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Searching for Women and Sustainable Development in Columbia: Restructuring the Limits

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SEARCHING FOR WOMEN AND SUSTAINABLE DEVELOPMENT IN COLOMBIA: RESTRUCTURING THE LIMITS

Helena Alviar García¹

The discussion surrounding the relationship between women and sustainable economic development dates back to the early 1970's with Esther Boserup's groundbreaking work, "Woman's Role in Economic Development."² Boserup explored the gendered division of labor in relationship to agricultural production and the importance of women to subsistence production. These two facts became very relevant in the understanding of women's relationship to the environment and their importance in achieving sustainable development.³ In addition to academic production inspired by

1. Associate Professor, Dean, Facultad de Derecho, Universidad de Los Andes.

2. ESTER BOSERUP, *WOMEN'S ROLE IN ECONOMIC DEVELOPMENT* (1970). See also Irene Tinker, *The Making of a Field: Advocates, Practitioners and Scholars*, in *THE WOMEN GENDER AND DEVELOPMENT READER* 34 (Nalini Visvanathan, et al., eds., 1997). The author points out:

In 1970 the General Assembly included in the International Development Strategy a phrase – later widely copied – which stated the importance of encouraging 'full integration of women in the total development effort'. In 1974 the SID/WID produced a bibliography, a mere five pages long, and in the process 'discovered' Ester Boserup's *Women's Role in Economic Development*. Her book was instantly embraced because Boserup's theory legitimized efforts to influence policy development with a combined argument for justice and efficiency.

Id. at 34.

3. For the purpose of this article, sustainable development is economic growth that meets the needs of the present without compromising future generation's capacity to achieve this same goal. See U.N. WORLD COMM'N ON ENV'T AND DEV., *Report of the World Commission on Environment and Development: Our Common Future*, U.N. Doc. A/42/427 at pt. I, ch. 2, (Aug. 4, 1987), available at <http://www.un-documents.net/wced-ocf.htm> [hereinafter Brundtland Report].

Boserup's work, the Nairobi Forum of 1985 presented case studies of women's participation in environmental protection.⁴

The relationship between women and sustainable economic development has competing perspectives. A first one, which I will call liberal, agrees with the basic premises of progress as growth both in urban and rural sectors, but considers that if women are more empowered in rural areas, by being targets of development assistance, the negative effects of growth will be minimized.⁵ One

4. See World Conference to Review and Appraise the Achievements of the U. N. Decade for Women: Equal., Dev. and Peace, Nairobi, Kenya, July 15-26, 1985, *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace* 277 (1986), available at <http://www.un.org/womenwatch/confer/nfls/Nairobi1985report.txt>; see generally Mandana Hendessi, *Fourteen Thousand Women Meet: Report from Nairobi*, FEMINIST REVIEW 147 (Summer 1986).

5. The United Nations took this position in 2010:

In most of the countries from the less developed regions, there are no significant differences by sex in the perception of the environmental problems as being very serious. By contrast, higher proportions of women than men define the environmental problems as very serious in most of the countries with available data from the more developed regions However, as presented in Chapter 5 – Power and decision-making, women still hold a minority of decision-making positions in most public and private institutions. Consistent with these findings, women participate less than men in high- level decision-making related to environmental issues in many countries. For example, a survey on gender mainstreaming among 17 environment ministries conducted in 2006 showed that women made up 41 per cent of the entire staff of the ministries but only 27 percent of managerial positions Some information on women's and men's behavior in the area of environmental protection is available, but mainly for countries from the more developed regions. For example, a review covering Western European countries, Australia and the United States of America showed that women tend to be more environmentally friendly with regard to recycling; choice of public transport for commuting; choice of smaller, less polluting and more efficient cars; and choice of organic food. These gender- specific choices are connected to some extent with the specific household and social roles of women and men.

U. N. DEP'T OF ECON. & SOC., *The World's Women 2010: Trends and Statistics*, U.N. Doc. ST/ESA/STAT/SER.K/19, 153-55, available at

critique of this perspective could be that it continues to leave women relegated to their role as subsistence producers. A second approach undermines the romantic view of the relationship between women and nature by critiquing the sexual division of labor which has marginalized women to only being subsistence producers, natural resource managers with little or no access to property.⁶ A third perspective proposes an alternative view of development, one that shifts the emphasis from growth and modernization to diversity and sharing.⁷

http://unstats.un.org/unsd/demographic/products/Worldswomen/WW_full%20report_color.pdf.

6. See Lourdes Benería & Gita Sen, *Accumulation, Reproduction, and Women's Role in Economic Development: Boserup Revisited*, 7 SIGNS 279, 290 (1981). The authors critique this view by asserting that

[m]odernization is not a neutral process, but one that obeys the dictates of capitalist accumulation and profit making. Contrary to Boserup's implications the problem for women is not only the lack of the participation in the process as equal partners with men; it is a system that generates and intensifies inequalities, making use of existing gender hierarchies to place women in subordinate positions at each different level of interaction between class and gender. This is not to deny the possibility that capitalist development might break down certain social rigidities oppressive to women. But these liberating tendencies are accompanied by new forms of subordination.

Id. at 290.

7. See Vandana Shiva, *STAYING ALIVE: WOMEN, ECOLOGY AND SURVIVAL IN INDIA* 42 (1988). Shiva proposes the alternative view, asserting that

[w]ith Adam Smith, the wealth created by nature and women's work was turned invisible. Labour, and especially male labour, became the fund which supplies us originally with all the necessities and conveniences of life. As this assumption spread to all human communities, it introduced dualities within society, and between nature and man. No more was nature a Source of wealth and sustenance; no more was women's work in sustenance 'productive' work; no more were peasant and tribal societies creative and productive. They were all marginal to the framework of industrial society, except as resources and inputs. The transforming, productive power was associated only with male western labour and economic development became a design of remodeling the world on that assumption. The devaluation and derecognition of nature's work and productivity has led to ecological crises; the devaluation and derecognition of women's

The debate surrounding the role of women in sustainable development is mentioned in Colombian contemporary discussions about equality in peasants' access to resources, and recent legal transformations aimed at providing reparations for victims of the ongoing civil conflict.⁸ In line with my recent work, in this Article I wish to pursue the idea that notwithstanding progressive norms aimed at privileging women as aid recipients and victims to be repaired, the interaction between these laws and economic development plans, existing access to land property, and women's burden on reproductive work end up making sustainability unreachable.

This Article will have three parts. Part I will outline the debate concerning women and sustainable development in the Colombian scenario. This part will describe both constitutional provisions and legal developments that have incorporated these ideas, as well as the provisions on gender incorporated in the recently passed Victims Law.⁹ Part II will describe how the interaction of these progressive laws with economic development plans, access to property, and family dynamics limit their breadth. Part III will present some preliminary conclusions and recommendations.

I. THE GENERAL FRAME OF GENDER-ORIENTED POLICIES

A. *Constitutional Provisions*

The Colombian Constitution has a number of articles that are relevant to the search of equality between men and women. The first is the equality clause contained in Article 13.¹⁰ This Article has two

work has created sexism and inequality between men and women. The devaluation of subsistence, or rather sustenance economies, based on harmony between nature work, women's work and man's work has created the various forms of ethic and cultural crises that plague our world today.

Id.

8. *See infra* Part II.

9. L. 1448, junio 10, 2011, [No. 48.096] DIARIO OFICIAL [D.O.] ("By which certain measures of attention, assistance and integral reparation of victims of the armed conflict and other dispositions are issued.").

10. All persons are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights,

separate sections. The first establishes the prohibition of discrimination, thereby codifying a negative definition of equality.¹¹ The second section in Article 13 provides a positive view of equality, one that requires the state to act.¹² This section has been the basis for laws aimed at correcting unequal representation and participation of women.¹⁴ In addition to the general equality clause, Article 43 of the Constitution expressly reaffirms equality between men and women in.¹⁵

One of the objectives of this Article is to link the idea of gender equality and sustainable development, so there are a few other

freedoms, and opportunities without any discrimination on account of gender, race, national or family origin, language, religion, [and] political or philosophical opinion.” CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 13, *translated in* Anna I. Vellve Torras, Jefri J. Ruchti & Maria del Carmen Gress, trans., POLITICAL CONSTITUTION OF COLOMBIA OF 1991, as consolidated to Legislative Act No. 6 (November 24, 2011) (HeinOnline World Constitutions Illustrated library 2011), available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan048941~1.pdf>.

11. In ruling C-371 of 2000, the Court reviewed some of its decisions based on the first section of the article and defined its negative aspect:

[This Court] has found that establishing a marriage annulment clause only applied to women; completely denying access to women to the only military academy existing in the country; allowing only men to affiliate their spouses to the social security system; establishing that the only residence for marriage is where the woman lives and forbidding women from working night shifts, all go against the equality clause. In all of these events, the Court concluded that differences in the law... perpetuate cultural prejudices and promote a harmful idea... that women are inferior to men.

Corte Constitucional [C.C.] [Constitutional Court], marzo 19, 2000, Sentencia C-371/00, Gaceta de la Corte Constitutcional [G.C.C.]

12. “The State shall promote the conditions so that equality may be real and effective and shall adopt measures in favor of the discriminated or [of] marginalized groups.” CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 13. “ ”

14. The quota law for government posts is one example of these positive actions. *See* L. 581, May 31, 2000, [No. 44.026] DIARIO OFICIAL [D.O.].

15. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 43 (“Women and men have equal rights and opportunities. Women may not be subjected to any class of discrimination. During pregnancy and after delivery, women shall enjoy the special assistance and protection of the State and shall receive from it food subsidies if they are unemployed or without support [*desamparada*]. The State shall support in a special way the female head of household.”).

provisions to take into account. Articles 64,¹⁶ 65,¹⁷ and 80¹⁸ establish special state protection for rural workers and food production, and determine that the State should do its best to guarantee sustainable development in order to protect its resources.

B. Legal Developments

1. General Laws: The Reiteration of Equality

Since the late 1990s there have been a number of laws whose objective is to achieve gender equality. Notwithstanding the considerable amount of legal provisions that include quotas,¹⁹ the criminalization of violence against women,²⁰ the reiteration of equal salaries,²¹ the accounting of reproductive work,²² and the special protection of women heads of households,²³ among others, equality continues to be an unattained goal.

2. Women and Sustainable Development: A Manifestation of Liberal Feminism

There have been several important laws specifically addressing the relationship between women and sustainable development. One is

16. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 64 (“It is the duty of the State to promote the progressive access of agricultural workers to the ownership of land, in individual or associative form, and to the services of education, health, housing, social security, recreation, credit, communications, the commercialization of products, technical and managerial assistance, with the purpose of improving the incomes and quality of life of the peasants [*campesinos*].”).

17. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 65 (“The production of food shall enjoy the special protection of the State. For that purpose, priority shall be given to the integral development of agricultural, cattle, fishing, forestry, and agroindustrial activities, as well as to the building of works of physical infrastructure and to the suitability [*adecuación*] of lands.”).

18. *Id.*

CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 80 (“The State shall plan the handling and use of the natural resources in order to guarantee their sustainable development, their conservation, restoration, or substitution.”).

19. L. 581, mayo 31, 2000, [No. 44.026] DIARIO OFICIAL [D.O].

20. L. 1257, diciembre 4, 2008, [No. 47.193] DIARIO OFICIAL [D.O.].

21. L. 1496, diciembre 29, 2011, [No. 48.297] DIARIO OFICIAL [D.O.].

22. L. 1413, noviembre 11, 2010, [No.47.890] DIARIO OFICIAL [D.O.].

23. L. 82, noviembre 3, 1993, [No. 41.101] DIARIO OFICIAL [D.O.].

Law 160 of 1994, known in Colombia as the Agricultural Reform Law. The objective of the law (as has been a trend in all agrarian reform laws since the early 20th century²⁴) is to transform the existing land concentration.²⁵ In addition (and also as most agrarian laws since the early 1980s), it explicitly establishes that women will have equal access to the policies of agricultural development.²⁶

Another relevant law for the purpose of understanding the relevant legal framework of women and sustainable development is Law 731 of 2002, which aims at improving rural women's quality of life.²⁷ It covers a variety of issues, most importantly women's access to land titling, credit, and education.²⁸

24. See generally Helena Alviar García, *The Unending Quest for Land: The Tale of Broken Constitutional Promises*, 89 TEX. L. REV. 1895 (2011) (analyzing agrarian reform failures).

25. The first article of the law establishes that "reform the agricultural social structure through process oriented at preventing and eliminating the unequal concentration of rural land or its anti-economic fracturing," and to "support men and women peasants with low income in their process of acquiring lands by themselves through credit and direct subsidy." L. 160, agosto 3, 1994, [No. 41.479] DIARIO OFICIAL [D.O.].

26. The law specifically establishes this objective by stating that: "the female peasant and indigenous population is guaranteed the same conditions and opportunities to participate equitably in the plans, programs and projects of agricultural development." Author's translation. *Id.*

27. Law 731 of 2002 states its objectives to "improve the quality of life of women in rural areas, specially low income women, and look[] for measures oriented at increasing equality among rural men and women." L. 731, enero 14, 2002, [No. 44.678] DIARIO OFICIAL [D.O.].

28. As additional proof that the law in the books does not necessarily translate into transformations, this law includes three articles that are very similar to the ones found on today's restitution law:

Article 24. Titling of rural reform land to spouse or permanent companion in state of abandonment. In cases where the land is titled or in the process of being so, to both spouse or permanent companions, or only to one of the spouses or permanent companions, in the event that one of them abandons the other, the rights over the land in the process of titling or already titled, will remain in the head of the spouse or permanent companion that proves the abandonment situation and that fulfills the requisites to demand prescription.

Article 25. Titling of land to communitarian associations or associative groups of women. Both Communitarian associations and associative groups of women that fulfill the

C. Recent Public Policy Initiatives: More of the Same

Multilateral organizations have been determinant in framing Colombian government initiatives related to improving women's condition in rural areas. A recent United Nations Food and Agriculture Organization (FAO) report highlighted the importance of women in the productive structure of agriculture, notwithstanding the lack of equality between men and women in the rural areas.²⁹ In addition, the United Nations Development Program released a report in 2011 analyzing the problems rural women face in Colombia, as well as the possible solutions available. This report openly criticizes rural women policies over the years for being unable to solve the structural discrimination suffered by women in the countryside.³⁰

requisites demanded by the law could be beneficiaries of the land titling process. In the same sense the preferential right over land is guaranteed to women head of the household and to those who are in a state of social and economic vulnerability due to violence, abandonment or widowhood.

Article 26. Equal participation of rural women in the process of adjudication and use of rural reform land. In all the processes of adjudication and use of the rural reform land that allow for the participation in decisions, training, and technical assistance and land price bargaining, women and men beneficiaries should intervene, with the object, of guaranteeing transparency and equality in those procedures.

L. 731, enero 14, 2002, [No. 44.678] DIARIO OFICIAL [D.O.] (emphasis added).

29. ORGANIZACIÓN PARA LA ALIMENTACIÓN Y LA AGRICULTURA, ACTUALIZACIÓN ESTADÍSTICA: SITUACIÓN DE LAS MUJERES RURALES COLOMBIA 50 (2007): *available at* <http://www.rlc.fao.org/es/desarrollo/mujer/docs/colombia/actualiz.pdf> (“Scarcity in access to productive resources by rural women is a tendency corroborated by the information available; even though we recognize some institutional efforts and the achievements of the various State Programs to obtain gender equality. The tendency to obscure women’s participation in food production in official statistics is persistent.”).

30. United Nations Development Program, MUJERES RURALES: GESTORAS DE ESPERANZA (2011), *available at* http://pnudcolombia.org/indh2011/pdf/mujeres_rurales.pdf (“Even though we recognize certain improvements, these policies lack an integral approach. They have been designed as marginal strategies and not as state policy. In the institutional level, they are assigned to the Ministry of Agriculture, with no articulation with other State offices. This shows a simplification of the public policy aimed at women’s productivity, when it should have an overarching approach and it should incorporate actions in education, health, environment and culture, among other aspects.”).

1. Ministry of Agriculture's Public Policy

A 2011 governmental policy, designed by the state through its Ministry of Agriculture, is a program aimed at improving productive conditions and strengthening agricultural productive projects led by women.³¹

According to the framing public document, by strengthening these projects led by women and improving their access to human capital, their income will improve and inequality will diminish.³²

This policy is a clear example of how the liberal understanding of women's role in rural development has been prevalent in the design and implementation of programs aimed at distributing resources among men and women.

2. Victims Law

In addition to the public policy aimed at improving women's access to aid for rural productive projects, the government has placed an enormous amount of energy into structuring a set of reparations for victims of the ongoing Colombian conflict.³³ Land restitution is perhaps the most important part of that effort that entails judicial, administrative, social and economic participation as well as individual and collective reparation.

As part of a transitional justice effort, this law transforms classical civil processes in order to effectively reconstitute the dispossessed. The Justice Minister defended the flexibility of classical civil law because

31. *See id.* at 1 (“...the project “Rural Women” is aimed to benefit rural women by strengthening their productive projects and the reconstruction of social and human capital . . .”).

32. *See id.* at 10 (“...all studies emphasize the importance of income for women to improve the life of her family since they invest their income in its entirety on them, to cover their basic needs. On the other hand, men, keep a percentage for their own use. Therefore, it is clear that all efforts made to improve the skills and earnings of women have a definite impact quality of life for their families.”).

33. *See* L. 1448, junio 10, 2011, [No. 48.096] DIARIO OFICIAL [D.O.] (“This law has as its objective to create a series of judicial, administrative, social and economic, measures, both individual and collective, in benefit of the victims of the violations contained in article 3 of this law, in a transitional justice framework, that allows the effective exercise of the rights to truth, justice and restitution” (Author’s translation)).

the process of land restitution operates in conditions of massive abnormality.³⁴

Recently, the government created a special agency to support the land restitution program and help the victims in the process of restitution by providing information to the victims.³⁵ However, the process of restitution is already being hampered by the pressure of armed groups and the corruption of public officials.³⁶ In some parts of the country, widespread violence against the peasant leaders of

34. Germán Vargas Lleras, Minister of Interior and Justice and Juan Camilo Restrepo Salazar, Minister of Agriculture and Rural Development, Statement of Purpose for the bill, *available at* http://www.minagricultura.gov.co/archivos/exposicion_de_motivos_al_proyecto_de_ley_v5_0109_2010.pdf (“The civil jurisdiction is designed to balance the legal remedies of the parties in litigation under the principles of due process and legal proof of each right, where all rulings by the judge may be contested. Its rules operate in normal conditions, but the processes are excessively long. In circumstances so irregular and massive, the possibility of restitution depends on designing a system of transitional justice which can restore the rights taken by violence, and to do so requires having exceptional rules, appropriate to the form of dispossession, which gives priority to legal entitlements that were lost... The challenge is to repair social damage caused by the misappropriation of property rights The dispossession was not random nor did the citizens have equal power. It was the application of deliberate strategies of predatory armed groups in certain regions, where they exercised control of the territory for nearly two decades which massively violated the rights of victims.”).

35. *Gobierno creó la Superintendencia especializada en Tierras*, EL ESPECTADOR (Feb. 6, 2012), <http://www.elespectador.com/noticias/politica/articulo-325091-gobierno-creo-superintendencia-especializada-tierras>, (“... this new institution was created . . . to advance the implementation of a program of guidance and information to victims of dispossession.”).

36. Redacción Política, *Revelan informe sobre retos de restitución de tierras en la Costa Caribe*, EL ESPECTADOR (Feb. 7, 2012), <http://www.elespectador.com/impreso/politica/articulo-325382-revelan-informe-sobre-retos-de-restitucion-de-tierras-costa-caribe> (“Land dispossession in the Caribbean Region was not a homogeneous phenomenon, nor with the same objectives in each case. While in some departments there was a clear relationship with the expansion of crops such as oil palm, others acted as a catalyst of old conflicts over land ownership and, in some cases, allowed a new investment of drug traffickers and paramilitary directly. This situation can lead to violent reactions, as the ones already seen, putting at risk the proper implementation of land restitution which the government of President Santos has committed to.”).

restitution movements has resulted in fear of the surviving victims to reclaim their lands.³⁷

3. Women in the Land Restitution Program

The Victims Law described above provides differential treatment for certain groups determined by gender, sexual orientation and age. The law specifically states that the processes and complaints started by women will be given a priority.³⁸ In addition, it creates a unit staffed by specialists in charge of solving women's issues, the police and the military must provide special protection when women are involved in a particular restitution process.³⁹ Finally, women who end up being beneficiaries of the restitution procedure will also have preferential access to the programs established by Law 731 of 2002 (Ley de Mujer Rural) discussed above.

II. CONTRADICTIONS THAT PARALYZE PROGRESSIVE LAWS

In Colombia there are a number of laws and regulations aimed at protecting – and in many cases, privileging – women's access to

37. *Gobierno condena asesinato de líder de restitución de tierras en Medellín*, Caracol Radio (June 8, 2011), <http://www.caracol.com.co/noticias/regional/gobierno-condena-asesinato-de-lider-de-restitucion-de-tierras-en-medellin/20110608/nota/1485596.aspx> (“Vice President Angelino Garzon rejected and strongly condemned the murder of Ana Fabricia Córdoba, leader of the displaced and the process of restitution and land titling in Medellín.”).

38. L. 1448, junio 10, 2011, [No. 48.096] DIARIO OFICIAL [D.O.] (“PRIME CARE FOR WOMEN IN THE STEPS OF ADMINISTRATIVE AND JUDICIAL PROCESS OF RESTITUTION. Women victims of dispossession or forced displacement, shall enjoy special protection in the States’ administrative and judicial processes related to this law. The Special Management unit of unlawfully taken land will have a special program to ensure women’s access through preferential service windows with trained personnel on gender issues; measures to promote access of women organizations and networks to reparation processes and areas of care for children and the disabled within the household The processing of applications from dispossessed women before the Special Administrative Land Restitution Unit will be given priority.”).

39. L. 1448, junio 10, 2011, [No. 48.096] DIARIO OFICIAL [D.O.] (“DELIVERY OF LAND. Once the ruling ordering land restitution for a woman, the Special Administrative Land Restitution Unit and the police or military authorities shall cooperate in order to ensure the timely delivery of the property and seek to maintain the conditions for future productivity.”).

resources and economic development policies.⁴⁰ Nevertheless, women continue to have less access to rural property, earn less in rural areas, and are overrepresented among the extremely poor.⁴¹ The author's work in recent years has attempted to explain this lack of impact,⁴² proposing that the interactions among economic development plans, family law, and cultural norms limit the possibilities of a progressive law.⁴³ The following sections briefly discuss these ideas.

Economic Development Plans

Over the last fifty years, there has been a bias in favor of industrialization in Colombia's national development plans. At the

40. See *supra* Part I.

41. See Nat'l Statistics Dep't Colom. [DANE], *Mercado Laboral por Sexo* 1 (Jan. 2006), available at http://www.dane.gov.co/files/investigaciones/boletines/ech/ech/re_sexo_sep_nov11.pdf ("The employment rate for men was 70.8% and 48.3% for women. The unemployment rate for women (12.4%) was higher than that of the men (7.0%)."); Food and Agric. Org., *SITUACIÓN DE LAS MUJERES RURALES COLOMBIA* 42 (2007), available at <http://www.rlc.fao.org/es/desarrollo/mujer/docs/colombia/actualiz.pdf> ("The number of land titles in the name of men on the national level is 9,620, equivalent to 44% of titled land, 6,247 couples have titled land (28.4%), while women have been the lowest beneficiaries of land titling, 6153, which is equivalent to 27.9%.").

42. See, e.g., Helena Alviar García, *Legal Reform, Social Policy, and Gendered Redistribution in Columbia: The Role of the Family*, 19 AM. U. J. GENDER SOC. POL'Y & L. 578 (2011); Alviar García, *The Unending Quest for Land*, *supra* note 24.

43. See Alviar García, *Legal Reform*, *supra* note 42, at 593 ("Background rules allow one to understand how the definition of property, the enforcement of labor contracts, the criminal code, and family law all determine the outcomes of social policy. These rules frame the outcome because they effectively determine the bargaining power both between social classes as well as among men and women."). See also *id.* at 599 ("[P]rogressives have underestimated the relevance of a powerful executive in the distribution of welfare benefits, the role that administrative agencies effectively have when defining rights, and the effect that labor, criminal and family judges have. This explains why redistributive social policies and gender equality norms are reiterated in the texts, but because their regulation comes late, it is insufficient or effectively blocks any weak redistributive impulse the legal or constitutional text might have. In addition, many legislators have lost sight of the fact that norms are interrelated: labor law is related to property and criminal law; social policies are related to divorce laws, access to abortion, and the gendered labor market.").

beginning of the second half of the 20th century, most of the country's population lived in rural areas and worked mostly on agriculture.⁴⁴ Encouraged by Raul Prebisch's theory on the declining terms of trade, a wide range of protectionist economic reforms were implemented in Latin America to begin a development plan from within.⁴⁵

This economic development model is known as the Import Substitution Industrialization, where peripheral nations use taxes, quotas, and other protectionist measures for industrial development within their borders.⁴⁶ This development model requires the nation to concentrate its resources in industrial development.⁴⁷ The process

44. See *Rural population (% of total population) in Colombia* Trading Economics, TRADING ECON., <http://www.tradingeconomics.com/colombia/rural-population-percent-of-total-population-wb-data.html> (last visited April 26, 2012).

45. Declining terms of trade means that the exports of one (developing) nation will be worth less over time in comparison to the exports of another (developed) nation. See James M. Cypher & James L. Dietz, *Static and Dynamic Comparative Advantage: A Multi-Period Analysis with Declining Terms of Trade*, 32 J. ECON. ISSUES 305, 309-12 (1998) ("The Prebisch-Singer hypothesis explains declining terms of trade as the consequence of structural differences of importance between manufactured goods exporters (like Country N) and primary product goods exporters (Country S). In particular, the competitive international market in which (most) primary products are produced combined with a labor surplus in producing such goods conspire to push down market prices with technological progress. Given that such conditions are presumed not to hold, or to be weaker for the manufactured goods produced in the N, or developed, countries, technological change there does not push market prices downward (or at least not to the full extent of increased productivity) Prebisch believed that with declining terms of trade, a successful development program for less-developed nations would, of necessity, require an emphasis on internal changes that could expand the production of manufactured goods and other secondary production activities and reduce the significance of the export of traditional raw materials, foodstuffs, and other primary products that formed the core of their exports. Import substitution thus became an essential building-block for less-developed nations wishing to become more developed.").

46. JAMES M. CYPHER & JAMES L. DIETZ, *THE PROCESS OF ECONOMIC DEVELOPMENT* 173 (3d ed. 2009) ("The success of ISI required that governments restrict imports of goods that might compete with the new ISI industries through the imposition of effective tariff barriers. ISI also entailed an activist governmental policy in providing and allocating public expenditures to those areas where the highest rate of return could be anticipated.").

47. See Werner Baer, *Import Substitution and Industrialization in Latin America: Experiences and Interpretations* 7, *LATIN AM. RES. REV.* 95, 95 (1972),

of industrialization in Colombia accelerated migration from rural areas to the urban ones, where more jobs were available.⁴⁸ Meanwhile, rural areas were supposed to undergo a process of land redistribution, guaranteeing what was established in the constitutional reform of 1936, known as the “Social Function of Property.”⁴⁹ As

available at http://isites.harvard.edu/fs/docs/icb.topic925740.files/Week%203/Baer_Import.pdf (“Import substitution consists of establishing domestic production facilities to manufacture goods that were formerly imported. It follows that all countries that industrialized after Great Britain, went through a stage of [import substitution industrialization]; that is, all passed through a stage where the larger part of investment in industries was undertaken to replace imports.”).

48. See MAURICIO CÁRDENAS, *INTRODUCCIÓN A LA ECONOMÍA COLOMBIANA* 163 (2d ed., Alfaomega, ed. 2009) (“The ability of the Colombian economy to grow steadily throughout the twentieth century is largely due to the ISI model. However, the domestic market did not allow the industrialization to increase, which stagnated prematurely in Colombia. The average annual growth rates in the industry fell from 6% in the seventies, to 3% in the eighties and 0.4% in the nineties.”). See also UNITED NATIONS POPULATION FUND (UNFPA), *CIUDAD, ESPACIO Y POBLACIÓN: EL PROCESO DE URBANIZACIÓN EN COLOMBIA* 13 (2007), *available at* http://www.unfpacolombia.org/home/unfpacol/public_htmlfile/PDF/Informeurbanizacion.pdf (“The number of people living in the country’s municipalities multiplied by a factor of twelve between 1938 and 2005, growing from 2.5 to 31.5 million people (Figure 1.1). In the same period, by way of contrast, the rural population did not even double, growing from just over 6 to 10.5 million. Rural population went from just over six million to ten million. In relative terms, this means that the urban population increased from 29% to 75% of the total population. Within little more than five decades (1938-1992), the country was transformed from a predominantly rural country into a predominantly urban country.”). See generally DEPARTAMENTO ADMINISTRATIVO NACIONAL DE ESTADÍSTICA, *COLOMBIA, EVOLUCIÓN DE LAS PRINCIPALES VARIABLES INDUSTRIALES 1956-2008*, *available at* http://www.dane.gov.co/files/investigaciones/industria/eam/eam_varprinc_2008.xls (showing that the number of industries goes from a high of 11,062 in 1968 to 7,935 in 2008).

49. In 1936, the Constitution was reformed to include the social function of property:

Private property and other rights acquired justly in conformity with the civil laws by individuals or juridical persons are guaranteed and may not be disregarded or violated by later laws. When, through the application of a law enacted for reasons of public welfare or social interest, there results a conflict between private rights and a necessity recognized by the same law, private interests must yield to public or social interests. Property is a social obligation which implies obligations. For reasons of public utility or social interest defined by the Legislature,

most of the public investment available in the country was destined to support industrialization, the institutions in charge of the redistribution lacked both the resources and the political will necessary to lead structural land reform in the country.⁵⁰

With the embrace of free market ideas in the early 1990s, the model of development changed, and so did the institutions of the state.⁵¹ These reforms sought to make the state more efficient by reducing its size and its role in managing the economy.⁵² This wave of neoliberal reforms were set in place in Colombia and other parts of Latin America with the promise of more jobs and an increase in the

expropriation may take place by means of judicial sentence and with previous indemnification. Nevertheless the Legislature, for reasons of equity, may decide the cases in which no indemnity is payable, by a favorable vote of an absolute majority of the members of both Chambers.

CONSTITUCIÓN DE LA REPÚBLICA DE COLOMBIA [C.R.C.] 1886, art. 26 (1936), *quoted in* Helena Alviar García, *The Unending Quest for Land: The Tale of Broken Constitutional Promises*, 89 TEXAS L. REV. 1895, 1895 (2011). A slightly amended version of the original provision now appears as Article 58 of the Colombian constitution. *See* CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 58.

50. *See* Alviar García, *The Unending Quest for Land*, *supra* note 24, at 1901.

51. *See* Luis Jorge Garay, *La política industrial de reconversión y modernización industrial (1994-1998)*, in COLOMBIA: ESTRUCTURA INDUSTRIAL E INTERNACIONALIZACIÓN 1967-1996 (Biblioteca Virtual del Banco de la República, 2004), *available at* <http://www.banrepcultural.org/blaavirtual/economia/industriatina/035.htm> (last visited April 28, 2012) (“With the modernization and restructuring of institutions for the promotion of exports – i.e. Proexport – the range of action was expanded, opening new offices in strategic markets and strengthening the export unit program, directly addressing requirements of exporters Another instrument of trade policy is the Bank of Foreign Trade, Bancoldex, which since its modernization has continued to increase credit loans for exporters and has initiated the extension of credit for buyers of Colombian exports.”).

52. *See* Luis Javier Orjuela Escobar, *La debilidad del estado colombiano en tiempos del neoliberalismo y el conflicto armado*, BIBLIOTECA VIRTUAL/BIBLIOTECA LUIS ÁNGEL ARANGO <http://www.banrepcultural.org/blaavirtual/revistas/colinter/orjuela.htm> (last visited April 28, 2012) (“[T]he national economy was moving from an economic model that emphasized the development of the domestic market – ie. import substitution industrialization – to a model of openness and internationalization of the economy. The objective of this process was not only to insert the Colombian economy in the world market, but also to increase its economic efficiency by reducing the “size” of the state and its regulatory role in the economic process.”).

general welfare of the population.⁵³ This meant a shift in the model of state, and thus a change in the model of development. In addition, this shift was based on export-led growth and not on import substitution industrialization.⁵⁴ Competition within a free market should naturally eliminate weak sectors of the economy and strengthen efficient ones. The institutions in charge of the land reform were modified to be more efficient, but they were in fact reduced in personnel and budget to reduce government spending.⁵⁵ Regarding agriculture, even fewer resources were dedicated to land reform or rural development.⁵⁶ The state was not in charge of directly distributing land, and instead subsidies and loans became the

53. See HELENA ALVIAR GARCÍA, DERECHO, DESARROLLO Y FEMINISMO EN AMÉRICA LATINA 31 (2008):

Neoliberalism is strongly opposed to the relevance of the state. They propose a reduction in the size of the state and its importance through deregulation, privatization, foreign direct investment and market discipline In addition to deregulation or 're-regulation', privatization is another tool used to reduce the size of government. Privatization, the belief that private industry is managed in a more efficient manner than state enterprises has been promoted by the IMF and the World Bank since 1985 The objective of trade liberalization is set to reach the main development strategy promoted by this group of theorists: the export-led growth. This strategy involves the production of manufactured goods for export, such as textiles.

54. See Helena Alviar García, *¿Quién paga o debe pagar los costos del Estado Social de Derecho?*, REVISTA DE DERECHO PÚBLICO, 4 (February, 2009), available at http://derechopublico.uniandes.edu.co/components/com_revista/archivos/derechopub/pub99.pdf (“[A]ccording to this conception of the economy, allowing market forces to operate without intervention by the state is the best way to achieve economic growth while allocating resources within society efficiently.”).

55. See Alviar García, *The Unending Quest for Land*, *supra* note 24, at 1909 (“In addition, with the transformation into INCODER, INCORA’s regional presence was considerably diminished: only nine offices were dedicated to regional programs, compared with more than fifty that were running before.”).

56. See Álvaro Balcázar et al., *Colombia: alcances y lecciones de su experiencia en reforma agraria*, 109 SERIE DESARROLLO PRODUCTIVO 5, 28 (2001), available at <http://www.eclac.org/publicaciones/xml/3/8393/LCL1602P.pdf> (“In recent periods of both the fiscal cost per household and per hectare redistributed has decreased to a level of 35 million pesos per family and 2.4 million pesos per hectare between 1995 and 1999. This coincides with a decrease INCORA bureaucratic structure, and implementation of policies of land acquisition by way of support for direct negotiations between farmers and landowners.”).

main instrument for individuals to privately improve the productive conditions of their land and housing.⁵⁷

At this point, a conflict between the two government policies emerges. On the one hand, the government seeks to enhance the uses and development of the agricultural sector by using land resources as an engine to reach development. For these objectives, the government would promote the use industrial equipment on large extensions of the most suitable land in order to obtain larger agro-industrial outputs. On the other hand, the government seeks to successfully apply the *Ley de Víctimas* (“Victim’s Law”), which guarantees an effective land restitution to the victims of the armed conflict. This requires the government to divide parts of fertile, available land in an efficient way to allow all the victims of forced displacement or dispossession access to property. In order to accomplish these stated objectives, the government needs to restitute portions of land to victims in areas where there may be conflicts with the needs of agro-industrial policy.

The government is aware of this contradiction and attempts to solve it by providing special treatment for agro-industrial projects. In fact, the Victims Law designs an exception when the land to be restituted is being used to develop an agro-industrial project.⁵⁸ In such a case, the judge may authorize a leasing contract that allows

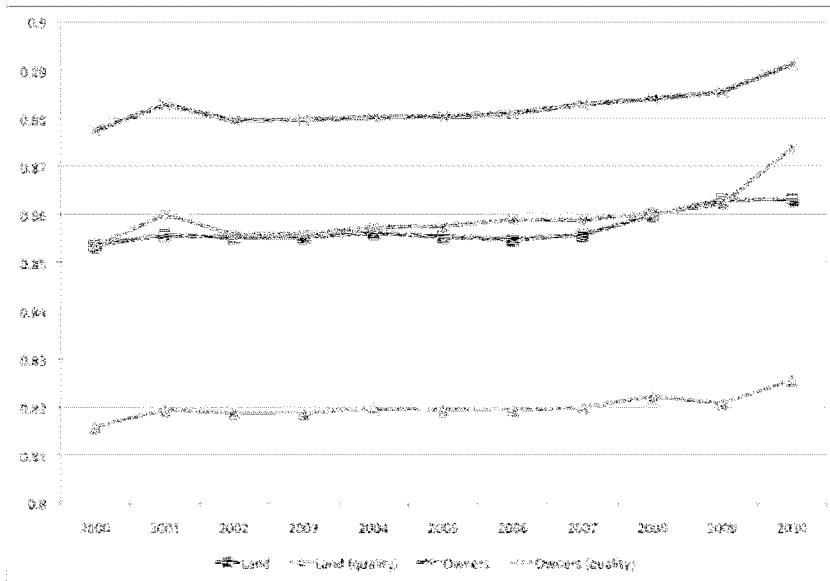
57. See Alviar García, *The Unending Quest for Land*, *supra* note 24, at 1903 (“The distributive thrust of the 1991 constitutional provision was further toned down through a combination of legal, administrative, and judicial acts. The first land reform law set in place after the constitutional reform, Law 160 of 1994, reduced the state’s scope of action by setting the grant of credits as the main mechanism for peasants to acquire land. Thus, distribution was left to market forces, as opposed to previously enacted systems where the state had some power in distributing land.”).

58. L. 1448, junio 10, 2011, [No. 48.096] DIARIO OFICIAL [D.O.] art. 99; Contracts for the Use of the Premises Reinstated, 10 de junio, 2011, *available at* http://www.secretariassenado.gov.co/senado/basedoc/ley/2011/ley_1448_2011.html (“When there are productive agro-industrial projects in the property which is going to be restituted, the Judge in the preliminary hearing the process may authorize contracts between the beneficiaries of restitution, and the opponent who was developing the productive project The judge shall ensure the protection of the rights of the parties and that they obtain adequate financial compensation.”).

the agro-industrial project to continue but provides land titling for the victim.⁵⁹

B. Unequal Property Distribution

One of the most lasting characteristics of rural areas in Colombia is the inequality of ownership. As Ibañez and Muñoz show, this inequality has not diminished in recent years; in fact it has increased.⁶⁰ The GINI number of rural land ownership is about 0.8.⁶¹



Graph 1: Evolution of the Ginis for lands and owners (2000-2010).⁶²

59. *Id.*

60. Ana María Ibañez & Juan Carlos Muñoz, *La persistencia de la concentración de la tierra en Colombia: ¿Qué pasó entre 2000 y 2010?*, 9 NOTAS DE POLITICA, August 2011 (“Rural land ownership in rural Colombia increased in the period between 2000 and 2010. In 2000, 75.7% of land was owned by 13.6% of the titleholders, while in 2010 this numbers augmented to 77,6% and 13,7% respectively.”).

61. *Id.* See THE WORLD BANK, *GINI Index*. <http://data.worldbank.org/indicator/SI.POV.GINI> (last visited May 12, 2012). The Gini index measures the extent to which the distribution of income among individuals or households within an economy deviates from a perfectly equal distribution.

62. Ana María Ibañez & Juan Carlos Muñoz, *The persistence of Land Concentration in Colombia: What happened between 2000 and 2009?*, in DISTRIBUTIVE JUSTICE IN TRANSITIONS 299 (Morten Bergsmo et al., eds., 2010).

There is a long tradition of individual property rights in Colombia.⁶⁴ Although there have never been absolute individual property rights, private property has been heavily protected in Colombia.⁶⁵ However, the liberal and individualistic definition of property does not respond to land titling in Colombia.⁶⁶ This means that part of the rural property in Colombia is characterized by informality, which in turn, means that the informal “owners” are unable to access subsidies or credits from the government as they are not the formal owners of the land. Most public policies regarding land are based on the traditional concept of property,⁶⁷ which once again, ignores the de facto relationships which occur in the countryside. The traditional and individual view of property also collides with the collective land property, which Law 70 of 1993 made possible for certain ethnic groups. Despite this possibility, the lands occupied by the ethnic groups are disputed by the large scale

64. Since the Civil Code of 1887, individual property rights have been protected in Colombia. For a more contemporary analysis, see Fernando Hinestrosa, *El derecho de propiedad en la Constitución*, in CONSTITUCIÓN ECONÓMICA DE COLOMBIA (Findeter et al., eds., 1996); Maria Mercedes Maldonado, *Propiedad y Territorio en la Constitución de 1991* in UTOPIA PARA LOS EXCLUIDOS (Jaime Arocha, ed., 2004); Juan Felipe Pinilla, *Evolución Legal y Jurisprudencial del Derecho Urbanístico Colombiano*, in REFORMA URBANA Y DESARROLLO TERRITORIAL - EXPERIENCIAS Y PERSPECTIVAS DE APLICACIÓN DE LAS LEYES 9A. DE 1989 Y 388 DE 1997 (2003).

65. See María Mercedes Maldonado Copello, *La propiedad en la Constitución Colombiana de 1991. Superando la tradición del Código Civil*, in REFORMA URBANA Y DESARROLLO TERRITORIAL - EXPERIENCIAS Y PERSPECTIVAS DE APLICACIÓN DE LAS LEYES 9A. DE 1989 Y 388 DE 1997 (2003).

66. See John Otis, *Land Reform Could End Colombia's Guerrilla War*, TIME WORLD, Dec. 31, 2010 (“A well-established system of property rights helped turn the United States and other Western nations into prosperous capitalist societies. But in Colombia, legalizing property in remote areas can be an expensive 50-step nightmare involving numerous trips to far-off provincial capitals. That’s why 40% of rural properties in Colombia lack legal titles, according to the Agriculture Ministry.”).

67. For example, the subsidies created by Law 160 of 1994 and reformed by Law 812 of 2003 require the peasants to be traditional owners of the land to access de subsidy. Law 731 of 2002 also contains traditional notions of property to access the benefits.

agro industrial projects which claim to have an individual right over the land.⁶⁸

In terms of women's access to rural property, the numbers still place women far behind men. The following chart summarizes this situation:

Unused Land Titling⁶⁹

	Number	%	Hectares	%	Plot Size (in hectares)
Women	6153	27.9	127.806	23.0	20.7
Men	9620	44.0	261.806	47.0	27.2
Couples	6247	28.4	165.166	30.0	26.4
Total	22020	100.0	554.778	100.0	25.2

C. Other issues

Along with these historical biases against agriculture and the recent bias toward agro-industrial projects, both of which affect women's access to rural resources, there are two additional factors that impede the relationship between women and sustainable development in achieving the expected egalitarian and transformative effects.

The first is the lack of access to legal protection that women have as mothers and spouses. Three out of every ten households in Colombia are led by women.⁷⁰ In fact, the most-committed crime in Colombia in 2010 was failure to pay alimony.⁷¹ In addition, women bear the bulk of reproductive work within the household,⁷² which in rural areas means that they bear an important part of the cost of not

68. See Alviar García, *supra* note 23, at 191 n.80.

69. ORGANIZACIÓN PARA LA ALIMENTACIÓN Y LA AGRICULTURA, SITUACIÓN DE LAS MUJERES RURALES COLOMBIA, 42 (2007).

70. DANE, MERCADO LABORAL DE LOS JEFES Y JEFAS DE HOGAR (2011), http://www.dane.gov.co/files/investigations/boletines/ech/jefehogar/RE_jef_trim_sep_nov11.pdf.

71. FISCALÍA GENERAL DE LA NACIÓN, INFORME AUDIENCIA PÚBLICA DE RENDICIÓN DE CUENTAS 2009-2010 24.

72. Colombian statistics show that in the year 2011, women dedicated (on a weekly basis) 32 hours to reproductive tasks. Men dedicated only 13 hours to these same tasks. See DANE, *supra* note 69.

having access to electricity, gas or water. This places a limit on their participation in the public/productive sphere.

The legal and regulatory promises of gender inclusion must therefore include a corresponding institutional framework. In this sense, the differential approach to benefit women established in Articles 114 to 118 of the Victims Law has not yet been set in place.⁷³ The most closely related program is known as “Programa Mujer Rural,”⁷⁴ which empowers female victims of conflict with productive enterprises in some of the most war-ravaged areas of the country. However, the land provided through these projects does not come from taken lands but instead from the properties of the INCODER⁷⁵ and the financial aid of USAID and the Ministry of Agriculture.⁷⁶ Despite the lack of specific programs for women, in certain areas of the country, women have begun to undertake the process of restitution by themselves, with mixed results.⁷⁷ As the

73. David James Cantor, *Restitution, compensation, satisfaction: transnational reparations and Colombia's Victims' Law*, UNHCR, 8 (Aug. 2011), <http://www.unhcr.org/4e423f6c9.pdf>.

74. See Part I(3) *supra*, discussing the Recent Public Policy Initiatives.

75. Instituto Colombiano de Desarrollo Rural (The Colombian Institute for Rural Development) (“The Institute’s main purpose is to run the agricultural policy and rural development, facilitating access to productive factors, strengthening local authorities and their communities and to promote coordination of rural institutional actions under principles of competitiveness, equity, sustainability, multi-functionality and decentralization, to help improve the quality of life of rural people and the country’s socioeconomic development.”). INCODER, *available at* <http://www.incoder.gov.co/> (last visited May 12, 2012).

76. *Programa Mujer Rural*, MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT, http://www.minagricultura.gov.co/02componentes/08rur_05mujer.aspx (last visited May 12, 2012) (“These early initiatives of the Rural Women Program will be possible thanks to the efforts and funding from the Ministry of Agriculture, the Colombian Institute of Rural Development, INCODER, and international cooperation, specifically the United States Government Agency for International Development USAID and the International Organization for Migration (IOM).”).

77. *Mujeres colombianas lideran lucha por restitución de tierras*, EL ESPECTADOR (Oct. 3, 2011), <http://www.elespectador.com/noticias/nacional/articulo-303280-mujeres-colombianas-lideran-lucha-restitucion-de-tierras> (“But to claim ownership of the land is a high-risk mission. The list of those who have been killed is long: 66 in the last nine years, including several women. Yolanda Izquierdo is one. She was murdered in 2007 in the department of Cordoba, birthplace of the paramilitaries.”).

programs have only recently been implemented, no statistics are yet available to assess whether the role of women has been effectively changed.⁷⁸

CONCLUSIONS

This Article has had three objectives. The first was to describe how the debate about gender and sustainable development has played out in the Colombian setting. It is clear from the analysis presented that Colombian public policy has understood that women's productive projects should be promoted in accordance with sustainable development goals. This form of equating of women-centered investment with sustainable development projects provides a very limited view of the role that women play daily in rural settings.

The second objective was to describe the range of progressive laws intended to correct gender inequalities and access to development. These include constitutional provisions, laws, and public policies that describe a general framework. Nevertheless, women continue to have less access to agrarian resources in public and private spheres.

The final objective was to provide a few ways to help understand the difficulties that progressive norms, whose goal is to build a bridge between sustainable economic development and gender, face. Here I proposed analyzing how the interactions between these laws and economic development plans, family relations, and institutional settings limit the force of progressive laws.

78. ORGANIZACIÓN PARA LA ALIMENTACIÓN Y LA AGRICULTURA, *SITUACIÓN DE LAS MUJERES RURALES COLOMBIA* (2007), <http://www.rlc.fao.org/es/desarrollo/mujer/docs/colombia/actualiz.pdf>; UNITED NATIONS DEVELOPMENT PROGRAMME, *MUJERES RURALES: GESTORAS DE ESPERANZA* (2011), http://pnudcolombia.org/indh2011/pdf/mujeres_rurales.pdf. Both of these reports reveal a consistent discrimination of women as they show an unequal distribution of the income, the jobs available and the land property. The reports also explain how women are more vulnerable to violence and more affected by its negative consequences.