

Collective land tenure in Colombia

Data and trends

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Key messages

- Collective land tenure in Colombia covers almost 38 million hectares, including land recognized both as indigenous *resguardos* and as collective lands of Afro-descendant communities. Yet, land titling has stagnated since the 1990s.
- Among Latin American countries, Colombia stands out for the amount of land under collective tenure, which represents 34% of the total Colombian continental area. Indigenous peoples alone own 28.4% of the country under the mechanism of community-based tenure.
- The existence of legal instruments to foster collective territory rights is a major achievement of ethnic social movements and of the State, which, even in the midst of land-concentration processes (Gini index of 0.85) and of armed conflict, has succeeded in adopting regulatory frameworks to safeguard these rights.
- There are also collective territories with no State recognition. Thus, in the present context of the implementation of the Peace Agreement, constituting *resguardos* and collective lands to benefit ethnic groups demanding increased participation in this new national scenario needs to be on the political agenda.

Collective land ownership and tenure in Colombia

The legal recognition of collective land ownership and tenure is enshrined in the 1991 Constitution. Although the collective titling of indigenous *resguardos* and of black/Afro-descendant lands is already recognized, it is increasingly likely that similar reserve zones will be considered for the protection of *campesino* (peasant) rights. This is an open debate that has a direct relation to the implementation of the recent Peace Agreement between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC-EP). However, at present, and within the current legal

system, collective land tenure in Colombia is exclusively recognized for ethnic groups. In addition, a proposal is gaining ground in the political arena related to the creation of an appropriate mechanism to address complex territorial contexts. In some regions, natives, Afro-descendants and *campesinos* share the same areas, hence existing options cannot grant them all legal security. This context gives significance to the idea of intercultural territories, understood as areas inhabited by different ethnic and *campesino* groups that work together towards the protection and preservation of land and natural resources, thereby articulating state responsibilities with forms of local organization¹.

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¹ At the 2014 IUCN World Parks Congress, the idea for this mechanism has gained visibility and has also generated debate, as it has introduced *campesinos* as subjects of conservation, a space that had been historically reserved to ethnic groups. At this event, Colombia's Ministry of Environment, Housing and Territorial Development reported that 43% of the forests are located in territories belonging to ethnic or *campesino* groups.

Mechanisms and procedures in collective land ownership

In the case of indigenous communities, Decree 2164 of 1995 defines four specific procedures for the legal security of collective ownership: (i) establishment, (ii) border/conflict resolution (*saneamiento*), (iii) expansion, and (iv) restructuring. Although this decree suggests a 12-month period to carry out these procedures, in practice, it may take years. An example of this is the *saneamiento* proceedings relating to several indigenous *resguardos* of the Arhuaco people in Sierra Nevada de Santa Marta, which remain unresolved after 20 years.

For Afro-Colombian communities, the only existing legal mechanism is the one enshrined in Law 70 of 1993, which first incorporated the recognition of territories for these communities into national law. Two years after this law was passed, regulatory decree 1745 of 1995 was issued, setting forth the specific procedures for recognition. The decree “recognizes the right of black communities to collective ownership of the idle lands (*baldíos*) that have been historically occupied by these communities in the coastal areas of the rivers forming the Pacific basin and in other areas of the country” (Decree 1745 of 1995). For this, communities need to set up community councils, which are understood by the legal frameworks mentioned as the legal entity that exercises the highest level of authority for internal administration in black communities’ lands². Lands to be allocated are those occupied by the community, with special consideration of population dynamics, traditional practices and specific ecosystem productivity.

The policy of collective land titling for black communities was addressed as a strategy for the recognition and protection of the ethnic and cultural diversity of these communities, and as an opportunity for organizational strengthening to ensure their participation, autonomy and the self-government of their traditional lands. Furthermore, it was conceived as an otherness (*alteridad*) policy (Restrepo 2002), as a strategy for the environmental protection of the existing natural resources in those territories and as a mechanism to foster production in order to improve the living conditions of black communities (Agier and Hoffmann 1999).

However, the rural characteristics of the region, the history of settlement and the diasporic experiences of the 20th and 21st centuries challenge the stable nature of collective ownership rights as fixed in time, space and subject. Nowadays, it is difficult to find areas in which the limits of collective lands can be clearly drawn and which are inhabited by a single

population group with identical forms of land tenure. The regions inhabited by multiple social subjects also reflect different relations with land and natural resources, ranging from strictly individual to collective. All this implies that, from a legal and political perspective, other territorial safeguards need to be developed in Colombia for communities with no specific collective ownership practices.

Stocktaking of collective titling

The area fully recognized for Afro-descendants and indigenous peoples as collective property covers over 37 million hectares, and almost 38 million with the inclusion of *campesino* reserves, as described in Table 1. Among Latin American countries, this is a significant amount, with lands under collective tenure representing 34% of Colombia’s continental territory. In this sense, it is worth noting that 28.5% of the national territory is classified either as indigenous colonial or republican *resguardos*. As seen in Map 1, the area recognized as *resguardos* and black communities’ collective lands are heterogeneous, on the national border and sometimes fragmented.

In order to understand the importance of the data, collective ownership needs be analyzed in the context of land and territory-related problems in Colombia. These are reflected in the agrarian structure and in land ownership, which have several distinguishing features: (i) the inequality associated with land tenure, (ii) incomplete redistributive land policies, and (iii) an important impact of multicultural policies for collective access to lands and to ecosystem goods and services.

First, analysts agree that land tenure inequality, expressed in Colombia as a Gini index of 0.85, may be associated with increased violence and reduced agricultural productivity (Deiningner and Lavandenz 2004). A recent specialized study

Table 1. Collective territories and *campesino* reserve zones (ZRC) in Colombia (area and percent)

Mechanism of collective tenure and <i>campesino</i> reserve zones	Area (ha)	Percentage of total national area
Black communities	5,396,376	4.7
Colonial <i>resguardos</i>	410,835	0.4
Indigenous <i>resguardos</i>	32,032,238	28.1
Established <i>campesino</i> reserve zones	837,003 ^a	0.7
Total	38,676,452	33.9

^a Mapped area of the six constituted reserves totals 837,000 hectares. However, it should be noted that there are currently 152 reserves pending approval, for over 3 million hectares (Instituto de Estudios Interculturales 2016).

Sources: prepared by the author on the basis of data from the *Módulo de Información Geográfica sobre titulación colectiva formalizada y en trámite* (OEC 2016) and the Instituto de Estudios Interculturales (2016).

² Decree 2664 of 1994 establishes that the Colombian Institute of Agrarian Reform (INCORA) is responsible for the collective titling of *baldíos* for black communities. INCORA was later dissolved and replaced by the Colombian Institute of Rural Development (INCODER). Since 2015, the National Land Agency (ANT) has taken over this function.



Map 1. Location of collective territories and campesino reserve zones (ZRC) in Colombia.

Sources: Geographic Information Systems of the Instituto Geográfico Agustín Codazzi, Instituto de Estudios Interculturales (Pontificia Universidad Javeriana – Cali) and OTEC (Pontificia Universidad Javeriana –Bogotá). Compiled by Elías Helo.

suggests that high levels of concentration and informality in land ownership are associated with land use conflicts (UNDP 2011). In this regard, it is worth noting that the Gini index inside Colombia ranges from 0.8 to as high as 0.9³ depending on the region (DNP 2015). Furthermore, studies have found a higher land concentration in the Colombian

municipalities affected by violence, land abandonment and forced displacement (Ibáñez and Muñoz 2011; Uprimny and Sánchez 2010).

Second, a variety of regulatory frameworks have been adopted in Colombia regarding land ownership (Machado 1998). However, violence, displacement and the concentration of land rent have impeded actual democratization of property or of rural tenure (Fajardo 2002; Machado et. al. 2013). This situation has prevailed in spite of repeated efforts at agrarian reform, in 1936, 1961, 1968 and 1994 (Ocampo 2014).

3 The most updated information on this issue is the technical document, Mission for Rural Transformation [Misión para la Transformación del Campo], or simply "Rural Mission", coordinated by the National Planning Department in 2015 (DNP 2015).

Third, the most recent and significant action in terms of collective tenure and ownership was the adoption of models for the protection of multiculturalism, which materialized in the 1991 Constitution. This explains why Colombia is one of the countries with the most legal mechanisms, titled area (Table 1) and guarantees for the recognition of collective land tenure.

In this regard, *campesino* reserves are different, as they incorporate private ownership principles and are not derived from a regulatory framework that protects cultural diversity. Law 160 of 1994 recognizes *campesinos'* right to access and demarcation of these areas. The law was designed to regulate and manage 'idle land' occupation and to strengthen *campesino* economies in the country (Pérez 2007).

From a conservation perspective, collective land ownership is essential. As shown in Table 2, the territories of ethnic groups are located in specially protected ecosystems, providing important environmental services and preserving high plains (*páramos*), humid forests and other biomes.

Collective lands of black communities

As mentioned above, Law 70 of 1993 provides the legal basis for the creation of the "collective lands of black communities" and is based on the constitutional principle of Colombia as a multiethnic and pluricultural nation. These communities are defined by law as:

the group of families of Afro-Colombian descent that have their own culture, share a common history and have their own traditions and customs within a rural-urban setting, revealing and preserving an awareness of identity that distinguishes it from other ethnic groups. (Law 70 of 1993)

The recognition of black communities as an ethnic group in the Constitution is a milestone in the development of national legal norms and marks a change in the approach to ethnicity as recognized by Colombian law and previously reserved to indigenous peoples. Before 1993, black communities had been considered by law as *campesinos* or settlers (*colonos*) (Herrera 2016; Restrepo 2013).

As of 2017, 5,396,376 hectares of Afro-descendant communities had been titled. Of these, only 3,430 hectares are located in the Caribbean, where an important part of the population resides, while the remaining lands are located primarily in the Pacific with some in the Andean region, as described in Table 3. These titles were mostly granted in 1995-2003. After this period, the process of collective titling slowed and even stagnated, as shown in Figure 1.

The reasons for the marked difference between one region and the other are related to the individual history of the settlements, the ecosystems and their intercultural contexts. Law 70 was not only applied but also created in the Pacific region. This is why a large part of its provisions are based on

Table 2. Strategic ecosystems in ethnic and *campesino* titled territories

Mechanism	Total area (ha)	High plains	Permanent open wetlands	Dry forests	Tropical rainforests	Natural and semi-natural cover ^a
Black communities	5,396,376.3	14,735.7	189,635.8	660.3	2,708,626.3	1,540,318.2
Colonial <i>resguardos</i>	410,835.3	102,638.5	1,252.8	—	68,838.8	17.7
Indigenous <i>resguardos</i>	32,032,237.7	286,587.8	280,339.6	35,618.4	22,834,753.8	4,572,801.2
Established <i>campesino</i> reserve zones	837,003.2	19,571.3	23,029.0	227.4	168,664.9	146,068.2
Total	38,676,452.4	423,533.3	494,257.2	36,506.1	25,780,883.9	6,259,205.4

a These correspond to wetlands categories in CORINE Land Cover (IDEAM 2010).

Sources: GIS of the Instituto Geográfico Agustín Codazzi and Observatorio de Territorios Étnicos y Campesinos, OTEC (Pontifical University Javeriana – Bogotá).

Table 3. Regional distribution of the hectares collectively titled to black communities in Colombia

Collective titles by region	Hectares	Percentage
Andean	249,438.8	4.47
Caribbean	3,430.3	0.06
Pacific	5,321,858.0	95.46
Insular Caribbean	100.5	0.0001

Source: Disaggregated data reconstructed from the information provided by INCODER's Subgerencia de Promoción y Grupos Étnicos (2006-2015).

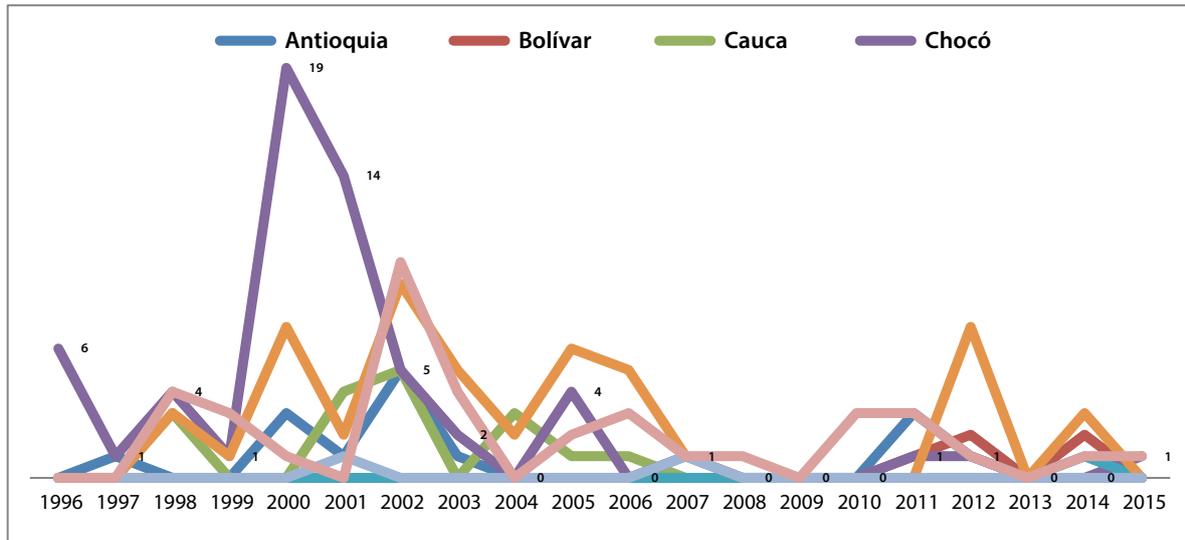


Figure 1. Titles granted by year and department, 1996-2015

Source: Author's own compilation based on INCODER and OTEC data (2016).

the territorial contexts of the low forests in the biogeographical Chocó. In the Caribbean, however, the story is different: there are no low forests and Afro-descendants have traditionally settled in densely populated regions inhabited by *campesinos*, indigenous peoples and settlers. In addition, the Caribbean is a major ranching area, which has led to higher levels of land concentration, deforestation and forest degradation. Surprisingly, there are significant overlaps between dry tropical forests and the traditional areas of the Afro-descendant communities waiting for the State to grant them titles to ancestral lands.

In the Caribbean and other regions, there is much to do in the field of collective titling. According to the information provided by the Observatorio de Territorios Étnicos y Campesinos (OTEC), as of 2017, and based on INCODER data as of March 2015—updated by the National Land Agency in March 2017—there are currently 271 collective titling petitions pending approval and submitted by black communities, most of which are located in the Colombian Caribbean⁴. For example, in the region of Cesar, in the municipality of Valledupar, these communities have petitioned for the collective titling of over 10,000 hectares.⁵

4 According to the State, there are 271 petitions in process for granting Afro-descendant communities' collective ownership. Of these, 103 refer to lands in the Caribbean. However, OTEC has recorded 145 proceedings initiated by Afro-Caribbean communities. Most of them are still waiting for a reply.

5 For this reason, OTEC, in partnership with the Rights and Resources Initiative (RRI), is currently developing research that lays the legal foundations for collective titling in the Caribbean. This study presents a systematic reinterpretation of the set of existing land regulations, including agrarian laws and laws establishing collective land rights, to make them consistent with constitutional provisions and the rules of international law recognizing the land rights of black communities.

These cases show how the rights of Afro-descendant communities are more vulnerable without recognition of collective ownership. At present, the set of provisions is incomplete and cannot provide an appropriate scenario for collective land tenure security. In this regard, and with the support of CIFOR, OTEC has recently published a think piece explaining how the array of standards aimed at collective land tenure rights protection, of which Colombia is so proud, actually fall short if they are not articulated with political will and agreements, and if they are not accompanied by the technical capacity for implementation (Velásquez 2017). This situation becomes even more alarming in the current context, with legislative reforms involving decisions over land tenure in relation to the implementation of the Peace Agreement⁶.

Indigenous *resguardos*

In percentage terms, Colombia ranks tenth in Latin America regarding the portion of the population that is indigenous, with more than 95 indigenous peoples that account for 3.3% of the total population (World Bank 2015). Most of these people live in indigenous *resguardos*, which are defined in Decree 2001 of 1988 as follows:

A special legal and sociopolitical institution composed of one or more indigenous communities that enjoys the guarantees of private ownership through collective titling, is in possession of its territory, and is governed for its management and internal affairs by an autonomous organization protected by indigenous law and its own norms. (Decree 2001 of 1988)

6 See OTEC (2017).

State recognition of indigenous peoples' territories is expressed through the legal mechanism of the *resguardo*, an institution that dates back to the colonial period. Although lands were titled across the country in the colonial period, to legitimize the expropriation and relocation of indigenous people, these titles have long been ignored by Republican governments, which dissolved most *resguardos* and indigenous reserves by issuing laws leading to the irreparable loss of indigenous peoples' lands.

It was not until the 1960s that the titling of *resguardos* was resumed, through the Colombian Institute of Agrarian Reform (INCORA). This process peaked between 1961 and 1986 when more than 158 new *resguardos* were titled, accounting for approximately 12,400,000 hectares. Later, between 1986 and 1989, 63 new *resguardos* were titled, for a total of 13,360,461 hectares. At present, and according to the data provided by the National Land Agency, there are 715 *resguardos*, mostly located in the Pacific and Amazon lowlands and in border regions.

Land use in indigenous *resguardos* is mainly associated with forest conservation, as shown in Figure 2. These are located in areas of great ecological importance. A recent study estimated that "if indigenous peoples had not had secure tenure of their lands and forests, greenhouse gas emissions in Colombia would have been even up to 10-15% higher" (RRI, WHRC and WRI 2016, 3).

According to RRI's expert Andy White, there is an unprecedented worldwide agreement among governments, international cooperation agencies, private investors, and companies that communities' collective land tenure rights need to be secured as an urgent, necessary and low-cost priority. An analysis of the relationship between the security of collective land tenure rights and the reduction of emissions in 14 countries with a large forest area, including Colombia, found that when communities have legal security over their collective lands and forest resources, they are better prepared to stop forest destruction and, hence, to curb carbon emissions (WRI and RRI 2014). Globally 513 million hectares of forests recognized as owned by indigenous peoples and rural communities store almost 37.7 million metric tons of carbon (White and RRI 2014). That is, safeguarding the land rights of indigenous peoples and communities ensures better climate and environmental conservation outcomes. This is also acknowledged by the international agreement on climate change, which emphasizes the importance of the recognition of the rights, traditional knowledge and management practices of indigenous peoples to mitigate climate change (Bolaños and RRI 2016).

However, indigenous territories are increasingly threatened by a variety of conflicts. In this regard, ONIC (2005) notes the clear land limitations to which indigenous peoples have been subjected, due not only to forced displacement, economic

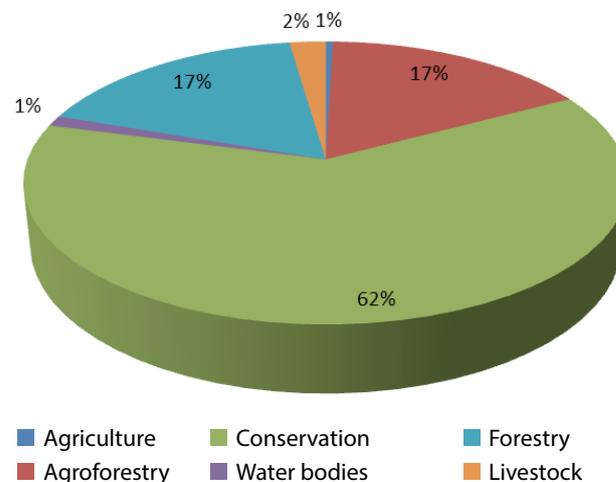


Figure 2. Land use in *resguardos*

Source: Map of land use of the Instituto Geográfico Agustín Codazzi, 2015, as these intersect with areas of indigenous *resguardos* georeferenced with OTEC's GIS.

interests and the lack of legal security but also to the loss of governability and the difficulties in access to productive and sacred spaces. This is also seen in Colombia's map of indigenous territories, which demonstrates large ethnic territories on the one hand, and scattered communities settled in small areas, on the other.

Historical data on forced displacement systematized by OTEC⁷ shows that nearly half of the country's *resguardos* (48.7%) are located in the group of 150 municipalities most affected by displacement. In future scenarios, this vulnerability may even increase, considering the number of indigenous territories without legal recognition⁸.

Collective ownership in the implementation of the Peace Agreement

More than 20 decrees have been issued for the implementation of the Peace Agreement. The Agreement proposes important changes with regard to land and territory, mainly in the first chapter, which sets forth the provisions for a comprehensive and transforming rural reform. The last chapter in the Agreement, Ethnic Perspectives, includes the commitment not to violate the rights already enshrined in ordinary and special legislation—at national and international level—with the implementation of the Peace Agreement.

⁷ As of December 2015.

⁸ Nearly 400 petitions to establish *resguardos* for an area of 2,295,696.5 hectares (INCODER 2015; OTEC 2016).

However, these first months of preparation for its implementation have brought about misunderstandings among the Colombian government, the FARC-EP and the authorities of ethnic groups, as regulatory frameworks have been established for land-use planning and development with a territory-based approach while disregarding the difficulties in terms of secure collective land tenure systems (170 municipalities in 16 subregions prioritized in Decree 893 of 2017).

A recent official statement made by the members of the Ethnic Commission for Peace and the Defense of Territorial Rights clearly states that land rights are at risk if the Development Programs with a Territorial Focus (PDET) do not consult with the respective authorities of indigenous and Afro-descendant peoples. In particular, the Afro-Colombian Peace Council (CONPA) has noted that ethnic groups have not been summoned or consulted to develop a methodology that ensures their significant—rather than symbolic—participation in the formulation of PDETs⁹.

The same applies to the Colombian National Protected Areas Conservation Trust Fund, which is limited by the State's lack of knowledge about sacred places and ancestral use areas. Other changes are yet to take place in terms of registration and agrarian jurisdiction issues that lack a focus on collective land rights and have instead a clear emphasis on individual ownership.

The delimitation and clarification of 'idle lands' is still one of the most sensitive elements for ethnic groups in the regions without collective titling, as most of these areas are, according to the State's official categories, merely public use areas, as they are not delimited or registered as traditional lands belonging to ethnic groups.

Thus, the post-conflict scenario is a source of both opportunities and risks. However, the consolidation of peace cannot violate the non-regression principle in any way. This principle refers not only to the guarantees incorporated into legislation but also to the guarantees in force in the legal system.

Acknowledgements

We thank the European Commission and the International Fund for Agricultural Development (IFAD) for supporting this research. We would also like to thank Andrée Viana and Cristian Zapata for their reviews and comments. This work was carried out within the framework of CGIAR Research Program on Policies, Institutions, and Markets (PIM), led by the International

Food Policy Research Institute (IFPRI), and of the Research Program on Forests, Trees and Agroforestry (FTA) led by CIFOR. This working paper has not gone through IFPRI's standard peer-review procedure. The views expressed here are those of the authors and do not necessarily reflect the views of CIFOR, PIM, IFPRI, CGIAR, or the financial sponsors.

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⁹ Official Statement of the Ethnic Commission for Peace and the Defense of Territorial Rights and participant organizations, dated 28 September 2017.

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