

The right of use on non-awarding state lands, an innovative tool for legal certainty regarding land tenure.

There is a new model of access to land in Colombia by means of rights of use on non-awarding state lands; legal security is important to legitimize the state lands tenure located in this area for the development of legal activities.

In contrast to the generality of the nation's state lands¹ that can be allocated to the farmers to develop productive activities, there are 3 types of areas that have been categorized as non-awarding, and that cannot be given to be owned:

1. Those located in forest reserve areas, B and C type.
2. Playones and shared communal lands
3. State lands located within a one thousand five hundred fifty four miles (1554) ratio around the areas where nonrenewable natural resource exploitation is being carried out; including useful fossil material considered economically usable which are present in the soil and subsoil, this excludes construction materials and salt mines, taking as a reference to measure the distance the entrance of the mine and/or the oil exploitation spot.

In 2013 and 2014, the Ministry of Environment and sustainable development classified the forest reserve areas into 3 types: A, B and C. In which the A forest reserve area is the largest one, with greater wooded coverage and intended to the maintain the basic ecological processes that are necessary to ensure ecosystem services and where the awarding of the usage contracts is not allowed. The type B area is intended to manage the forest resources sustainably with commercial plantations. Type C are areas that, due to their biophysical characteristics, offer the conditions to develop agroforestry productive activities, among others compliant with the Forest Reserve objectives. These are non-awarding given its ecological relevance.

It is worth mentioning that there are approximately 2.566.306 hectares in type B areas, and 1.188.529 hectares in type C areas. (Source: Ministry of environment and sustainable development)

Regarding the playones², it must be mentioned that they are non-awarding since they are part of strategic ecosystems, particularly in water. And the shared grasslands³ are also non-awarding because they are intended to be used collectively by the communities settled in those territories.

Finally, due to national mining and energy policies. it has been established a restriction to allocate the state-owned lands ownership that is located within the 1.5 miles ratio where the entrance of the mine or the hydrocarbon exploitation points are.

¹ All the lands that being within the borders are ownerless are also goods of the Union. (Colombian Civil Code, article 675)

² State lands that flood periodically with swamp water or with the rivers and their waterways that can be used according to environmental and technical criteria.

³ These are zones consisting of state lands, generally covered by natural pasture, which haven been traditionally occupied with cattle. Agreement 058, 2018, article 3.

As well as being non-awarding, these 3 areas share the trait of being occupied by rural inhabitants, and even though the state does not have accurate information about the number of inhabitants in these zones, a large part of towns are in them. This generates precarious land tenure conditions for the inhabitants.

In addition, there is social unrest because some of the rural residents occupied these lands without being aware of these restrictions, or they did so before the law that established such a restriction.

Furthermore, the land titling restriction has been a hindrance for rural development, and besides the occupants have been labeled as illegals which makes them subjects of processes in which the state tries to get back the lands generating more social unrest within the communities.

On the other hand, the state has not done an appropriate administration of the nation's lands; it does not have information nor enough tools to monitor lands adequately, therefore, its presence is needed to identify the occupants and verify appropriate use of the soil.

Therefore, it is essential to perform an exercise to manage these state lands, where the territory reality is recognized, and the state isn't seen only as a sanctioning entity.

To improve these situations, it has been proposed to look for legal procedures, so the inhabitants can develop their activities under clear rules and parameter that allow the state to manage and generate information of these lands, making the inhabitant an ally in the state lands' administration.

Considering this social panorama, the territory reality and its competence in state lands management, la Agencia Nacional de Tierras- ANT-⁴ started to issue a regulation (agreement 058 of 2018), that develops the access to land over those Nation's state lands that cannot be awarded, by assigning use rights.

Along with the final Peace agreement, between FARC-EP and the Colombian Government, the assignment of user rights was established as another mechanism of access to land⁵. And given that the Colombian countryside presents a multiplicity of actors, and the administration measurements in non-rewarding state lands management require a territorial approach that understands the social dynamics of the legitimate land tenure of small and middle producers. That's how the new regulation intends that the people that occupied non-rewarding state lands can be chosen to grant them the use rights, which generates an appropriate Nation's state lands management, legal certainty in land tenure, public goods access, and private investments to develop sustainable productive activities.

Conclusions

The new access to land model by means of allocation of user rights generates the following situations:

- 1) It legitimates the rural inhabitants land tenure.
- 2) It offers legal certainty to potential investors.
- 3) It facilitates the control and follow-up to verify an appropriate soil usage.

⁴ Highest land authority in Colombia (Decree 2363, 2015)

⁵ Without prejudice to the provisions in the point 1.1.1 Fund of Lands (Fondo de Tierras), the Government will process a law in order to promote other ways to access state's lands such as the right of use allocation, particularly for those small and middle producers, individually or collectively.

- 4) It brings the institutionality together with the rural areas
- 5) It can contribute to reducing the land claims.

Hence, this model provides an opportunity that helps to enhance the rural inhabitants' living conditions, since it legitimates the land tenure with a contract signed up by the state, and it recognizes and grants legal certainty to the occupant. It also facilitates investment because, when the rules are clear and there is legal security on land ownership, not only the institutional offer arrives with public goods and productive projects, but also the private one that has a big opportunity to establish partnerships to develop environmental, touristic and agricultural projects with the legal security conditions that are needed for investing in these lands. Besides, it is worth mentioning that the contracts will be signed for a minimum of 1 year up to 10 years which can be renewed if the parties are complying with the obligations. Moreover, these contracts will be valid as credit support with the financial institutions.

Implementation challenges

1. To establish working sessions between the competent institutions in order to identify the areas to intervene and to develop the tasks with the communities to assign the users rights.
2. To structure standard contracts that can be adapted to the situations of each zone and de customs of the territory.
3. To promote partnerships to develop productive projects in the allocated lands.
4. To establish clear rules with the contracts that allow renewals and that generates warranties to the investments, and so that the user right does not become a pernicious incentive to exploit intensively the soil for short periods of time that ends up degrading it.

Other public policies considerations

It is necessary that the National Government define if it is required to continue with the restriction on access to state lands ownership located in the 1.5 miles ratio around mining and hydrocarbon activities, especially if it is much more convenient for the companies to negotiate with the owners the leasing, sale or easements on the lands, than negotiate the access to them with unhappy occupants that do not have title of property.

Similarly, it must be studied the legal relevance to continue with the limitation to property access for those occupants located in Forest Reserve Zones, promoting the suitability of legalizing the inhabitants' property, who will always be subject to strict obligations and conditions related with soil usage and according to the characteristics of the Forest Reserve Zone, and at the same time promoting the transition from productive activities to sustainable systems.