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Comparative Agrarian Jurisdictions:
Peasants and Peoples before the Land Judge

By **Carlos Duarte**



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Peasants and Peoples before the Land Judge

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1. FROM ARIADNÓPOLIS TO CAYOS COCHINOS

At the end of 2025, after almost thirty years of litigation, the more than 480 families of the Quilombo Campo Grande settled by agreement their dispute over the former Fazenda Ariadnópolis, in Campo do Meio, in southern Minas Gerais. There was no eviction. There were the land-conflict resolution commissions of the Court of Justice of Minas Gerais and of the Federal Regional Court of the Sixth Region, a year and a half of mediation and a conciliation hearing at which the court approved the agreement.[1] Further north, on 17 September 2026, a Honduran criminal court with national jurisdiction over organized crime, the environment and corruption, acting on a complaint filed by a private company, ordered the eviction of the Garifuna community of Cayos Cochinos and described the order as a "neutralizing measure". More than two hundred riot police arrived by boat.[2] Six months earlier, Honduras had been notified of the judgment in which the Inter-American Court of Human Rights declared it responsible for violating the collective property of that very community.[3]

The two scenes do not separate a virtuous country from one that is not. Brazil has its own history of rural violence, and the mechanism that made the Ariadnópolis agreement possible was challenged in court by the national agriculture confederation and restricted in 2024. What separates them is simpler and more decisive. In Minas Gerais, before a collective eviction could be carried out, a judge had to ask who occupied the land, since when, and what alternatives existed. In Cayos Cochinos there was nowhere to ask that question, because Honduras has never had an agrarian judge, and the conflict reached the only judicial door that, in this context, opens quickly today and with police force behind it: the criminal courts.

This text starts from that difference. I argue that the agrarian jurisdiction is the closest institutional route to giving effect to the right of access to justice recognized in article 12 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (hereinafter, the UNDROP) and, through the form of its procedures, to the rights of association, participation and information set out in its articles 9, 10 and 11. I also argue, with the conviction of someone who has watched it happen again and again in several Latin American countries, that where no agrarian jurisdiction exists, justice lies further away from the peasant and from the people claiming a territory, because the conflict is settled by the land register and by the civil and criminal judges, the forums in which the weaker party loses more, and loses faster.

That defence does not exempt me from looking at what the agrarian jurisdiction carries with it. None of the jurisdictions I examined escapes a set of tensions that come with the task of adjudicating land, some arising from context and others from procedure, and section 4 examines them one by one.

My view is that these tensions are not resolved by choosing a single ideal side of the question, and that the experiences that have best protected peasants and ethnic peoples share a feature the literature on specialized courts tends to overlook. They ordered inequalities through explicit procedural asymmetries: who bears the burden of proof, who waits for whom, what is decided first, when the judge steps in and when the judge holds back. Specialization helps, but in the cases examined, what protected peasants and peoples were those procedural asymmetries.

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With that in mind, the text proceeds as follows. Section 2 sets out what the UNDROP asks of a land judge and what happens when that judge does not exist, and section 3 takes stock of the jurisdictions examined, more than a dozen across Latin America, Africa, Asia and Oceania, while section 4 brings together the tensions and challenges of contemporary agrarian justice and works through them one by one, with one country as the principal witness in each case. Finally, section 5 gathers the asymmetries that, in my view, should become general rules or guidelines, and names those who could adopt them.

The empirical basis is the comparative research I prepared for the *Conversatorio sobre jurisdicciones especiales de tierra, territorio y ambiente* (Dialogue on Special Jurisdictions for Land, Territory and the Environment), convened by the Supreme Court of Justice of Honduras and the Office of the United Nations High Commissioner for Human Rights. I built it from legislation,

judgments and official reports and, where no primary source was available, from press reports, documents produced by organizations and academic literature, which I identify as such in the notes.

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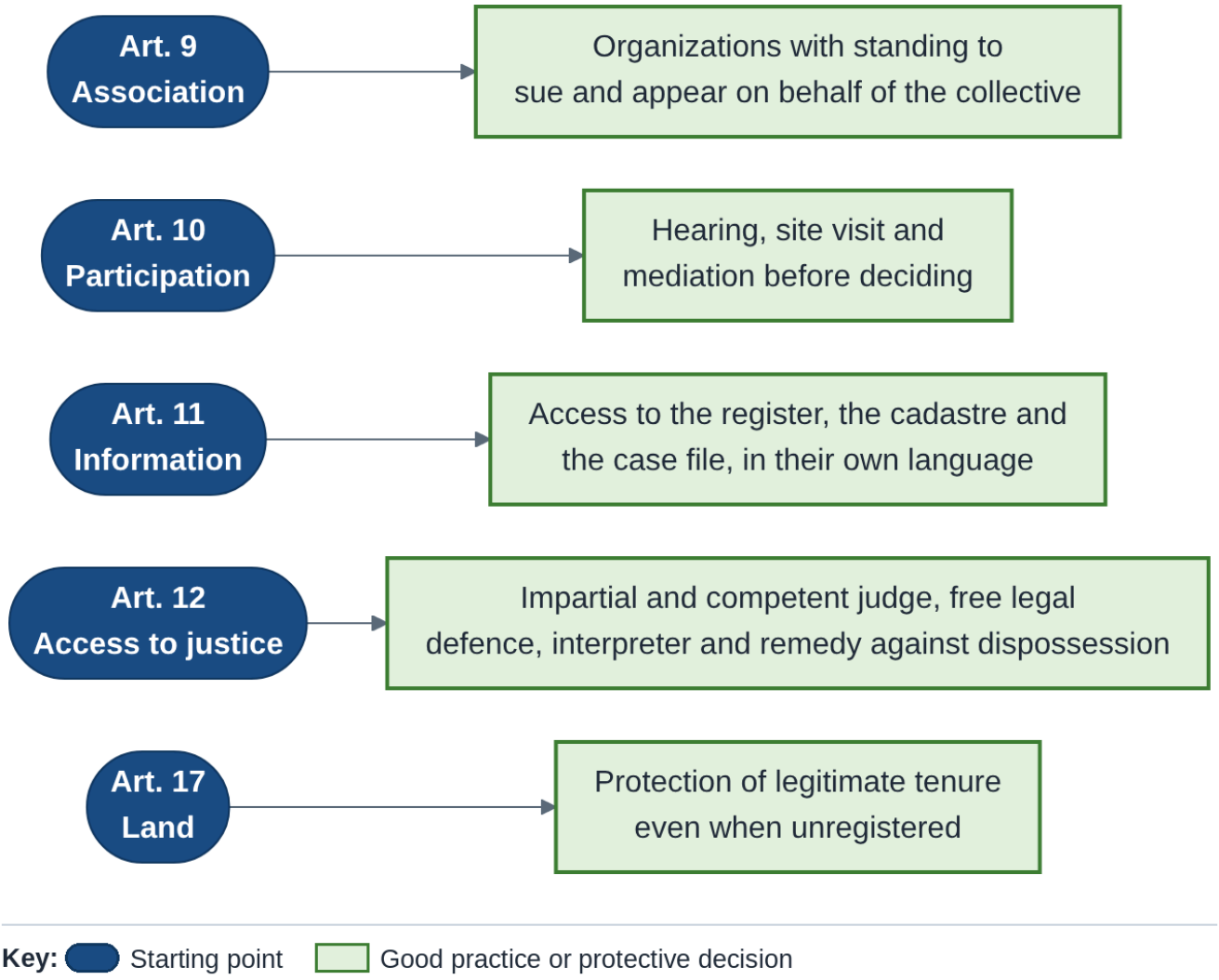
WHAT THE UNDROP ASKS OF AN AGRARIAN JUDGE

The UNDROP is a declaration, and its legal force has to be measured provision by provision: some provisions restate treaty obligations that already bind States, while others guide their development.

On justice, its article 12 contains the most precise international formulation of what a judicial system should offer those who live from land, water and forests. It recognizes the right to effective and non-discriminatory access to justice, asks that decisions give due consideration to "their customs, traditions, rules and legal systems", requires "impartial and competent judicial and administrative bodies" and "timely, affordable and effective means of resolving disputes in the language of the persons concerned", provides for free legal assistance, and directs States to establish "effective mechanisms for the prevention of and redress for any action that has the aim or effect of (...) arbitrarily dispossessing them of their land and natural resources".[4] Article 17.3, for its part, requires States to "protect legitimate tenure" and to ensure that peasants "are not arbitrarily or unlawfully evicted".[5]

Article 12 reads almost like a description of an agrarian jurisdiction. Although articles 9, 10 and 11 do not speak of judges, they find their most concrete place in agrarian procedure. Article 9 recognizes the right of peasants and rural workers "to form and join organizations"; article 10, the right to "active and free participation" in the decisions that affect them; and article 11, the right to "seek, receive, develop and impart information".[6] A procedure that grants organizations standing to sue on behalf of the collective, that requires a hearing and a site visit before deciding, and that guarantees access to the land register, the cadastre and the case file in the language of the parties, turns those three rights into rules of procedure. Figure 1 summarizes this translation as I understand it. It is my own reading: none of these provisions, taken by itself, requires a special jurisdiction, but no other institution brings them together with the same density. This figure and all the others in the text share a single colour convention, which each one sets out in its key.

FIGURE 1. From the UNDROP to agrarian procedure.



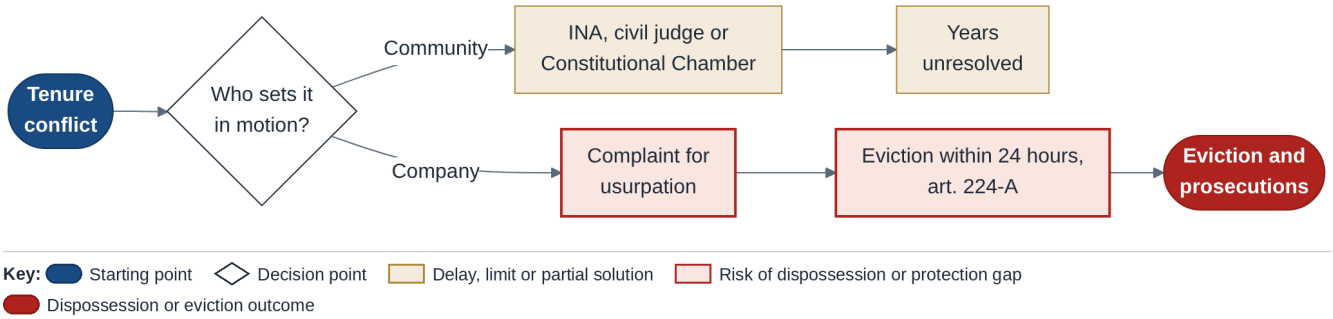
Author's elaboration based on articles 9, 10, 11, 12 and 17 of the UNDROP.

The strongest argument for the agrarian jurisdiction, however, does not lie in what it promises. It lies in what happens where it does not exist.

Honduras is the clearest case.[7] The country has never had agrarian courts or chambers: the 1974 Agrarian Reform Law concentrated decision-making in the National Agrarian Institute (Instituto Nacional Agrario, INA) and left civil judges with ancillary functions.[8] Today land disputes are divided among an administrative route that by mid-2023 had resolved 40 of 1,100 applications, a registry and civil route governed by a property law that makes registration the condition for asserting a right against third parties, a constitutional route and a criminal route.[9] Only the last of these works with deadlines measured in hours and with police force. The 2021 criminal reform removed violence as an element of the offence of usurpation, increased penalties and created a

"preventive eviction" which, according to the description given by the Office of the High Commissioner, is ordered within twenty-four hours, without a formal indictment, on the strength of the documents the complainant submits.[10] In 2024 the Office counted 22 forced evictions of peasant, Indigenous and Garifuna communities.[11] Figure 2 shows the result: the path a tenure conflict follows depends on who sets it in motion.

FIGURE 2. Honduras: the path of a tenure conflict without an agrarian judge.



Author's elaboration based on the 2004 Property Law, the Code of Criminal Procedure (art. 224-A) and the OHCHR reports on 2024 and 2025.

Paraguay shows the same pattern. It has no specialized agrarian court system, and the bill that would create one, first introduced in 2016, was still under review in September 2024.[12] Meanwhile, Law 6830 of 2021 raised the invasion of real property to the category of a serious crime punishable by up to ten years' imprisonment, with no alternatives to custody. In that setting, between December 2024 and March 2025 there were six evictions and at least sixty people charged, most of them peasant and Indigenous leaders, and a civil society report concluded that "Paraguay has no legal mechanisms for preventing forced evictions of peasant communities".[13] In Argentina, which also lacks a national agrarian justice system, the only effective protection of Indigenous communities against eviction was a statutory moratorium in force since 2006, which a decree of December 2024 rendered ineffective.[14]

Colombia and Peru offer the most instructive comparison, because both went through long periods without an agrarian jurisdiction after having had one. In Colombia, the 1996 Statutory Law on the Administration of Justice transferred the subject matter to the civil circuit judges, and for three decades agrarian conflict was handled under the rules of civil procedure, except for the land restitution created in 2011, to which I return below.[15] In Peru, the agrarian court system was abolished by an administrative resolution in 1996 and only came back into existence in April 2026, when twenty-eight bodies in fourteen superior courts of justice received exclusive jurisdiction over the matter following a compliance action (*acción de cumplimiento*).[16]

In my view, the evidence gathered supports the intuition that justice lies further away where there is no agrarian jurisdiction, although it would need to be confirmed by comparative studies that control for other variables.

The cases nonetheless point in the same direction. Where there is no agrarian judge, the default forum is criminal or civil-registry litigation, and both reason from the registered title. Where there is one, rules appear that displace that logic: the Costa Rican Third Chamber upheld the acquittal of occupants charged with usurpation and sent the merits to the agrarian courts, the Venezuelan Criminal Cassation Chamber annulled criminal proceedings because land occupation fell within the jurisdiction of the agrarian courts, and the Brazilian Federal Supreme Court accepted that agrarian courts may try agrarian-motivated offences.[17] None of that could happen in Tegucigalpa or Asunción, because there was nobody to refer the case to.

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The agrarian jurisdiction, then, is necessary. Whether it is sufficient is another matter, and comparative experience requires that question to be examined with care, beginning with an assessment of what exists.

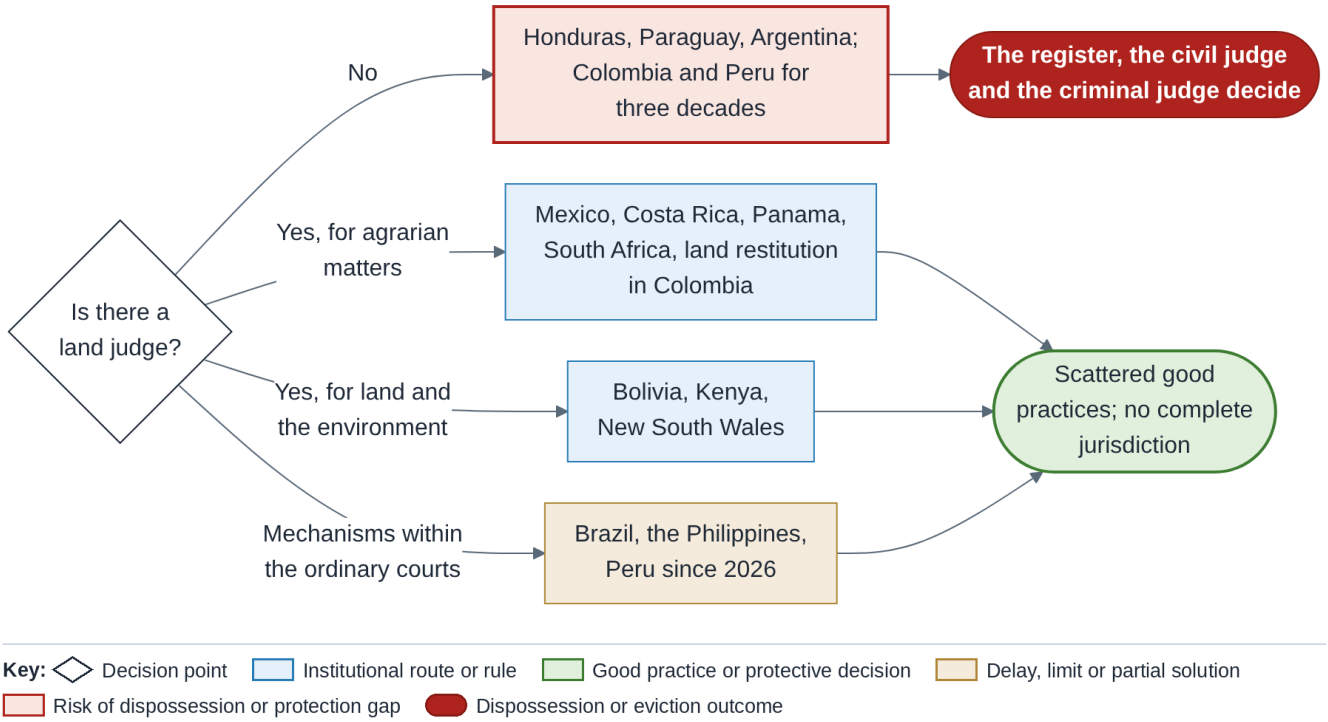
3.

TAKING STOCK OF LAND JURISDICTIONS

The comparative literature on specialized justice has dealt mostly with environmental courts. For the United Nations Environment Programme, George and Catherine Pring counted more than 1,200 environmental courts and tribunals in at least 44 countries in 2016, and recorded a tendency to extend their jurisdiction to land use.[18] Brian Preston, who presided for many years over the New South Wales court, systematized the features of the courts that work.[19] Ceri Warnock has described much of this literature as "predominantly promotional", written by and for those who promote the courts, without a theory of adjudication and without attention to the legitimacy of a judge who takes on functions traditionally belonging to the executive.[20] And the only quasi-experimental evidence I found on land forums, concerning the chiefdom committees created in Sierra Leone in 2015, indicates that they increased litigation in the formal courts instead of reducing it.[21] I found no global mapping of land courts equivalent to the one available for environmental courts.

That literature is mostly concerned with environmental specialization. In the agrarian world the prior question is whether there is a land judge at all, and what that judge decides when there is one. Figure 3 arranges the experiences I examined according to those two questions.

FIGURE 3. Where there is a land judge and what it decides.



Author's elaboration based on the legislation and case law cited in the text.

The first branch gathers the countries that have no agrarian jurisdiction, or that lost it for decades, and leads to the register, the civil judge and the criminal judge. The other branches gather three families. On one side are agrarian jurisdictions in the strict sense: the Mexican agrarian courts of 1992, the Costa Rican jurisdiction of 1982 with its Agrarian Procedure Code of 2018, the Panamanian Agrarian Code of 2011, the South African Land Court of 2023 and the Colombian restitution courts of 2011.[22] On another are jurisdictions whose core object is land and environment together: the Bolivian Agro-environmental Tribunal, the Environment and Land Court of Kenya and the Land and Environment Court of New South Wales, the oldest of them all, created in 1980. And there are, of course, mechanisms embedded in the ordinary courts that do not create a separate jurisdiction but change the sequence of decisions: the Brazilian land-conflict resolution commissions, the Philippine rules for environmental

cases, which allow the early dismissal of harassment complaints or strategic lawsuits against public participation (SLAPPs), and the exclusive jurisdiction assigned in Peru to bodies that already existed.

None of these experiences is complete. In this stocktaking, the three families lead to the same point: scattered good practices. Mexico contributes the court's duty to supply deficiencies in the parties' pleadings, free legal defence and itinerant justice; Costa Rica, cultural expert evidence and the limit on administrative eviction; Panama, collective acquisitive prescription; Colombia, the reversal of the burden of proof in restitution proceedings; Bolivia, ex officio precautionary measures against the State itself; Brazil, mediation prior to eviction and the criminal jurisdiction of agrarian courts; Kenya, a body for historical injustices whose decisions the court reviews; New South Wales, the burden of proof placed on the Crown; South Africa, anthropological evidence and State-funded representation; the Philippines, the early dismissal of harassment complaints. Section 4 places each of them against the tension it seeks to resolve.

4.

TENSIONS AND CHALLENGES OF CONTEMPORARY AGRARIAN JUSTICE

The tensions I announced at the outset can be grouped into two families. The first are contradictions of context. They arise from the agrarian structure and from the subjects who come before the court, and no procedural reform makes them disappear. They set individual property against collective forms of tenure, whether peasant, Indigenous, tribal or Afro-descendant. And they force us to ask for whom the agrarian judge decides: is the judge's duty neutrality between the parties, or rather the protection of the rural subjects that the UNDROP names in its article 1 and whose disadvantage it recognizes from its preamble onwards? These contradictions of context also pit two simultaneous vulnerabilities against each other: that of the ethnic people claiming an ancestral territory and that of the peasant settler who occupies it and has no other land. In their most widespread form, however, they set the peasant, and vulnerable rural populations as a whole, against business conglomerates that frequently have the government on their side.

The second are agrarian procedural tensions, in that they concern the judicial apparatus as it operates in rural settings: the sophistication of oral and expert evidence against the urgency of solving material problems; complete theoretical design against modest mechanisms that work; and the lack of judicial teeth against its opposite, the excess of judicialization that multiplies decisions detached from their context. These last two are, strictly speaking, a single tension seen from its two extremes, and I treat them as such.

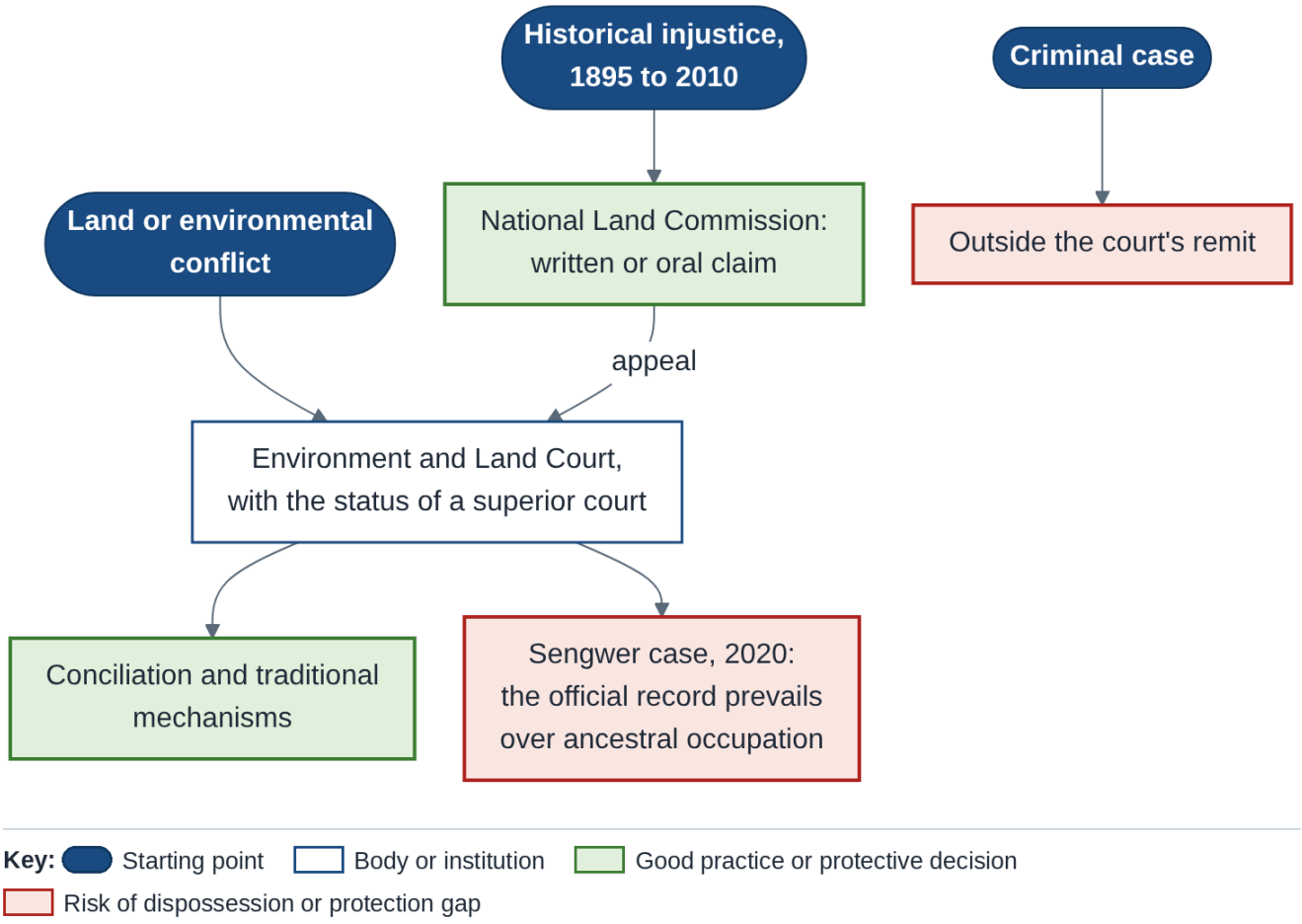
The seven tensions that follow are not watertight compartments. The way a jurisdiction defines its subject determines how it treats the register, on whom it places the burden of proof and how much judicial control it admits. That is why I examine them within a single section, in an order that moves from structure to procedure.

FIRST TENSION

When the register decides before the judge

In May 2020, the Environment and Land Court of Kenya dismissed the claim of the Sengwer people over the Embobut forest. The reasoning was brief: the forest had been declared a forest reserve in 1964, and the claimants had not proved that the declaration had been lawfully revoked.[23] Ancestral occupation was rendered ineffective against a category the Kenyan State had fixed in 1964, the year after independence. The judgment came from the court that, in my reading, best represents a jurisdiction with threefold reach over land, territory and environment: a superior court created by the 2010 Constitution, with 53 judges in 37 stations, empowered to use traditional dispute resolution mechanisms and to review the decisions of the National Land Commission on historical injustices.[24] Figure 4 shows that double face.

FIGURE 4. Kenya: the Environment and Land Court and the National Land Commission.



Author's elaboration based on the Environment and Land Court Act of 2011, the Commission's 2026 regulations and the 2020 Sengwer judgment.

The Sengwer case shows that the first tension, the one that sets individual property against collective forms of tenure, is almost never fought between two titles. It is fought between a registered title and a possession that is not registered. And the judge, even the specialized judge and despite the context, tends to resolve it in favour of what the register has already decided.

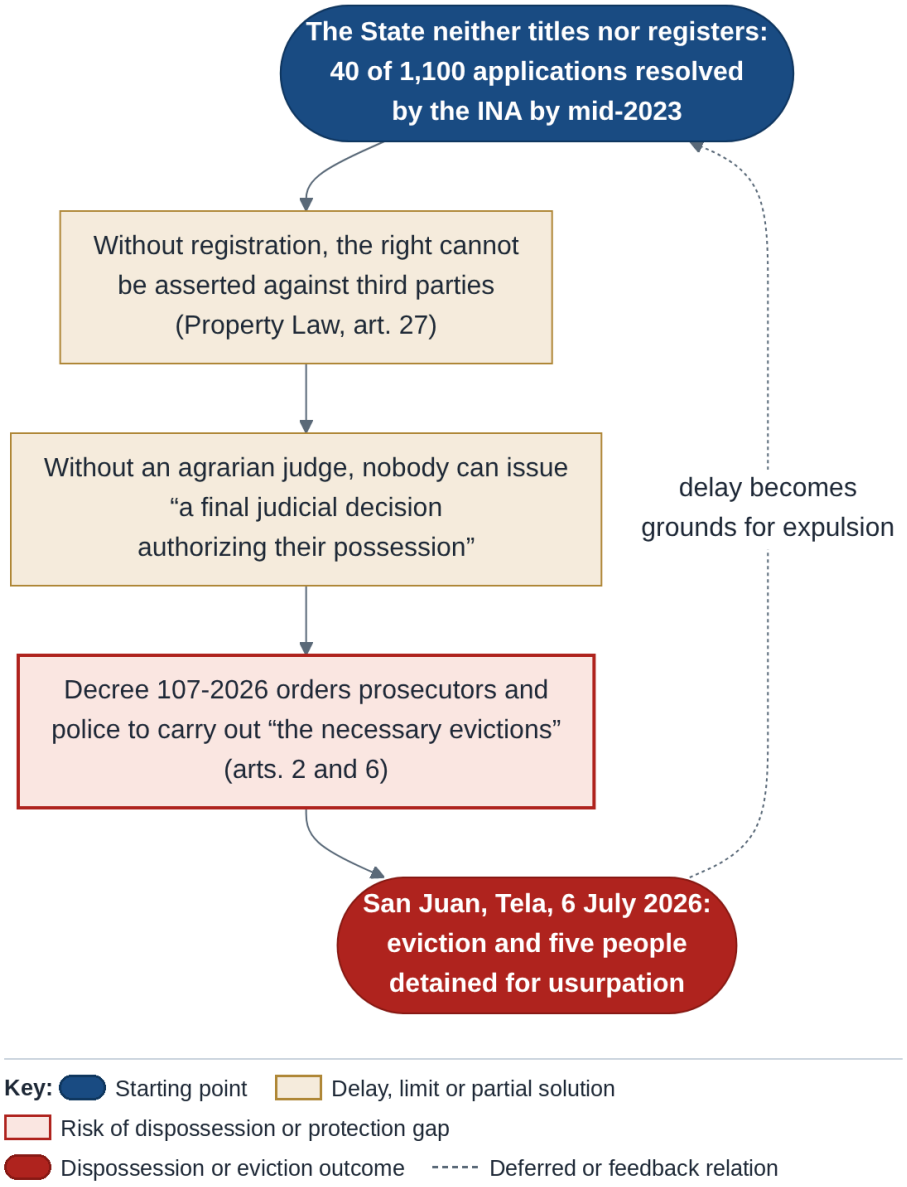
The literature on property rights has discussed this asymmetry from two sides. Hernando de Soto turned formalization into a programme: he argued that without registered title the assets of the poor are "dead capital".[25] Michael Albertus showed the other side of that programme. Many twentieth-century agrarian reforms handed over land without handing over full rights to it, and that property rights gap was no technical oversight: it helped governments keep beneficiaries under political control.[26]

Against that background, the agrarian jurisdiction inherits a gap of vulnerability that is all too evident. When the beneficiary of a land access programme, the community whose collective title has not been cleared of third-party occupants, or the people with unregistered ancestral possession comes before the judge, they arrive with the incomplete right the State itself left them.

Honduras takes this inheritance to its most extreme form. Article 27 of the 2004 Property Law provides that, until it is registered, an act "only produces obligations and rights between the parties".[27] The National Agrarian Institute, which was supposed to title and register the allocations of the agrarian reform, had resolved by mid-2023 just 40 of the 1,100 applications in its agrarian backlog (*mora agraria*), and in Triunfo de la Cruz the Inter-American Court found titling applications from 1969, 1998 and 2001 that never received an answer.[28] Into that void fell Decree 107-2026, in June 2026. Its article 2 requires that claims over lands exempt from agrarian reform (*tierras inafectables*) be pursued "previously and exclusively through the competent judicial bodies", and its article 6 orders the Public Prosecutor's Office and the Police to respond to any complaint with "the necessary evictions", unless the occupants hold "a final judicial decision authorizing their possession".[29]

As things stand, the State turns its own delay into the legal ground for expulsion. It did not title, it did not register, and it did not create a judge who could issue the decision it now demands. Figure 5 draws that circle.

FIGURE 5. Honduras: from State delay to eviction.



Author's elaboration based on the Property Law (art. 27), Decree 107-2026 (arts. 2 and 6) and La Tribuna, 6 July 2026.

The loop has already produced its first verifiable result. On 6 July 2026, some two hundred officers of the National Police evicted families of the Garifuna community of San Juan, in Tela, "in compliance with Legislative Decree 107-2026", at the request of the Public Prosecutor's Office and in favour of a company that produced a deed of full ownership; five people were detained for usurpation, among them the president of the land defence committee.[30] Three years earlier, in August 2023, the Inter-American Court had declared Honduras responsible for violating the collective property of that same community and had ordered it to resolve the pending judicial and administrative remedies.[31]

Mexico shows the same tension by another route, that of the market. The 1992 constitutional reform that created the agrarian courts also opened ejido land to alienation through full ownership (*dominio pleno*). For the Yucatán Peninsula, a briefing note by the Mexican Civil Council for Sustainable Silviculture estimates that between 1992 and 2019 some 192,600 hectares left social property by that route, and the reports coordinated by Gabriela Torres-Mazuera document the growth of annulment actions against the assembly records that authorize the sale of common-use lands.[32] Here the register is not imposed from outside. Individualization advances from within the community itself, sometimes with the votes of its own members, as Tania Murray Li showed for the Sulawesi highlands, where Indigenous peasants themselves fenced their cacao plots and enclosed the commons on which they had lived.[33] In those cases, the Mexican agrarian judge was left in charge of processing the land's exit from the collective regime.

There are, nonetheless, good practices that belie the idea that the register must always decide. The most widespread in the region shields collective property that has already been recognized.

In Colombia, for example, article 63 of the Constitution declares the communal lands of ethnic groups and the lands of *resguardos* (Indigenous reserves) "inalienable, imprescriptible and unseizable", article 329 defines *resguardos* as "collective and non-transferable property", and Law 70 of 1993 extended that protection to the collective lands of Black communities.[34] It is the highest-ranking protection I found, because it sits in the Constitution and covers all ethnic groups, and in that sense it is stronger than any statutory rule. Its limit is that it operates on land already titled. For ancestral possession that does not yet have title, Decree 2333 of 2014 created a provisional protection measure that is annotated in the property's registry folio, obliges notaries and registrars to prevent allocations over the property and allows the suspension of police eviction proceedings (*procesos policivos*) to be requested, although it safeguards the rights of third parties acquired in accordance with the law.[35]

Along the same lines, the Honduran Property Law goes even further on one precise point, that of third-party titles over ancestral land: on the lands of Indigenous and Afro-Honduran peoples, their rights "shall prevail over such titles issued in favour of third parties who have never possessed them", "No authority may issue or register title in favour of third parties on communal lands", and conflicts are processed through a special procedure with direct cassation before the Supreme Court.[36] I found no evidence, however, that it has been applied.

The Panamanian Agrarian Code admits collective acquisitive prescription, so that prolonged communal possession can be converted into title through the courts.[37] The Costa Rican Indigenous Law of 1977 declares transfers of Indigenous lands to non-Indigenous persons abso-

lutely null, the First Chamber has applied that nullity, and the Constitutional Chamber endorsed that case law in 2022.[38] At the international level, article 17.3 of the UNDROP calls for the protection of "legitimate tenure", a category the FAO's 2012 Voluntary Guidelines built to cover unregistered forms of tenure by calling for the recognition of legitimate tenure right holders and their rights "whether formally recorded or not".[39]

What these rules have in common is that they treat the register as evidence and not as a judgment. An agrarian jurisdiction that cannot rule against the register reproduces the Sengwer judgment in every courtroom, and this is the first power the legislators of the region should guarantee to their land judges.

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SECOND TENSION

For whom do agrarian judges decide?

The second tension is usually framed as a dilemma between the judge's neutrality and the protection of the weak. Although that framing sounds right, and is regularly put on the table in rural conflicts, I believe that at bottom it confuses two things.

Impartiality is a guarantee the judge owes to all parties, including the agribusiness company and the State, and an agrarian jurisdiction that sacrifices it loses its legitimacy and, with it, its capacity to protect.

The neutrality of the rules is another matter. Pierre Rosanvallon distinguished within democratic legitimacy a dimension of impartiality, that of the body that takes no side, and a dimension of proximity, that of the body that attends to the particularity of each situation.[40] The land judge needs both. A judge can be impartial and, at the same time, apply rules that do not treat alike the *comunero* who cannot read the case file and the attorney of a company holding a registered deed. Labour law has done this for a century, and it occurs to no one to call a judge partial for applying the principle of favourability.

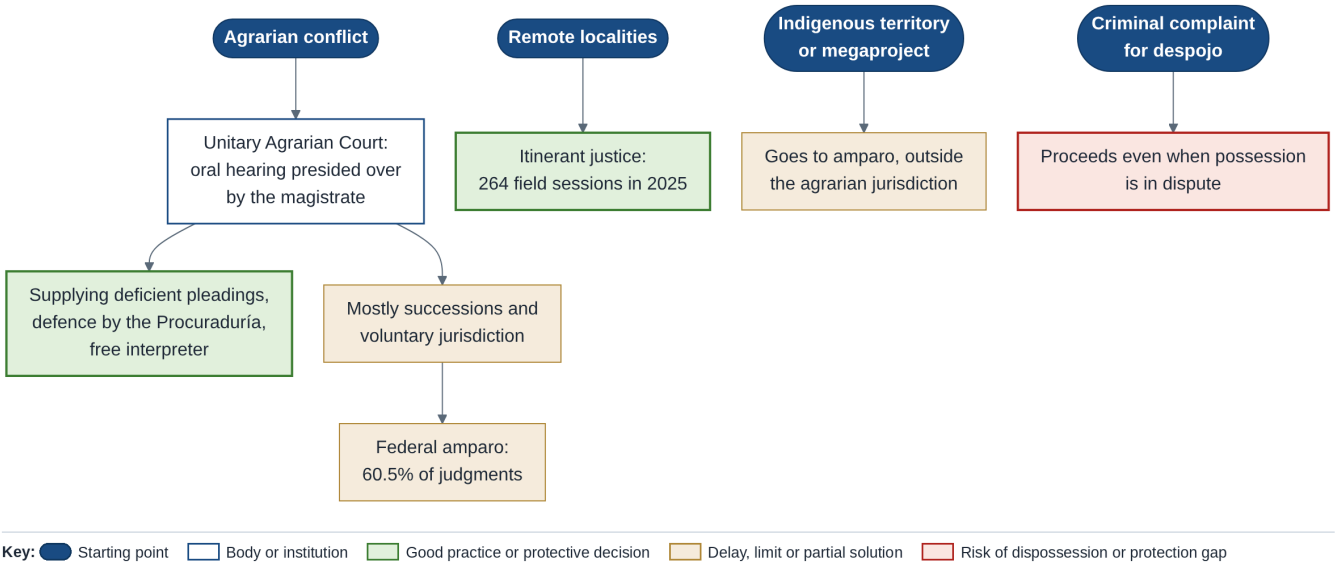
A recurrent formula, that of the "common good", deserves suspicion. In the case files of agrarian conflicts it is the argument with which governments present investment projects, especially foreign and private ones: public utility, the national interest, food security understood as exportable production. A telling example is Decree 107-2026, whose title is, precisely, Law for the

Strengthening and Protection of the Agro-industrial Sector, Energy Projects, Tourism, Livestock and Small Agricultural Producers of Honduras.[41] Small producers come at the end of the list, next to large-scale energy and tourism.

Agrarian doctrine offers two ways of answering the question of for whom the judge decides. The Italian school of Antonio Carrozza, received in Costa Rica by Ricardo Zeledón and his generation, defined the agrarian by the activity: the development of a biological cycle of raising animals or plants, with its own particular risk.[42] That theory of agrarianness gave the discipline scientific autonomy and allowed the Costa Rican jurisdiction to extend its competence to environmental matters. It has, however, a consequence that is seldom said out loud: under the activity criterion, a conglomerate's oil palm plantation is as agrarian as a peasant's plot.

The Mexican tradition started from the opposite side, that of the subject. The agrarian courts of 1992 were organized around agrarian communities (*núcleos de población*), *ejidatarios* and *comuneros*, and the Agrarian Law gave them protective tools that are still the most complete in the region. Figure 6 shows the route. The magistrate must preside over the hearing in person; the court supplies deficiencies in the legal arguments of agrarian subjects; judgment is rendered *a verdad sabida*, free of statutory rules on the weight of evidence; since 2024, filings in an Indigenous language have not required translation by the party; the Agrarian Attorney's Office (Procuraduría Agraria) provides free legal defence and, if only one party has counsel, the trial is suspended until the other has it too.[43] In 2025 itinerant justice disposed of 12,097 matters in 264 field sessions across 6,822 localities.[44]

FIGURE 6. Mexico: the agrarian courts and their exits.



Author's elaboration based on the Agrarian Law, the Organic Law of the Agrarian Courts, the 2025 Activity Report of the Superior Agrarian Court and the INEGI agrarian justice census.

Despite those guarantees, defining jurisdiction by the subject also had its price. The agrarian subject of Mexican law is the ejido and the agrarian community, and Indigenous peoples who did not fit that form found little room: in 2024 the unitary agrarian courts admitted fourteen cases for the recognition of the communal regime nationwide, against 14,933 successions and 15,133 voluntary jurisdiction matters.[45] The major territorial and megaproject conflicts therefore migrated to *amparo* proceedings before the federal judges.

The UNDROP, for its part, chooses the subject, and defines it with care. Its article 1 understands a peasant to be any person who engages, alone, in association with others or as a community, "in small-scale agricultural production for subsistence and/or for the market", relying on family labour or non-monetized ways of organizing labour, and who has "a special dependency on and attachment to the land".[46]

This is plainly a protective definition and, for that very reason, a contested one. In September 2026, the Colombian Minister of Agriculture told Congress that "campesino" is a derogatory word and announced that peasants "will be called small rural entrepreneurs".[47] The category of subject can be captured, and a jurisdiction whose competence depends on it is exposed to having its object changed by that capture.

I propose separating the two functions. The competence of the jurisdiction should be defined by the object of the conflict: land, territory, the environment associated with them, and consultation. Protection, by contrast, should be triggered by the subject, through procedural asymmetries that come into play when one of the parties meets the conditions of article 1 of the UNDROP or of article 1 of ILO Convention 169: the court's duty to supply deficiencies, free legal defence, an interpreter paid for by the State, the reversal of the burden of proof.

Under this proposal, the plantation and the plot appear before the same judge, though not under the same rules. That separation would allow legislators to keep the jurisdiction universal without giving up the protection that justifies its existence.

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THIRD TENSION

Asymmetry among the equally vulnerable

The third tension is the least discussed in forums on agrarian justice, and the one I know best. When an Indigenous or Afro-descendant people claims an ancestral territory occupied by poor peasant families, neither party is the company or the landowner. Both have a legitimate right, both are protected by international instruments, and both have usually reached that situation through decisions of the State or circumstances beyond their control.

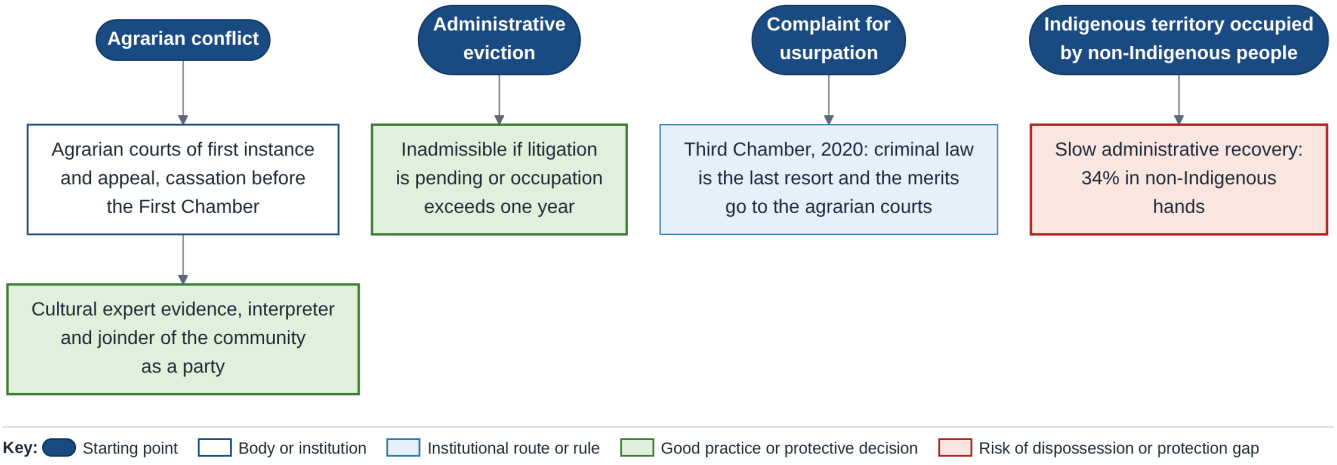
This is no marginal phenomenon. The territorial conflicts database of Colombia's National Land Agency (Agencia Nacional de Tierras, ANT), which I analysed with Allan Bolívar, Alen Castaño and Juan David Jaramillo, records 158 conflicts between 2018 and 2024; the most frequent pair of actors is Indigenous peoples and peasants, with 35 cases, and Cauca accounts for 31.[48] In the volumes of *Desencuentros territoriales* I argued that the main driver of these conflicts is an entrenched structure of land concentration, which leaves Indigenous, Afro-descendant and peasant communities fighting over the margins, and that the case law that should have ordered them was fragmented "across multiple bodies with little coordination among them".[49]

Charles Hale described state multiculturalism as a conditional recognition that grants cultural rights to the figure of the "indio permitido" as long as it does not challenge the economic order.[50] My reading is that, in the agrarian field, this selective recognition also produced competition

among the rural poor: some subjects obtained territorial legal figures and others were left without them.[51] In Colombia, the peasantry had no equivalent constitutional figure until Legislative Act 01 of 2023.[52]

Costa Rica also bears witness to this identity-based tension, and its case teaches as much through what it did well as through what it left undone. Figure 7 summarizes the route.

FIGURE 7. Costa Rica: the agrarian jurisdiction and Indigenous territories.



Author's elaboration based on the Agrarian Procedure Code (Law 9609), the 1977 Indigenous Law and the case law of the First and Third Chambers.

The 1977 Indigenous Law resolved the conflict between two vulnerabilities with a rule that looks simple. Its article 5 provides that, where non-Indigenous persons are owners or good-faith possessors within the reserves, the State "shall relocate them to other similar lands, if they so wish", and, if that is not possible or they do not accept, "shall expropriate and compensate them"; those who invade after the law must leave without compensation.[53] The territory returns to the people and the good-faith peasant is not left landless. The State, which created the problem by allowing the occupation, is the one that pays for the solution.

The rule, however, was barely enforced. A 2024 estimate places about 34 per cent of the surface area of Costa Rica's 24 Indigenous territories in non-Indigenous hands.[54] Recovery was left to the administration, with scarce resources, and the agrarian jurisdiction was given no power to order the clearing of the territories (*saneamiento*).

The result was paradoxical. In 2020, the Third Chamber upheld the acquittal of non-Indigenous occupants in Salitre charged with usurpation, on the correct ground that criminal law is the last resort and that the forum for deciding who has the right to occupy is the agrarian one.[55] And in June 2026, the Civil, Labour and Agrarian Court of Buenos Aires, the Costa Rican canton in which

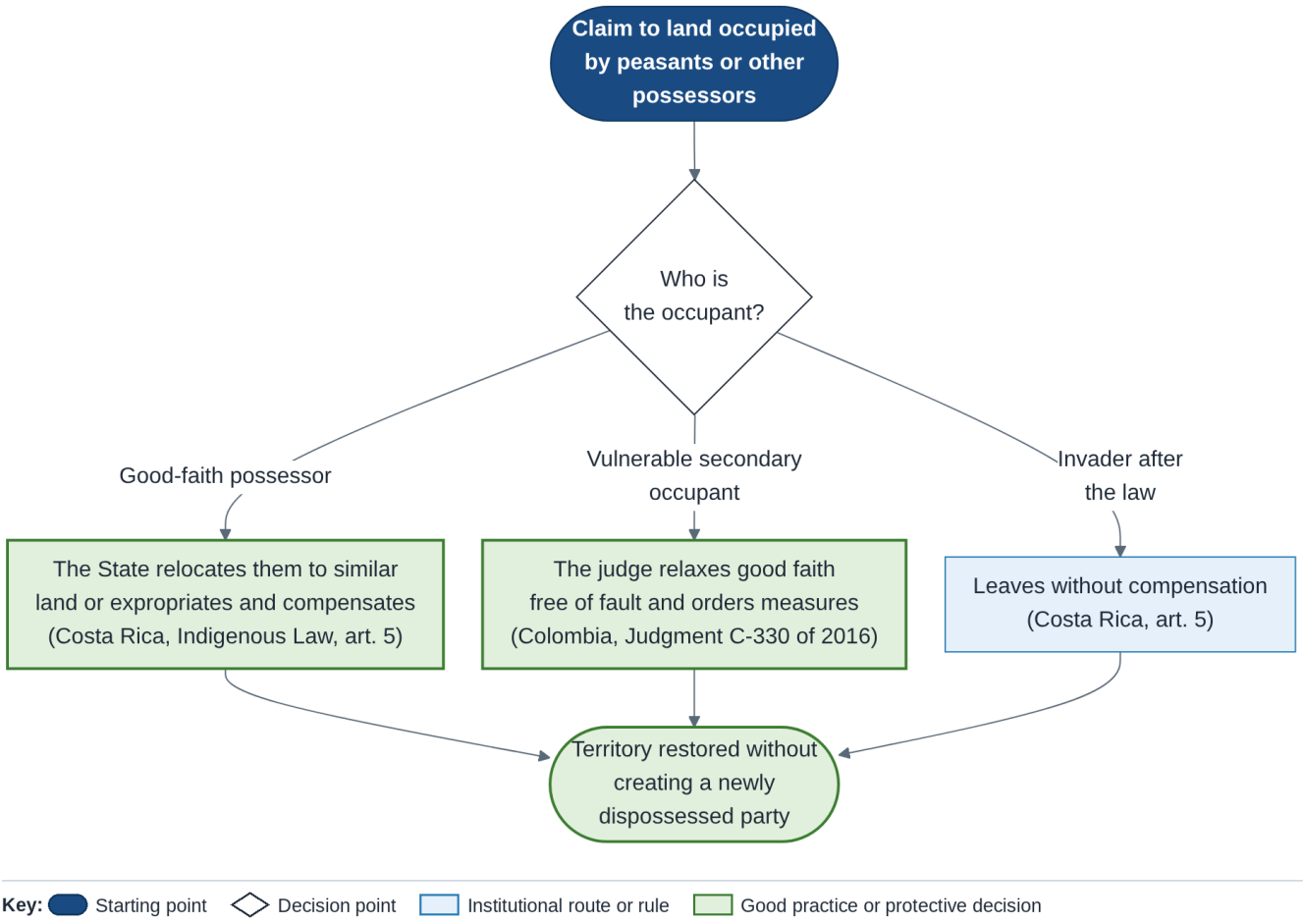
Salitre lies, ordered the eviction of four Bribri families from the Kapliña land recovery, in Salitre, in favour of an occupant whom the Bribri organization describes as non-Indigenous and who was named as a suspect in the case, later closed, concerning the murder of the leader Sergio Rojas.[56] The agrarian judge protected current possession, which is what possessory proceedings know how to do, in a territory where the law had declared transfers to non-Indigenous persons null since 1977.

Panama lived through a version of the same conflict. In 2014, in the case of the Kuna of Madungandí and Emberá of Bayano peoples, the Inter-American Court found against the State for failing to demarcate and title the territories flooded by a dam and later occupied by settlers, and for the delays in the criminal and eviction proceedings against those settlers.[57]

Colombia offers the finest judicial rule I found for the secondary occupant, although it does not rest on identity criteria. In Judgment C-330 of 2016, the Constitutional Court held that the requirement of good faith free of fault (*buena fe exenta de culpa*) imposed on those who occupy a property subject to restitution must be assessed by judges in a differentiated way when they are secondary occupants in a situation of vulnerability who had no direct or indirect connection with the dispossession, and it urged Congress and the Government to adopt a policy for them.[58] Bolivia resolved part of the problem through jurisdictional demarcation: Law 073 of 2010 reserves to the Indigenous jurisdiction the internal distribution of community lands.[59]

With these pieces a relatively standard guideline can be built for this kind of case. Figure 8 proposes one. My proposal starts from the premise that the agrarian jurisdiction should not establish an ethnic hierarchy among subjects of special protection, and that it cannot resolve the conflict as if it were a dispute between two private parties either. The ancestral territory prevails over the land, but the vulnerable good-faith peasant does not leave it before the State offers equivalent land or compensation. For that to happen, the judge must be able to join the State as a necessary party and order it to carry out the relocation.

FIGURE 8. A rule for conflict between two vulnerabilities.



Author's elaboration based on the Indigenous Law of Costa Rica (art. 5) and Judgment C-330 of 2016 of the Constitutional Court of Colombia.

The UNDROP and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) cannot be read as adversarial instruments, and the Working Group of which I am a member has maintained this in various forums. An agrarian jurisdiction equipped with the rule in Figure 8 would give that position procedural form, and it is a rule that both legislators and the courts that set precedent could adopt.

FOURTH TENSION

The peasant, the company and the State. On whose side?

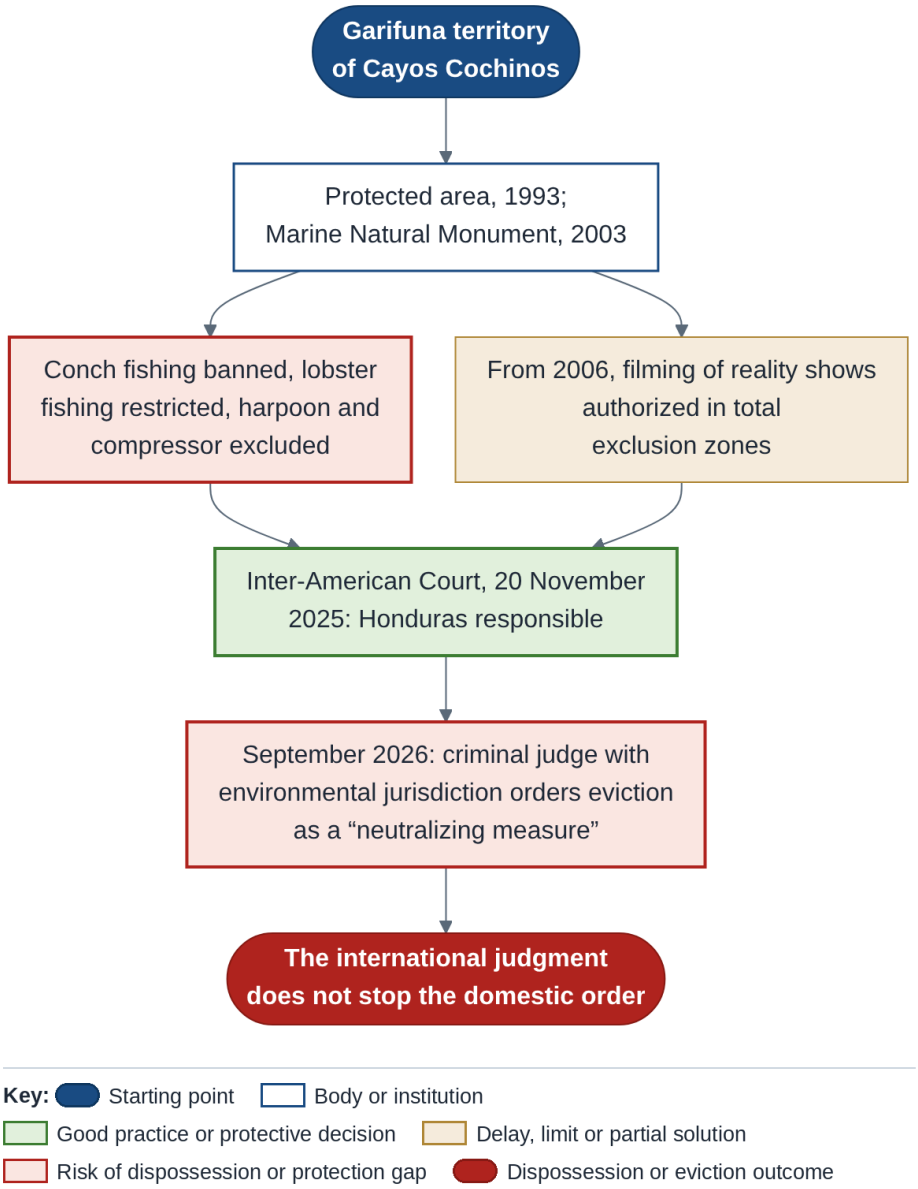
The fourth tension is the oldest in agrarian law, and the one that the wave of land acquisitions following the 2008 food crisis brought back to the centre. Saturnino Borras and Jennifer Franco showed that these acquisitions cannot be explained without the State, which defines what land is "available", classifies it as idle or marginal and places it at the disposal of investors.[60] James

Fairhead, Melissa Leach and Ian Scoones added a variant that gained weight over the following decade: green grabbing, the appropriation of land and resources for declared conservation purposes.[61] In both cases, the peasant is not litigating against a private party. The peasant litigates against a private party backed by the State, or against the State itself.

Honduras offers the complete sequence. In June 2023, an agreement of the National Defence and Security Council signed by the President of the Republic, the President of the Supreme Court and the Attorney General ordered the urgent execution of eviction orders, with priority for oil palm, sugar cane and banana estates, and created an agrarian security commission that included "A Judge with National Jurisdiction".[62] Three years later, Decree 107-2026 made evictions a duty of prosecutors and police officers, and its article 7 made any official who fails to carry them out answerable "personally and directly", without the possibility of pleading "due obedience".[63] Decree 84-2026, which amended the offence of terrorist association to include the purpose of "Maintaining territorial presence or social dominance over communities", left usurpation untouched, but the Centre for the Study of Democracy (Centro de Estudio para la Democracia, CESPAD) warned that its wording could reach community organizations.[64] Between 2012 and 2023, Global Witness counted 149 land and environmental defenders murdered in the country.[65]

Cayos Cochinos shows the green variant, and the Inter-American judgment documents it with a precision worth quoting. The archipelago was declared a protected area in 1993 and a Marine Natural Monument in 2003. Those declarations banned conch fishing and restricted lobster fishing, and the management plan excluded the harpoon and the compressor, which the community's representatives identified as traditional Garifuna methods. Yet in the very zones declared to be of total exclusion, the managing institutions authorized from 2006 onwards the filming of reality television programmes produced by foreign companies, which, according to the 2014 management plan itself, generated "discontent among the inhabitants of the Communities".[66] Conservation restricted subsistence and opened the way to spectacle. In September 2026, the eviction order against the community was issued by a criminal judge with environmental jurisdiction, on a complaint filed by a private company. Figure 9 reconstructs that sequence.

FIGURE 9. Cayos Cochinos: from conservation to eviction.



Author's elaboration based on the Inter-American Court judgment of 20 November 2025 (paras. 47 to 63) and El Salto, 19 September 2026.

The closeness between economic power and the land judge is not exclusive to Honduras. In Holbox, in the Mexican Caribbean, an agrarian magistrate who ruled in favour of the *ejidatarios* in 2012 was removed days later, and his successor reversed the decision.[67] The Mexican agrarian courts sit outside the Federal Judiciary, have no judicial council of their own, and their magistrates are nominated by the Executive. In India, nine of the thirteen expert members appointed to the National Green Tribunal since 2016 had previously taken part in granting environmental clearances.[68]

Meanwhile, in Brazil, the national agriculture confederation challenged before the Federal Supreme Court the resolution that created the land-conflict resolution commissions, arguing that site visits and hearings prolong "a 'posse' do invasor" (the invader's "possession"), and in November 2024 it obtained technical notes requiring an express decision by the judge before a case can be referred to the commission.[69] In the face of that pressure, the good practices I found target the point where economic power gains its quickest advantage: the criminal complaint. In ADI 3.433, of 2021, the Brazilian Federal Supreme Court accepted that agrarian courts may have jurisdiction over offences "cuja motivação for predominantemente agrária, minerária, fundiária e ambiental" (whose motivation is predominantly agrarian, mining-related, land-related and environmental).[70]

Given this context, I consider the 2010 rules of the Supreme Court of the Philippines against harassment complaints, or strategic lawsuits against public participation (SLAPPs), an important innovation: they allow the accused to seek, before arraignment, the dismissal of a criminal action brought to harass someone who seeks to enforce environmental law, and they place on the complainant the burden of proving that the action is not of that kind.[71] The Philippine rule has its limits: I found no statistics on its use, and in the Hotchkiss case a trial judge held that it applied only in environmental courts. Like everything analysed so far, it also has its reverse side: in 2021 it was a mining company that invoked it against local residents.[72]

To close this brief review, ILO Convention 169, ratified by most Latin American States, asks for something that Latin American criminal practice tends to invert: that "Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned", and that, when criminal penalties are imposed on members of those peoples, "Preference shall be given to methods of punishment other than confinement in prison".[73]

This overview leads me to think that the piece missing from every jurisdiction examined is a *mandatory agrarian preliminary question*: a rule under which the criminal judge may neither order an eviction nor advance a prosecution for usurpation until the land judge has decided who holds the right to tenure. As we saw, the pieces exist, scattered, in Brazil, in the Philippines and in Costa Rican case law. Bringing them together into a single rule is a task for legislators and, where the law allows, for the judicial governance agreements through which supreme courts organize their jurisdictions.

FIFTH TENSION

The cost of proving territory

The fifth tension sets evidentiary sophistication against material urgency. It weighs especially on long-standing peasant possessions and on collective ethnic territories, because neither is usually proved with deeds. They are proved instead through oral memory, genealogies, toponymy, historical cartography, anthropological expert reports and on-site inspections, and each of these forms of evidence costs time and money. Meanwhile, the family awaiting judgment needs to sow, and the evicted community needs to return before the land changes hands again.

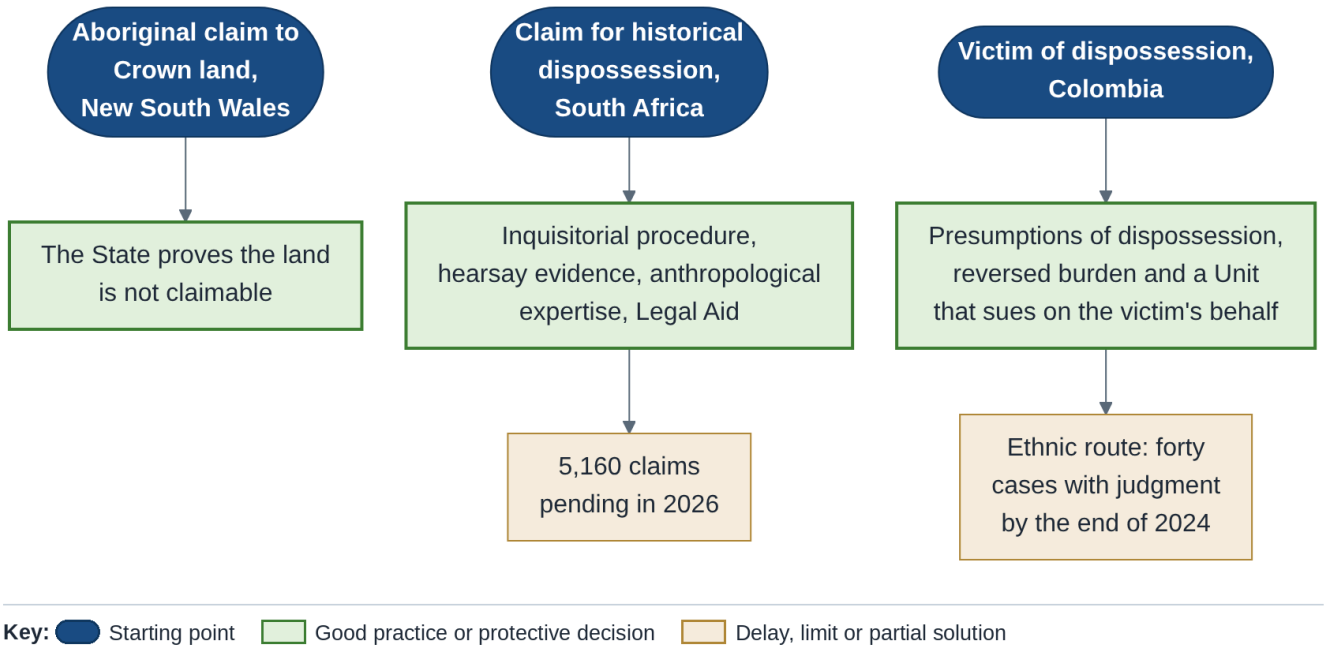
In this stocktaking, South Africa is the country that built the most refined procedure I found for that kind of evidence. The Land Court, in operation since April 2024, sits with judges who have expertise in land rights and up to two assessors who are not required to have legal training; it may conduct proceedings "on an informal or inquisitorial basis"; it admits hearsay evidence and both historical and anthropological expertise; and it guarantees State-funded representation where a substantial injustice would otherwise result.[74] Yet the South African experience also shows the price of delay: 28 years after the 1998 deadline for lodging restitution claims, 5,160 remain pending, and at the current pace it will take at least fifteen more years to resolve them.[75]

Costa Rica incorporated "cultural expert opinions" and an interpreter paid for by the Judiciary into its Agrarian Procedure Code, and Mexico abolished statutory rules on the weight of evidence with judgment *a verdad sabida*.[76] Kenya, in its 2026 regulations on historical injustices, allowed claims to be lodged orally.[77]

These are undoubtedly good practices, and their risks deserve to be stated just as clearly. Sally Engle Merry showed that human rights circulate through translation, and that those who translate between the language of law and the language of communities hold considerable power over what is ultimately recognized.[78] The anthropological expert is a translator of that kind. When the judge requires a community to prove an "authentic" ancestral connection, the expert report can turn into an examination of cultural purity that peasant and mestizo communities, or communities reconstituted after displacement, will rarely pass. Article 12.1 of the UNDROP, which extends to peasants the duty to consider their customs and legal systems, obliges us to think of forms of evidence that do not depend on that authenticity.

The tension between sophistication and efficiency changes its nature once we ask who bears the cost of evidence in genealogical disputes over territory. Figure 10 brings together three answers.

FIGURE 10. Who bears the burden of proving territory.



Author's elaboration based on New South Wales legislation, the South African Land Court Act of 2023 and Colombia's Law 1448 of 2011.

In New South Wales, when an Aboriginal land council claims Crown land, it is the State that must prove the land is not claimable.[79] In Colombian restitution, Law 1448 of 2011 established presumptions of dispossession, reversed the burden of proof in favour of the claimant and created a Unit that documents the case and sues on the claimant's behalf; fifteen years on, the Unit reports 11,322 favourable judgments, 1,113,488 hectares under restitution orders and 727,739 hectares physically handed over.[80] It is the only Colombian experience of specialized agrarian justice that delivered land at scale, and it did so with explicit evidentiary asymmetries.

The same Colombian restitution shows the limit. The watchdog Forjando Futuros calculates that only 4 per cent of proceedings meet the statutory four-month time limit, and the ethnic route, which accounts for 13.2 of the 14.3 million hectares entered in the register, had only forty cases with judgment at the end of 2024.[81] Establishing the territorial harms suffered by a people is a more complex form of proof than proving those suffered by a family plot, and the Unit did not reduce that complexity.

Evidentiary sophistication, in short, is a guarantee when the State or the registered owner pays for it, and a barrier when it falls on the community. The Escazú Agreement said as much for environmental justice when it called for measures to facilitate the production of evidence, "such as

the reversal of the burden of proof and the dynamic burden of proof".[82] The rule can be carried over to land conflicts without difficulty, and it lies within reach of any legislator drafting an agrarian procedure code.

> *Evidentiary sophistication, in short, is a guarantee when the State or the registered owner pays for it, and a barrier when it falls on the community.*

SIXTH TENSION

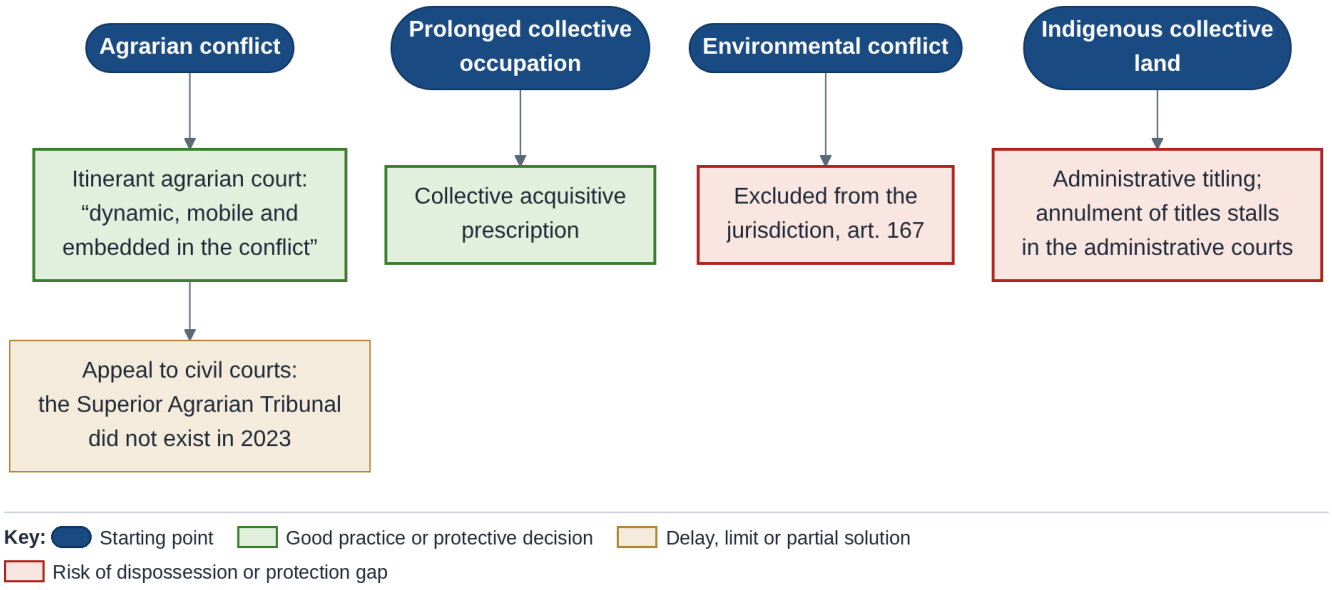
The complete code versus the modest mechanism

The sixth tension sets complete theoretical design against the modest mechanism that works. Latin America has more examples of the former than of the latter.

The 2018 Costa Rican Agrarian Procedure Code, which already appeared under the third tension, is in my view the most complete agrarian procedural text in the region, with orality, intercultural guarantees, a preferential environmental procedure and precautionary protection available even in the absence of scientific certainty. Yet it was approved without budgetary funding, its entry into force was postponed three times, and it only took effect on 28 February 2025.[83] Seven months later, Law 10779 amended dozens of its articles and, according to the Bar Association's opinion on the bill, stripped it of powers.[84] The average duration of first-instance agrarian proceedings, which in 2012 reached 31 months in the cases decided, explains the urgency of the reform.[85]

Panama designed a court system around one of the most beautiful formulas in Latin American agrarian law: the court must be "dynamic, mobile and embedded in the conflict". Its 2011 Agrarian Code provides for one court per province and per Indigenous *comarca* and admits collective acquisitive prescription. But its article 167 excludes from the jurisdiction actions arising from the laws on "natural resources and the environment", the Superior Agrarian Tribunal created by the law did not yet exist by 2023, appeals go to civil courts, and in 2022 six agrarian courts were operating, none of them in the provinces of Panamá, Colón or Darién.[86] Figure 11 shows that half-installed jurisdiction.

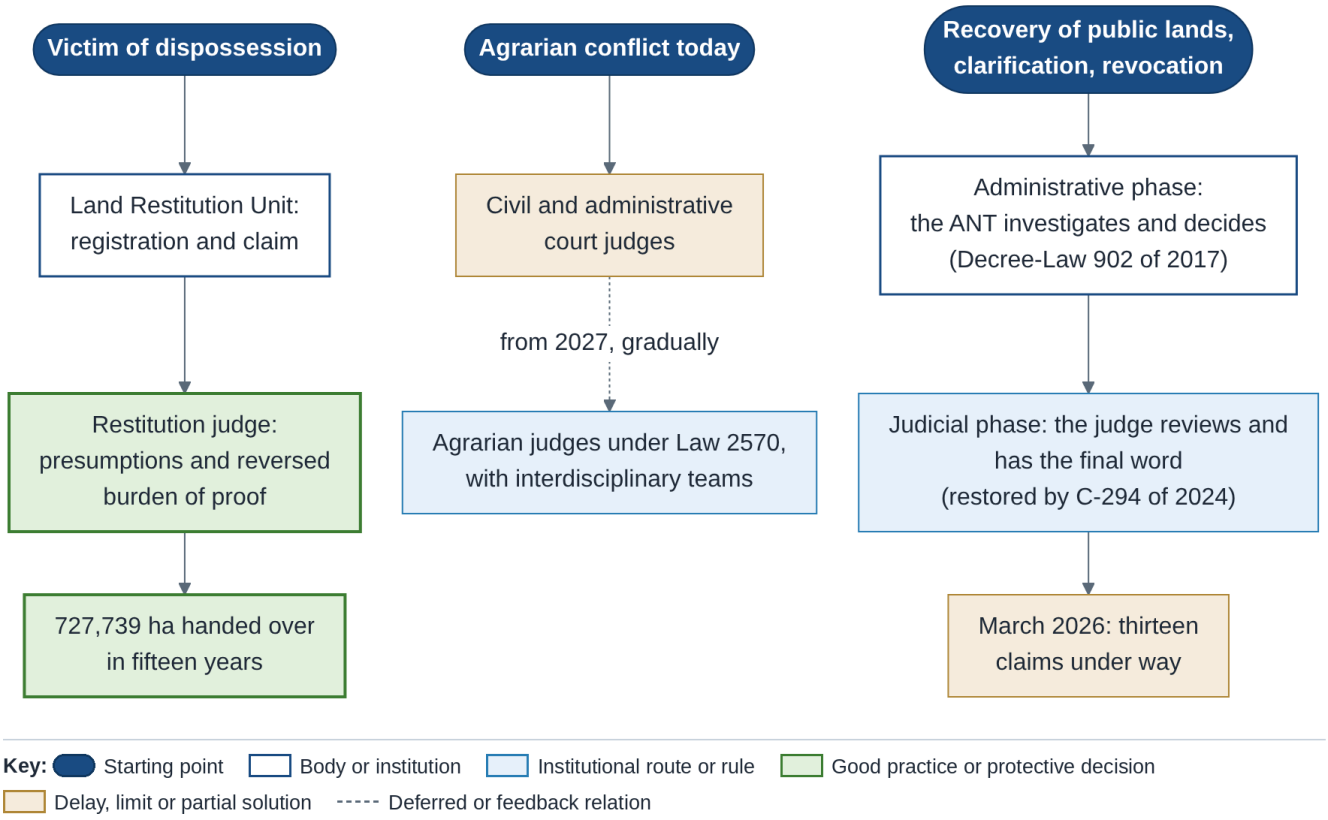
FIGURE 11. Panama: the 2011 Agrarian Code and its gaps.



Author's elaboration based on Law 55 of 2011 and documents of the Judicial Branch from 2022 and 2023.

Colombia is the extreme case of the cycle of creation and abandonment glimpsed in section 2: it has created specialized agrarian justice at least four times. The land judges of 1936 were abolished in 1943; the agrarian jurisdiction of Decree 2303 of 1989 managed to operate in only a handful of courts, and the 1996 Statutory Law suspended it "until all of them come into operation", an all-or-nothing clause that guaranteed paralysis.[87] Restitution in 2011 was the exception. The fourth creation, the Agrarian and Rural Jurisdiction of Legislative Act 03 of 2023, has had a statutory law since March 2026 that provides for interdisciplinary teams and agrarian facilitators, but its funding was made subject to the Medium-Term Fiscal Framework; the Constitutional Court ordered that it be put into operation "from 2027 and in a gradual and progressive manner", and the procedural law sank in Congress in June 2026, the fifth such bill shelved since 2020.[88] With Juan Camilo Ortega I argued that this jurisdiction was left deferred: if Congress does not enact the procedure, it will start out applying the very procedural rules it was meant to overcome.[89] As of October 2026, not a single agrarian judge has taken office. Figure 12 summarizes the state of affairs.

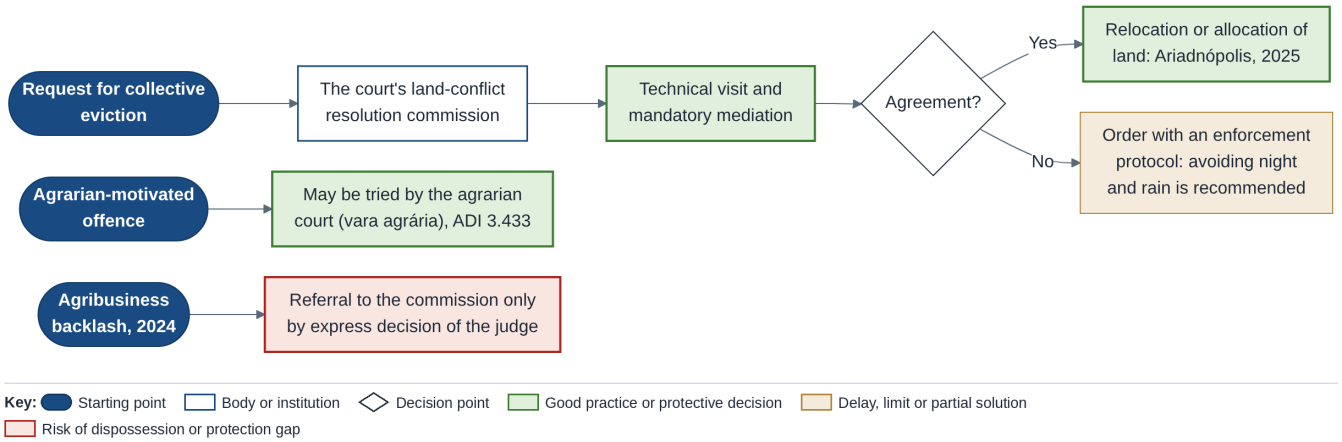
FIGURE 12. Colombia: the restitution that works and the agrarian jurisdiction that waits.



Author's elaboration based on Law 1448 of 2011, Decree-Law 902 of 2017, Law 2570 of 2026 and Judgments C-294 of 2024 and C-099 of 2026.

Set against these codes, Brazil did something far more modest. It did not create a jurisdiction. In ADPF 828, in November 2022, the Federal Supreme Court established that judicial inspections and mediation hearings are an "etapa prévia e necessária às ordens de desocupação coletiva" (a prior and necessary stage before collective eviction orders).[90] Resolution 510 of the National Council of Justice, of June 2023, created land-conflict resolution commissions in all courts, regulated technical visits, made mediation mandatory in long-standing collective possessory disputes and recommended that the execution of evictions not begin at night, on public holidays or in intense cold or rain.[91] By December 2024, all 27 state courts and the six regional federal courts had their own commission. The Ariadnópolis agreement with which this text opens came out of one of them. Figure 13 shows the sequence.

FIGURE 13. Brazil: the land-conflict resolution commissions.



Author's elaboration based on ADPF 828, CNJ Resolution 510 of 2023 and the note of the Court of Justice of Minas Gerais of 1 December 2025.

The Brazilian mechanism created neither judges nor codes. It changed the order of decisions: before eviction, the site visit; before force, mediation. That change of sequence produced agreements such as Ariadnópolis without a single new judge. Peru followed a similar path in April 2026, when it assigned exclusive agrarian jurisdiction to twenty-eight bodies in fourteen existing superior courts, instead of waiting for a complete network of new courts.[92]

The modest, however, has a weakness that codes lack. It is easily reversed. The 2024 technical notes restricted referral to the Brazilian commissions without any law having to be amended.[93] The Peruvian agrarian court system was abolished in 1996 by an administrative resolution. The Argentine moratorium on Indigenous evictions, in force since 2006, fell by decree in 2024.[94] The literature adds one more warning: in Sierra Leone, the land forums created in 2015 increased formal litigation instead of reducing it.[95]

My answer to this tension is a precise combination. The modest mechanism that alters the sequence of decisions should be the starting point, installed territory by territory and on a mandatorily gradual basis, never conditioned on the existence of the entire system. That mechanism, though, needs a statutory anchor so that it does not depend on the will of whoever happens to be running judicial governance. For the legislatures of the region, this means legislating the sequence and the gradualism first, and leaving the complete code for when there are judges to apply it.

SEVENTH TENSION

How much judicialization can land bear?

The lack of teeth and the excess of judicialization are, as I anticipated, a single tension seen from its two extremes. On one side lies the lack of teeth: courts that declare rights nobody enforces. On the other lies the excess of judicialization: decisions on land that wait years for a judge, or that a judge takes far from the territory, with categories that cannot read it. The underlying question is this: how much judicial intervention can an agrarian conflict bear before the guarantee turns into its opposite?

The lack of teeth has its most painful example in the inter-American system. In Punta Piedra, in 2015, the Inter-American Court held that Honduras had "the irrefutable duty to clear the titled territory" and that it had to do so "ex officio and with extreme diligence". In its joint supervision of that case and of Triunfo de la Cruz, in 2021, it did not declare any of the main reparations complied with, and in 2025 the Office of the High Commissioner found no progress in clearing those territories or that of San Juan.[96]

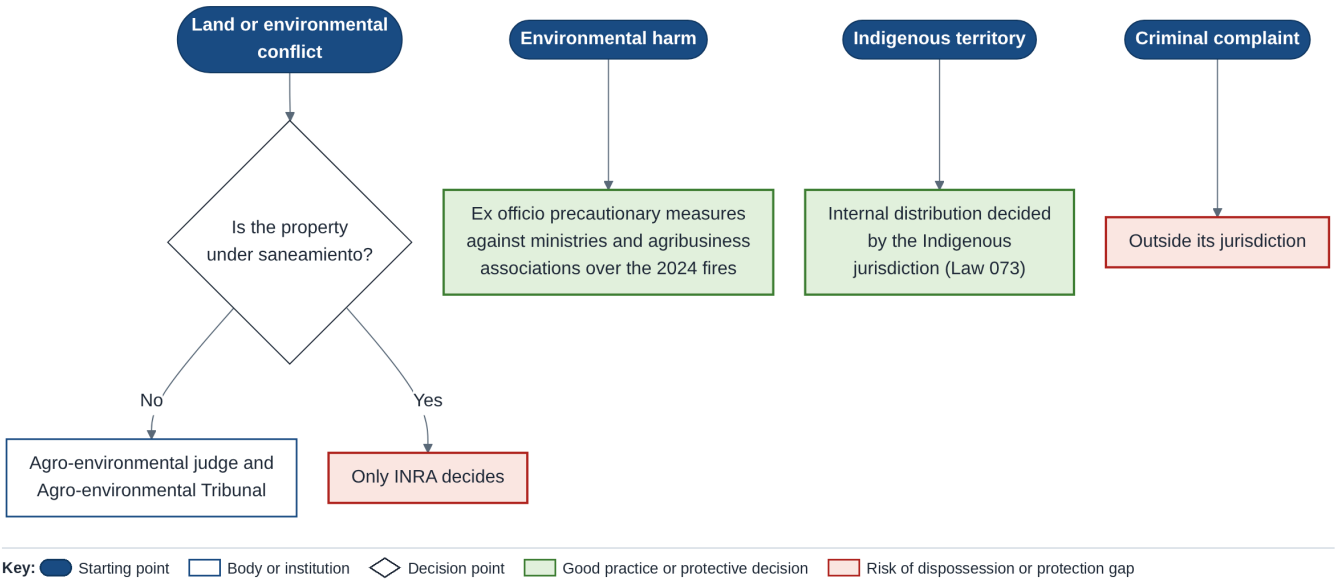
The evictions in San Juan and Cayos Cochinos, examined under the first and fourth tensions, came after the inter-American judgments on those same territories. Meanwhile, the Black Fraternal Organization of Honduras (Organización Fraternal Negra Hondureña, OFRANEH) was reporting more than sixty legal actions answered with a "no ha lugar", a plain refusal, and the Garifuna camp the organization set up on 10 August 2026 in front of the Supreme Court of Justice, in Tegucigalpa, had passed seventy days by 21 October.[97] The same happens outside the region: in December 2025, the African Court found that Kenya had neither demarcated nor titled the land of the Ogiek people, nor paid the compensation ordered in its judgments of 2017 and 2022.[98]

International judgments have no police. Domestic judges do, and in Honduras they use it in the opposite direction. What is missing there is a land judge who has the duty to apply those judgments and the treaties on which they rest, and who can set aside ex officio the domestic norms that contradict them. The Inter-American Court has called that operation conventionality control since the Almonacid Arellano case of 2006, and in Norín Catrimán, in 2014, it warned that there may be "a discriminatory application of the criminal law" when judges reason from stereotypes in a context of claims to ancestral lands.[99] I found no express conventionality control clause in any of the agrarian jurisdiction laws examined. Its absence leaves the specialized judge in the position of the court in the Sengwer case: applying the registry category without asking whether the treaty displaces it.

International judgments have no police.

Bolivia shows what a land judge with teeth looks like. Figure 14 summarizes its route. Faced with the fires that burned 12.56 million hectares in 2024, the Agro-environmental Tribunal issued precautionary measures ex officio against ministries and departmental governments, and rejected the 39 written submissions, the fifteen objections to jurisdiction and the motion for annulment filed by ministries, the Armed Forces, the Police and agribusiness associations.[100] The same tribunal, however, has two limits: it does not hear criminal matters, and while the administrative land regularization (*saneamiento*) conducted by the National Agrarian Reform Institute (Instituto Nacional de Reforma Agraria, INRA) is under way, agro-environmental judges cannot intervene over the property.[101] The judge arrives when the conflict has already been decided by the administration.

FIGURE 14. Bolivia: the Agro-environmental Tribunal and its limits.



Author's elaboration based on Law 025 of 2010, Law 073 of 2010 and the case law of the Agro-environmental Tribunal.

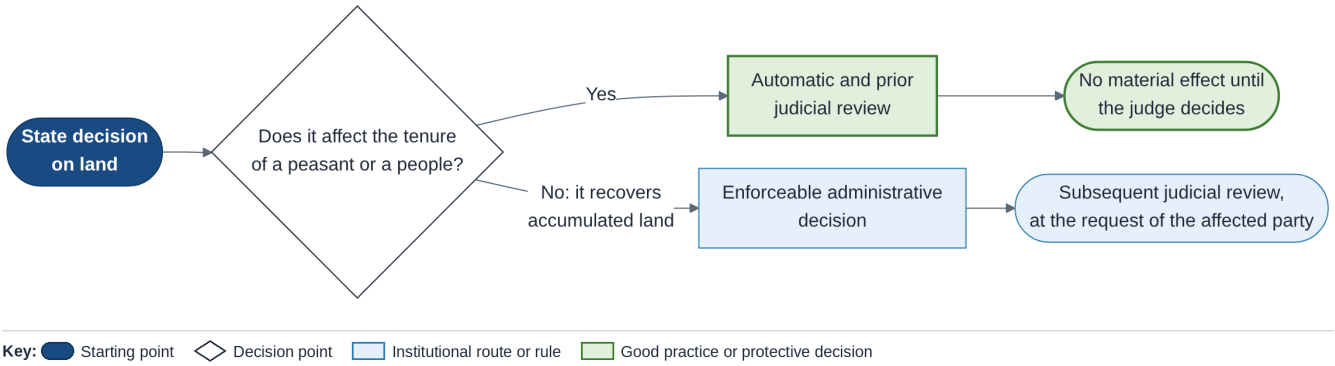
The excess of judicialization has its examples too.

In Mexico, 60.5 per cent of the 11,753 final judgments of the unitary agrarian courts had been challenged through *amparo* by the end of 2025, so that in practice the specialized jurisdiction works as the first instance of a longer chain.[102] In Kenya, the court had accumulated close to 14,000 pending cases by the end of 2024, two-thirds of them more than a year old.[103]

In Colombia, meanwhile, the debate over article 9 of the agrarian procedure bill posed the problem in its starkest form. Decree-Law 902 of 2017 organized the clarification of ownership, the demarcation and recovery of public lands (*baldíos*), revocation and forfeiture (*caducidad*) into a Single Procedure (Procedimiento Único) with two phases: an administrative phase, in which the National Land Agency investigates and decides, and a judicial phase, in which a judge reviews that decision and has the final word. The 2023 National Development Plan abolished the judicial phase, and the Constitutional Court restored it in 2024 on account of defects in the legislative process; until agrarian judges exist, review falls to the administrative courts and to the civil judges.[104] Article 9 of the 2026 bill graded that review and left some of those decisions entirely in the Agency's hands. In May 2026, the Civil, Agrarian and Rural Cassation Chamber of the Supreme Court held that these procedures "cannot be conceived exclusively as administrative actions" and called for "full, timely and specialized judicial review".[105] I argued then, and I maintain, that this proposal transferred to the judge functions that belong to the agrarian reform policy of article 64 of the Constitution, and that in a country without agrarian judges it amounted to suspending them. The data on the judicial phase point in that direction: in March 2026, after its restoration, the Agency reported thirteen pending claims, arising from demarcation and clarification proceedings over some 16,874 hectares, of which four had been admitted, three had been declared inadmissible and five still awaited a ruling on admission.[106]

What I believe is that comparative experience allows us to project an asymmetry, which Figure 15 represents. When the State acts against the tenure of a peasant or of a people, judicial review must be automatic and must precede any material effect: no eviction, revocation or forfeiture should be carried out without a land judge having reviewed it. When the State recovers land from those who accumulated or occupied it improperly, the decision can remain administrative and enforceable, with subsequent judicial review at the request of the affected party. Judicial review is a guarantee of the weaker party against the State, and it must be designed to protect that party.

FIGURE 15. Asymmetric judicial review.



Author's elaboration.

The rule has a vulnerability, however. A regressive government can label a peasant an "improper occupant" and recover the land through the administrative route, sheltered precisely by the primacy the rule grants it. That is why the trigger for automatic review cannot be the label the State attaches to the affected person. It has to be the affected person's condition, verifiable under the criteria of article 1 of the UNDROP and of Convention 169, and in case of doubt the presumption must favour judicial review. The question of for whom the judge decides, which the second tension raised as a doctrinal matter, reappears here as the key that determines which regime applies, and land judges will have to answer it case by case.

5.

A GENERALIZING CONCLUSION: ASYMMETRIES AS RULES

The journey reaffirms the conclusion I set out at the beginning of this text: the agrarian jurisdiction is the closest route by which article 12 of the UNDROP, and with it the rights of association, participation and information in its articles 9, 10 and 11, can reach those who live from the land. Where it does not exist, conflict is decided by the register, the civil judge and the criminal judge, and Honduras and Paraguay show what that means. But the agrarian jurisdiction protects to the extent that it orders the inequalities it faces. The good practices I found confirm this, because almost all of them are procedural asymmetries. Table 1 brings them together with the tension each one answers.

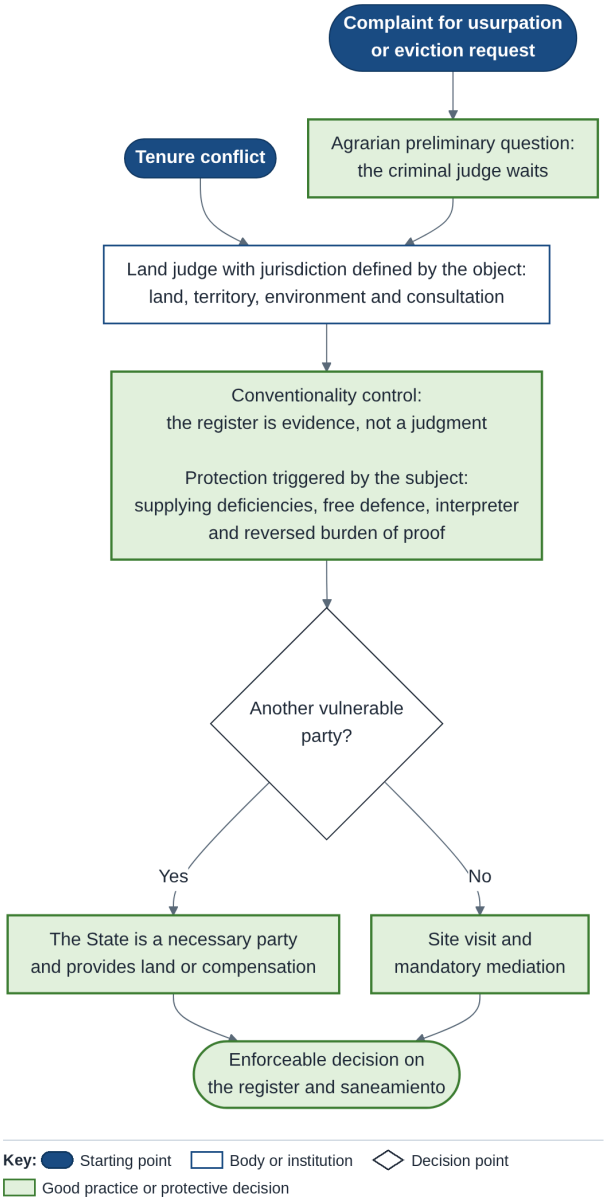
TABLE 1. Good practices in agrarian justice and the asymmetry they establish

Experience	Practice	Asymmetry it introduces	Tension
Brazil, ADPF 828 and Resolution 510	Technical visit and mediation before collective eviction	Eviction waits for mediation	Modest mechanism
Brazil, ADI 3.433	Criminal jurisdiction of the agrarian courts	Charges pass through the land judge	Company and State
Mexico, Agrarian Law	Supplying deficient pleadings, Agrarian Attorney's Office, trial suspended until both parties have counsel	Protection is triggered by the subject	For whom the judge decides
Mexico, Superior Agrarian Court	Itinerant justice	The court goes to the territory	Modest mechanism
Costa Rica, Indigenous Law, art. 5	Relocation or compensation of the non-Indigenous good-faith possessor	The State pays for restitution	Two vulnerabilities
Costa Rica, Agrarian Procedure Code, art. 55	Administrative eviction inadmissible where litigation is pending or occupation exceeds one year	The administration waits for the judge	Teeth and excess
Colombia, Law 1448 of 2011	Presumptions of dispossession and reversal of the burden of proof	The opponent bears the burden of proof	Evidence
Colombia, Judgment C-330 of 2016	Flexible good faith for vulnerable secondary occupants	The vulnerable occupant does not pay for someone else's dispossession	Two vulnerabilities
Colombia, Constitution (arts. 63 and 329) and Decree 2333 of 2014	Inalienable ethnic lands; protection of ancestral possession annotated in the register	The register records ancestral possession and halts allocations	Individual and collective
Panama, Agrarian Code	Collective acquisitive prescription	Communal possession becomes title	Individual and collective
Bolivia, Agro-environmental Tribunal	Ex officio precautionary measures against the State itself	The judge acts without waiting for the parties	Teeth and excess
New South Wales	The Crown proves the land is not claimable	The State bears the burden of proof	Evidence
South Africa, Land Court	Inquisitorial procedure, hearsay and anthropological evidence, State-funded representation	The State finances the evidence	Evidence
Philippines, environmental rules	Early dismissal of harassing criminal actions	The complainant bears the burden of proof	Company and State
Honduras, Property Law, arts. 93 to 102	Communal rights prevail over the titles of third parties who never possessed	The register yields to ancestral possession	Individual and collective

Source: author's elaboration based on the legislation and judgments cited in section 4.

No jurisdiction brings together all of these pieces, and two that I consider indispensable do not appear in complete form in any of them. The first is the mandatory agrarian preliminary question, which would prevent the criminal judge from ordering evictions or advancing prosecutions for usurpation until the land judge has ruled on tenure. The second is an express conventionality control clause, requiring the land judge to set aside ex officio the domestic norms contrary to Convention 169 and to the American Convention, and to treat the register as evidence and not as a judgment. Figure 16 shows how the path of a tenure conflict would change if those two pieces were added to the ones in Table 1.

FIGURE 16. The path of a tenure conflict with procedural asymmetries.



Author's elaboration.

These rules have specific addressees. The legislatures of the region can write them into the agrarian procedure laws they have pending, the Colombian Congress first of all, because its jurisdiction is waiting for precisely that law. Supreme courts and judicial councils can adopt several of them by agreement, as the Brazilian National Council of Justice did with Resolution 510, and the Honduran Supreme Court already considered itself empowered in 2021 to create a complete special jurisdiction by agreement of its Plenary.[107]

Human rights bodies, likewise, can use them to give content to article 12 of the UNDROP, and the Working Group on the rights of peasants has in them an interpretive agenda worth developing. The FAO Voluntary Guidelines already contemplate “introducing specialized tribunals or bodies that deal solely with disputes over tenure rights”, and that paragraph could be completed with the asymmetries such tribunals need.[108]

Open questions remain that this text cannot close. The evidence gathered supports the idea that justice lies further away where there is no agrarian jurisdiction, but it does not demonstrate it through a design that controls for other variables, and most of the data on judicial performance come from institutional or press reports. Nor did I find systematic studies of how the Philippine anti-SLAPP rules, the new South African court or the Costa Rican code after its 2025 reform actually work. And the vulnerability of the asymmetry to political capture, which I pointed out when examining the seventh tension, requires that the definition of the protected subject be kept beyond the reach of the government of the day. These are tasks for comparative research in the coming years, especially for those who carry out research in our Specialization programme in Agrarian Jurisdiction, and for the land judges who, with or without a procedural law, are already deciding these conflicts.

NOTES

1 Tribunal de Justiça do Estado de Minas Gerais, "TJMG e TRF6 encerram conflito fundiário histórico em Minas Gerais", 1 December 2025, https://www.tjmg.jus.br/portal-tjmg/noticias/tjmg-e-trf6-encerram-conflito-fundiario-historico-em-minas-gerais.htm.

2 El Salto, 19 September 2026, https://www.elsaltodiario.com/honduras/ordenan-desalojo-comunidad-garifuna-donde-se-graba-reality-show-supervivientes-telecinco.

3 Inter-American Court of Human Rights (IACtHR), *Caso Comunidad Garífuna de Cayos Cochinos y sus miembros vs. Honduras*, judgment of 20 November 2025, copy in the repository of the Public Defence Service of Argentina (Ministerio Público de la Defensa), https://repositorio.mpd.gov.ar/jspui/bitstream/123456789/6421/1/Comunidad%20Gar%c3%adfuna%20de%20Cayos%20Cochinos%20v.%20Honduras.pdf; date of notification according to La Prensa, 4 March 2026, https://www.laprensa.hn/honduras/condenan-honduras-derechos-garifunas-cayos-cochinos-EI29564642.

4 UNDROP, arts. 12.1, 12.2, 12.3 and 12.5, annexed to General Assembly resolution 73/165 of 17 December 2018, https://digitallibrary.un.org/record/1661560/files/A_RES_73_165-EN.pdf.

5 UNDROP, art. 17.3, ibid.

6 UNDROP, arts. 9.1, 10.1 and 11.1, ibid.

7 Carlos Duarte, *Campesinos, garífunas y pueblos indígenas de Honduras frente a la inafectabilidad. El Decreto 107-2026 y la octava técnica del contrarreformismo agrario latinoamericano*, working paper, Cali, Instituto de Estudios Interculturales, Pontificia Universidad Javeriana, 2026, https://www.javerianacali.edu.co/sites/default/files/2026-10/Campesinos%2C%20gari%CC%81funas%20y%20pueblos%20indi%CC%81genas%20de%20Honduras%20y%20%20inafectabilidad.pdf.

8 Ley de Reforma Agraria (Agrarian Reform Law), Decree-Law 170 of 1974, consolidated text, arts. 56, 58, 60, 61, 63, 137 and 140, Institute for Access to Public Information (Instituto de Acceso a la Información Pública), https://portalunico.iaip.gob.hn/ver_archivo/MTUyMjMzMQ==.

9 CESPAD, Análisis semanal 24, 11 June 2023, https://cespad.org.hn/wp-content/uploads/2023/06/Analisis-semanal-24.pdf; Ley de Propiedad (Property Law), Decree 82-2004, art. 27, copy published by the National Commissioner for Human Rights (CONADEH), https://conadeh.hn/wp-content/uploads/2025/10/Ley-de-Propiedad.pdf.

10 OHCHR, annual report on the situation of human rights in Honduras for 2024, A/HRC/58/23, 3 March 2025, note 50, https://oacnudh.hn/sites/default/files/2026-04/v1_informe-anual-2024.pdf; El Heraldo, 9 October 2021, https://www.elheraldo.hn/honduras/tomas-protestas-invasiones-usurpacion-reformas-codigo-penal-congreso-nacional-OQEH1497382.

11 OHCHR, A/HRC/58/23.

12 Judiciary of Paraguay (Poder Judicial), note of 4 September 2024, https://www.pj.gov.py/notas/26679-ministro-rios-recibio-proyecto-de-ley-que-crea-el-fuero-agrario-y-ambiental.

13 Judiciary of Paraguay, 12 August 2022, https://www.pj.gov.py/notas/22594-charla-para-lideres-indigenas-sobre-alcances-de-ley-683021; BASE-IS, Informe Especial 75, March 2025, https://cdn.biodiversidadla.org/content/download/184835/1337953/file/Violencia%20estatal%20contra%20comunidades%20campesinas%20e%20ind%C3%ADgenas%20marca%20el%20inicio%20de%202025.pdf; BASE-IS and Codehupy, *Derechos Humanos en Paraguay 2024*, chapter on forced evictions, https://ddhh2024.codehupy.org.py/wp-content/uploads/2024/12/DESC-Desalojo-Forzozo.pdf.

14 Palabras del Derecho, 10 December 2024, on Decree 1083 of 2024 and Law 26.160, https://www.palabrasdelderecho.com.ar/articulo/5623/Milei-puso-fin-a-la-emergencia-en-materia-de-posesion-y-propiedad-de-las-tierras-de-comunidades-indigenas-originarias.

15 Law 270 of 1996, art. 202, Régimen Legal de Bogotá, District Legal Secretariat (Secretaría Jurídica Distrital), https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6548.

16 First Constitutional Chamber of Lima, Case File 15652-2017, Resolution 04, 24 September 2024, https://img.lpderecho.pe/wp-content/uploads/2024/09/Exp.-15652-2017-0-1801-JR-CI-03-LPDerecho.pdf; Administrative Resolution 000059-2026-CE-PJ, El Peruano, 14 March 2026, https://busquedas.elperuano.pe/dispositivo/NL/2495727-1.

17 Third Chamber of the Supreme Court of Justice of Costa Rica, Resolution 2020-00479, 24 April 2020, https://desc.scjn.gob.mx/sites/default/files/2023-01/COS66-Sentencia.pdf; Provea, Informe 2022, chapter on land, https://provea.org/wp-content/uploads/2021/05/11-Tierras-2022-1.pdf; Federal Supreme Court of Brazil, ADI 3.433/PA, 2021, https://informativos.trilhante.com.br/julgados/stf-adi-3433-pa.

18 George Pring and Catherine Pring, *Environmental Courts & Tribunals: A Guide for Policy Makers*, Nairobi, UNEP, 2016, UNEP institutional repository, https://wedocs.unep.org/20.500.11822/10001.

19 Brian J. Preston, "Characteristics of successful environmental courts and tribunals", paper presented at the Eco Forum Global Annual Conference, Guiyang, 19 to 21 July 2013, https://lec.nsw.gov.au/documents/speeches-and-papers/characteristics_of_successful_ects_-july_2013.pdf.

20 Ceri Warnock, "Reconceptualising specialist environment courts and tribunals", *Legal Studies* 37(3), 2017, pp. 391 to 417, https://www.cambridge.org/core/journals/legal-studies/article/reconceptualising-specialist-environment-courts-and-tribunals/24D96CDB0427FB08123EDF00E12CBB22.

21 Henry Musa Kpaka, "Chiefs, Courts, and Upholding Property Rights: Quasi-Experimental Evidence from Sierra Leone", *The World Bank Economic Review* 39(2), 2025, pp. 341 to 361, https://ideas.repec.org/a/oup/wbecrv/v39y2025i2p341-361..html.

22 Colombia appears in two branches of the map. It had judges specialized in agrarian matters, in a broad sense, and lost that specialization for decades. Much later it created a justice system specialized in the dispossession linked to the armed conflict, land restitution, without the breadth of an agrarian jurisdiction.

23 REDD-Monitor, 19 June 2020, on the judgment of the Environment and Land Court of 13 May 2020, delivered by Justice Stephen Kibunja, https://redd-monitor.org/2020/06/19/sengwer-and-the-forests-are-one-and-inseparable-despite-court-ruling-indigenous-sengwer-communities-vow-to-remain-in-embobut-forest-kenya/.

24 Environment and Land Court Act No. 19 of 2011, ss. 4, 13 and 20, consolidated version as at 31 December 2022, Kenya Law, https://new.kenyalaw.org/akn/ke/act/2011/19/eng@2022-12-31; Judiciary of Kenya, institutional page of the Environment and Land Court, https://judiciary.go.ke/environment-and-land-court/; Bowmans, 22 September 2026, on the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2026, https://bowmanslaw.com/insights/kenya-national-land-commission-investigation-of-historical-land-injustices-regulations-2026/.

25 Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, New York, Basic Books, 2000.

26 Michael Albertus, *Property Without Rights: Origins and Consequences of the Property Rights Gap*, Cambridge, Cambridge University Press, 2021.

27 Ley de Propiedad (Property Law), Decree 82-2004, art. 27, copy published by CONADEH, https://conadeh.hn/wp-content/uploads/2025/10/Ley-de-Propiedad.pdf.

28 CESPAD, Análisis semanal 24, 11 June 2023, https://cespad.org.hn/wp-content/uploads/2023/06/Analisis-semanal-24.pdf; IACtHR, *Caso Comunidad Garífuna Triunfo de la Cruz y sus miembros vs. Honduras*, judgment of 8 October 2015, Series C No. 305, official summary, https://www.corteidh.or.cr/docs/casos/articulos/resumen_305_esp.pdf.

29 Decree 107-2026, Ley para el Fortalecimiento y Protección del Sector Agroindustrial, Proyectos de Energía, Turismo, Ganadería, Pequeños Productores Agrícolas de Honduras, La Gaceta 37.178, 26 June 2026, arts. 2 and 6, copy posted by the Superior Court of Accounts (Tribunal Superior de Cuentas), https://www.tsc.gob.hn/web/leyes/Decreto-107-2026.pdf.

30 La Tribuna, 6 July 2026, https://www.latribuna.hn/2026/07/06/desalojan-a-invasores-de-oficio-en-san-juan/. The report identifies the company as "Promociones y Turismo".

31 IACtHR, *Caso Comunidad Garífuna de San Juan y sus miembros vs. Honduras*, judgment of 29 August 2023, official summary, https://www.corteidh.or.cr/docs/casos/articulos/resumen_496_esp.pdf.

32 Gabriela Torres-Mazuera, Sergio Madrid and Raúl Benet, *Tres décadas de privatización y despojo de la propiedad social en la Península de Yucatán*, Consejo Civil Mexicano para la Silvicultura Sostenible, briefing note, January 2021, https://imagenagropecuaria.com/revista/wp-content/uploads/2021/02/2020_22_TresDecadasPrivatizacion.pdf, an advocacy document whose figures rely partly on press reports and testimony; Gabriela Torres-Mazuera, Jorge Fernández Mendiburu, José Orvelín Montiel Cortés and Sergio Alberto Salgado Román, *Los Tribunales Agrarios en México: a la luz de los derechos humanos de los pueblos indígenas y campesinos*, Washington, Due Process of Law Foundation, c. 2020, https://back.dplf.org/sites/default/files/informe_tribunales_agrarios_final.pdf.

33 Tania Murray Li, *Land's End: Capitalist Relations on an Indigenous Frontier*, Durham, Duke University Press, 2014.

34 Political Constitution of Colombia, arts. 63 and 329, Senate Secretariat, http://www.secretariasenado.gov.co/senado/basedoc/constitucion_politica_1991.html; Law 70 of 1993, art. 7, Senate Secretariat, http://www.secretariasenado.gov.co/senado/basedoc/ley_0070_1993.html.

35 Decree 2333 of 2014, of 19 November, arts. 1, 3 and 5, FAOLEX, https://faolex.fao.org/docs/pdf/col142218.pdf. The decree assigned the measure to INCODER; its land functions later passed to the National Land Agency.

36 Property Law, arts. 93 to 102, 110 and 111.

37 Agrarian Code of Panama, Law 55 of 2011, Judicial Branch (Órgano Judicial), https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2016/11/Código-Agrario-2.pdf.

38 Ley Indígena (Indigenous Law), Law 6172 of 1977, art. 3, vLex, https://vlex.co.cr/vid/ley-n-6172-indigena-652624857; First Chamber of the Supreme Court of Justice of Costa Rica, Resolution 000274-F-SI-2011, 17 March 2011, https://salaprimera.poder-judicial.go.cr/phocadownload/Textos_fallos_relevantes/Agrario/274-2011.pdf; CRHoy, 19 October 2022, on vote 2022-024725 of the Constitutional Chamber, https://crhoy.com/nacionales/sala-iv-declara-sin-lugar-a-accion-sobre-ley/.

39 UNDROP, art. 17.3; FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome, 2012, paras. 3.1 and 5.3, https://www.fao.org/4/i2801e/i2801e.pdf.

40 Pierre Rosanvallon, *La légitimité démocratique. Impartialité, réflexivité, proximité*, Paris, Seuil, 2008; English translation, *Democratic Legitimacy: Impartiality, Reflexivity, Proximity*, Princeton, Princeton University Press, 2011.

41 Decree 107-2026.

42 María Vanessa Fisher González, "El Derecho Agrario: una ciencia que respondió a su origen y que supo mirar al futuro", *Revista de Ciencias Jurídicas*, special 60th anniversary issue, University of Costa Rica, 2023, https://revistas.ucr.ac.cr/index.php/juridicas/article/download/57451/57935/256128, which reconstructs the theory of agrarianness (*agrarietà*) presented by Carrozza in 1972 and developed in *Problemi generali e profili di qualificazione del diritto agrario* (1975), and its reception in Ricardo Zeledón, *Derecho Agrario Contemporáneo*, San José, IJSA, 2015.

43 Ley Agraria (Agrarian Law), arts. 135, 136, 164, 179, 185 and 189, current text published by the Chamber of Deputies, last amended 14 November 2025, https://www.diputados.gob.mx/LeyesBiblio/pdf/LAgra.pdf. Article 164 was amended on 1 April 2024.

44 Superior Agrarian Court (Tribunal Superior Agrario), Informe de Labores 2025, presented on 27 March 2026, https://www.tribunalesagrarios.gob.mx/ta/informe/2026/informe2025.pdf.

45 INEGI, Censo Nacional de Impartición de Justicia Federal 2025, agrarian justice results, https://www.inegi.org.mx/contenidos/programas/cnijf/2025/doc/resultados_just_agraria_cnijf_2025.pdf; Gabriela Torres-Mazuera, Claudia Gómez and Jorge Fernández, *Informe sobre la jurisdicción agraria y los derechos humanos de los pueblos indígenas y campesinos en México*, Washington, Due Process of Law Foundation, 2018, https://indignacion.org.mx/wp-content/uploads/2018/08/informe-jurisdiccion-agraria.pdf.

46 UNDROP, art. 1.1.

47 Publimetro, 8 September 2026, on the statement by Minister Indalecio Dangond before the economic committees of Congress, https://www.publimetro.co/noticias/2026/09/08/ministro-de-agricultura-reniega-de-la-palabra-campesino-y-defiende-polemica-decision-de-su-administracion-es-despectivo/.

48 Allan Bolívar Lobato, Alen Castaño Rico, Carlos Arturo Duarte Torres and Juan David Jaramillo, "Conflictos territoriales rurales en las fronteras interétnicas e interculturales de tres departamentos fronterizos de Colombia", *Estudios Fronterizos* 26, 2025, e171, https://doi.org/10.21670/ref.2513171, based on the National Land Agency's conflicts database as updated on 22 August 2024.

49 Carlos Arturo Duarte (coord.), *Desencuentros territoriales*, vol. I, *La emergencia de los conflictos interétnicos e interculturales en el departamento del Cauca*, Bogotá, ICANH and Pontificia Universidad Javeriana Cali, 2015; Carlos Duarte, "Los conflictos territoriales y la urgencia de una Jurisdicción Agraria", La Silla Vacía, Red Rural, 2 August 2017, https://www.lasillavacia.com/red-de-expertos/red-rural/los-conflictos-territoriales-y-la-urgencia-de-una-jurisdiccion-agraria/.

50 Charles R. Hale, "Rethinking Indigenous Politics in the Era of the 'Indio Permitido'", *NACLA Report on the Americas* 38(2), 2004.

51 Carlos Duarte, *Hacia una antropología del Estado colombiano: descentralización y gubernamentalidad multicultural*, Cali, Sello Editorial Javeriano, Pontificia Universidad Javeriana Cali, 2018.

52 Legislative Act 01 of 2023, Senate Secretariat, https://www.secretariasenado.gov.co/senado/basedoc/acto_legislativo_01_2023.html.

53 Indigenous Law, Law 6172 of 1977, art. 5. The law assigned relocation and expropriation to ITCO, the predecessor of the present INDER.

54 Moya Aburto and Sivas Sivas, *Revista Rupturas* 16(1), 2026, https://revistas.uned.ac.cr/index.php/rupturas/article/download/6376/9079/35595.

55 Third Chamber of the Supreme Court of Justice of Costa Rica, Resolution 2020-00479.

56 Delfino, 7 June 2026, https://delfino.cr/2026/06/organizacion-bribri-denuncia-nueva-orden-de-desalojo-contra-familias-recuperadoras-en-salitre. The description of the beneficiary as non-Indigenous is that of the complainant organization.

57 IACtHR, *Caso Pueblos Indígenas Kuna de Madungandí y Emberá de Bayano y sus miembros vs. Panamá*, judgment of 14 October 2014, Series C No. 284, official summary, https://www.corteidh.or.cr/docs/casos/articulos/resumen_284_esp.pdf.

58 Constitutional Court of Colombia, Judgment C-330 of 2016, Justice Rapporteur María Victoria Calle Correa, 23 June 2016, https://www.corteconstitucional.gov.co/relatoria/2016/C-330-16.htm.

59 Law 073 on Jurisdictional Demarcation (Ley de Deslinde Jurisdiccional), of 29 December 2010, art. 10, https://bolivia.infoleyes.com/norma/2769/ley-de-deslinde-jurisdiccional-073.

60 Saturnino M. Borras Jr. and Jennifer C. Franco, "Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis", *Journal of Agrarian Change* 12(1), 2012.

61 James Fairhead, Melissa Leach and Ian Scoones, "Green Grabbing: a new appropriation of nature?", *Journal of Peasant Studies* 39(2), 2012, https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/3864.

62 Agreement CNDS-002/2023 of the National Defence and Security Council, La Gaceta 36.253, 13 June 2023, https://api.iaip.gob.hn/ver_archivo/MTc4NjUwOQ==; TuNota, 6 June 2023, https://www.tunota.com/honduras-hoy/gobierno-crea-comision-seguridad-agraria-desalojo-tierras-productivas-invadidas-2023-06-06.

63 Decree 107-2026, arts. 6 and 7.

64 Decree 84-2026, La Gaceta 37.148, 22 May 2026, copy posted by the Superior Court of Accounts, https://www.tsc.gob.hn/web/leyes/Decreto-84-2026.pdf; CESPAD, Análisis semanal, 13 July 2026, https://cespad.org.hn/wp-content/uploads/2026/07/Analisis-Semanal-13-de-julio-de-2026.pdf.

65 El Heraldo Plus, 20 September 2024, with Global Witness data, https://www.elheraldo.hn/elheraldoplus/data/mitad-crimenes-ambientalistas-honduras-en-impunidad-BA21564252.

66 IACtHR, *Caso Comunidad Garífuna de Cayos Cochinos y sus miembros vs. Honduras*, judgment of 20 November 2025, paras. 47, 50, 56, 57, 61, 62 and 63.

67 Torres-Mazuera, Madrid and Benet, *Tres décadas de privatización y despojo*.

68 SuperKalam, summary of an *Indian Express* article of 26 February 2026, https://superkalam.com/current-affairs/26-02-2026/ngt-has-space-for-experts-most-of-them-now-are-former-govt-officers-pg9-6b52ffd1-fa52-45c8-bcfc-e965c112b4c1.

69 Confederação da Agricultura e Pecuária do Brasil, initial petition against Resolution 510, via JOTA, https://images.jota.info/wp-content/uploads/2023/08/adi-cna-resoluccca7acc83o-cnj-no-510-2023.pdf; Colégio Notarial do Brasil, São Paulo Section, 14 November 2024, https://cnbsp.org.br/2024/11/14/cnj-comissao-de-solucoes-fundiarias-aprova-notas-tecnicas-para-orientar-tribunais/.

70 Federal Supreme Court of Brazil, ADI 3.433/PA, Justice Rapporteur Dias Toffoli, 2021, https://informativos.trilhante.com.br/julgados/stf-adi-3433-pa.

71 Supreme Court of the Philippines, Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, 13 April 2010, Rule 1, s. 4(g), Rule 6 and Rule 19, https://lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html.

72 Syahruddin et al., *Pandecta Research Law Journal*, 18 December 2025, https://journal.unnes.ac.id/journals/pandecta/article/download/29495/10995; Human Rights Watch, 23 July 2026, https://www.hrw.org/news/2026/07/23/philippines-rights-advocates-in-mining-areas-face-prosecution; Supreme Court of the Philippines, *FCF Minerals Corporation v. Lunag*, G.R. No. 209440, 15 February 2021, summary, https://jur.ph/jurisprudence/summary/fcf-minerals-vs-lunag-et-al.

73 ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 10.2 and 18, https://www.ohchr.org/en/instruments-mechanisms/instruments/indigenous-and-tribal-peoples-convention-1989-no-169.

74 Land Court Act 6 of 2023, ss. 8, 12, 14, 16, 21 and 29, Government Gazette 49372, 27 September 2023, https://www.gov.za/sites/default/files/gcis_document/202310/49372landcourtact62023.pdf; Proclamation Notice 162 of 2024, https://www.acts.co.za/the-land-court-act-2023/proc162_proclamation_notice_16.

75 Parliamentary Monitoring Group, reply to question NW4033, 17 August 2026, https://pmg.org.za/committee-question/39904/; News24 and GroundUp, 21 August 2026, https://news24.com/southafrica/news/28-years-later-thousands-of-land-claims-still-outstanding-20260821-0494.

76 Agrarian Procedure Code of Costa Rica (Código Procesal Agrario), Law 9609, arts. 28, 33, 48 and 59, FAOLEX, https://faolex.fao.org/docs/pdf/cos191065.pdf; Agrarian Law of Mexico, art. 189.

77 Bowmans, 22 September 2026.

78 Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, Chicago, University of Chicago Press, 2006.

79 Land and Environment Court of New South Wales, page on Aboriginal land claims, https://lec.nsw.gov.au/your-legal-problem-is-about---/aboriginal-land-claims.html; Land and Environment Court, Annual Review 2025, https://lec.nsw.gov.au/content/dam/dcj/ctsd/lec/documents/annual-review/Land_and_Environment_Court_Annual_Review_2025.pdf. Sixteen Aboriginal land claims were filed with the court in 2025.

80 Law 1448 of 2011, arts. 76 to 79, 88 and 91, Senate Secretariat, https://www.secretariasenado.gov.co/senado/basedoc/ley_1448_2011_pr001.html; El Tiempo, 10 June 2026, with statistics from the Land Restitution Unit, https://www.eltiempo.com/justicia/paz-y-derechos-humanos/la-restitucion-de-tierras-cumple-15-anos-se-han-entregado-727-mil-hectareas-pero-miles-aun-esperan-justicia-3563464.

81 El Tiempo, 10 June 2026; El Tiempo, 24 March 2025, https://www.eltiempo.com/politica/proceso-de-paz/agudizacion-del-conflicto-armado-impediria-cumplir-metas-de-restitucion-de-tierras-al-2031-urt-3438134.

82 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), art. 8.3(e), United Nations Treaty Collection, https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf.

83 Agrarian Procedure Code, Law 9609, arts. 2, 282 and 283, FAOLEX, and text as amended by Law 10779, third-party reproduction, https://bufetedecostarica.com/wp-content/uploads/2026/05/reforma-de-varios-articulos-de-la-ley-9609-codigo-procesal-agrario_10779.pdf; Law 10344, which sets the date of entry into force as 28 February 2025, third-party

reproduction, https://bufetedecostarica.com/wp-content/uploads/2026/10/ley-10344_ley-de-vacancia-de-la-ley-9609-codigo-procesal.pdf; El Observador, 14 February 2023, https://observador.cr/falta-de-dinero-atrasaria-por-tercera-vez-implementacion-de-codigo-procesal-agrario-aprobado-en-2018/.

84 Delfino, bill file 24.818, https://delfino.cr/asamblea/proyecto/24818; Colegio de Abogados y Abogadas de Costa Rica, Opinion 002-2025, 9 July 2025, https://abogados.or.cr/uploads/CMS/pronunciamientos/2025/JD-07-574-25.pdf.

85 Judiciary of Costa Rica, Anuario de Estadísticas Judiciales 2012, agrarian courts, https://planificacion.poder-judicial.go.cr/images/judiciales/Anuario_Judiciales_2012/PDFs/comentarios/30.JUZGADOS%20AGRARIOS.pdf.

86 Agrarian Code of Panama, Law 55 of 2011, arts. 159, 160, 167, 169 and 179; Judicial Branch of Panama and AMEXCID, sheet for the Mexico and Panama cooperation project on the Agrarian Code, c. 2023, https://www.organojudicial.gob.pa/uploads/blogs.dir/5/2023/12/412/proyecto-codigo-agrario-comixta-panama-mexico.pdf; Judicial Branch, Dependencias judiciales 2022, https://www.organojudicial.gob.pa/uploads/blogs.dir/1/2023/04/456/dependencias-judiciales-2022.pdf.

87 Pereira Gaviria, Parra Sariego and Martínez Hernández, *La justicia agraria y rural en Colombia: retos y posibilidades en la garantía de los derechos campesinos*, Corporación Universitaria Remington, 2025, https://repositorio.uniremington.edu.co/bitstreams/f2654172-9e75-4cf5-9f09-2a68f91cd90e/download; Decree 2303 of 1989, https://normas.cra.gov.co/gestor/docs/decreto_2303_1989.htm; Law 270 of 1996, art. 202.

88 Legislative Act 03 of 2023, https://www1.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=214630; Law 2570 of 2026, text published by the Universidad del Rosario, https://urosario.edu.co/sites/default/files/2026-04/ley-no.-2570-del-27-de-marzo-de-2026.pdf; Constitutional Court, Judgment C-099 of 2026, as reported by Pérez-Llorca, 12 May 2026, https://www.perezllorca.com/es-co/actualidad/boletin/la-corte-constitucional-impulsa-la-implementacion-de-la-jurisdiccion-agraria-y-rural-a-partir-de-2027/; Senate of the Republic, press release of June 2026, https://www.senado.gov.co/index.php/el-senado/noticias/7426-jurisdiccion-agraria-el-congreso-finaliza-periodo-sin-aprobar-el-codigo-procesal-para-el-campo; Portafolio, 18 June 2026, https://www.portafolio.co/economia/gobierno/jurisdiccion-agraria-que-vendria-para-la-iniciativa-luego-de-su-inminente-hundimiento-en-el-congreso-496464, which records it as the fifth bill shelved since 2020.

89 Juan Camilo Ortega Betancur and Carlos Arturo Duarte Torres, "La jurisdicción agraria diferida. Notas sobre la Sentencia C-099 de 2026 y el arreglo institucional del Procedimiento Único", working paper, Cali, Instituto de Estudios Interculturales, Pontificia Universidad Javeriana, 2026.

90 Federal Supreme Court of Brazil, ADPF 828, fourth incidental provisional relief, endorsed by the Plenary on 2 November 2022, Informativo 1075, https://informativos.trilhante.com.br/informativos/informativo-1075-stf/stf-adpf-828-tpi-quarta-ref-df.

91 Conselho Nacional de Justiça, Resolution 510 of 26 June 2023, arts. 1, 2 and 9 to 16, https://cnbsp.org.br/2023/06/29/dje-cnj-regulamentada-a-criacao-das-comissoes-de-solucoes-fundiarias-e-diretrizes-para-litigios-possessorios-e-despejos-em-imoveis-de-populacoes-vulneraveis/; Colégio Notarial do Brasil, São Paulo Section, 12 December 2024, https://cnbsp.org.br/2024/12/12/cnj-solucao-de-embates-fundiarios-precisa-respeitar-direitos-fundamentais-afirma-barroso/.

92 Administrative Resolution 000059-2026-CE-PJ.

93 Colégio Notarial do Brasil, São Paulo Section, 14 November 2024.

94 Palabras del Derecho, 10 December 2024.

95 Kpaka, "Chiefs, Courts, and Upholding Property Rights".

96 IACtHR, *Caso Comunidad Garífuna de Punta Piedra y sus miembros vs. Honduras*, judgment of 8 October 2015, Series C No. 304, official summary, https://www.corteidh.or.cr/docs/casos/articulos/resumen_304_esp.pdf; IACtHR, joint resolution monitoring compliance in the Punta Piedra and Triunfo de la Cruz cases, 30 April 2021, https://www.corteidh.or.cr/docs/supervisiones/ComGarifunasPPyTDLC_30_04_21.pdf; OHCHR, annual report on Honduras for 2025, A/HRC/61/19, 4 February 2026, paras. 66 and 67, https://oacnudh.hn/sites/default/files/2026-04/2025-informe-sobre-derechos-humanos-en-honduras-2.pdf.

97 La Prensa and EFE, 19 September 2026, https://www.laprensa.hn/honduras/piden-honduras-cumpla-sentencias-corteidh-favor-cuatro-pueblos-garifunas-PG32079688; Criterio, reproduced by Biodiversidad en América Latina, "Más de 70 días de resistencia garífuna ante un Estado negligente", 21 October 2026, https://www.biodiversidadla.org/Articulos/Mas-de-70-dias-de-resistencia-garifuna-ante-un-Estado-negligente.

98 African Court on Human and Peoples' Rights, compliance order in Application No. 006/2012, 4 December 2025, https://african-court.org/cpmt/storage/app/uploads/public/694/2cb/bb4/6942cbbb4388d548598027.pdf.

99 IACtHR, *Caso Almonacid Arellano y otros vs. Chile*, judgment of 26 September 2006, Series C No. 154; IACtHR, *Caso Norín Catrimán y otros (Dirigentes, miembros y activista del Pueblo Indígena Mapuche) vs. Chile*, judgment of 29 May 2014, official summary, https://www.corteidh.or.cr/docs/casos/articulos/resumen_279_esp.pdf.

100 Fundación TIERRA, *Incendios forestales 2024*, 2025, https://mail.ftierra.org/index.php/publicacion/libro/attachment/258/52; Mongabay, 9 September 2025, https://es.mongabay.com/2025/09/bolivia-tribunal-agroambiental-medidas-cautelares-incendios/.

101 Agro-environmental Tribunal, Auto Definitivo JAC 01/2022, 8 April 2022, https://juristeca.com/bo/tribunal-agroambiental-bolivia/auto/2022/4/resolucion-recurrida-auto-definitivo-n-jac-/fjii1-iii-competencia-de-los-juzgados-agroambientales-en-predios-que-se-encuentran-en-proceso-de-saneamiento; Fundación Solón, *Tunupa* 123, 2022, https://fundacionsolon.org/wp-content/uploads/2026/07/TUNUPA-123-ABC-AMBIENTAL_compressed.pdf.

102 INEGI, Press release 36/26, 2 July 2026, https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2026/cnijf/CNIJF-JA2025_CP.pdf.

103 Eastleigh Voice, 9 December 2025, with data from the Kenyan Judiciary, https://eastleighvoice.co.ke/land%20cases/252081/senate-bill-proposes-two-year-deadline-for-land-court-cases.

104 Decree-Law 902 of 2017, arts. 58 to 61; Constitutional Court, Judgment C-294 of 2024, press release 30 of 17 and 18 July 2024, which struck down numeral 6 and paragraph 3 of article 61 of Law 2294 of 2023, https://www.corteconstitucional.gov.co/relatoria/2024/c-294-24.htm; Ángela María Molina Palacio and Óscar Giampiero Polo Serrano, *La jurisdicción agraria y rural a partir de la Sentencia C-099 de 2026*, Cali, Pontificia Universidad Javeriana, 2026, https://www.javerianacali.edu.co/sites/default/files/2026-06/JAR_sentencia.pdf, on the transitional jurisdiction defined in Judgment C-073 of 2018.

105 Supreme Court of Justice of Colombia, Civil, Agrarian and Rural Cassation Chamber, observations on Bill 398 of 2024 (House) and 183 of 2024 (Senate), Gaceta del Congreso 468, 14 May 2026, via Ámbito Jurídico, https://www.ambitojuridico.com/sites/default/files/2026-05/PL-398-24C-1832-4S-COMENTARIOS-CSJ%28JURISDICCION-AGRARIA%29.pdf; Supreme Court of Justice, statement of 14 May 2026, https://www.ambitojuridico.com/sites/default/files/2026-05/Comunicado-ObservacionesCSJReformaAgraria-26.pdf.

106 Molina Palacio and Polo Serrano, *La jurisdicción agraria y rural a partir de la Sentencia C-099 de 2026*, based on the National Land Agency's report for the hearing in case file D-0016791, 9 March 2026. One of the thirteen claims had been referred to the Supreme Court because of a conflict of jurisdiction.

107 Agreement CSJ-01-2021 of 14 June 2021, La Gaceta 35.628, 15 June 2021, copy posted by the Superior Court of Accounts, https://www.tsc.gob.hn/web/leyes/Acuerdo-CSJ-01-2021.pdf. It concerned the jurisdiction of the Employment and Economic Development Zones (ZEDE).

108 FAO, *Voluntary Guidelines*, para. 21.2.

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