, once the implementation of land rights began, the governmental Unit for Land Restitution reported over 400 threats against land claimants in 2013 (Marteens, 2015). In areas where government officials have had links with armed groups, there has been a reduced number of applications for land registration by the public due to a lack of trust in authorities (Thomson, 2017). Once land has been formalized landholding can become concentrated by powerful interests using "accumulation by dispossession" in which violent threats, and fraud are used to force sale at low prices (Camilo Suarez 2023).

The land restitution process has been marred by constant violence and attacks on claimants and rights defenders. About 72 people, either land leaders or restitution claimants, have been murdered, and many still receive threats against their lives (Robustelli, 2018). In some cases, displaced people are forced to flee their homes again because of their restitution processes. Even representatives from accompanying organizations, human rights defenders, and state officials involved in restitution cases have become targets, with paramilitary groups being responsible for most crimes against land claimants and restitution leaders (Thomson, 2017). In some contexts, the legal recognition of black collective property rights often increased conflicts in such communities by right-wing paramilitary groups with severe impacts on women (San Pedro, 2019; Ahmed et al., 2020).

TWO | CONTRADICTIONS AND INCONGRUENCES IN OVERLAPPING LEGAL AND CUSTOMARY TENURE SYSTEMS

Although formal legal frameworks and customary systems have accommodated women in accessing land, contradictions in the national legal system, have hindered women's rights to land. Legal pluralism recognized in the Colombia Constitution (Art. 246), allowed some autonomy for indigenous customary law and practice within territories, which came after comprehensive reforms to accommodate indigenous groups (Cott, 2000; Cuskelly, 2011). Although pluralistic laws have been welcomed as an inclusive approach to recognizing indigenous people, it has not guaranteed tenure security for women (Isa, 2014).

Some contradictions between inheritance law and customary inheritance practices expose the gaps between statutory and customary laws. Colombian law generally allows land to be acquired through inheritance, purchase or adjudication in agrarian reform plans and settlements, even though land ownership tends to rest on the family or community structure (Deere & Leon, 2001). For private property, a married woman can hold marital property as shared property with her spouse. This applies to any woman in a stable union for at least two years as stipulated under the Civil Code. In cases where a property is considered a "homestead property," certain protections are established over that community property irrespective of when it was bought. The property can only be mortgaged with consent from both spouses (Garcia, 2005; USAID, 2017). When a divorce, separation, or death of a spouse occurs, each spouse can have 50% of the property acquired during marriage. In divorce cases, women are expected to get certified by a notary from their ex-husband confirming there was a union binding them (USAID 2017). A person can give away up to 25% of their property through a testament (will) (Garcia, 2005). Systems of inheritance recognize men and women as having equal rights to inherit land from their parents, and studies have confirmed that inheritance is a significant form of land acquisition for women (Deere & Leon, 2001; García-Reyes & Wiig, 2020).

Even when the titling process is intended to be gender neutral or to favor women, gender norms in communities still consider agriculture a male activity and see land as men's property. (Perez, 2008; USAID, 2017). In rural Colombia, cultural norms on inheritance typically discriminate against women (Garcia, 2005). While legally both sons and daughters should inherit equally, men continue to inherit land more often than women. Regulations on joint titling have been considered a limited but progressive step towards gender equality in land rights by providing a legal base for peasant women's bargaining power in the household and the institutional sphere (Marteens, 2015; USAID, 2017). However, the joint titling policy also has limitations as it may obstruct women's independent land claims in cases of divorce, abandonment, domestic violence, or men's disappearance during war or inheritance practices (Marteens, 2015). In this perspective, women are considered more as a group than individuals (García-Godos & Wiig, 2014). Widows sometimes lack extra protection from the government when pursuing claims to overcome their immediate environment when faced with pushbacks from family members (Marteens, 2015).

THREE | SOCIAL NORMS AND PRACTICES THAT LIMIT WOMEN'S RIGHTS TO LAND

In Colombia, patriarchal culture is one of the key reasons why women are victims of hostility, repression, and violence for challenging social, cultural, and religious gender norms (García-Godos & Wiig, 2014). In practice, land rights for women are not socially acknowledged, and therefore, women do not enjoy autonomous rights, as their rights are often tied to a male head of household who acts as the rights-bearer for the family (Marteens, 2015; USAID 2017). Patriarchal bias is also evident in gender roles in agricultural and livestock activities. For example, women were not expected to 'know' about production or legal issues and were often ignorant of boundary locations, the monetary value of land, notarial registration, or loans (Marteens, 2015).

As mentioned earlier, because of the risk being attacked, many women fail to exercise their land rights. In a country with a strong patriarchal structure, some women, small farmers, indigenous or Afro-Colombian women, fear the stigmatization of land rights activists (San Pedro, 2019). Many poor women are also not comfortable with the legal formalities related to land registration, primarily because of their low level of education. Application procedures for subsidies and loans are often not designed to meet the needs of low-income families as many are not very explicit to women who work in the informal sector (Garcia, 2005).



Conclusion

Colombia has had a complicated history of inequitable distribution of land which has driven patterns of violent conflict, displacement and poverty that has often fallen disproportionately on women. At the same time, recent decades have seen progressive attempts at policy reform to address inequality, land access, many of these initiatives focusing on women. The 1991 Constitution established a foundation defining access to rights and property by men and women as equal. It reconfirmed indigenous communities' collective rights to land ownership and was followed several years later by Law 70 which established a process for recognizing collective properties for Afro-descendent populations. The establishment of these collective territorial categories addressed the land rights of tens of thousands of rural Colombians, although women's rights still fell under customary authority.

Other land policy reforms have witnessed progress central to women's rights. For example, The Agrarian Land and Policy Law 160 established joint titling for spouses, ensuring security for women. The Victim's Law and the Rural Women Law 731 prioritized recognition of women's land rights. While these are very significant affirmative measures, women's land rights continue to be hindered by barriers related to contradictory laws and regulations, customs, and practices, which have been shown to prevent women from exercising their rights to land.



References

Ahmed, A. T., Marcus, J., & Vásquez-Cortés, M. (2020). Land Titling, Race, and Political Violence: Theory and Evidence from Colombia. National Conference of Black Political Scientists (NCOBPS), 1–100.

Baranyi, S., Deere, C. D., & Morales, M. (2004). Scoping Study on Land Policy Research in Latin America.

Bigio, J., Vogelstein, R., & Connell, A. (2017, December 16). Women’s Participation in Peace Processes: Colombia. Relief Web, OCHA Services. <https://reliefweb.int/report/colombia/women-s-participation-peace-processes-colombia>

Bose, P. (2017). Land tenure and forest rights of rural and indigenous women in Latin America: Empirical evidence. Women’s Studies International Forum, 65(November), 1–8. <https://doi.org/10.1016/j.wsif.2017.10.006>

Bose, P., Larson, A. M., Lastarria-cornhiel, S., Radel, C., Schmink, M., Schmook, B., & Vázquez-garcía, V. (2017). Women’s rights to land and communal forest tenure: A way forward for research and policy agenda in Latin America. Women’s Studies International Forum, 65(November), 53–59. <https://doi.org/10.1016/j.wsif.2017.10.005>

Camilo-Sánchez, N. and Naranjo-Velasco, K., 2023. Institutional Design and Transitional Justice: An Analysis of Colombia’s Land Restitution Policy. Revista Derecho del Estado, (57), pp.225-258.

CEDAW Committee(UN Committee on the Elimination of Discrimination Against Women (CEDAW)), “General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations,” 2013.

Cramer, C., Cramer, C., & Wood, E. J. (2017). Introduction: Land rights, restitution, politics, and war in Colombia. Journal of Agrarian Change, 17, 733–738. <https://doi.org/10.1111/joac.12239>

Cristiano Mendivelso, J. (2022). Efectividad de las políticas de inclusión de las mujeres rurales en la historia de Colombia (2002-2022): Análisis crítico de la ley 731 de 2002. [online] Bogotá: Universidad de Ciencias Aplicadas y Ambientales. [Acceso : 18 de marzo 2024]

Cuskelly, K. (2011). Customs and Constitutions: State recognition of customary law around the world. IUCN, Asia Regional Office, Bangkok, Thailand.

DANE (Departamento Administrativo Nacional de Estadística - National Administrative Department of Statistics, “Propiedad Rural En Colombia Un Análisis Con Perspectiva de Género e Integración de Fuentes de Datos” (Bogota, Colombia, 2022):.12

Deere, C. D., & Leon, M. (2001). The Importance of Gender and Property. In B. R. De Walt, R. Andrews, C. Conaghan, & J. I. Domínguez (Eds.), Empowering Women: Land and Property Rights in Latin America (pp. 1–31). UNIVERSITY OF PITTSBURGH PRESS.

Del Pilar Peña-Huertas, R., Abondano-Romero, A., Abril-Bonilla, N., Jiménez-Nicholls, M. C., & Uribe-Larrosa, L. F. (2018). Land tenure systems and property rights: Socio-legal studies in the

Colombian case. Tilburg Law Review, 23(1), 43–58. <https://doi.org/10.5334/tlir.3>

Esquirol, J.L., 2021. The presumptions and burdens of land restitution in Colombia. Transnat’l L. & Contemp. Probs., 31, p.93.

Faguet, J.-P., Fabio, S. T., & Villaveces, M.-J. (2017). The paradox of land reform, inequality and development in Colombia (No. 17-181; Working Paper Series 2017). <http://hdl.handle.net/10419/224807%0AStandard-Nutzungsbedingungen>:

García-Godos, J., & Wiig, H. (2014). The Colombian Land Restitution Programme: Process, results and challenges, emphasizing women. In NIBR-report 2014:14.

García-reyes, P., & Wiig, H. (2020). Reasons for gender. Gender, household composition and land restitution process in Colombia. Journal of Rural Studies, February 1–9. <https://doi.org/10.1016/j.jrurstud.2020.01.006>

García, M. I. and N. Bermudez (2005). Law, Land Tenure and Gender Review Series: Latin America. In M. Benschof & F. Bruyas (Eds.), UN-HABITAT (Vols. 92-1–13176). UN-HABITAT.

Isa, F. G. (2014). Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective: The Approach by the Colombian Constitutional Court and the Inter-American Court of Human Rights. Human Rights Quarterly, 36(September), 723–756. <https://doi.org/10.1353/hrq.2014.0056>

Meertens, D. (2012). Forced Displacement and Gender Justice in Colombia: Between Disproportional Effects of Violence and Historical Injustice. In Case Studies on Transitional Justice and Displacement (Issue July).

Meertens, D. (2015). Discursive Frictions: the Transitional Justice Paradigm, Land Restitution and Gender in Colombia. Pap. Polit. Bogotá (Colombia), 20(2), 353–381. <https://doi.org/10.11144/Javeriana.papo20-2.dftj>

Peña, X., Alejandro, M., Cardenas, J. C., Perdomo, N., & Matajira, C. (2017). Collective Property Leads to Household Investments: Lessons From Land Titling in Afro-Colombian Communities. World Development, 97, 27–48. <https://doi.org/10.1016/j.worlddev.2017.03.025>

Plant, R., & Hvalkof, S. (2001). Land Titling and Indigenous Peoples. In Technical Paper Series (IND-109; Sustainable Development Department Best Practices Series).

Robustelli, T. (2018, October 15). Challenges to Rural Land Reform in Colombia: The Need for Change in the Countryside Faces Significant Obstacles. New America. <https://www.newamerica.org/future-land-housing/blog/challenges-rural-land-reform-colombia/>

Ruiz, V. M. A. (2018). Collective land tenure in Colombia: Background and current status. In Info Brief (Issue 217). <https://doi.org/10.17528/cifor/006902>

Sánchez, F. V. D. (2019). Rural Land Reforms in Colombia: Policy and Institutional Challenges for the new administration. Artículos, 138(June 2019). <https://doi.org/10.11144/Javeriana.vj138.rlrc>

Sánchez, N.C., and Sandoval-Villalba, C., 2020. Go big or go home? lessons learned from the colombian victims’ reparation system. In Ferstman, C., & Goetz, M. (Eds.). Reparations for Victims of Genocide, War Crimes and Crimes against Humanity (pp. 547-570). Leiden, The Netherlands: Brill | Nijhoff. <https://doi.org/10.1163/9789004377196>

San Pedro, P. S. (2019). Women Defenders of Agricultural, Territorial, and Environmental Rights in Colombia: Risking their lives for peace. In Oxfam Briefing Paper (Issue October).

Thomson, F. (2017). Land restitution in Colombia: why so few applications? (Issue October). www.fmreview.org/latinamerica-caribbean

Tobin, B. (2013). The Role of Customary Law in Access and Benefit-Sharing and Traditional Knowledge Governance: Perspectives from Andean and Pacific Island Countries.

UNDP. (2011). Gender Equality and Women’s Empowerment in Public Administration: Colombia case study.

United Nations High Commissioner for Refugees (UNHCR). 2023 Global Focus: Colombia situation <https://reporting.unhcr.org/operational/situations/Colombia-situation>

USAID. (2017). Property Rights and Resource Governance: Colombia. https://usaidlandtenure.net/wp-content/uploads/2017/01/USAID_Land_Tenure_Colombia_Profile_Revised_December-2017.pdf

Von Au, A.K., 2013. The transformative potential of gender justice in the land restitution programme in Colombia. Deusto Journal of Human Rights, (11), pp.207-239.

Key regulations related to women's land rights in Colombia

YEAR OF APPROVAL	REGULATION	RELEVANCE
1991	The 1991 Constitution (rev. 2015)	<p>Art 5, 7, 13, 19, 42, 43, 58, 59, 63, 171, 246, 313:</p> <ul style="list-style-type: none"> The Constitution recognizes women and men as equals before the law and that they enjoy the same rights, freedoms, and opportunities without discrimination based on gender, race, nationality or family origin, language, religion, and political opinion. It guarantees all citizen's rights to private property while promoting and protecting associative and joint forms of property. It also allows land expropriation for social interest while ensuring compensation to the individual or community. It classifies certain public properties as inalienable including natural parks, communal lands of ethnic groups, and archaeological sites. It guarantees indigenous authorities' jurisdiction within their territories.
1993	Law 70 of Colombia	<p>Art 1, 3, 4, 5, 7, 15, 19:</p> <ul style="list-style-type: none"> The law created a pathway for recognition of collective property right for afro-descendant communities. It made provisions to protect the cultural identity and rights of afro-descendent people and included measures to foster equal economic and social development. It granted afro-descendant people autonomy over their territories in conformity with the law. It also recognized Community Councils as an internal administrative body that manages adjudicated lands in the territory. It defined communal lands as non-transferable, imprescriptible, and non-mortgageable except for areas assigned to a family group that can be transferred.
1994	Agrarian Land and Policy Law No 160	<ul style="list-style-type: none"> This law regulated a national agrarian reform process to address the problem of land concentration. It created a category of communal land called Campesino Reservation Zones (Zonas de Reserva Campesina - ZRC) to ensure land distribution to family farms and to limit the expansion of large agro-industries. It prioritized the allocation of land to rural women affected by war and violence in the country. It recognized joint titling for household property.
2000 AND 2011	Quota Law (Law 581 of 2000, and Law 1475 of 2011)	<ul style="list-style-type: none"> Law 581 states that women must hold at least 30 per cent of positions in the highest decision-making levels in all three branches of government and other national, departmental, regional, provincial, district, and municipal public offices. Law 1475 states that women's participation in the electoral lists of political parties should be at least 30%

YEAR OF APPROVAL	REGULATION	RELEVANCE
2002	Rural Women's Law 731	<p>Art 6, 7, 8, 10, 13, 18, 19, 22, 24, 25, 27, 28, 29:</p> <ul style="list-style-type: none"> This law was enacted to address discrimination against rural women, improve their quality of life and promote equality between rural men and women. It defined four pillars 1) improving women's access to land, credit and technical assistance, 2) encouraging women's participation in governance, 3) improving their wellbeing in terms of education, health, employment and housing, and 4) monitoring of the implementation of the law. It included provisions for equitable participation of rural women in decision-making bodies. It further encourages the recognition of the rights of a woman widowed or abandoned by her spouse or partner to claim land already titled.
2011	Law 1448 (Victims and Land Restitution Law)	<p>Art 6, 7, 13, 31, 72, 73, 76, 84</p> <ul style="list-style-type: none"> This law included a process for restitution of people that were forcibly displaced from their land. It created a mechanism to register land forcibly abandoned during the armed conflict. It established a differentiated approach, of protection for vulnerable groups exposed to violations such as women, children, elderly, disabled, victims of forced displacement, and human rights defenders.
2015	Colombian Civil Code, 2015	<p>This framework classifies land tenure systems into three types:</p> <ul style="list-style-type: none"> State lands: Land owned by the State for public use including protected areas, archaeological sites, and land with no owners (vacant lands). Private lands: Land owned by individuals or under joint ownership between spouses or a group of individuals. Communal lands: Lands owned collectively as Indigenous reserves (resguardos), Afro-Colombian territories, and associations of smallholders.



INITIATIVE CONSORTIUM



The Center for International Forestry Research (CIFOR) and World Agroforestry (ICRAF) envision a more equitable world where trees in all landscapes, from drylands to the humid tropics, enhance the environment and well-being for all. CIFOR and ICRAF are CGIAR Research Centers.



Climate change, biodiversity loss, environmental degradation, and malnutrition. These four interconnected global crises have put at stake the wellbeing of our planet for years. Fueled by COVID-19, their impact on agriculture, landscapes, biodiversity, and humans is now stronger than ever. Reversing this negative trend is a challenge, but also an opportunity for bold choices and integrated solutions. Established in 2019, the Alliance of Bioversity International and the International Center for Tropical Agriculture (CIAT) was created to address these four crises, maximizing impact for change at key points in the food system.



The International Food Policy Research Institute (IFPRI) provides research-based policy solutions to sustainably reduce poverty and end hunger and malnutrition in developing countries. Established in 1975, IFPRI currently has more than 600 employees working in over 50 countries. It is a research center of CGIAR, a worldwide partnership engaged in agricultural research for development.

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