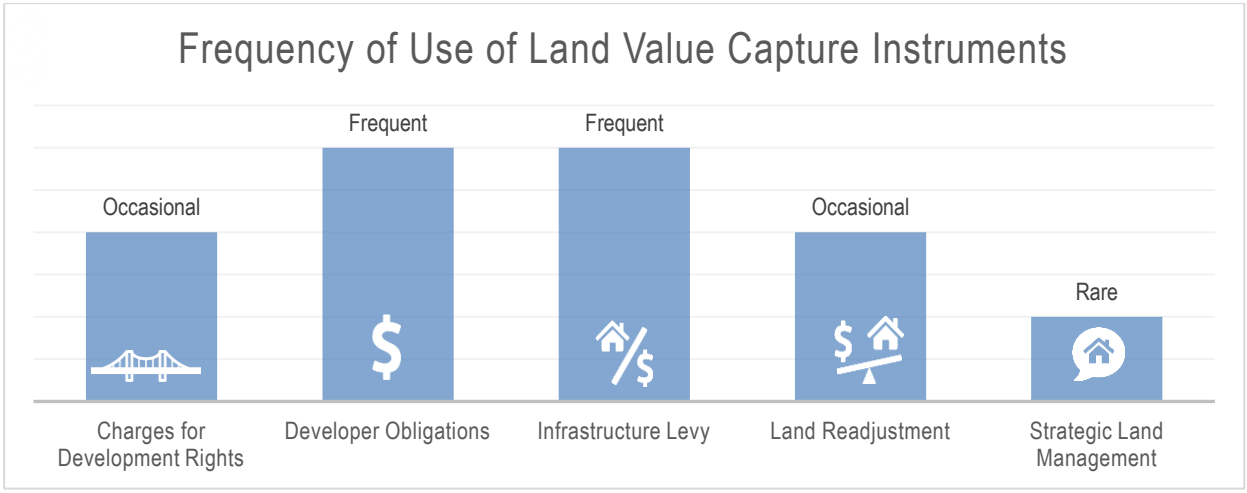
Colombia



Several land value capture instruments are used systematically in Colombia (Table 1). The capital city, Bogotá, and about ten other cities concentrate the most relevant experience. However, more than 100 cities would have the potential to use land value capture considering their size and socioeconomic dynamics. Three main obstacles limit the broader use of land value capture. Landowners' resistance, local governments' lack of administrative capacity and national regulations that reduce the powers of local governments.

Main instruments

Instrument (OECD-Lincoln terminology)	Local name	National legal provision	Implementation	Use
Infrastructure levy	*Contribución de valorización*	*Law 25*/1921; *Law 113*/1937; *Law 1*/1943; and *Decree 1604*/1966	National government, departments and local governments	Frequent
Developer obligations	xxx	Articles 15 and 37 of *Law 388*/1997	Local governments	Frequent
Charges for development rights	*Participación en plusvalías*	Articles 50 and 88 of *Law 388*/1997	Local governments	Occasional
Land readjustment	xxx	Article 77 of *Law 9*/1989	Landowners, developers or public entities through real estate trusts	Occasional
Strategic land management	xxx	Article 70 of *Law 9a*/1989	Local and metropolitan governments through land banks	Rare

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Enabling framework

Colombia is a unitary state with three levels of government: the national level, 32 departments and the Capital District of Bogotá as well as 1,103 municipalities (OECD/UCLG, 2019[1]). The Constitution assigns the competence of regulating land use to municipalities. Land-use plans and land management instruments are regulated by national law and approved by municipal councils at the mayor's initiative. The national government has sometimes tried to take more control over municipal regulations through laws and decrees, but the Constitutional Court has generally privileged municipal autonomy.

According to Article 58 of the Constitution, property has a social function, which implies obligations. An ecological dimension is inherent to property. When a law enacted for reasons of social interest conflicts with the rights of individuals, the social interest prevails. Moreover, the Constitution establishes as a collective right public entities' participation in land value increases resulting from public actions.

Infrastructure levy

Landowners pay a levy (*contribución de valorización*) for infrastructure built by the government and from which they specifically benefit, for example public roads, public transport, public utilities and green space. All levels of governments implement the levy and receive the revenues. The levy dates back to 1921 and has been widely used in large and intermediate cities to finance road infrastructure. Despite some resistance in specific municipal contexts; delays in public works' delivery or criticism of its calculation and distribution methods, the levy remains a crucial and frequently used instrument.

The levy amounts to the estimated total cost of public works. The law also allows recovering up to 30% of the levy's administrative costs, but local governments rarely charge more than 10%. To identify landowners who will benefit and be charged, local governments estimate the distance within which public works increase land values using market-based approaches. Local governments use different criteria to estimate public works' area of influence and the distribution of costs among landowners, such as the distance to the new infrastructure, size, shape and land use of landowners' properties. When benefit criteria other than land value increases were used (for example improvements in the city's general accessibility), there was greater public opposition and discussion. Landowners' ability to pay and their socioeconomic characteristics are also taken into account to set the amount each landowner has to pay. Lower-income landowners and church properties are granted exemptions.

The levy can be charged in advance or up to five years upon public works' completion. If infrastructure is not provided as originally planned or within the due date, the money is returned to landowners. There are mechanisms for citizen participation in the monitoring of the levy's collection and public works' execution.

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Developer obligations

Developers are subject to obligations (*obligaciones o cargas urbanísticas*) to obtain approval for new development or densification. The obligations mainly consist of land dedications for public uses, such as roads, public space and social facilities. Alternatively, they can be equivalent cash payments. The obligations are designed to compensate the cost of stronger public infrastructure and services use resulting from private development. National-level legislation establishes the general guidelines, and local master plans elaborate them. Local governments implement the obligations and receive the land or revenues.

Developer obligations are widely used for new development but more controversial for densification. Nevertheless, several cities apply them. In large cities like Bogotá they allow to recover a relatively large share of the land value increase in urban expansion projects but a lower share in urban renewals.

The obligations must not exceed the land value increase development approvals generate. Local governments also determine whether it is feasible to extend public service networks, road infrastructure and the necessary additional public space.

Local governments use different methods to calculate the obligations. National law does not establish specific norms. For instance, some local governments use formulas based on a percentage of the land developed or on standards (for example square metres per inhabitant), multiplied by the cadastral value or by market prices using mass appraisal. It has been customary to use the rule adopted in Bogotá in 2000, which requires land provisions of 17% of private development areas for public space and 8% for social facilities, plus the land necessary for local roads. Developers can pay the equivalent value in cash when their developments are very small or are densifications. Local governments must use the revenues to create public space, build public roads or buy land in protected environmental areas.

For urban expansion projects, national law also requires that at least 20% of development areas is dedicated to affordable housing. Affordable units should have a maximum price of 90 legal minimum wages (one monthly minimum wage is around USD 300) and should be for households with monthly incomes of up to two minimum wages. This land requirement for affordable housing automatically applies in municipalities with over 100,000 inhabitants or located in the area of influence of cities with over 100,000 inhabitants. It is accepted that land destined for affordable units can be transferred to other development projects or paid in cash to the municipal entities responsible for social housing programmes.

Charges for development rights

Participación en plusvalías

Law 388 of 1997 established the *participación en plusvalías* as the main instrument for land value capture. It allows local governments to recover between 30% and 50% of the land value increase resulting from changes in land-use regulations or building indexes (the number of square metres that can be built on a plot).

However, the instrument has faced problems because of the difficulty to estimate land value increases and complex legal requirements and procedures. As a result, the governments of the largest cities have strengthened the alternative of developer obligations (see section above).

Edificabilidad básica y adicional

Law 388 of 1997 allows the sale of development rights beyond an established baseline but within the maximum density local plans permit. This instrument may also serve as an alternative collection mechanism for the *participación en plusvalías* (*pago de la participación en plusvalías mediante derechos de construcción,* Article 2.2.4.1.5.2 of *Decree 1077/2015*).

Law 9 of 1989 allows the transfer of development rights to other plots to ensure equitable treatment among landowners when private land is declared for public use or environmental or architectural protection.

However, no city has so far used these three instruments.

Land readjustment

Land readjustment is used for incorporating rural land into urban development and for urban renewal. Usually, landowners, developers or public entities set up a real estate trust to implement a readjustment project. The legislation dates back to 1989, but land readjustment's use started in 1997 and became more widespread in recent years after a long process of trial and error. Landowners are actively involved in readjustment projects through associations. This facilitated large urban operations recently.

Land readjustments follow partial plans, which may be a public or private initiative the municipal planning office approves. Partial plans are mandatory for urban expansion projects in any municipality and for urban renewals when so established in municipal plans. In partial plans local governments may make mandatory the formation of *unidades de actuación urbanística* ('urban action units'), which must be developed through land readjustment. The original plots cannot obtain individual building permits. Local governments establish in their zoning plans the minimum areas required for partial plans and *unidades de actuación urbanística*.

Partial plans can be approved without the participation or consent of all affected landowners. However, for land readjustments the approval of landowners who own at least 51% of the *unidades de actuación urbanística* area is required. Once this requirement is met, local governments can expropriate landowners who do not consent. However, this alternative/expropriation has generated resistance, especially in urban renewal projects.

Local governments finance land readjustments' urbanisation costs through developer obligations (see section above), with an equitable distribution of burden and benefits among landowners. Landowners must provide a share of their plots for public improvements and services, such as roads, utilities, schools, parks and green space. Moreover, for urban expansion projects, at least 20% of the partial plan area must be allocated to affordable housing. Local governments may also set baseline and maximum building indexes in readjustment areas and charge landowners for development rights beyond the baseline but within the maximum (see section above).

After readjustment, landowners receive a plot with a value and area proportional to their original holdings and located on or as close as possible to their original land. However, landowners may receive a residential or commercial unit instead of their original ground plots. They can exchange reallocated plots for cash. Owners of readjusted plots that

are less valuable than original plots do not receive any compensation. Conversely, owners of readjusted plots that are more valuable are not required to pay any compensation. Third party investors can buy readjusted plots.

Land readjustment is usually more effective than strategic land management (see section below) because it involves landowners' participation to obtain land for public improvements or services. Nevertheless, three main obstacles limit readjustment projects: landowners' resistance, local governments' lack of administrative capacity and the lack of temporary resettlement options for affected landowners during readjustments in urban renewal projects.

Strategic land management

The priority of strategic land management in Colombia is to create land banks for affordable and social housing. Other aims include environmental protection, urban development, creating urban public spaces, regularising informal settlements and relocating settlements. Local and metropolitan governments manage land banks in line with national regulations. The legislation dates back to 1989, but land banks have rarely been used.

Plots for land banks are expropriated or bought through preemption rights (*derecho de preferencia*). In areas local plans previously designate, landowners who want to sell their plots must first offer them for sale to the municipal entity in charge of housing programmes. The entity has three months to accept or refuse the sale offer.

Regarding expropriation, local governments can decide to expropriate land at the price before the announcement of a public project. This instrument (known as 'project announcement') is part of the expropriation process and allows recovering the increase in land values public projects generate.

After acquisition, land is retained for five years on average, rezoned and developed by the government or private developers, which raises land prices. When private developers develop the land, it is urbanised and sold to them through tenders that involve criteria beyond the sales price, such as the construction of affordable and social housing. The government recovers investments in land purchase and development through the sale of rezoned and developed plots.

Strategic land management is hampered by the lack of resources for land purchases, local governments' lack of administrative capacity, delays in judicial expropriations and high compensations for expropriations.