

**LAND IN THE
HANDS OF A FEW**



The situation in Colombia couldn't be more paradoxical: the country's constitution protects the fundamental, social, economic, and cultural rights of its citizens and requires the State to actualize them. Yet at the same time a legal and regulatory model covering agrarian property incentivizes and facilitates not only unequal distribution of land, but its concentration in very few hands.

The Colombian Republic's constitution certainly seems to offer protection in rural spheres to individuals and domestic food production, giving judges unusual latitude to carry out legal actions to ensure the fulfillment of its articles.

Analysts such as Rocío Peña Huertas, professor at the Faculty of Jurisprudence of the Universidad del Rosario, have conducted in-depth studies into the clear contradiction between the constitutional protections and current law. Professor Peña maintains that "while the 1991 Constitution transformed countless social and political structures, it preserved the classic 19th-century liberal structure for agrarian property rights as regulated by the Civil Code."

Indeed, the Constitution mentions peasants only to equate them with agricultural workers (article 64), "when they are not the same", and then refers to them in article 57 as part of a group that should help put forward proposals to the government on the issue of social security. "Unlike other social agents, peasants were not considered to be subjects addressed by specific state policies, and many aspects of peasants' reality were overlooked," states Peña. In other words, the identity of the peasant as a subject with particular ties to the land beyond production and participation in the market was not taken into account.

In addition, the institutional model for the organization of rural assets includes a bias favouring people with access to the necessary information, including rural elites, politicians, and illegal armed interests.



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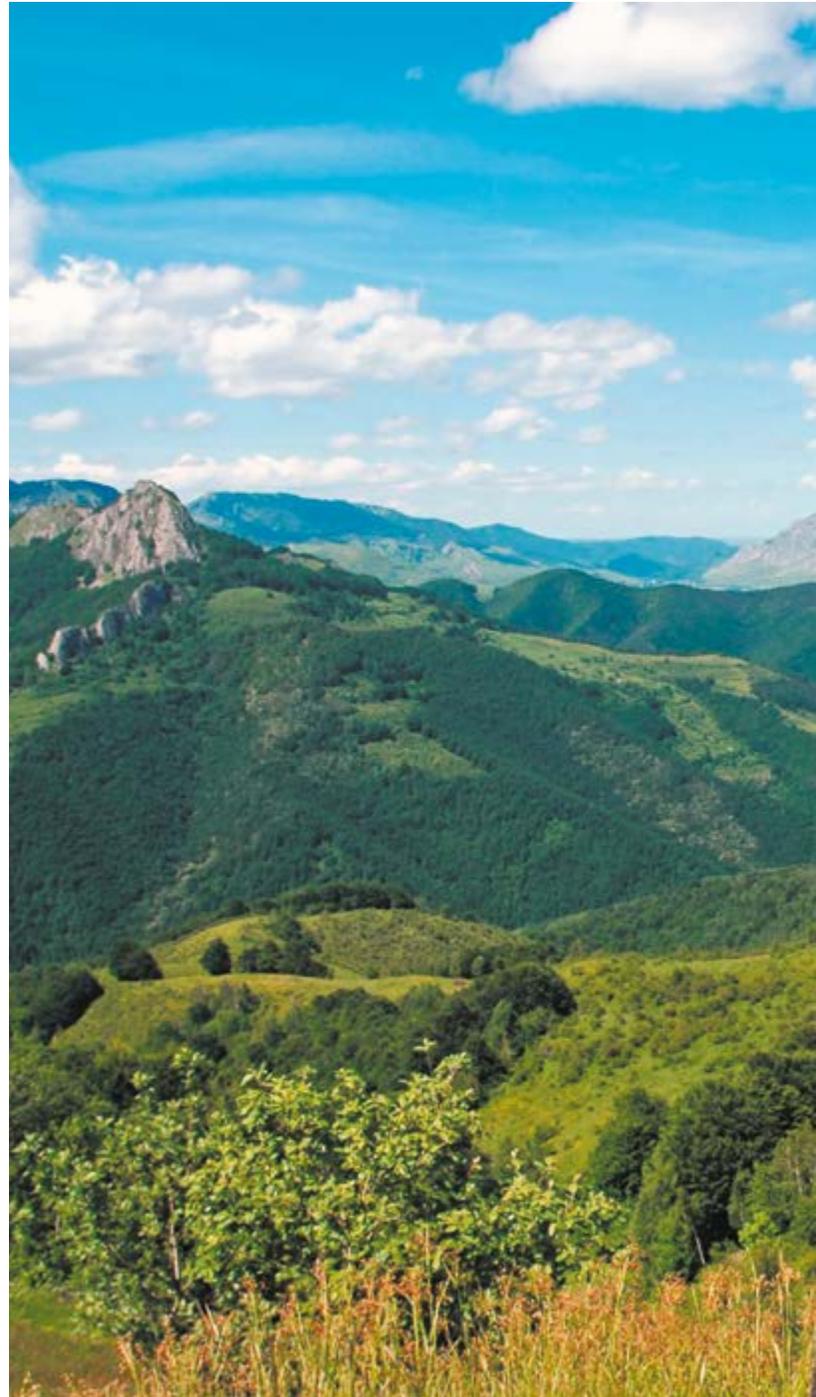
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Rocío Peña Huertas, professor at the Faculty of Jurisprudence of the Universidad del Rosario, maintains that “despite having transformed many social and political structures, the 1991 constitution preserved the classic 19th-century liberal structure of property.

Thus, the regulation of agrarian property rights in Colombia, which theoretically allows access to land while impeding land concentration and dispossession, is far from resolved. Even though the Constitutional Court has issued rulings and other State bodies have produced laws, decrees, and various regulations over many years, the legal framework is still inadequate to fully resolve the problem.

This is so much the case that in 2009 the Gini coefficient for rural property was 0.86, meaning that Colombia had one of the highest levels of rural inequality and exclusion in the world. This coefficient measures the level of inequality within a given territory on a scale of 0 to 1, with 1 being the most unequal and 0 the least unequal. As if that were the only problem, the displaced population was dispossessed of 6.6 million hectares of land in the period from 1980 to 2010.

How is it possible that, despite multiple legal instruments in place to avoid it, this wholesale dispossession and concentration of land has intensified?

This is one of the questions that Professor Peña is trying to answer, given that these phenomena cannot be explained strictly on the basis of existing legal regulations. “But although their effectiveness is tested by local practices and independent local bodies taking on State functions, the entities charged with implementing and enforcing established norms, especially these control filters, stick to



the letter of the law when carrying out their responsibilities,” she explains. But so too do other actors who take advantage of legal loopholes to advance their own interests.

It is argued by some that the problem is not directly related to the regulations themselves, but to their application. These voices include that of the United Nations Development Program, as expressed in its Human Development Report of 2011, where it states that dispossession and displacement result from a historical process involving the convergence of market forces, drug-trafficking operations, and manipulation by outlawed armed groups.



COLOMBIA SHOULD CONFORM TO NEW REQUIREMENTS AND NECESSITIES RECOGNIZED BY STATES AROUND THE WORLD IN ORDER TO ACHIEVE DECENT LEVELS OF EQUITY AND EQUALITY AMONG THEIR POPULATIONS



Rocío Peña Huertas
Researcher

tem, and the government of Juan Manuel Santos first introduced the Law on Victims and Land Restitution (Law 1448 of 2011 to Congress in 2010, intending to restructure public policy covering land restitution.

Professor Peña maintains that the legal institutions provided for in the Civil Code issue clear rules allowing for just and equitable property transactions, and guarantee respect for the rights of all citizens. “All these good intentions are disfigured by the logic that dominates the armed conflict and the struggle for rural assets. It is not possible to speak of equality before the law when it is a notorious fact that a high percentage of the land illegally taken and concentrated in the hands of a few powerful actors was legalized according to forms and procedures stipulated in the Civil Code,” she notes.

Among the broad conclusions of the research are that the constitution virtually precluded land expropriation, but did not reform crucial aspects of property rights regulation that greatly empowered the wealthy and local elites.

The results indicate that, since the 1990s, through implementing policies on access to rural land, the state has perpetuated policies that do not address the structural faults underlying rural inequality and the need for redistribution of rural property. So, there continues to be a marginalized peasant population that is not subject to state policy and lacks effective participation in the making of policy for the rural sector.

“Colonial and republican power structures that have allowed absurd rates of rural property concentration to last to the present day have not been overturned as part of a necessary state reorganization,” asserts Professor Peña, who is convinced that Colombia must conform to new requirements and necessities recognized by States around the world in order to achieve decent levels of equity and equality among their populations. ■



The displaced population was dispossessed of 6.6 million hectares of land in the years 1980-2010.

In her capacity as coordinator of the Observatory on the Restitution and Regulation of Agrarian Property Rights, Professor Peña collaborated on the research report, *Agrarian Regulation in Colombia, or the Eternal Déjà vu of Concentration and Dispossession: An Analysis of Colombian Legislation on the Agricultural Sector (1991-2010)*. This report demonstrated that laws and regulations issued during the period studied either promote or permit the concentration and dispossession of rural property.

The 1991-2010 period was chosen because the 1991 constitution was intended to restructure the Colombian legal sys-