

RESEARCH ARTICLE

Land Tenure Systems and Property Rights: Socio-Legal Studies in the Colombian Case

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This article aims to propose a methodological design to explain and assess the land titling programs that have been implemented in Colombia since 1991. The methodology incorporates elements from social and legal sciences in order to analyze the results of land titling programmes in terms of the *campesinos'* legal and social relationship with their land. This methodology focuses on evaluating whether land titling programs produced a change in the beneficiaries' land rights. Consequently, the proposed analysis helps to understand how legal regulations affect and transform social relationships.

Keywords: Socio-legal studies; land titling; property rights; territory-territoriality

1 Introduction

This article presents a methodology that starts out from legal categories, in combination with social sciences data collection techniques,¹ to evaluate some of the land titling programs implemented in Colombia over the last 25 years. We propose this socio-legal approach to analyze the relationship between the concept of property, and the ways in which Colombian *campesinos* (countrymen) understand their land, socially, culturally, politically and economically. *Campesinos* are individual holders of land rights who collectively claim an identity based on a bond with land and territory.² The above mentioned approach combines social sciences' methods, such as semi-structured interviews and social mapping, to subsequently perform an analysis of the collected information in light of legal and jurisprudential definitions.

Since the 1990s the Colombian state has carried out three national land titling programs, which have sought to consolidate individual private property rights: (i) *Plan Nacional de Desarrollo (1996–2004)* (National Development Plan) sought to provide a legal economic alternative to small producers of illicit crops, such as indigenous people and *campesinos* and their families. The program has two goals. First, to legalize and normalize property rights so the small producers could have credit access. Second, the government was supposed to provide technical assistance, infrastructure and services to the public. (ii) *Programa Presidencial para la Formalización de la Propiedad y la Modernización de la Titulación Predial (1997–2007)* (Presidential Programs for Property Formalization and Modernization of Property Rights) aimed to boost the land market through land titling programs as well as upgrading the cadastral and registration system during the government of former President Ernesto Samper (1994–1998). During the administration of former President Andrés Pastrana (1998–2002), the program was restructured and most of the new measures that were adopted were related to upgrading the cadastral and the registration system rather than land titling. Finally, (iii) *Programa Nacional de Formalización de la Propiedad de los Predios Rurales (2010-present)* [*National Programs of Property Formalization of Rural Lands*] sought to promote access to land ownership

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² Rocío del Pilar Peña-Huertas and others, 'Legal Dispossession and Civil War in Colombia' (2017) 17(4) *Journal of Agrarian Change* 759.

and improve the *campesinos* quality of life. This program pursues the regularization of individual and collective tenure of rural properties. Additionally, the *Instituto Colombiano de Desarrollo Rural* (Colombian Institute of Rural Development, INCODER) delegated its land titling and registration functions to the departments,³ through inter-administrative agreements. That is the case of the Department of Casanare, in the East of Colombia, which promoted the titling of vacant lands between 2004 and 2007 under Law 160 of 1994, by which the National System of Agrarian Reform and Rural Peasant Development is created.⁴

These programs were developed within a context of land distribution inequalities. According to the Instituto Colombiano Agustín Codazzi (Geographic Institute Agustín Codazzi or IGAC),⁵ by the 21st century, Colombia had a Land GINI index of 0.853 and 0.863, which showed a growing trend of concentration in landowning in the country. At the same time, the land ownership GINI index, which is different from the land index one, went from 0.877 in 2000 to 0.886 in 2009. The latter index also exposed a growing trend in which existing landowners were buying new plots in this period, leading to an increase in land concentration.⁶

According to IGAC,⁷ both Afro-Colombian and indigenous communities⁸ had 0.27 percent of registered cadastral land by 2009.⁹ It also reported that indigenous safeguards in 2009 took up 29.03 percent of Colombian territory,¹⁰ while the Afro-Colombian share of the land was 1.47 percent. Private land, on the other hand, comprised 4.71 percent of the national territory; 41 percent of this private land is made up of large properties of more than 200 hectares, 40 percent are medium-size properties between 20 and 200 hectares, and the remaining 19 percent of private properties are distributed among smallholdings.

One of the greatest difficulties studying land and property rights in Colombia is the lack of institutional information and public policy monitored by the state. An example of this is the virtual non-existence of public records of wastelands. In the late 20th century, the Instituto Colombiano de Reforma Agraria (Colombian institute for Agrarian Reform or INCORA) (Agencia Nacional de Tierras) allocated some of these wastelands to *campesinos* across the national territory without duly registering them. Therefore, the *campesinos* living on those non-registered plots are not still recognized as landowners by the government.

The concepts of property and territory included in this methodology are the two main categories of analysis to understand people in relation to their land. On one hand, property rights statutes represent a regulatory framework through which land titling programs are performed. On the other hand, they form a benchmark against which the rights, entitlements and obligations of former holders before and after land titling programs can be measured. Consequently, in this article, we first assess the concept of ownership according to Colombian legislation and then use it as an analytical tool to assess whether the programs effectively fulfilled the objective of transforming *campesinos* into landowners.

In turn, the concept of territory arises from the “new paradigm”,¹¹ from our literature review on the assessment of titling processes and programs around the world. Territory and territoriality are conceptual approximations to non-legal relations, such as social, political or cultural rapports that may be present in the

³ Administratively, Colombia is divided into departments at a regional level, and into municipalities at the local level.

⁴ Congreso de la República [1994] Ley 160 de 1994 Por la Cual se Crea el Sistema Nacional de Reforma Agraria y Desarrollo Rural Campesino, se Establece un Subsidio para la Adquisición de Tierras, se Reforma el Instituto Colombiano de la Reforma Agraria y se Dictan Otras Disposiciones (Law 160 of 1994 by which the National System of Agrarian Reform and Rural Peasant Development is created, a subsidy is established for the acquisition of land, the Colombian Institute of Agrarian Reform is reformed and other provisions are issued) Diario Oficial No. 41.479.

⁵ Instituto Geográfico Agustín Codazzi (IGAC), *Atlas de la Distribución de la Propiedad Rural en Colombia* (IGAC, 2012) 118.

⁶ Although this data shows land tenure inequality in Colombia, note that due to the lack of a cadastral update, and its lack of connection with the registration system, it is considerably difficult to make statements about land property. By 2016 the 28 percent of the national territory did not have cadastral training, and 63.9 percent of the formed area is outdated cadastre (722 municipalities out of 1101). Consejo Nacional de Política Económica y Social-CONPES, *Política Para La Adopción De Un Catastro Multipropósito Rural-Urbano* (CONPES, 2016).

⁷ Instituto Geográfico Agustín Codazzi is the entity in charge of producing official mappings and basic cartography of Colombian territory. It is also in charge of carrying out the national cadastre of real property; perform the inventory of soil characteristics, advance geographic research in support of territorial development, train professionals in geographic information technologies and coordinate the Colombian Spatial Data Infrastructure. IGAC, ‘Acerca del IGAC’ (2018) <<http://www.igac.gov.co/wps/portal/igac/raiz/iniciohome/nuestraentidad/>> accessed 24 February 2018.

⁸ Afro-Colombians and indigenous are heterogeneous ethnic communities, with racial, cultural and historical differences recognized by the Constitution. They have collective rights and autonomy upon their territories, as they are protected by the Colombian State to guarantee their social and cultural ties. However, since our investigation focuses to private land, we do not analyze the collective access to land of these communities.

⁹ IGAC (n 6).

¹⁰ Ibid.

¹¹ Janine Ubink and others, *Legalizing Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America* (Leiden University Press 2009).

territories to be titled. These concepts enable us to think about the geography as more than titling field; it helps us to perceive the ties and conflicts related to the use and enjoyment of resources within the land. They also help us to understand the differing versions and visions between what the state assumes about ownership, which it consequently regulates, and what *campesinos* experience in their everyday lives.

The methodology proposed here is framed within the social sciences approach known as socio-legal studies. Banakar and Travers define this as an interdisciplinary research that understands and integrates aspects of two or more disciplinary perspectives into a single analytical approach.¹² The aim of this exercise is ultimately to combine knowledge, skills and research experiences from two disciplines in order to overcome certain theoretical and methodological limitations, setting the foundations for a new form of analysis.¹³ Following this introduction, Section 2 provides an overview of the legal literature and background information of the theoretical and political influences on the consolidation of property rights as set forth in the Colombian Civil Code. Such information is essential to understand the objectives of the land titling programs to be assessed using the proposed methodology. Section 3 briefly discusses the state of the art of impact assessments of titling programs at the international level. This helps to identify other methodological approaches, scopes and significant contributions for understanding the Colombian case. In the third section, we present an extreme example of *campesinos* land tenure in the Colombian Atlantic coast as narrated by Fals Borda,¹⁴ and LeGrand.¹⁵ This illustrates the complexities of thinking about the land from a single outlook and the relevance of the categories such as territory and territoriality for analyzing relationships with the land. Section 4 presents the proposed methodology based on tools of socio-legal research, and discussions of previous sections, particularly on the concepts of property, territory and territoriality. We develop five tables to assess the land titling plans and programs, which are presented in the annexes. This section also presents the methodological tools, including semi-structured interviews and social mapping, the operationalization of the analytical categories and the systematization of the information, which were used during fieldwork and later analyzes. Lastly, we present the expectations for the methodology presented in this article, with a focus on recognizing the importance of the law as a tool for analysis, and not just as a subject of study, as well as the importance of a cross-disciplinary approach for assessing land titling programs, and public policy in general.

2 Land Ownership: A Bag-Load of Legal Fish-Hooks?

The Colombian titling programs are intended to promote access to land ownership.¹⁶ Therefore, it is necessary to understand how national law regulates land ownership rights in order to assess these programs. This enables us to analyze the starting point of such programs and their legal and social limitations.

In Colombia, property rights are mainly governed under private law.¹⁷ However, in certain areas of property law, we can find a mixture of private and public law. Good examples of this are the laws on the social function of property and provisions on agrarian reform,¹⁸ which often generate clashes and turn Colombian property law into an entangled bag load of legal fish hooks. For instance, the legal means available for acquiring a piece of land vary depending on the land's legal classification. By virtue of the Agrarian Reform Law,¹⁹ wastelands may only be transferred by the state to those eligible for land reform, while private property may be acquired by any person. In many cases, however, the legal classification of a piece of land is unclear, thus generating the need for courts to fill in this gap and apply different legal interpretations to determine whether a give piece of land is a wasteland or not. Divergent court decisions have upheld diverse interpretations based on different legal rules; some of them identify wastelands whenever they have no registered property titles and others determine that wastelands are only those lands which no one exploits it economically.

To make matters worse, the legal uncertainty, caused by the private-public dichotomy and inconsistent standard of reviews on land classification, coupled with the Colombian armed conflict, has perpetuated the incapability of government to implement public policies to redress the inequitable distribution of rural

¹² Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (1st edn, Hart Publishing Limited 2005).

¹³ Ibid.

¹⁴ Orlando Fals Borda, *Historia Doble de la Costa: 1 Mompos and Loba* (2nd edn, Universidad Nacional de Colombia 2002).

¹⁵ Catherine Legrand, *Colonización y Protesta Campesina en Colombia (1850–1950)* (2nd edn, Universidad de los Andes, 2016).

¹⁶ Ministry of Agriculture and Rural Development [2010] Resolución 452 de 2010 Por la Cual se Crea el Programa de Formalización de la Propiedad Rural y su Unidad Coordinadora (Resolution 452 of 2010 by which the Rural Property Formalization Program and its Coordinating Unit Are Established).

¹⁷ Congreso de la República [1873] Ley 84 de 1873 Código Civil de los Estados Unidos de Colombia' (United States of Colombia Civil Code) Libro Segundo [Book Two], Diario Oficial No. 2.867.

¹⁸ Congreso de la República 1994 (n 4).

¹⁹ Ibid.

public assets.²⁰ This clash of interpretations as well as the private-public dichotomy in the domain of property law generate uncertainty and poses the necessity to analyze the concept of property itself.²¹

Several authors have identified that there is a clash between two classical theories that have influenced how Colombian legislation from the mid-20th century has identified whenever an individual has acquired a property right. According to McGreevey and Fayard,²² the Rousseau's Social Contract theory was present in Colombia during colonial times, recognizing an owner to be the individual who had a title of domain issued by the crown. Following independence, Locke's theory, in which ownership was recognized based on the economic use of the asset, took hold.²³ This latter school of thought was introduced in Colombia by means of Law 200 of 1936,²⁴ which established that every piece of land which was economically exploited should be regarded as private property, as indicated by Smith and Montiel.²⁵ Interestingly, both theories are being applied and they continue to define the nature of property rights in Colombia.

For Rousseau, the first occupants were the ones susceptible to becoming owners within civil society.²⁶ However, such rights would only be consolidated when a "positive title" was issued to make it a right. Similarly, in Colombia, the state recognizes a landowner to be the person who has obtained such a title by means of a duly registered title.²⁷ This theory is aligned with the actual legal arrangement in effect for the current land titling programs in Colombia. Resolution 452 of 2010,²⁸ which created this programs, includes land titling assistance for beneficiaries in the relevant administrative, notary and registration processes, with the aim of providing those programs beneficiaries with a duly registered "positive title".

In contrast to Rousseau, Locke believed that ownership is a right to be held by an individual who combines their own work with a resource.²⁹ Lockean philosophy is also incorporated within the legal regime as the law that acquisition of land under the private property regime through adverse possession upheld for five or ten years.³⁰ Even though the state only recognizes the individual who holds a registered title as an owner, Lockean theory still applies today in terms of establishing who has a valid claim to land ownership by virtue of working the land over a certain period of time.

In the case of government wasteland,³¹ which must only be awarded to those eligible for agrarian reform, exclusive application of the Lockean approach would lead to the unlawful appropriation of these lands.³² Establishing that ownership is acquired through economic use only,³³ may lead to mistakenly considering

²⁰ Rocio del Pilar Peña-Huertas and others, 'La Regulación Agraria en Colombia o el Eterno Déjà Vu Hacia la Concentración y el Despojo: un Análisis de las Normas Jurídicas Colombianas Sobre el Agro (1991–2010)' (2013) 16(1) Estudios Socio-Jurídicos 123.

²¹ Mauricio Rengifo Gardeazábal, *Teoría General de la Propiedad* (Temis 2011).

²² William McGreevey and Mireya De Fayard, 'Tierra y Trabajo en Nueva Granada' (1969) 8(30/31) Desarrollo Económico 263.

²³ *Ibid* 264.

²⁴ Congreso de la República [1936] Ley 200 de 1936 sobre régimen de tierras (Law 200 of 1936 about land regime) Diario Oficial No. 23388.

²⁵ Lynn Smith and Angela Montiel, 'Conflicto de Teorías Sobre la Propiedad de la Tierra en Colombia' (1958) 20(2) Revista Mexicana De Sociología 371.

²⁶ Jean-Jacques Rousseau, *The Social Contract* (Penguin 1968).

²⁷ Peña-Huertas and others (n 2); Congreso de la República 1873 (n 16) Articles 673, 749 and 756.

²⁸ Ministerio de Agricultura y Desarrollo Rural (n 16).

²⁹ John Locke, *Two Treatises of Government* (first published in 1629, a new edition corrected by Rod Hay for the McMaster University Archive of the History of Economic Thought 1823) 116.

³⁰ The adverse possessor must uphold the possession for a period of five years if she entered into adverse possession in good faith. Otherwise, when the adverse possession is not in good faith, this period increases to 10 years. This is determined by whether the adverse possessor holds a title that does not make her an owner but shows good faith, such as an unregistered public deed. See Congreso de la República [2002] Ley 791 de 2002 por medio de la cual se reducen los términos de prescripción en materia civil (Law 791 of 2002 by which adverse possession terms are reduced) Diario Oficial No. 45046.

³¹ As it was explained at the beginning of this section, there are two different interpretations of how wastelands can be defined. The first one, based on a literal interpretation of Law 200 from 1936, Article 1, (Congreso de la República 1936 (n 24)), states that wastelands are those lands on which no one develops any kind of economic exploitation. The second one is based on the harmonic interpretation of Law 200 from 1936, Article 1 (Congreso de la República 1936 (n 24)), Law 160 1994, Article 65 (Congreso de la República 1994 (n 4)), the Civil Code 1873, Article 675 (Congreso de la República 1873 (n 17)) and the Constitution 1991, Article 64 (Asamblea Nacional Constituyente [1991] Constitución Política de Colombia (Colombian Political Constitution)), and it argues that there must be the assumption that the land is a wasteland whenever there is not any registered owner. The first interpretation is sustained for instance in ruling: Corte Suprema de Justicia (Supreme Justice Court) [2016] *Sentencia STC1776-2016* (M.P. Luis Armando Tolosa Villabona). For the latter interpretation read as an example ruling: Corte Constitucional (Constitutional Court) [2014] *Sentencia T-488/14* (M.P. Jorge Iván Palacio).

³² Congreso de la República 1994 (n 4). Articles 71 and 72 of Law 160 of 1994 establish that recipients of awards of waste lands must not have net assets valued at more than 1000 minimum wages currently in effect and that they must not own or possess other rural properties.

³³ Some of the legal decisions in which the Locke theory has been applied to define the nature of a property are: Corte Suprema de Justicia (Supreme Justice Court) [2015] *Sentencia SC6504-2015*; Corte Suprema de Justicia (Supreme Justice Court) [2015] *Sentencia STC9823-2015*; Corte Suprema de Justicia (Supreme Justice Court) [2016] *Sentencia STC1776-2016*.

that a government plot is actually private property due to the sole fact that its occupant is working on it. As a result, persons who are not eligible for wasteland awards could acquire ownership over these lands. This theoretical application has the same implications in the land-titling programs because it addresses the need for a legal classification of the property in order to define the manner in which property rights are to be transferred.

The application of the Rousseauian theory also involves certain challenges. According to Scott, the positive title that consolidates ownership can be looked upon as a mechanism through which the state represents reality by taking only the information it needs to administer it more easily.³⁴ The information contained in a title provides the state with a view of real estate in its territory, enabling it to intervene, to collect taxes on such properties,³⁵ or resolve any disputes that may arise between different holders of rights *in rem*. Titling rural properties may even be a tool to weaken the operation of illegal activities by increasing the presence and visibility of the state in its territory.³⁶ Consequently, we can say that land titling has two basic objectives: i) to enable the state to fulfill its constitutional duty of guaranteeing legal protection for owners' rights³⁷ and ii) enable the state to exercise greater control over the territory by making it comprehensible and facilitating its administration.³⁸

However, by only considering information of interest, such as the area or location of the property, the state neglects other types of information which seem less useful for its purposes, and in that process it creates the realities it seeks to represent.³⁹ This means that as the state recognizes property rights, it also gives solidity to them by making them legally enforceable. For instance, Article 669 of the Civil Code⁴⁰ grants the owner of a series of rights (such as the right to use, enjoy and dispose of the asset) once the ownership rights have been consolidated.⁴¹

Ternera defines the right to use by specifying that the owner has the power to choose how to utilize her commodity, as long as it does not run against the law or the rights of third parties.⁴² This also means respecting the social function of property mandated by Colombian law which implies that land should remain in use so that its economic exploitation benefits the public interest.⁴³ The right to enjoy the commodity gives the owner the power to receive the natural and civil products of an asset obtained through its economic use, which does not affect the ownership of property rights. Finally, the right to dispose allows the owner to carry out certain actions on the substance of the asset (such as transforming or destroying it) and the ownership itself (such as donating or selling it).

According to Article 58 of the Colombian Constitution, when the state acknowledges the existence of a consolidated property right, it must also guarantee the protection of this right and the entitlements it implies.⁴⁴ Additionally, the state has different legal mechanisms available to protect the individual with full ownership rights, such as devices against interference from third parties. The individual is also entitled to receive indemnity if the state decides at any time to expropriate the asset for reasons of public interest.

In sum, land titling programs are essential in order for the state to recognize land owners and guarantee their property rights. They also enable the state to know the legal, physical and economic situation of the land, not only its ownership. Consequently, land titling programs are also tools for the development of a cadaster which enables the state to know who is subject to which rights and obligations, and determine who needs government protection. Land titling is itself a tool to consolidate property rights and promote access to land, which also grants rights and obligations to the subjects of such rights. It is also essential to understand how the state recognizes valid claims to exercise ownership over property and how its nature is classified in order to assess land titling programs. This is all the more so considering that the Colombian legal

³⁴ James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1998).

³⁵ *Ibid* 51.

³⁶ Juan Carlos Muñoz-Mora and others, 'Does Land Titling Matter? The Role of Land Property Rights in the War on Illicit Crops in Colombia' (2014) Universitat Autònoma de Barcelona Document de Treball núm.14/2 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539032> accessed 24 February 2018.

³⁷ Asamblea Nacional Constituyente (n 31) Article 58.

³⁸ Scott (n 33).

³⁹ *Ibid* 11.

⁴⁰ Congreso de la República 1873 (n 17).

⁴¹ Corte Suprema de Justicia (Supreme Justice Court) [1988] *Sentencia SP-86 1988*.

⁴² Francisco Ternera, *Bienes* (Universidad del Rosario 2011).

⁴³ The public function of property is mandated by the Constitution Article 58. The Constitutional Court has also stated that land should not remain unused, so it can benefit public interest. Corte Constitucional [1994] *Sentencia C-389/94* (M.P. Antonio Barrera Carbonell).

⁴⁴ Asamblea Nacional Constituyente (n 31) Article 58.

system and consequently the titling programs operate based on a logic of registered titles; which means that the state relies on these documents in order to administer the land. In this context, there are informational, economic and geographic barriers that prevent the effective enjoyment of property rights granted through the consolidation of ownership.⁴⁵

3 Assessing International Land Titling Programs: Insight-Bearing Experiences

This section discusses the methodological approaches, scopes, theoretical contributions and guidelines found in literature pertaining to international land titling programs.⁴⁶ This literature provides an essential point of comparison for assessing the impact of such programs in the legal and social relationship of the people with their property within Colombian context.

The land titling programs implemented around the world have generally been guided by what Ubink and others consider the “traditional paradigm”.⁴⁷ This paradigm is based on the assumption that individual property rights improve access to credit, increase the capacity of owners to invest in their lands, and increase the confidence in such investments because of the diminished probability of losing the land. Even though some cases of relative success have been reported in terms of agricultural investment (Nicaragua, Venezuela and Ecuador), in many other countries (especially in Africa) no significant relationship has been found between tenure regimes, security, use of credit and productivity.⁴⁸

In fact, as noted by Firmin-Sellers,⁴⁹ land titling can increase, rather than reduce, uncertainty and conflict over property rights in the absence of a high level of entitlement in property rights legislation. According to Ubink and others, this happens because in most cases programs do not take the particularities of local contexts into account.⁵⁰ Consequently, the authors propose a “new paradigm”⁵¹ that reconciles the programmatic state-wide and national approach with local proposals.

This debate helps us to understand the limits and structural issues of programs that are guided by a static vision of rural property and provides methodological tools for analysis of land titling programs in different contexts. The literature focusing on land distribution or titling programs,⁵² within the scope of unequal relationships,⁵³ falls into three broad categories grouped according to their theoretical and methodological contributions.

The first group of authors start out by studying the partial agrarian reforms in Africa,⁵⁴ with a critical view of the definition of property rights. Their reference point is the context of unequal land distribution, and they emphasize why titles themselves do not generate greater productivity or access to credit. However, they overlook the origin of the definition of property rights and how the security of land ownership is defined from a legal perspective. This is troubling since property rights are allocated according to the institutional designs, defined by a country’s legal system, and these may vary from one state to another. In methodological terms, the authors base their research on document analysis, social science

⁴⁵ Peña-Huertas and others (n 2) 136–7.

⁴⁶ Most studies on land titling programmes are framed within broader discussions on partial agrarian reforms and institutional designs for the distribution of property.

⁴⁷ Ubink and others (n 11) 7.

⁴⁸ Ibid 8.

⁴⁹ Kathryn Firmin-Sellers, ‘The Politics of Property Rights’ (1995) 89 *American Political Science Review* 867.

⁵⁰ Ubink and others (n 11).

⁵¹ Ibid 9.

⁵² For partial agrarian reforms see Kevin Gould, ‘Everyday expertise: Land Regularization and the Conditions for Land Grabs in Peten, Guatemala’ (2014) 46 *Environment and Planning* 2353. For an analysis of the impact of land titling programs, see Robert Smith, ‘Land tenure reform in Africa: A shift to the defensive’ (2003) 3 *Progress in Development Studies* 210. For security of property rights see Robert Smith, ‘Land tenure reform in Africa: A shift to the defensive’ (2003) 3 *Progress in Development Studies* 210; Hanan Jacoby and Bart Minten, ‘Is Land Titling in Sub-Saharan Africa Cost-Effective?’ (2007) 21 *World Bank Economic Review* 461; Sebastian Galiani and Ernesto Scharrodsky, ‘Land Property Rights and Resource Allocation’ (2011) 54 *The Journal of Law and Economics* 329. For the tensions between traditional tenure systems and productivity of the agricultural industry see Frank Place and Peter Hazell, ‘Productivity Effects of Indigenous Land Tenure Systems in Sub-Saharan Africa’ (1993) 75 *American Journal of Agricultural Economics* 10. Lastly, for the disputes and/or tensions surrounding the institutional designs for land distribution in a post-conflict context see George Meszaros, ‘Taking the Land into their Hands: The Landless Workers’ Movement and the Brazilian State’ (2000) 27 *Journal of Law and Society* 517.

⁵³ In most of the articles that describe the state of the art, there is a clear relationship with conditions of inequality. The theoretical framework of such articles is the analysis of civil wars or conflicts over land, with a focus on inequality as a structural issue.

⁵⁴ Smith (n 52); Place and Hazell (n 52).

literature reviews on security and insecurity of property rights, as well as qualitative methodologies such as life stories and in-depth interviews. Their analyses focus on the impact of land tenure reforms on traditional lands in Sub-Saharan Africa (in the case of Smith), and the lack of legal security for property rights. By not establishing the legal frameworks of property rights, they overlook the analysis of how the land reforms were formulated and/or why the definitions lack clear starting points.

The second group of authors is headed by Gould and his study of the sense of partial agrarian reform in Guatemala.⁵⁵ The study involved persuading *campesinos* to participate in a land titling programs under neo-liberal slogans, human rights narratives and exclusionary visions of nation, race and property. It is representative of a series of contributions that focus on the impact of political and ideological limitations of institutional designs, which were aimed at reforming land tenure within contexts of post-conflict or highly concentrated rural property.⁵⁶ This group of authors focuses on the everyday practices of implementation and consolidation of the partial agrarian reforms through an analysis of the participating actors. In characterizing the relationships between the actors, and their various roles and interests, they highlight the discourses and practices that articulate the ideas of race, nation and rural development underpinning these programs. To this end, they draw upon social science methodologies such as document analysis, focus groups and in-depth interviews.

Lastly, both the abovementioned articles, and others focusing on Latin American and African countries,⁵⁷ have addressed the ethnic and gender component to analyze the impact of ambiguities in agrarian policies and tensions arising from the coexistence of different titling systems. The selected literature made use of social sciences methodologies that help to show the local implications of national programs. Some of the tools used in these studies were the identification of actors and the historical characterization of rural issues, particularly when traditional systems are ignored or associated with low or non-productivity.

These three groups of literature can be analyzed through Daniel Fitzpatrick's theoretical analysis of open access.⁵⁸ Fitzpatrick concludes that to understand property failures in contemporary third world countries, it is necessary to '[...] move beyond conventional evolutionary analysis to taxonomic formulations based on the nature and interaction of property enforcement arrangements'.⁵⁹ That is to say that the basic economic models of property rights fail to incorporate complex issues of institutional supply. These models overlook the fact that '[...] property rights are embedded in complex social systems,⁶⁰. Thus, Fitzpatrick remarks that property enforcement is not only a question of law or institutional choices, but also the degradation of social norms in circumstances of conflict, state antagonism and illegitimacy, which explains why there are property rights failures in third world countries.

Even though the abovementioned literature acknowledges the importance of using different methodologies in the study of land titling programs, it fails to use a cross-disciplinary approach, which takes into consideration the methodological contributions of social sciences and law. The literature either includes a strict analysis of existing legislation, or it is based on categories such as geographic territory, unequal land distribution, or *campesinos* movements to address the issue of land titling. Although conflicts over land and land titling programs limitations are always characterized by the legal norms that framed them, they lack performing an analysis from a legal perspective. This is treating law more as a subject of analysis than part of the methodological design. The mentioned methodological approach of the reviewed literature, can limit the assessment of land titling programs, as it disregards the realities that are affected and created by a given legislation. Therefore, adding legal categories and legal designs to the methodology, can provide a different assessment of land titling programs in Colombia.

⁵⁵ Gould (n 52).

⁵⁶ Meszaros (n 52); Jamie Crook, 'Promoting Peace and Economic Security in Rwanda through Fair and Equitable Land Rights' (2006) 94 California Law Review 1487; Cynthia Simmons and others, 'The Amazon Land War in the South of Pará' (2007) 97 Annals of the Association of American Geographers 567; Ismael Garcia-Colon, 'Buscando Ambiente: Hegemony and Subaltern Tactics of Survival in Puerto Rico's Land Distribution Program' (2006) 33 Latin American Perspectives 42.

⁵⁷ Cynthia Simmons and others (n 56); Mani Nepal and others, 'More Inequality, More Killings: The Maoist Insurgency in Nepal' (2011) 55 American Journal of Agricultural Economics 886.

⁵⁸ 'Conventional property rights theory defines open access as a situation in which multiple privileges of use exist in relation to a resource, but in which no one person or group has a right to exclude others or make authoritative decisions concerning resource use.' Daniel Fitzpatrick, 'Evolution and Chaos in Property Rights Systems: The Third World Tragedy of Contested Access' (2006) 115 Yale Law Journal 996, 1001.

⁵⁹ Ibid 996.

⁶⁰ Ibid 1046.

4 Flexible Ownership in the Atlantic Coast: Contributions for a new methodology from an extreme case

As mentioned earlier, two paradigms are applied in relation to the evaluation of land titling programs. The abovementioned literature belongs to the new paradigm that contributes to a comprehensive analysis of land conflicts which places public policies in context, rather than simply assuming that those land titling programs are ends in themselves.

In most African, Asian and Latin American countries, land titling programs endorsed by the state seek to title properties with the objective of improving productivity and security. However, during the implementation process government institutions often encounter realities that go beyond the legal ways of understanding rural property. A representative case of these realities that are ignored and that represent added complexities for land titling processes is that of the *campesinos* on the Colombian Atlantic Coast. Two researchers of rural issues in the country, LeGrand and Fals Borda,⁶¹ show how at the end of the 19th century and the mid-20th in parts of the departments of Cesar, Magdalena, Sucre, Santander and Bolívar, land tenure for *campesinos* was defined by and adapted to their geographic conditions.

During rain-season, the rivers, swamps, beaches, hillsides and rainforests that form this sub-region were flooded, preventing the *campesinos* from working on these fertile lands. For this reason, the *campesinos* developed flexible production systems in which they performed different activities depending on weather conditions.

[T]hus, when the water levels are low between January and March and July and September, they plant in the lowlands or take the cattle there to graze (...) on the natural grasses that grow there. During the rainy seasons (April to June and October to December) the cattle are moved to higher grounds, and the lowlands are cleared out; but at the same time, on the same land that is covered by water, the people are able to fish and hunt. The farmer or cowboy then becomes a canoe rower, fisher or hunter during these months.⁶²

Such environmental conditions gave rise to communities that were closely associated with community lands. Optimal use of the environment required a flexible concept of land tenancy that involved working as a community because the land 'was considered to belong to everybody'.⁶³ Individual plots of land made no sense in these flooded areas, so the *campesinos* considered the swampy riverbanks a territory that could be used by the entire community.⁶⁴ However, the forms of production and of peasant land tenancy in this area of the Atlantic Coast were linked to, what Fals Borda called, the 'amphibian culture'.⁶⁵ In other words, a series of '[...] behaviors, beliefs and practices related to handling the natural environment, (...) [where] psycho-social expressions, attitudes, prejudice, superstitions and legends are articulated in connection with the rivers, beaches, swamps and rainforests, streams, mountainsides and ravines'.⁶⁶ Consequently, life in these floodable lands, which implied a flexible and community-based conception of property, was determined not only by changing forms of production but by the culture that was developed in the context. The change in livelihoods, which shifted from farming to fishing during rain-season, was also expressed in their social and cultural relationship with the land and water. The legend of the *hombre caimán*, a half-man-half-crocodile who lives on land and swims in the river, is an example of this. The world of the river bank dwellers, or 'river people' as they call themselves, is, therefore, a culture in itself and flexible property forms an intrinsic part of it.

Even though this case represents an extreme example of the *campesinos'* relationships between the *campesinos* and land, it helps to understand the reality faced by the various government agencies involved in land titling programs, particularly if the purpose is to assess changes in property rights of the communities after their properties have been titled. This extreme case illustrates the need to establish analytical categories and data collection tools that are not common in the field of law, but help understand the concepts of ownership in a given community which form a part of its development as a social group.

The contribution of social sciences to this study improves the understanding of the effects of land titling programs for *campesinos*, on their rights and on the way they face the legal realities. In addition to the aforementioned legal perspective, which enables simplification of government agency, the concepts of territory

⁶¹ Legrand (n 15); Fals Borda (n 14) 21.

⁶² Ibid 23–24B.

⁶³ Ibid 20^a.

⁶⁴ Legrand (n 15).

⁶⁵ Fals Borda (n 14).

⁶⁶ Fals Borda (n 14) 21.

and territoriality have also been adopted,⁶⁷ to understand the described relationships between communities and property.

Territory can be defined as the geographic space, qualified by a legal and political ordering that exercises some type of authority. This concept makes reference not only to a portion of land delimited by its bio-physical features (terrain, environmental conditions, biodiversity) but to a socially developed concept of space. In other words, it is a space that combines historical, political, cultural and economic factors. It may be understood as a space whose boundaries are defined by processes carried out by social actors (i.e. states, government institutions, social movements etc.) who transform, intervene, define and delimit the area.⁶⁸ Territory as construction makes reference to an organized spatial configuration arising not only from the use or management of natural resources, but also in connection with objectives of administration and exercise of power, either established or in resistance. Escobar defines territory as a social and historical product that is endowed with certain forms of production, consumption and trade, in an organizational, social and institutional network that provides cohesion (by consensus or domination), and is not exempted from contradiction or conflicts.⁶⁹

Territoriality, on the other hand, addresses the form of appropriation or the relationship between the human beings, society and the physical space or geographic boundaries. Territoriality is how one controls, appropriates or owns a given territory. It is a relational concept that goes well beyond the strategies of territorial control as it includes dimensions of domain, ownership and appropriation in terms of how these concepts are rendered into practical experiences. Territoriality is thus the specific appropriation made of the territory, which directly affects the representation, organization and power dynamics that configure it.⁷⁰ Both concepts (territory and territoriality) can be thought of theoretically and methodologically in terms of representation, appropriation and construction. Even though they overlap to a certain extent, they differ as how they can be used to analyze any social space.

For example, “territory” can be used to characterize a certain geographical space and territoriality, allows us to determine how this space is appropriate.⁷¹ The importance of these notions lies in the fact that through them we can understand the social, political and cultural relationships that are established in the geographic areas that are subject to titling. These relationships arise not only from a governmental or institutional perspective, but also from a bottom-up perspective that includes the day to day experiences. Therein lies the importance of our cross-disciplinary methodological design.

5 Building a Comprehensive Methodology for the Assessment of Rural Property Land Titling Programs

The previous sections on the notion of property in Colombian law and the international approaches and methodologies used to study land titling programs demonstrate the complex realities that affect territories and the importance of contextualizing land tenure systems. This complexity of understanding the local practices is precisely the starting point of our methodological proposal, which combines elements of law, sociology and anthropology.

Land titling programs involve the recognition and legalization of land tenure through a registered title. In doing so, the beneficiaries of these programs change their legal relationship with the land, which implies that their rights, obligations and entitlements also change. It is therefore necessary to use legal categories to understand these relationships and their implications in the exercise of land ownership. The land titling programs are also part of broader economic, political and social systems that produce and interact with different land tenure systems.⁷² The relationship with land, in which rights and obligations are established, is not exempt from conflict, dispute and nuance in the form, meaning and significance that a person or community assigns to a portion of land. For this reason, social science data collection methods provide a means to understand these aspects that are not included in the simplifying categories used by the state to facilitate land tenure management. To this end, two categories of analysis were used: property rights and

⁶⁷ Mario Sosa Velasquez, *¿Cómo Entender el Territorio?* (Editorial Cara Parens 2010); Arturo Escobar, *Sentipensar con la Tierra Nuevas Lecturas Sobre Desarrollo, Territorio y Diferencia* (Ediciones Unaula Colección Pensamiento Vivo 2014); Arturo Escobar, *Territorios de Diferencia: Lugar, Movimiento, Vida, Redes* (Enviño Editores 2010); David Delaney, *Territory: A Short Introduction* (Blackwell Publishing 2005).

⁶⁸ Ibid 4.

⁶⁹ Escobar (n 67) 35–37.

⁷⁰ Escobar (n 67) 57.

⁷¹ Velasquez (n 67) 12.

⁷² John Bruce, ‘Conceptos Sobre Tenencia de la Tierra’ (2000) Tenure Brief NO. 1-S,1 <<https://ageconsearch.umn.edu/bitstream/12816/1/lctb01s.pdf>> accessed 24 February 2018.

the concept of territory. Both are used to assess the land titling programs in terms of the shift in the rights of beneficiaries, on the one hand, and their relationship with the land, on the other.

Semi-structured interviews and social mapping were selected as data collection techniques. Semi-structured interviews are conversational in nature, as they '[...] create a colloquial environment that facilitates communications between those who are interacting (...) and are based on the model of conversation between peers, going beyond the simple formal exchange of questions and answers'.⁷³ This type of interview is a data gathering technique that enables the researcher to address issues that had not been considered previously while allowing the interviewees to express themselves openly. Social mapping is a participatory and collaborative research technique, which '[...] encourages reflection, organization and action around a specific physical and social space'.⁷⁴ This fieldwork methodology is conceived as a conversational technique that enables, from a cross-disciplinary perspective, posing questions and critical outlooks to explore beliefs, practices, uses and conflicts related to land in the context of the land titling programs.⁷⁵ Such data collection techniques enable us to study the content of law through the methodological tools of social sciences, with the objective of establishing conceptual and analytical relationships between law and the social phenomena.

In order to select participants, our proposed methodology is also accompanied by a characterization of territories where the interviews and social mapping are going to be conducted. According to available official data, we identified the municipalities where three of the land titling programs took place. Then we gathered relevant information on those municipalities related to land titling and can possibly be affected by it, in line with the reviewed literature and empirical evidence on the Colombian experience.⁷⁶ All the information was gathered in a database. Subsequently, we established seven different typologies to select the municipalities according to the aims of the investigation.⁷⁷ In the end, there were seven municipalities located throughout the national territory.⁷⁸ Finally, to select participants from those selected towns, we used the snowballing method.⁷⁹ We contacted local authorities and social organizations who had a significant role in a given land titling programs, who in turn led us to other relevant people. We expect to conduct focus groups, for the social mapping activity, with ten beneficiaries of land titling programs and five who did not participate in those programs in each municipality. This way, we will be able to distinguish which effects may be attributed specifically to the programs. Once we have an overview of land titling impacts in a local context, we will select the most emblematic cases from those focus groups to conduct further in-depth interviews.

We will focus on cases of individual tenancy, due to the fact that the aforementioned land titling programs were aimed towards the consolidation of individual property rights. The outcome will be an analysis of the studied cases, which, even if they are not representative of the whole Colombian territory, constitute an assessment base on the empirical evidence of what land titling means and the challenges it faces in certain contexts.

The information gathered using this research methodology is used to assess the land titling programs in a comprehensive manner using five tables. In each table, the categories of property and territory are broken down into analytical subcategories for operationalization, as it is shown in the tables below. The first two tables contain the information that is gathered, while the other three are the results of systematization.

Table 1 is a guide for data collection. The column labeled "operationalization" contains the questions of the semi-structured interview conducted with beneficiaries of individual titling. The questions are grouped by the proposed analytical categories and their respective characteristics or elements.

⁷³ Lidia Ozonas and Alicia Perez, 'La Entrevista Semiestructurada Notas Sobre una Práctica Metodológica Desde una Perspectiva de Género' (2004) 9 La Aljaba 198, 198.

⁷⁴ Irene Velez Torres and others, 'Cartografía Social Como Metodología Participativa y Colaborativa de Investigación en el Territorio Afrodescendiente de la Cuenca Alta del Río Cauca' (2012) 21 Cuadernos De Geografía – Revista Colombiana De Geografía 59, 59.

⁷⁵ Orlando Fals Borda, *Ciencia Propia y Colonialismo Intelectual: Los Nuevos rumbos* (3rd edn, Carlos Valencia 1987).

⁷⁶ We collected information about Unsatisfied Basic Needs in order to identify the socioeconomic situation of the selected municipalities; share lands of indigenous and Afro-Colombians located in the municipalities where land titling took place, and according to literature can generate conflicts. Lastly, we collected data on forced displacement, murders and threatens of social rural leaders, armed groups attacks and massacres to measure the impacts of armed conflict.

⁷⁷ For example, one of the municipalities was chosen because it portrayed every variable we collect for the analysis, while another one of the selected municipalities did not portray any of these. The rest of the municipalities showed the presence of several variables and fell within the range of the first two.

⁷⁸ Urumita (Guajira), Santander de Quilichao (Cauca), Jamundí (Valle del Cauca), Santa Sofía (Boyacá), Ramiriquí (Boyacá) and Andes (Antioquia) y Valledupar (Cesar).

⁷⁹ Matthew Salganik and Douglas Heckathorn, 'Sampling and Estimation in Hidden Populations Using Respondent-Driven Sampling' (2014) 34 Sociological Methodology 193; Jan Browne and Sarah Russell, 'Recruiting in public places: A Strategy to Increase Diversity in Qualitative Research Samples' (2003) 3 Qualitative Research Journal 75.

Table 1: Semi-structured interview guide.

Category	Sub-category	Operationalization
Ownership	Legal relationship with the land (new owner, occupier, holder, community co-owner, occupant)	Do you own the land? On what basis do you assert this claim? What does it mean for you to own the land?
	Title	Do you have any document that proves your ownership status? How did you acquire this document?
	Form	Have you ever registered that document? Where?
	Entitlements and obligations prior to formalization	Before land titling program(s) were implemented, was there something you could not do with this land? Why? Did you pay taxes? Did you pay for utilities (water, electricity)? Did you make any improvements to the land before the land titling program was implemented (buildings, fences, etc.)?
	Government presence prior to formalization	Was there any presence of the police or the military? Was there any presence of different armed groups other than police and/or the military? Were there any conflicts over the land? What kind of conflicts? Who did you turn to in order to solve these conflicts? Which services were provided by the state (education, roads, a market to sell your products)?
	Entitlements and obligations following formalization	Is there anything you cannot do on this land? Why? Do you pay taxes? Do you pay for utilities (water, electricity)? Have you made any improvements to your land after the land titling program was implemented (buildings, fences, etc.)? Have you had access to state programs on technical assistance for productive projects? Have you tried to obtain credit after the program was implemented? Were you granted the credit you requested?
	Government presence following formalization	After the land titling program was implemented, have you noticed any increase in the presence of government officials (mayor, governor, other)? Is there police and/or military presence? Are there armed groups other than police and military personnel? Are there conflicts over land? Which type? Who do you turn to in order to solve these conflicts? Do you have access to educational centers? Have you seen any improvements in schools? Elementary and high school? Have access roads been built? Have you been able to sell your products in the market (transport)?
Territory: It is the space appropriated by a human group for its physical, social and cultural reproduction	Relationship with the land Do you live on this land? -If yes: for how long? Who do you live with? How did you arrive? What do you do with the land? Do you work? Do you till the land? -If not: What did you use to do with this land? For how long have you been using this land? Does someone else live here? Who? Which have been the biggest changes that have occurred on the land or its surroundings before, during and after the land titling program was executed?	

(contd.)

Category	Sub-category	Operationalization
	Representation of the territory (how the people envision their territory)	Here we propose to carry out social mapping with the participants in order to compare with official maps (IGAC) the way in which people perceive the organization of their territory.
	Appropriation of the territory (How the inhabitants recognize the characteristic features of the territory that are only known by those who live there).	We will ask the participants to locate and identify on the maps the significant spaces in their everyday lives (sidewalks, rivers, mountains, shops, trees, chapels, etc.) in order to comprehend the ways in which the inhabitants appropriate their territory. They will also be asked to explain why they consider those spaces significant. The participants will also ask to identify key actors and conflict zones within the territory
	Use (reflection on appropriation of the territory based on the uses given to it before and after formalization)	What will you do with your land? (Rent it, do you intend to sell it? others). What do you on your land? (Take into consideration: agriculture, mining, wood extraction, sharecropping, livestock, fishing, poultry, rotation crops, illicit crops). Where do you do it? (Indicate where you carry out this activity on the map) Has it always been this way? If Not: which changes have you made? Why?
	History of the territory	The participants will help fill out a timeline where they will identify the most significant events related to their land. This timeline will focus on three particular moments: before, during and after the titling program was implemented.

Table 2 shows legal definitions of the various types of land tenure in Colombia. Each form of tenure is associated with a series of entitlements and obligations. This is explained in the definition, which indicates the rights the person was entitled to prior to land titling programs. We included the definitions of every form of tenancy recognized by Colombian law. Nevertheless, our interview guide (**Table 1**) focuses only on those concerning individual holders given the particular aim of a titling programs in Colombia. This means that if it comes down to analyzing collective land titling programs, it would be necessary to make adjustments on the interview guide. Based on these definitions, we can group interviewees according to the type of land tenure they had prior to the programs.

Table 3 is for systematizing the information gathered for subsequent analysis based on the proposed categories. This table was developed to indicate the type of land tenure the beneficiary of formalization had prior to and after a programs, with the intention of showing the entitlements the beneficiaries had in terms of their form of land tenure and whether they effectively became owners or not. The columns describe each the legal relationship between the interviewees and land before and after titling, and whether or not a duly registered title was obtained following land titling programs.

The fourth and fifth tables provide a summary of the interviews and of the social mapping by systematizing the information collected in the field. Both are intended to display the results of the studied land titling plan. For this reason, the outcomes are not grouped by interviewee, but by topic. Specifically, **Table 4** intends to show the role played by land titling in terms of its practical implications for the owners and as a tool for the State. In other words, it shows how land titling, as a public policy, contributes to improving quality of human life by enabling the state to “read” its territory as described by Scott.⁸⁰ The blank columns “Before land titling” and “After land titling” help describe the practical living situation of people in terms of land titling.

Lastly, **Table 5** contains the information gathered through social mapping in order to show changes in the social, political and cultural relationships between the people and the land. This shows how land titling programs affected the relationship between people and their territory, and whether it had any effects on its organization. As in the previous table, the blank columns describe the situation before and after land titling in terms of territoriality (i.e. representation, appropriation and use).

⁸⁰ Scott (n 33).

Table 2: Legal definitions.

Form of land tenure	Definition
Full owner	The holder of ownership rights that confer the right to use, enjoy and dispose of a commodity. ⁸¹ Even though it is the broadest possible right <i>in rem</i> , ⁸² ownership is not absolute, because ownership entails a series of obligations, and the protection of such rights is subject to the public interest. ⁸³
Bare owner ⁸⁴	The individual holds only the right to dispose of the commodity. The rights to use and enjoy the property remain with another individual by virtue of a usufruct contract. Furthermore, the status of bare holder is for a limited time, and at the end of the term the rights revert to the full owner. ⁸⁵
Tenant	Type of holder that by virtue of a verbal or written agreement exercises the rights to use and dispose of a commodity in exchange for monetary consideration. ⁸⁶
Usufruct holder	The usufruct holder has the right to use and enjoy a commodity, but has also the obligation of preserving its form and substance in order to return it to its owner. ⁸⁷ Usufruct of real estate is not considered valid unless it is contained in a duly registered public document. ⁸⁸
Sharecropper	A type of holder who, by virtue of a written or verbal agreement exploits a rural property or a portion of it in collaboration with its owner, with the objective of sharing between the parties the product of such exploitation. ⁸⁹
Common holder (Comunero) of private property (co-ownership of common property)	A person who is the co-owner of a property with other individuals, but where the common holders have not established a partnership or legal entity. ⁹⁰ When a property is owned in community, each member of the community (<i>comunero</i>) has a stake of interest in the land. For this reason, when the property is co-owned by community members, each <i>comunero</i> has the right to be assigned a portion of the land in proportion to his stake of interest. ⁹¹ Also in this arrangement, each co-owner has the right to use the property and to take its product in proportion to the stake of interest he is entitled to. ⁹² Each comunero has the right to dispose of the property. Also, each comunero is entitled to request that the land be divided or sold at any time. Since the land is susceptible to being divided into portions, in this case the preferred option is to divide rather than sell. ⁹³
Common holder (Comunero) of collective property	Indigenous and other recognized ethnic groups have the right to use, enjoy and partially dispose of the substance of a property. Territories under collective ownership do not prescribe, cannot be sold and cannot be encumbered, which implies that these <i>comuneros</i> do not have the legal right to transfer ownership over the property. ⁹⁴

(contd.)

⁸¹ Colombian Civil Code (n 16) Article 669.⁸² Ternera (n 42).⁸³ Corte Constitucional [1999] *C-595 1999*; Corte Constitucional [2005] *C-474 2005*.⁸⁴ This legal figure has no directly equivalent term in English, but the table provides a description of its meaning in Colombia's legal system.⁸⁵ Corte Constitucional [2004] *T-751 2004*.⁸⁶ Congreso de la República 1873 (n 17) Articles 1973, 1977.⁸⁷ Ibid Article 823.⁸⁸ Ibid Article 826.⁸⁹ Congreso de la República [1975] Ley 6 de 1975 Por la cual se dictan normas sobre contratos de aparcería y otras formas de explotación de la tierra (Law 6, 1975 by which rules are issued on contracts of sharecropping and other forms of exploitation of the land) Article 1.⁹⁰ Colombian Civil Code (n 16) Article 2322.⁹¹ Ibid Article 2328.⁹² Ibid Article 2328.⁹³ Ibid Articles 2334, 2338.⁹⁴ Corte Constitucional [2011] *Sentencia T-235 de 2011*; Corte Constitucional [2014] *Sentencia T-379 de 2014*; Corte Constitucional [2014] *Sentencia T-576 de 2014*.

Form of land tenure	Definition
Holder	A person who holds a property with the intention of owning it, ⁹⁵ but is not registered as owner in the public document registry. A holder may be either regular or irregular. ⁹⁶ A regular holder is one who has fair title to the property in good faith. ⁹⁷ A fair title is one that is suitable for the effects of transferring ownership. The good faith of the holder implies that the holder believes that he is the true owner. ⁹⁸
Occupier	A person who lives in and exploits a rural property belonging to the state (<i>baldío</i> or <i>wasteland</i>), but who has not been awarded the property. ⁹⁹
Award holder	A person who has fulfilled the legal requirements and has been awarded government wastelands. ¹⁰⁰

Table 3: Semi-structured interviews systematization.

Interview	Before land titling program			After land titling program			
	Acts as full owner	Property of public or private origin	Use, enjoyment and disposal	Form of land tenure	Title	Form	Owner
Person 1							
Person 2							

Table 4: Practical implications of land titling for new owners and for the state.

	Before land titling	After land titling
Entitlements and obligations of the person	Disposal	
	Exclusivity	
	Pays taxes	
	Pays utilities	
	Other	
Presence of the state	Roads of access	
	Technical assistance	
	Market	
	Credit	
	Education	
	Security	

⁹⁵ The Spanish expression used to describe this act is "*actuar como señor y dueño*" [Acting as lord and owner].

⁹⁶ Colombian Civil Code (n 16) Article 764.

⁹⁷ Ibid.

⁹⁸ Ibid Article 768.

⁹⁹ Ministry of Agriculture and Rural Development, '*Land Restitution*' <<https://www.minagricultura.gov.co/atencion-ciudadano/preguntas-frecuentes/Paginas/Restitucion-de-Tierras.aspx>> accessed 22 August 2017.

¹⁰⁰ Congreso de la República 1994 (n 4) Articles 68, 69, 70 and 71.

Table 5: Changes in the social, political and cultural relationships between the people and the land.

	Before	After
Representation (Representation refers to the way in which the actors define, organize, define as sacred, narrate the history, conceive of and control a territory. Representation is related to cultural identity, in that “they are frames, both physical and symbolic, of the group’s experience –ethnic awareness”. It helps understand the local practices of those who inhabit the territory, the social and cultural value they assign to it, and claims regarding access, control and use ¹⁰¹ How to the people imagine their territory?)		
Appropriation (Appropriation is the replication of the government legal ordering and spatial delimitation, along with a process of social appropriation that consists in assigning meaning to the area and the construction of territorial identity. ¹⁰² What are the determining features that are only recognized by those who live in the specific territory?)		
Use (Use is a social and historical product associated with certain forms of production, consumption and trade of an organization and social and institutional network that binds it together (through consensus or domination), and which is not exempt from contradictions and conflicts. ¹⁰³ How was the land used before and after the land titling program?)		

6 Final Thoughts and Expectations

The objective of this methodological design is to assess land titling programs in light of both legal categories as well as social, economic and political variables in order to understand the relationships *campesinos* have with their land. This comprehensive methodology enables assessment of the overall results from the programs studied, of the degree of success of their land titling methodologies and of the government’s interventions in peasant communities. In general terms, the methodology will indicate the changes in the rights and obligations of the beneficiaries of land titling programs.

This methodology is also intended to contribute to the analysis of social phenomena from a legal perspective. It demonstrates that legal categories are more than objects of study, as they are also analytical tools, given that such categories create and transform realities. Similarly, the use of concepts and data gathering techniques from social sciences help understand the various forms of peasant land tenure by describing its political, social and cultural dimensions. The combination of knowledge derived from the law, sociology and anthropology may contribute to the assessment of land titling programs, particularly if land titling is understood as part of a comprehensive land policy and not as an end in itself.

The legal perspective of ownership as both the right of a person and as a category of analysis is essential to understanding how the state recognizes and guarantees property rights to those individuals that it identifies as land owners. If this is not well understood, it is impossible to assess the implications of land titling programs on the practical lives of beneficiaries. However, the process used by the law to simplify reality, which it intends to manage, leaves out certain information that initially may be seem of no use for the state but is determining in the social practices of a community in its territory. For this reason, a comprehensive assessment of such programs requires an approach that includes a vision of these social practices, in order to analyze the impact of legal provisions on those realities which lie outside the letter of the law.

Rather than a result of land titling achievements and failures, the outcome of this paper is the exercise of combining two different fields of knowledge into one approach so as to assess a public policy. This kind of exercise is the core of an informed analysis on whether a particular policy has an impact on transforming realities, as it is supposed to do. In the case of land titling, this kind of exercise implies an understanding of the concept of property rights, what it means for the state, and how it is regulated. It also implies

¹⁰¹ Mario Sosa Velásquez, *¿Cómo Entender el Territorio?* (Editorial Cara Parens 2010).

¹⁰² Arturo Escobar, *Territorios de Diferencia: Lugar, Movimiento, Vida, Redes* Departamento de Antropología (University of North Carolina, Chapel Hill Enviación Editores 2010).

¹⁰³ *Ibid* 35.

a review of international and national experiences to reap positive and negative lessons from them. The suggested methodology can be considered a pathway to assess public policy from a different perspective; one that includes, or at least acknowledges, the several dimensions of social life and how they interact with each other.

Competing Interests

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