The Historical Debt: The Elusive Agrarian Jurisdiction in Colombia

By *Natalia Ruiz Morato**

Abstract: This study reviews the past, present, and future of agrarian jurisdiction in the context of the agrarian reforms in Colombia with a focus on violent conflicts in rural areas. The methodology used is that of a multi-method case study and legal historic analysis. The study shows how, without an agrarian jurisdiction, the Colombian legal system faces a crisis of legitimacy, lacks effectiveness, and creates new interethnic rural conflicts. The study also evaluates the country's recent legislative proposal in the light of constitutional law, the stated goals of the 2016 Peace Agreement, the Sustainable Development Goals and the United Nations Declaration on the Rights of Peasants (UNDROP). It offers recommendations on how to enforce the rule of law in agrarian issues, in order to overcome systematic violations of human, economic, social, and environmental rights of vulnerable rural populations: recommendations to be taken into consideration by the legal community and the international partners of the country's comprehensive agrarian reform program.

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A. Introduction

In 2018, the United Nations adopted the Declaration on the Rights of Peasants and Other People Working in Rural Areas, UNDROP. It constitutes the most comprehensive and up-to-date legal instrument for the human rights of farmers and rural workers, who suffer disproportionately from poverty, the effects of environmental degradation and climate change, despite being the key actors for nature conservation, and food security[1]. The UNDROP includes several rights: the right to freedom of thought, peaceful assembly and political participation, right to information, the right to have access to justice, the right to work with safe conditions and social security, the right to food and food sovereignty, the right to an adequate standard of living, the right to land, the right to a safe, clean, and healthy environment, the right to biological diversity, the right to drinking water and sanitation, the right to health, the right to adequate housing, the right to education and training and cultural

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1 UN Human Rights Council, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), 17 December 2018, UN Doc A/RES/73/165, p. 3.

rights. This declaration imposed obligations on national states to protect, respect and fulfil the rights of the peasants and rural workers, to make constitutional and legal reforms to progressively achieve the implementation of mentioned rights and to establish mechanisms to ensure the coherence of their agricultural, economic, social, cultural, and development policies.

However, as of late 2021, the COVID-19 pandemic ravaging Latin America has led to a contraction of the regional economy by 9.1 %[2] and an increase in inequality and extreme poverty, generating economic, social, and environmental setbacks, especially for rural territories. The UN Economic Commission for Latin America and the Caribbean[3] has recommended that countries make political reforms and forge new social pacts to protect their rural citizens.

In Latin America, peasants' rights and rural regulations have historically been instituted through agrarian reform, which has been a legislative and political agenda to overcome colonial systems in the countryside and to pursue economic growth[4]. Agrarian reform has also been a core objective of peasant movements and communist guerrillas, whose aim has been to overthrow the oligarchy with its large land-owning hacienda base, and transform social and productive relations in the countryside[5].

Colombia is a particular case in the region for its repeated attempts at conventional agrarian reforms without structural change[6] and with an overlapping geography of extreme poverty, criminal groups[7] and special bio ecosystems territories like Amazon and Chocó. It is a country whose rural territory covers 75 % of the land surface, home to 31 % of the Colombian population, also they live under conditions of a multidimensional poverty.[8] Of the rural municipalities, only 6 % have a degree of formal land titles, while the remaining

2 United Nations Economic Commission for Latin America and the Caribbean (ECLAC), Political and social compacts for equality and sustainable development in Latin America and the Caribbean in the post-COVID-19 recovery, 2020, https://repositorio.cepal.org/bitstream/handle/11362/46146/1/S2000672_en.pdf (last accessed on 11 October 2021).

3 ELAC, note 2.

4 *Jean Le Coz*, Las Reformas Agrarias, De Zapata a Mao Tsé Tung y la FAO, Barcelona 1979, p 142.

5 Ibid, p.143.

6 *Raúl Alegrett,* Evolución y tendencias de las reformas agrarias en América Latina, www.fao.org/3/j0415t/j0415t0b.htm (last accessed on 20 May 2021).

7 According to Idepaz different armed groups control 115 municipalities. In Colombia there is a permanent redefinition of the criminal groups, ELN guerilla, exfarc dissidents, neo paramilitary groups and drug trafficking groups.

8 Departamento Administrativo Nacional de Estadística (DANE), República de Colombia,.Medida de pobreza multidimensional 2018, p. 39, www.dane.gov.co/index.php/estadisticas-por-tema/pobreza-y-condiciones-de-vida/pobreza-y-desigualdad/medida-de-pobreza-multidimensional-de-fuente-censal (last accessed on 15 June 2021).

94 % of the land remains in total informality[9]. Poor territorial planning and inadequate environmental controls mean that agribusiness, extensive cattle breeding and mining mixed with illegal economies[10] are driving deforestation and biodiversity loss[11], further jeopardizing the human rights and development of the rural communities.

Despite these realities, the theoretical and institutional understanding of sustainable development has come to accept that access to justice is a key variable. Effective access to justice underpins inclusive growth and is a target of the Sustainable Development Goals[12]. As this study emphasises, rural communities in Colombia do not have access to justice, to a fair procedure and rules according to their agrarian and rural social interactions, and thus find themselves in the most vulnerable condition and living in permanent structural injustice, maintaining the violent conflict and loss of biodiversity.

"The historical debt with the countryside, with 7 failed [agrarian reform] attempts since 1957,"[13] was a key official phrase of the 2014-2018 government and the senate debates of the Agrarian Jurisdiction bill[14]. This recognition summarizes the failures over more than half a century and is a testament to a political tradition that conceives of agrarian reform as a peace agenda with armed groups, a promise to progressive access to land and reparations for peasant victims of the conflict[15]. This became the central idea of the 2016 Peace Agreement between the Colombian Government and the Revolutionary Armed Forces of Colombia-People's Army, FARC. The Agreement determined the creation of an agrarian jurisdiction to resolve rural land conflicts. Yet, five years later, no substantial progress has been made: in July 2021, Bill Number 134 of 2020 "whereby an agrarian and rural judicial

9 DNP-Departamento Nacional de Planeación, República de Colombia, El campo colombiano: un camino hacia el bienestar y la paz, 2015, www.dnp.gov.co/programas/agricultura/Paginas/Informe-misi%C3%B3n-FInal.aspx (last accessed on 20 May 2021).

10 Coca plantation, illegal mining, logging and wildlife trafficking.

11 Programa de Naciones Unidas para el Desarrollo Informe Nacional de Desarrollo Humano (PNUD), Colombia Rural, Razones para la esperanza, 2011, http://hdr.undp.org/sites/default/files/nhdr_colombia_2011_es_low.pdf (last accessed on 15 June 2021); FIP y adelphi 2021, Un Clima Peligroso: Deforestación, cambio climático y violencia contra los defensores ambientales en la Amazonía colombiana, https://ideaspaz.org/media/website/WWF_ColombiaAmazonas_2021_ES_WEB.pdf (last accessed on 15 November 2021).

12 OECD and Open Society Foundations, Legal Needs Surveys and Access to Justice, 2019, p. 5, https://doi.org/10.1787/g2g9a36c-en. (last accessed on 20 May 2021).

13 Ministerio de Justicia y del Derecho, República de Colombia, El ABCÉ del proyecto de ley estatutaria que crea la especialidad agraria, 2020, p. 1, https://www.minjusticia.gov.co/Portals/0/Proyectos_ley/ABC_AGRARIA.pdf?ver=2020-07-19-202033-123 (last accessed on 20 May 2021); Oficina del Alto Comisionado para la Paz, Presidencia de la Republica, Tomo II Instalación de la mesa de conversaciones, inicio de los ciclos de conversaciones y la discusión del punto 1, 2018, p. 197.

14 *Angelica Lozano,* Proyecto de Ley 395 de 2021, Sesión del 25 de Mayo de la Comisión Primera del Senado, Presentation, Comisión Primera del Senado de la República de Colombia, Gaceta N° 607- 2021, p. 27.

15 Presidencia de la República, Ley de Victimas y de restitución de tierras, 2011, p. 3.

specialty is created, mechanisms for the resolution of agrarian and rural controversies and disputes are established and other provisions are enacted" was shelved by the Colombian Senate.

This repeated failure to create a new agrarian jurisdiction has been overlooked in the existing literature on agrarian reforms in Colombia, due to an exclusive emphasis on political economy and institutional economics. The present study addresses this gap by analysing current and past proposals and their successive failures from the perspective of agrarian justice, bearing in mind the realities of the rural territories[16]. This is a qualitative study with a multi-method approach. It comprises a comprehensive review of the literature and offers an analytical re-assessment of the existing data around: agrarian justice reforms in Colombia (B.), b) peasants' constitutional law (C.), transitional land justice and new inter-ethnic land conflicts after the 2016 Peace agreement (D., E.) and the agrarian jurisdiction in the Colombian Peace Agreement of 2016 (G.). With a case study and participant observation methodology[17] in the parliamentary debates (2020-2021) of the Bill Number 134, 2020, I conducted an analysis of the dynamics, debates, and problems of the consolidation of the agrarian jurisdiction.

Beyond its relevance at a national level, a review of the Colombian case also highlights difficulties in guaranteeing peasants' rights. Consequently, the present study offers recommendations for overcoming the obstacles and scenarios that affect the implementation of agrarian jurisdiction and peasants' rights so that the legal community, the judicial branch and the international partners of the current Comprehensive Agrarian Reform (CRA) may consider them.

B. Colombia's Evaporated Agrarian Justice in Relation to Agrarian Reforms

In the colonial era, the Spanish crown controlled the adjudication of the discovered lands, and whatever was occupied without its approval was considered an illegal act[18]. After Independence in 1810, the new Colombian state inherited the colonial geography and institutions but was limited in its reach to the urban centres and settled rural regions, a

16 *Mauricio Garcia Villegas Mauricio and Jose Rafael Espinosa*, El derecho al Estado, Los efectos legales del apartheid institucional en Colombia, 2013. This described the lack of state in rural municipalities, but in the opinion of this study one of the problems in the current analysis is to homologate the urban realities and needs with the rural ones. DANE, Encuesta de Convivencia y Seguridad Ciudadana, 2021, www.dane.gov.co/files/investigaciones/poblacion/convivencia/2019/Presentacion_v_corta_ECSC_2019.pdf (last accessed on 19 November 2021). The latest survey on outstanding legal needs only included big cities and focused on the problem of criminal actions such as theft, fights, and extortion.

17 *Orlando Fals Borda,* Reflexiones sobre la aplicación del método de estudio acción en Colombia, Revista Mexicana de Sociología 35(1) (1973), pp. 49-62.

18 Recopilación de leyes de los reinos de las Indias: mandadas imprimir y publicar por la Majestad Católica del rey Don Carlos II, nuestro señor, Leyes de las Indias, Libro IV, título XII, 1681, p. 384.

situation effectively unchanged up until the present day. While large estates were further consolidated, vast expanses of the rural Colombian territory did not have private property titles and the Civil Code of 1887 regulated the few small rural properties that were adjacent to the cities. The Fiscal Code of 1912[19] stipulated a general regime of *baldíos* or vacant state land (VSL) that accepted informal situations of peasant colonisation and usufruct of crops on uncultivated land. This set up the informal rural territories as remote zones beyond the reach of legal or state support[20].

In the 1920s, with the increase in coffee exports and the precarious conditions of work in the countryside, agrarian conflicts with peasant tenants increased. In 1926, the Supreme Court[21] addressed the lack of regulation on the titling of rural land by adjusting the civil interpretation of acquisitive prescription and reviving the colonial idea that land without title is the property of the nation. Consequently, VSL was not susceptible to private appropriation and legal title could be granted only through administrative processes of adjudication[22]. However, this ruling aggravated the conflicts that existed between settlers, tenant farmers and large landowners, without formalizing land tenure[23].

The first agrarian reform of the 20th century was the Law 200 of 1936[24], as a program to address the political violence and the economic crisis of the 1930s. In terms of the administration of agrarian justice, this law created land judges to decide land possession actions, agrarian prescription, and illegal land tenure evictions. However, these judges were abolished through Law 4 of 1943[25], passing their functions to the civil circuit judges. Later on, the Law 100 of 1944[26] focused on regulating sharecropping contracts to promote land productivity and tried to resolve the labour and civil relations of tenant farmers instead of doing a land distribution or land formalization. Some years later, Decree 291 of 1957[27] took the jurisdiction of this agrarian issue out of the hands of civil judges and it became instead a labour conflict assumed by labour judges. This law included a provision for conciliation hearings to settle these conflicts. Later, the Decree 1819 of 1964[28] defined the controversies

19 Ley 110 de 1912, Código Fiscal Colombiano.

20 *John Coatsworth*, Inequality, Institutions, and Economic Growth in Latin America, Journal of Latin American Studies 40(3) (2008) pp. 545-569; *Abasalon Machado,* Ensayos para la historia de la política de tierras en Colombia: de la Colonia a la creación del Frente Nacional, Boagotá 2009.

21 Corte Suprema de Justicia, Sala de Negocios Generales, 8 septiembre de 1926, Sentencia gaceta 1644-1655.

22 *Alejandro Reyes Posada,* Guerreros y campesinos, el despojo de la tierra en Colombia, Bogotá 2009.

23 *Machado,* note 20.

24 Ley 200 de 1936, sobre Régimen de Tierras.

25 Ley 4 de 1943, sobre seguridad rural y por la cual se dictan otras disposiciones.

26 Ley 100 de 1944, sobre regimen de Tierras.

27 Decreto 291 de 1957, Junta militar de gobierno- por el cual se dictan normas procedimentales sobre problemas relativos a predios rurales.

28 Decreto 1819 de 1964, por el cual se modifican y adicionan los Decretos 528 y 1358 de 1964, y se dictan otras disposiciones.

of sharecropping contracts as the competence of civil judges. By alternatively defining the problems as civil or labour disputes meant that for claims brought forward by peasants, the competent jurisdiction was continuously unclear, affecting both substantial and procedural requirements of their claims. With these issues remaining unresolved, farmers were adversely affected in their access to justice.

Looking at the records of the judicial gazettes of the sentences of the Supreme Court's Labour Cassation Chamber in 1959[29], which resolved matters of sharecropping contracts, the claims of the peasants were denied for lack of evidence and a lack of dates in the beginning and termination of their sharecropping contracts[30]. The labour law was never adapted to the realities of social interactions of the peasants. In another situation, in 1969 the Supreme Court's Labour Cassation Chamber[31] established that the appeal in cassation did not operate in agrarian matters of sharecropping contracts, evictions of rural occupants or the restitution of rural properties.

During the second agrarian reform in 1968,[32] measures to control the ongoing violence of communist guerrillas were set in motion. Further, the law aimed at fostering peasant participation in public policy by establishing a National Association of Peasant Users of Colombia-ANUC. It also established mechanisms for the redistribution of land trough Family Agricultural Units, land technification programs, credits, and accompaniment of the peasants. In terms of agrarian jurisdiction, the Law 4 of 1973[33] established the creation of an Agrarian Chamber in the Council of State. It followed the recommendations of the Eleventh Conference of the Food and Agriculture Organization of the United Nations in 1970[34]. However, the Agrarian Chamber was never implemented.

During the administration of 1970-1974, under the Law 5 of 1973[35], the agrarian institutions favoured the landowners of large extensions of land for cattle ranching. The small farmers were treated as settlers of peripheral territories abandoned to their fate without

29 Corte Suprema de Justicia, Sala de Casación Laboral, Sentencia de Casación del 18 de julio de 1959, Gaceta 2214.

30 This study faced the problem to investigate the decisions of judges of first instance, because there is no system of compilation of legal decisions of first instance in Colombia.

31 Corte Suprema de Justicia, Sala de Casación Laboral, Sentencia Casación del 20 de agosto de 1969.

32 Ley 1 de 1968, por la cual se introducen modificaciones a la Ley 135 de 1961 sobre Reforma Social Agraria.

33 Ley 4 de 1973, por la cual se introducen modificaciones a las Leyes 200 de 1936, 135 de 1961 y 1ª de 1968. Se establecen disposiciones sobre renta presuntiva, se crea la Sala Agraria en el Consejo de Estado y se dictan otras disposiciones.

34 Organización de las Naciones Unidas para la Agricultura y la Alimentación (FAO), Derecho Agrario y Desarrollo Agrícola: Estado Actual y Perspectivas en América Latina, 1976.

35 Ley 5 de 1973, por la cual se estimula la capitalización del sector agropecuario y se dictan disposiciones sobre Títulos de Fomento Agropecuario, Fondo Financiero Agropecuario, Fondos Ganaderos, Prenda Agraria, Banco Comercial, deducciones y exenciones tributarias y otras materias.

any titling and infrastructure by the state[36]. It is worth noting that this and subsequent governments treated the peasant movement as an ideological enemy collaborating with the different Colombian guerrillas[37] which deeply affected the participation of peasants in land formalization programs and the non-implementation of rural technification programs for small peasants. In the 1980s, Law 35 of 1982[38] and Law 30 of 1988 were other agrarian reforms focused on land market strategies to combat drug trafficking and illicit crops, through a system of land purchases for poor peasants and by means of eliminating the requirement of prior occupation of the land. The Law 30 of 1988[39] contemplated the creation of an agrarian section inside the upper level court of the administrative jurisdiction. The purpose of this agrarian section was only to review the legality of the process of the adjudication of rural land of the Ministry of Agriculture and INCORA. This judicial reorganization did not materialize.

However, during this period, the Decree 2303 of 1989[40] created agrarian judges and agrarian court magistrates at the cassation chamber of the Supreme Court. The decree contemplated an oral and simple judicial process to resolve problems of agrarian land tenure, with special protection for the weaker party – the peasant farmer. This decree determined that agrarian law was independent from civil law to resolve agrarian conflicts relating to the tenure and use of land, conflicts that arise in agrarian production, commercialization and conflicts between productive activities and the conservation of natural resources. Unfortunately, this agrarian judicial reform was not carried out: there was not even the will of the government to execute the very law it created. Law 270 of 1996[41], which is the Statutory Law of the Administration of Justice, suspended the operation of agrarian judges for reasons of coverage and budget and reassigned the competence of agrarian matters to civil judges. According to the Superior Council of the Judiciary since 2004, the judicial branch has had a budgetary lag to meet the needs of the administration of justice and the resources allocated by the National Government are insufficient to meet the goals and

36 *Daron Acemoglu and James Robinson,* Why nations fail?, New York 2012; *Michael Albertus and Oliver Kaplan,* Land Reform as a Counterinsurgency Policy: Evidence from Colombia, Journal of Conflict Resolution 53(2) (2013), pp. 198-231; *Luis Enrique Ruiz González,* Élites y restricciones institucionales de las reformas agrarias: La implementación del acuerdo de paz en Colombia, Revista De Derecho 53 (2020) pp. 88–110*; Absalon Machado,* Problemas agrarios colombianos, Bogotá 1991.

37 *Mauricio Archila Neira, Martha Cecilia García Velandia, Leonardo Parra Rojas, Ana Maria Restrepo Rodríguez,* Cuando la copa se rebosa: luchas sociales en Colombia, Bogotá 2019.

38 Ley 35 de 1982, por la cual se decreta una amnistía y se dictan normas tendientes al restablecimiento y preservación de la paz.

39 Ley 30 de 1988, por la cual se modifican y adicionan las Leyes 135 de 1961, 1a. de 1968 y 4a. de 1973 y se otorgan unas facultades al Presidente de la República.

40 Decreto 2303 de 1989, por el cual se organiza la jurisdicción agraria.

41 Ley 270 de 1996, estatutaria de la Administración de Justicia.

programs in the long term[42]. This agrarian jurisdiction never entered in function and it was eliminated from the legal system by the Law 1564 of 2012[43].

Besides the agrarian reforms, the 1991 Colombian Constitution[44] notably aimed to overcome social problems in the country as well as specifically included a rural reform. By encompassing a recognition of collective lands of indigenous populations and peasants' collective territories, the constitution highlights the importance and need for stronger protection of vulnerable rural populations. It includes new fundamental rights of ethnic groups in articles 329 and 330, establishes an indigenous jurisdiction in article 246 for indigenous territories, a peace jurisdiction for communitarian affairs in article 247, and protecting the progressive access to land ownership of peasant workers and their social, economic, and cultural rights in article 64. It also updated the social ecological function of property in article 58. After the Constitutional reform, the Law 160 of 1994[45] established the Peasant Reserves or Peasants' collective ownership territories, which are areas of uncultivated land that must be given to the peasants for economic development with ecological purposes. While thirteen peasant reserves have since been established, a further 34 are yet to be recognized. This is due to successive administrations being opposed to creating reserves in areas with guerrilla presence[46]. However, ultimately, this Law does not establish any conflict resolution criteria or guidelines help overcome the limited access to justice and peasants' conflicts.

Several conclusions emerged regarding what the Colombian legal system currently offers to the peasants. One being that the legal solutions in the Colombian civil code of 1873[47] have not been updated to the realities of the agrarian reforms, the new constitutional rights, tenure agrarian contracts, conflicts from agrarian activities and conservation of natural resources. Second, a lower coverage of civil courts in the rural territories still adversely affects the access to justice.

42 Consejo Superior de la Judicatura de Colombia, Informe al Congreso, 2014, www.camara.gov.co/sites/default/files/201707/Informe%20al%20Congreso%20Rama%20Judicial%202015.pdf (last accessed on 15 July 2021).

43 Ley 1564 de 2012, por medio de la cual se expide el Código General del Proceso y se dictan otras disposiciones.

44 Constitución Política de Colombia, 27 October 1991.

45 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.

46 *Archila* note 38; Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO), Las zonas de reserva campesina: retos y experiencias significativas en su implementación, 2019, http://www.fao.org/3/ca0467es/CA0467ES.pdf (last accessed on 15 July 2021).

47 Ley 84 de 1873 Codigo Civil. The Colombian civil code is based on roman civil law and the Napoleonic Code of 1804.

C. Peasants' Constitutional Law and The "Train Wreck" between High Courts

In the absence of an administration of justice for rural issues, ethnic groups and peasant movements have reclaimed rights through *Tutela* action for the protection of fundamental rights, based on their condition as victims of armed conflict, land dispossession and vulnerability[48]. The Constitutional Court declared the situation of the rural territories an unconstitutional state of affairs[49][50].

The peasant movement has succeeded in getting the Constitutional Court to determine differential treatment for peasants who are victims of social marginalization[51]. However, the present study is critical of this vision because there is no legal protection for peasants in non-vulnerable situations. In this regard, the peasant movement in Colombia has provided other definitions of the peasant subject: it being an historical and intercultural subject that is involved with land and nature with a social organization based on family and community work that sells his or her labour force[52]. Güiza et al.[53] have compiled the peasant constitutionalism of the Constitutional Court which includes: the content of rural development programs, recognition of the peasant as a subject of constitutional protection and recognition of peasant rights such as land and territorial rights, development policies according to the peasants' needs and peasant participation in public policy.

Unfortunately, the constitutional decisions regarding peasants have difficulties in their application. At the High Courts, it became evident that there is no common interpretation of the application of VSL regulation to solve the peasants' conflicts. This is also known as the "train wreck"[54] of the Constitutional Court and the Civil Chamber of the Supreme Court. The Constitutional Court in their ruling T-488 of 2014[55] and T-293 of 2016[56] established that the rights of the nation over VSL are imprescriptible. The court further highlighted that

48 Corte Constitucional de Colombia, Sentencia T-754 de 2006, www.corteconstitucional.gov.co/relatoria/2006/t-754-06.htm (last accessed on 15 July 2021); Corte Constitucional de Colombia, Sentencia T-267 de 2011, www.corteconstitucional.gov.co/relatoria/2011/t-267-11.htm. (last accessed on 15 July 2021).

49 "Estado inconstitucional de cosas" means that the fundamental rights are not fulfilled.

50 Corte Constitucional de Colombia, Sentencia T-025 2004, https://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm (last accessed on 15 July 2021).

51 Corte Constitucional de Colombia, Sentencia C-006 2002, https://www.corteconstitucional.gov.co/relatoria/2002/C-006-02.htm#:~:text=Demanda%20de%20inconstitucionalidad%20contra%20el,y%20se%20dictan%20otras%20disposiciones%E2%80%9D (last accessed on 15 July 2021).

52 *Martha Saade Granados (ed.),* Conceptualización del campesinado en Colombia, 2019, p. 19.

53 *Diana Isabel Güiza Gomez, Ana Jimena Bautista, Ana Malagón Pérez, Rodrigo Uprmny Yepes*, La Constitución del campesinado: luchas por el reconocimiento y redistribucion en el campo jurídico, Bogotá 2020.

54 Colombian expression to describe the phenomenon.

55 Corte Constitucional de Colombia, Sentencia T-488 de 2014, www.corteconstitucional.gov.co/RELATORIA/2014/T-488-14.htm (last accessed on 15 July 2021).

56 Corte Constitucional de Colombia, Sentencia T-293 of 2016, www.corteconstitucional.gov.co/relatoria/2016/t-293-16.htm (last accessed on 15 July 2021).

the rulings issued by civil judges adjudicating rural land through adverse possession are unconstitutional and contrary to the aims set out in the agrarian reform, as they negatively affect the land fund distribution according to the legal requirements. However, the Civil Chamber of the Supreme Court did not follow this constitutional binding jurisprudence[57]. In their interpretation of the Law 200 of 1936[58], VSL cannot be applied to all land without formal title. The aim of the Law 200 of 1936 was to allow the farmers to claim the ownership of the land through productive occupation over time (*usucaption*). The Supreme Court arguments that it is the state and not the farmer who must demonstrate whether VSL applies in a concrete circumstance. This lack of judicial coherence and irreconcilable judicial position promotes informal and illegal land tenure, since there is no legal certainty for either land agencies or judges, thus neither can formalise ownership titles. This is why many of potential rural land ownerships and land adjudication decisions are pending and are going to continue to do so, unless a until a unified interpretation on the application of VSL has been reached. This legal incoherence also impacts the possibility of implementing rural social programs while the Constitutional Court maintains the colonial regulation of the VSL that without the approval of the then Spanish crown, now state-controlled agency, any adjudication or occupation is illegal.

D. Transitional Justice for Land Dispossession in Armed Conflict

Following the Constitutional Court Decision C-715 de 2012[59], Law 1448 of 2011[60] created the Civil Land Restitution Jurisdiction (CLRJ) to overcome only the problem of land dispossession and internal displacement as violation of human rights during the Armed Conflict. The CLRJ has 15 magistrates and 40 judges and does not solve agrarian issues or any rural land disputes of ownership or agrarian contracts. Their duties will expire in 2031[61]. The land restitution process has two stages: the first is an administrative procedure in the Land Restitution Unit (LRU), to evaluate claims as to their dispossession through armed violence and submit them to a restitution judge. The second stage is the judicial process, rules on the land restitution and claims of third stakeholders or secondary occupants. A relevant characteristic of the CLRJ is that judicial orders follow the international UN Pin-

57 Corte Suprema de Justicia de Colombia, Sala de Casación Civil, Sentencia STC 1776-2016.

58 Law 200 of 1936, note 32.

59 Corte Constitucional de Colombia, Sentencia C-715 de 2012, https://www.corteconstitucional.gov.co/relatoria/2012/C-715-12.htm (last accessed on 15 July 2021).

60 Ley 1448 de 201, por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones.

61 Ley 2078 de 2021, por medio de la cual se modifica la Ley 1448 de 2011 peorrogando por 10 anos su vigencia.

hero Principles[62] for displaced people to aim at a comprehensive victim reparation in terms of public services, road connections, housing construction, and monetary compensation.

However, in Colombia there is no precise information on the amount of land dispossessed and abandoned. As of 2021, the LRU had received 130,000 applications and only 6,908 cases received a judicial ruling[63]. The administration of 2018-2022 promised to resolve 8,090 property titles, but achieved only 10% of the target[64], while 65% of the land restitution applications in the LRU are denied[65].

Since 2011, the CLRJ has evidenced the continuous failures of the legal and institutional system to regulate land ownership, in the following regards:

a) the impossibility of land restitution when the dispossessed lands are located in new areas declared as National Parks or forest reserves;
b) the material impossibility of returning it to petitioners when the dispossessed lands have been subsequently granted mining titles, or there are infrastructure or agro-industrial projects[66];
c) problems of due process in the administrative processes of land restitution[67];
d) the failure due to budget shortfalls to fulfil orders by land restitution judges for the construction of infrastructure and public services in restituted territories[68].

The present study concludes that regular peasants' land formalization, conflicts in agrarian production and contracts and natural resources management conflicts that do not belong to the phenomenon of land dispossession do not have a jurisdiction and consequently peasants do not have any recourse to justice.

62 UN Economic and Social Council, Principles on housing and property restitution for refugees and displaced persons, UN Doc E/CN.4/Sub.2/2005/17, 28 June 2005.

63 Comisión de Seguimiento y Monitoreo a la Implementación de la Ley 1448 de 2011 "Ley de Víctimas y Restitución de Tierras", Séptimo informe de seguimiento al Congreso de la República, 2020, p. 198, https://www.coljuristas.org/documentos/tmp/informe%20seguimiento%20Ley%20de%20V%C3%ADctimas.pdf (last accessed 17 November 2022).

64 Ibid, p. 199.

65 Ibid, p. 202.

66 Comisión Colombiana de Juristas, Radiografía de la restitución de tierras en Colombia, 2019, https://www.coljuristas.org/documentos/tmp/Radiografia_de_la_restitucion_de_tierras_en_Colombia_2019.pdf (last accessed 17 November 2022).

67 Procuraduría General de la Nación, Republica de Colombia, Informe sobre el estado de avance de la implementación de las estrategias de acceso a tierras y uso del suelo rural contempladas en el acuerdo de paz, 2021, https://colombiapeace.org/files/210107_proc.pdf (last accessed on 17 November 2022).

68 Comisión Colombiana de Juristas, note 69.

E. The 2016 Colombian Peace Agreement

As a long march toward addressing the violent conflict and land distribution, the 2016 Peace Agreement Law[69], aimed to put an end to the Colombian state's long-running conflict with the FARC guerrillas. According to the Kroc Institute's monitoring report on compliance with the Peace Agreement[70], the Comprehensive Agrarian Reform (CRA) is the point with the most difficulties and delays in the goals, plus a budget reduction to overcome the rural poverty and land informality ownership. The 2018-2022 government prioritized only the definition of the areas of the Development Programs with Territorial Approach (PDET) and the multipurpose cadastre. However, these programs have not made significant progress in 2020 due to the Covid-19 pandemic[71]. The PDET areas still do not have justice services and by some estimates the Colombian state "will take 57 years to implement" the agrarian reform[72]. The Attorney General's Office reviewed the ANT's management and found that it has not awarded even 1 % of the land and does not have clear statistics to distinguish the processes of land adjudication and formalization of properties. However, 81 % of the agrarian processes carried out by the entity are in the preliminary stage, which indicates that there is no clarity on how much land is available for the CRA's Land Fund for the vulnerable population. The report concludes the need for agrarian justice to expedite the processes of land adjudication to poor peasants and beneficiaries of the CAR[73]. In 2022, the Constitutional Court declared the Government non-compliant with the Peace Accord and thus issued a series of orders for the authorities[74].

F. New Inter-Ethnic Land Conflicts After The 2016 Peace Agreement

The problems of land restitution and the lack of the implementation of the CRA are drivers for the mutation of land conflicts. A case that illustrates this is the conflict of the Yakpa indigenous people and the Reserva Campesina de la Serranía del Perija.

Peasants escaping the political violence of the 1940s settled in the highlands of the Yakpa, forming an interethnic territory. In 1952, this territory was declared a Forest Reserve

69 Acto Legislativo 01 de 2016, por medio del cual se establecen instrumentos jurídicos para facilitar y asegurar la implementación y el desarrollo normativo del acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera.

70 Kroc Institute for International Peace Studies, Five Years of Peace Agreement Implementation in Colombia: Achievements, Challenges, and Opportunities to Increase Implementation Levels, 2021, https://doi.org/10.7274/0c483j36025, (last accessed on 11 November 2021).

71 Kroc Institute for International Peace Studies, note 73.

72 *Juanita Gobertus,* Is Colombia's Peace Over? Challenges and Progress in Implementing the Peace Accords, www.youtube.com/watch?v=5-tRtuSWu84. (last accessed on 8 March 2021).

73 Procuraduría General de la Nación, note 70.

74 Corte Constitucional de Colombia, Sentencia SU-020 de 2022, https://www.corteconstitucional.gov.co/Relatoria/2022/SU020-22.htm (last accessed on 8 September 2022).

Zone[75], which prohibited peasant settlements, yet the government has offered no serious plan to relocate the peasants. Due to the armed conflict in this natural park, both population groups have lived in vulnerable conditions, submerged in illegal and legal economies that also negatively affect biodiversity[76].

As becomes clear in interviews with representatives Niño Izquierdo[77] and Martinez Zapata[78], the interethnic conflict over the ownership and delimitation of the territory has been created not only by the judicial incoherence of VSL, but also by the disjointed actions, poor planning, and misinformation of regional and national institutions. Since 2009, the Colombian state has had a constitutional obligation to implement a Safeguard Plan in the Yakpa people's reserves[79]. This ethnic group has also been requesting the expansion of their territories to areas occupied by peasants in the municipalities of Becerril and Agustín Codazzi since 1940. The peasants oppose the extension of the Yakpa territory onto their land, as they occupied these municipalities since 1946 and their lands are not recognized as indigenous territory. Not a single competent institution or judge has been able to resolve the land boundaries in the Serranía del Perijá.

With the 2016 Peace Agreement, the administration of 2014-2018 made land available in the Serranía del Perijá to implement reincorporation projects for former FARC combatants and CRA's programs to access land. However, the government did not contemplate the Yakpa territory when it created the Transitory Veredal Zone for Normalization (ZVTN) and the Territorial Spaces for Training and Reincorporation (ETCR) in Becerril and Agustín Codazzi municipalities.

The implementation of the Peace Agreement exacerbated the conflict between the prospect of the creation of the Peasant Reserve and the expansion of the reserve of the Yukpas[80]. An obstacle to setting up an interethnic territory and engaging in inter-ethnic

75 *Jesus Rangel, Alexis Justinico, and Larry Niño*, Colombia Diversidad Biótica XVIII: Biodiversidad y Territorio de la Serranía de Perijá, Bogotá 2019. The serrania del Perija includes 2000 vascular plant species, about 88 species of reptiles, 43 species of amphibians, 495 species of birds, 125 species of mammals and 425 species of butterflies, most of them in danger of extinction. In the last three years, more than 1,100 hectares have been deforested.

76 *Josefina Cuello Daza and Elsy Villazon Villero,* Conflicto Interétnico por el uso, tenencia y permanencia en el territorio entre el pueblo Zukpa y las comunidades campesinas en la Serranía del Perijá - César, 2019, https://media.business-humanrights.org/media/documents/Conflicto-inter%C3%A9tnico-pueblo-Yukpa-serran%C3%ADa-del-Perija.pdf (last accessed on 17 November 2022).

77 *Camilo*, *Niño Izquierdo,* Representante de la Comision Nacional de Territorios Indigenas, Personal Interview, 30 June 2021.

78 *Arnobi Zapata Martinez,* Representante de la Asociación Reservas campesinas, Personal Interview, 25 July 2021.

79 Corte Constitucional de Colombia, Sentencia T-025 de 2004, Auto 14 de enero de 2009.

80 *Josefina Cuello Daza and Elsy Villazon Villero,,* note 79.

dialogue is the decision of the Constitutional Court No. 713 of 2017[81]. The core of the decision was the right of prior consultation of Indigenous People vs the peace as a constitutional value, in terms of the reincorporation of the former FARC combatants to a normal life and the recognition of the peasants' rights to access to land and productive projects. In this case, the Constitutional Court decided that the process of expansion, sanitation, and delimitation of the Yukpa territory must be complete before the implementation of the CRA programs.

The research fieldwork found that the peasants' aim is for the government to formalize the permanence of both communities, which have been victims of the war, and have formulated dialogue tables to consolidate an inter-ethnic territory. However, the Yukpa ethnic group did not participate in this initiative, because by the Constitutional Court decision they are entitle to the Serranía del Perijá territory. To date, the Colombian government's Agencia Nacional de Tierras has not been able to make progress in the formalization of the Yukpa territory, nor does it have an alternative plan for land access for the peasant communities of Serranía del Perijá. The government's negligence, in effect, perpetuates the inter-ethnic non-violent conflict of land uses and ownership, fanning the presence of illegal actors, illegal economies, and high rates of biodiversity loss.[82]

The current civil or administrative jurisdictions do not have any legal rationale to manage social agrarian interactions and there are no special rules dealing with peasants. Without an inter-ethnic dialogue for the management of the land and an agrarian jurisdiction addressing rural land ownership with the guarantee of due process, it is not possible to solve the land adjudication or protect the biodiversity of the Natural Park Serrania del Perija. Thus, this calls for the development of simple procedural rules, low or free cost of the judicial process for persons in need and protection of the weaker party. The following part analyzes the process of constructing such an agrarian jurisdiction.

G. Analysis of The Shelved Bills of The Colombian Agrarian Jurisdiction of the 2016 Peace Agreement

Agrarian jurisdiction in a Columbian context is understood as a system of lower and higher agrarian courts with their own judicial process. The mandate for the creation of agrarian jurisdiction is part of the CAR, emphasising the importance of "some mechanisms for the resolution of conflicts of tenure and use and strengthening of food production"[83]. This was

81 Corte Constitucional de Colombia, Sentencia T-713 de 2017, https://www.corteconstitucional.gov.co/relatoria/2017/t-713-17.htm#:~:text=T%2D713%2D17%20Corte%20Constitucional%20de%20Colombia&text=La%20Corte%20Constitucional%20ha%20considerado,derechos%20de%20los%20pueblos%20ind%C3%ADgenas (last accessed on 15 July 2021).

82 Defensoria del Pueblo Colombia, Informe especial, economias ilegales, actores armados y nuevo escenarios de riesgo en el posacuerdo, 2018, p. 68.

83 Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera, 2016, p. 16.

a point of convergence between the FARC and the Colombian government[84]. The agrarian jurisdiction should have "adequate coverage and capacity in the territory, with mechanisms that guarantee agile and timely access to justice"[85]. The government did not support the establishment of a peasant jurisdiction similar to the indigenous jurisdiction, arguing that it was not viable for peasants to be granted self-government[86].

Since the signing of the Peace Agreement, the administrations of 2014-2018 and 2018-2022 have presented legislative projects of agrarian jurisdiction in accordance with constitutional principles to guarantee the progressive access to land and the protection of agrarian workers[87]. Both legislative projects presented, address the need to overcome the problems of informality and concentration of rural land ownership, through the creation of jurisdictional rules of an autonomous and declarative agrarian and rural process that settles disputes in rural territories with a peasant and gender-differential approach. Through agrarian jurisdiction, both projects have sought to review and ratify decisions made in administrative courts regarding rural property titles. However, both Bills 2018[88] and 2021 were subsequently shelved by the Senate.

The basis of the two legislative projects was a comparative law study by the Ministry of Justice in 2018 which reviewed functional and budgetary aspects for the incorporation of an agrarian jurisdiction into the judicial system.. The resulting recommendation was to adopt a dual model taken from the legal systems of Chile and Mexico, where agrarian specialized judges, annexed to both ordinary and contentious-administrative justice, replicate the figure of the facilitator by advising farmers how to bring the claim forward in court or another authority and emphasizing differential approaches for peasant women[89].

The 2018-2022 Government presented the Bill 134 of 2020, "whereby an agrarian and rural judicial specialty is created, mechanisms for the resolution of agrarian and rural controversies and disputes are established and other provisions are enacted"[90]. This was one of the few points of the Peace Agreement with a budget allocated for the 2018-2022 administration. The House of Representatives conducted a dialogue table with experts from academia, former government officials, and magistrates of the High Courts, representatives of the Attorney General Office, the National Land Agency and NGO representatives. The main concern shared by the expert group was the lack of harmonization with environmental

84 Oficina del Alto Comisionado para la Paz, note 13, p. 39.

85 Oficina del Alto Comisionado para la Paz, note 13, p. 293.

86 Oficina del Alto Comisionado para la Paz, note 13, p. 293.

87 Constitución de Colombia, note 45, articles 1, 64, 65 and 66.

88 Senado, por la cual se modifica la ley 270 de 1996, estatutaria de la administración de justicia, se establecen los mecanismos para la resolución de controversias y litigios agrarios y rurales, y se dictan otras disposiciones.

89 Ministerio de Justicia y del Derecho, note 13.

90 Senado, Proyecto de Ley 134 de 2020, por la cual se crea una especialidad judicial rural y agraria, se establecen los mecanismos para la resolución de controversias y litigios agrarios y rurales y se dictan otras disposiciones.

principles and that it does not address environmental conflicts in rural areas[91]. The Superior Council of the Judiciary suggested? that the project be supported by specialists in environmental law, topography and other areas. The representatives of the Supreme Court's Civil Cassation Chamber stated that there is currently no unification of regulations on land issues and that an organic regulation of land laws is needed. Regarding the operational issue, they recommended that another chamber should not be created in the Supreme Court of Justice, but that the current structure be maintained and the number of auxiliary magistrates with an expertise in rural issues be increased[92].

Experts from academia and NGOs have stated that the bill ought to focus on municipal judges, not on the high courts. Some experts oppose the dual model, because most agro-environmental issues involve a public good that makes it difficult to distinguish private from public interest. The dual model will create interpretative, unification and coordination problems between the civil and administrative judicial branches. The group was also sceptical that the Civil Cassation Chamber, which has a civil legal rationality, could in fact protect the rights and interests of the peasantry[93]. Further concerns expressed included the existing inter-institutional coordination problems and the lack of a provision for improving access to information used in the agrarian jurisdiction and harmonization with the actions carried out by the National Land Agency (NLA)[94]. It should be highlighted that there was no participation of the peasant associations in the discussion of the project[95].

The bill includes the purposes and principles of the agrarian judicial branch, procedural aspects, and coordination with other government institutions. However, reviewing the bill project in light of UNDROP and the Peace Agreement, as well as the demands of the Peasant Movement, its objective is very limited. It is restricted to the land adjudication process and economic relations, when current rural conflicts affect the guarantee of the enjoyment of rural territory, access to natural resources, a healthy environment, food security and control of seed[96].The Constitutional Commission of the House of Representatives and the Senate has modified the principles that guide agrarian jurisdiction in the debates. The Bill 134 of 2020 eliminated the principles of well-being and good living, the right to food, integrity and immediacy that had been stipulated in the Peace Agreement and UNDROP. Instead, the House of Representatives' debates focused on environmental issues, and as a result, the principle of sustainable development and the ecological function of rural property were enshrined. In the debates in the Senate in May 2021, the Conservative Party

91 Congreso de la República de Colombia, Cámara de Representantes, Comisión Primera Constitucional, Field Observation of October 5, 2020, Audiencia Pública discusión del proyecto de Ley 134 de 2020.

92 Ibid, note 94.

93 Ibid, note 94.

94 Ibid, note 94.

95 Congreso de la República de Colombia, Camara de Representantes, Comisión Primera Constitucional, Field Observation of December 7, 2020, Discusión de expertos ambientales.

96 UNDROP, note 1, article 4, article 19.

and Centro Democratico Party, opposed the idea of democratization of the rural land and women's rights[97].

In terms of agrarian and rural proceedings, this law innovatively includes the constitutional judicial precedent as a primary source of law. The draft bill follows the guidelines of the Constitutional Court based on international conventions to create a simple judicial proceeding for vulnerable populations. The historical novelty of the shelved bills is the dual model of administrative and civil judicial branches. The administrative agrarian judges will resolve controversies against the decisions of the ANT on the process of formalization of rural property[98]. Agrarian civil judges will resolve rural tenure and usage rights, as well as agrarian contracts. A positive aspect of the proposed bill is a solution to the current conflicts of land use by peasants inside natural parks, forest reserves and conservation areas, such as the ethnic conflict of Serrania de Perija Being a transitional justice system set out only until 2031 for land dispossession in the Armed Conflict, these specialized judges are not going to assume the jurisdiction of the land restitution judges.

A highlighted mandate of this bill was the product of the discussion between experts and the House of Representatives on ethnic conflicts[99]: the inclusion of an interpretation rule in terms of the application of the indigenous peoples' law in ethnic territories.[100] The Bill lays strong emphasis on the use of alternative conflict resolution mechanisms and incorporates a legal conciliator in the judicial process[101]. The Bill project incorporates professionals or technicians in geographic, topographic, and cadastral information[102]. Moreover, it includes a facilitator that only provides information on how to access agrarian judges, documents, or which authority is the competent to their issues.[103] Since these facilitators are not giving actual legal advice, but rather offer guidance, the plan is to have law students assume this position.[104]

The present study observes a problem in the design of the agrarian proceeding in that the involvement of a legal conciliator undermines the participation of rural communities in resolving conflicts according to their own customs and realities. What is more, legal conciliators would be students of law or lawyers trained in cities who typically knowledge of the *modus vivendi* in a farming context. What is more, the agrarian jurisdiction ought to include Justices of the Peace (JP), who in this case enter the agrarian judicial process as conciliators with familiarity of the territory and peasant customs, and could speed up the

97 Congreso de la República de Colombia, Senado, Comisión Primera de Asuntos Constitucionales, Field Observation of May 25, 2021, Segundo Debate de la Ley 134 de 2020.

98 Senado, note 93, article 33.

99 Field Observation of October 5, 2020, note 94.

100 Senado, note 93, article 112.

101 Senado, note 93, article 25.

102 Senado, note 93, article 24.

103 Senado, note 93, article 3 and 25.

104 Senado, note 93, article 125.

agrarian legal processes. This is feasible, because the JPs are already trained and supported by the Ministry of Justice on dispute resolution mechanisms[105]. By including JPs in the agrarian proceedings, it would be possible to harmonize legal pluralism and improve the institutional presence overcoming the concept of the itinerancy of agrarian judges in the most vulnerable territories of the country.

In the design of the operative structure of the agrarian-rural jurisdiction law, it is contemplated that it must be itinerant[106] in rural poor municipalities with vulnerable population. There is currently no itinerant judicial programme or public policy in Colombia, and although there have been pilots such as Justicia sobre ruedas (Justice on wheels), the debates showed that there was no clarity on this model[107]. The draft Bill includes some non-procedural aspects, related to institutional improvement and legal training. As discussed in the Public Hearing[108], none of the Law Faculty programs in Colombia include the subject of agrarian law. This constitutes a problem of legal culture. The Bill invites law faculties to include the agrarian subject in their syllabi[109], as well as the creation of training programs in rural women rights[110]. It further contemplates provisions to prioritize the budgets for the construction of agrarian courts. A point of weakness is that the Bill does not want to address the ethnic conflicts and territories due to the difficulties to conduct a prior consultation process with the indigenous communities and Afro-Colombian groups to approve the Bill[111]. The bill also does not address the environmental problems of the agriculture. The reason given during the technical discussions was that the dynamics of environmental conflicts in Colombia would call for the creation of a whole environmental judicial branch[112].

H. Obstacles and adjustments for the incorporation of an agrarian judicial branch

The obstacles faced by the Peace Agreement directly affect the implementation of agrarian justice in Colombia. The structural obstacles in terms of the allocation of logistical, operational and financial resources of the agreement are:

a) a lack of political will on the part of government leaders, combined with conflicting views that seek to redefine or disregard commitments due to different visions of governance[113],

105 Constitución de Colombia, note 45, article 247.
106 Senado, note 93, article 12.
107 Field Observation of October 5, 2020, note 94; Field Observation of May 25, 2021, note 100.
108 Ibid.
109 Senado, note 93, article 125.
110 Senado, note 93, article 126.
111 Field Observation of December 7, 2020, note 98.
112 Field Observation of December 7, 2020, note 98.
113 *Niño Izquierdo,* note 80, *Zapata Martinez,* note 81.

b) corruption and co-optation by personal interests – legal and illegal – of state entities that affect old and current agrarian reforms[114], and
c) an unprecedented urgency to address the Covid-19 pandemic[115].

Another obstacle affecting governance and social stabilization for the Agreement is the dynamics of violence due to the reconfiguration of criminal groups regionally that makes the rural territories into war territories. The implementation of the Agreement requires the participation of the communities, but many who have led programs of the Agreement, such as coca crop substitution, land restitution and environmental rights, have been murdered by criminal groups[116]: between 2016 and 2021 alone, 904 social leaders have been assassinated[117]. At the end of 2019, the number of internally displaced persons reached a new height, with close to eight million, according to government statistics[118].

The 2018-2022 administration has focused its efforts only in a military security strategy without building institutional capacity in the rural territory. The survey of unmet legal needs shows that the justice services strategy of the government is to fight crime in the cities[119] and not to create legal services for the rural territories. It is noteworthy that the Colombian government of 2018-2022, which has a majority in the Senate, failed to pass its own Agrarian Jurisdiction Law. Some senators and house representatives stated that this project is no longer a priority for this government[120]. The senators opposed to the agrarian jurisdiction object to the democratization of the rural land, the participation of peasant organizations in the agrarian processes and the ultra and extra petita powers of the agrarian judge[121]. In addition, due to the economic crisis that the country is going through because of the Covid-19 pandemic, agrarian judges are not considered a necessity and there is no budget to implement the new jurisdiction[122]. Beyond the political and economic opposition, in the debates in Congress in the years 2018, 2020 and 2021, it is evident that there is a consensus of technocrats and magistrates that support the creation of the agrarian

114 *Acemoglu and Robinson,* note 37; *Albertus and Kaplan,* note 37, *Ruiz González,* note 37*; Machado,* note 37.

115 Field Observation of May 25, 2021, note 100, Kroc Institute for International Peace Studies, note 74.

116 Indepaz, Informe sobre presencia de grupos armados, Actualización 2018-2 y 2019, 2020, https://www.indepaz.org.co/wp-content/uploads/2020/11/INFORME-GRUPOS-ARMADOS-2020-OCTUBRE.pdf (last accessed on 1 January 2021); *Zapata Martinez,* note 81.

117 Jurisdicción Especial para la Paz de Colombia, Sistema Integral solicita a la Defensoría del Pueblo adoptar una resolución defensorial que trace hoja de ruta para poner fin al asesinato de líderes sociales y excombatientes de las Farc-EP, 2021, p. 1.

118 UN News, Asesinatos de defensores de derechos humanos en zonas remotas de Colombia, 2020, https://news.un.org/es/story/2019/06/1458001 (last accessed 17 November 2022).

119 DANE, note 16.

120 *Maria Jimena*, *Duzan,* Un Congreso que legisla de espalda a los colombianos?, www.youtube.com/watch?v=slWl-hZYXUg (last accessed on 15 September 2021).

121 Field Observation of May 25, 2021*,* note 100.

122 Field Observation of May 25, 2021, note 100.

jurisdiction. The 2022-2026 Colombian Government must prioritize to fulfill the CAR of the Peace Agreement meaning that they are going to have to create an agrarian jurisdiction.

Regarding upcoming attempts of introducing an agrarian jurisdiction in the following years, this study considers that to overcome the financial and operational obstacles and guarantee a degree of legal pluralism, a pragmatic strategy is needed. While the current civil and administrative judges assume the agrarian procedure, a representative of the peasants' organizations or one of the justices of the peace (JP) accompanies the conciliation stage in the agrarian judicial process. .. Theoretically, by including JPs in the agrarian proceedings, it would be possible to harmonize legal pluralism and improve the institutional presence overcoming the concept of the itinerancy of agrarian judges in the most vulnerable territories of Colombia. The Judicial Branch coordinates the consolidation of the Report Office to unify the agrarian jurisprudence and must create a responsible officer who coordinates the entities that participate in the Integral Agrarian Reform and the Special Jurisdiction for Peace. Finally, there is not a single agrarian program in Colombian law faculties; they cannot wait for the creation of an agrarian judicial branch to update their law programs. Unfortunately, the technical debates of the Bill in the Congress excluded peasant organizations. For the peasant organizations, reeling from the martyrdom of many of their leaders, it is necessary to protect and guarantee their political, social and economic participation in all the spaces of consolidation of the integral rural reform.

J. Conclusions

The elusive agrarian justice for Colombia's rural territories has generated a vicious cycle between land informality and illegal land use. On that basis, the legal system reproduces judicial decisions that are unfit for rural territories. These legal gaps in Colombian law, accompanied by constitutional justice and the transitional justice of land restitution, offer access to justice only to victims of land dispossession resulting directly from the armed conflict.

The current legal system in Colombia without an agrarian jurisdiction is a clear violation of the right to access to justice. The VSL regulation has been used as an instrument to push legal and illegal private interests in land adjudication meant for peasants. It further suffers from a incoherent application of the law at the High Courts regarding land adjudication cases. The case study of la Serranía del Perijá and the Yukpa indigenous people highlights the lack of effectiveness of the decisions of the Constitutional Court which in turn have escalated interethnic rural conflicts and perpetuated the endemic violence. Beyond the weak points of the most recent shelved Bill project, the consolidation of an agrarian jurisdiction is essential to enforce the rule of law for agrarian issues, peacebuilding, and overcoming the systematic violations of human, economic, social, and environmental rights of vulnerable rural populations.

Keeping in mind the budget cuts expected due to the Covid-19 pandemic and recovery, the focus needs to be on operational adjustments and not insist on the creation of new

agrarian judges. Instead, an agrarian judicial procedure and the consolidation of the agrarian constitutional precedents should be adopted in the lower and higher administrative and civil courts with an agrarian conciliator and facilitator. Moreover, agrarian legal training is necessary. An agrarian judicial branch should not be considered as a solely government agenda, but as a moral obligation of the faculties of law and the judiciary. It requires inter-institutional coordination and greater participation of peasant organizations. Without concerted effort, rural Colombia will continue on a downward spiral.