

PRIVATIZATION STRATEGIES OF PUBLIC SPACES IN THE BEACHES OF SANTA MARTA, COLOMBIA

ESTRATÉGIAS DE PRIVATIZAÇÃO DOS ESPAÇOS PÚBLICOS NAS PRAIAS DE SANTA MARTA, COLÔMBIA

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Abstract

Pozos Colorados is a beach in the city of Santa Marta (Colombia) whose tourism and real estate expansion process does not follow any coastal urban management plan. This generates large socio-environmental impacts, such as the displacement of artisanal fishermen, the degradation of mangrove areas, and land and coastal grabbing of public spaces. One of the causes for the absence of planning is the regulatory gap for the coastal zone since Colombia lacks specific regulation for marine-coastal territorial management. Regulation is fragmented, and the territorial entities, responsible for sanctioning and recovering beach spaces

Resumo

Pozos Colorados, na cidade de Santa Marta (Colômbia), é uma praia cujo processo de expansão turística e imobiliária não obedece ao planejamento urbano-costeiro, gerando grandes impactos socioambientais, tais como o deslocamento de pescadores artesanais, a degradação de áreas de mangue e a grilagem de terras em espaços públicos. Uma das causas dessa falta de planejamento é o vazio regulamentar da zona costeira, uma vez que o país não dispõe de um regulamento específico para o ordenamento do território costeiro-marítimo. A regulamentação existente é fragmentada e as autoridades territoriais, que têm o dever de sancionar e recuperar áreas de praia, não cumprem com suas obrigações – no caso



do not fulfill their responsibilities—in the case of Pozos Colorados—even when violations are documented or visible. Given a general state of impunity, in order to create exclusive access to the beaches that surround large real estate projects in the sector, some condominiums use a type of legal simulation to convince beach users that certain public spaces are reserved for the exclusive use of condominium owners. By analyzing primary information, secondary data, and direct observation, this article illustrates one of these strategies.

Keywords: cultural rights; land use; open space; tourism

de Pozos Colorados –, mesmo quando as infrações estão documentadas ou à vista de todos. No meio de um panorama de impunidade, e para oferecer um acesso mais exclusivo às praias que rodeiam os grandes projetos imobiliários do setor, alguns condomínios da zona recorrem a simulacros para convencer os frequentadores das praias de que determinados espaços públicos são de uso exclusivo de seus condôminos. Este artigo ilustra uma dessas estratégias utilizando o método de análise de informações primárias, de dados secundários e de observação direta.

Palavras-chave: direitos culturais; espaço aberto; turismo; uso da terra.

Introduction

Santa Marta, the capital of the Magdalena department in Colombia, is a coastal city on the Caribbean Sea, and a national and international tourist destination. Pozos Colorados is an important area for urban and tourist expansion. Originally, it served as a passage for the fishermen of the region (Santa Marta, Ciénaga, Guajira) and a center of activity for the fishermen from Gaira.

In the 1980s, following construction of the coal port, the Pozos Colorados pipeline, and the beginning of tourist housing projects, the fishermen progressively moved to other areas. Nonetheless, artisan fishing in the sector persists today, albeit in very small numbers. Pozos Colorados also has natural coastal wetlands, formerly composed by three brackish lagoons, known as the El Dulcino fluvial-marine system, which has since been drastically altered, despite legal protection measures offered by the municipality.

Currently, the whole sector is undergoing a transformation into a tourist enclave accompanied by the privatization of access to coastal areas. Land occupation on Pozos Colorados beach is quite low and certainly not linked to meeting the needs of the local population.

Despite scant research on the impacts or alternatives for the tourism sector in Colombia, the loss of coastal public spaces as a result of their commodification is evident.

In addition to displacing local inhabitants from the beaches, the privatization of urban spaces reduces public management capacity and has generated a series

of legal conflicts around the duty of the State to promote collective well-being and protect cultural rights, such as leisure, or social rights, such as a healthy environment. Preventing the local population from accessing natural public spaces can also represent a great loss for the country as a whole, as it alienates people from their commitment to defending and protecting them.

This article presents the results of a legal analysis of the laws that regulate public space on the beaches of an urban area like Santa Marta and highlights the problem of land, sea, and coastal appropriation, illustrated by the case of the Sierra Laguna Condominium in Pozos Colorados. The methodology included the study of primary legal information and secondary data, direct observation of these spaces, and their conflicts.

1 Public coastal space in Colombian legislation: access to social, cultural, and environmental rights

According to Law 9/1989, the purpose of public spaces is “the satisfaction of collective urban needs that transcend the limits of the individual interests of the inhabitants”¹ (Colombia, 1989, free translation).

According to the Constitutional Court of Colombia, the public space of a city includes, among others,

[...] necessary for the preservation and conservation of sea and river beaches, low tide areas and their vegetation, sand and coral and, in general, for all existing or duly planned areas in which the collective interest is obvious and desirable and which therefore constitute areas of collective use or enjoyment² (Colombia, 1999, free translation).

Beaches, both sea and river, are public spaces and their purpose is to meet the needs of the community.

These spaces, understood as legal assets worthy of protection, belong to all the inhabitants of a territory, to the collectivity. It is up to the State to protect the integrity of these spaces (Colombia, 1991a), in which no private actor can build anything without prior permission from the competent authority.³ They are assets

¹ In the original: “la satisfacción de necesidades urbanas colectivas que trascienden los límites de los intereses individuales de los habitantes”.

² In the original: “[...] necesarios para la preservación y conservación de las playas marinas y fluviales, los terrenos de bajamar, así como de sus elementos vegetativos, arenas y corales y, en general, por todas las zonas existentes o debidamente proyectadas en las que el interés colectivo sea manifiesto y conveniente y que constituyan, por consiguiente, zonas para el uso o el disfrute colectivo”.

³ According to article 674 of the Civil Code, the Union’s public assets whose “use belongs to all the inhabitants of a territory, such as streets, squares, bridges, and roads, are called Union assets of public use or public assets of the territory.

[...]

meant to serve the common good, “which means that their use and enjoyment belongs to the community and not exclusively to the public entity that manages the asset”⁴ (Colombia, 1873, free translation).

Public spaces, as a legal asset, are constitutionally vested with the characteristics of inalienability (they cannot be traded), unseizability (they cannot become the material object of precautionary measures adopted in legal proceedings), and imprescriptibility (they cannot be acquired by adverse possession) (Colombia, 1991a, 2010).

Constitutional protection of public spaces is closely linked to guaranteeing citizens’ quality of life (Colombia, 2015), protecting “recreation), leisure and the enjoyment of a healthy environment that depend on the existence of a physical space available to all inhabitants”⁵ (Colombia, 2002b, free translation).

According to the United Nations Rapporteur (2019) on Cultural Rights, accessibility and adequacy of public spaces are an essential condition for the exercise of human rights, especially cultural rights. Liberties necessary for recreation and the strengthening of culture and identity, such as freedom of expression, assembly, or collective association, are closely linked to the notion of public space. The United Nations Human Settlements Program states that urban public spaces should essentially contribute to the overall quality of human life in terms of accessibility, flexibility, and good quality. Public spaces, as indicated by the Special Rapporteur, “because they are accessible to all people, fulfill many functions, including facilitating access to resources, providing a venue for cultural practices, and enabling the establishment of relations with spaces”⁶ (Naciones Unidas, 2019, p. 7, free translation).

Art. 680. Columns, pilasters, steps, thresholds, and any other constructions that serve for the convenience or ornament of buildings, or form part of them, may not occupy any space, however small, on the surface of streets, squares, bridges, roads and other places owned by the Union” (Colombia, 1873, free translation). In the original: “uso pertenece a todos los habitantes de un territorio, como el de calles, plazas, puentes y caminos, se llaman bienes de la Unión de uso público o bienes públicos del territorio
[...]

Artículo 680. Las columnas, pilastras, gradas, umbrales y cualesquiera otras construcciones que sirvan para la comodidad u ornato de los edificios, o hagan parte de ellos, no podrán ocupar ningún espacio, por pequeño que sea, de la superficie de las calles, plazas, puentes, caminos y demás lugares de propiedad de la Unión”

⁴ In the original: “lo cual significa que el uso y goce de los mismos pertenece a la colectividad y no exclusivamente a la entidad pública que administra el bien”.

⁵ In the original: “la recreación), el aprovechamiento del tiempo libre, y el goce de un medio ambiente sano que dependen de la existencia de un espacio físico a disposición de todos los habitantes”.

⁶ In the original: “al ser accesibles para todas las personas, cumplen muchas funciones, entre ellas facilitar el acceso a los recursos, ofrecer un lugar para las prácticas culturales y permitir que se establezcan relaciones con los espacios”.

The Colombian Constitutional Court has a similar understanding: public space is “the most accessible agora in which citizens meet and express themselves”; the place where participatory democracy materializes itself (Colombia, 2002b, free translation).

People’s quality of life “is closely linked to the possibility of having meeting and circulation spaces that make it possible to build a social fabric”⁷ (Colombia, 2002b, free translation) in which individuals recognize themselves as members of the community. Public spaces help the inhabitants of the same locality to coexist on equal terms (Colombia, 2002b); they help to improve urban living conditions and “neutralize, even on a small scale, the aggressions of a large city or modern housing centers”⁸ (Colombia, 2015, free translation).

Maintenance of open public spaces and their free availability “should be a social value par excellence”⁹ (Colombia, 1999, free translation).

This perspective of public spaces as open places for the exercise of social, cultural, and environmental rights is seriously affected by appropriation or privatization processes. In privatization processes, the private sector takes on duties that correspond to the state and which are generally related to the protection and enjoyment of human rights (Naciones Unidas, 2018). Land grabbing, in turn, is the acquisition, retention and/or control of large tracts of land and associated resources through a series of mechanisms that involve large amounts of capital and generally change the orientation of resource use to an extractive nature, without the free, prior, and informed consent of its users (Borras *et al.*, 2012; Del Valle, 2022). These processes, whose main objective is the economic benefit of investors, can affect public spaces like national parks or areas of sea, coastal, or river beaches. Thus,

[...] the interruption of public space [...] can lead to vulnerability not only to pedestrians’ individual constitutional rights and collective aspirations for general use and enjoyment, but also to the community’s perception of the areas to which it has free access and those to which it does not¹⁰ (Colombia, 1999, free translation).

⁷ In the original: “está íntimamente ligada a la posibilidad de contar con espacios de encuentro y circulación que hagan posible la construcción de un tejido social”.

⁸ In the original: “neutralizar, así sea en mínima parte, las agresiones propias de una gran ciudad o de los centros habitacionales modernos”.

⁹ In the original: “debe ser un valor social por excelencia”.

¹⁰ In the original: “[...] el trastorno del espacio público [...] puede llegar a vulnerar no sólo derechos constitucionales individuales de los peatones y aspiraciones colectivas de uso y aprovechamiento general, sino también la percepción de la comunidad respecto de las áreas a las que tiene acceso libre y a las que no lo tiene”.

This becomes more complex when it comes to public spaces like coastal areas, whose legal framework becomes diffuse. Although Colombia has 3,513 km of coastline on the Pacific and Caribbean oceans (Colombia 50%..., 2022), the country does not have specific regulations for coastal public space that establish minimum elements for construction, works, licenses, and even their management (Botero; Marin, 2018). This reflects, at least in part, the Colombian state's complex relation with its marine and coastal spaces which have historically been neglected, as evidenced by the lack of a clear policy for these areas (Avella *et al.*, 2009). For example, from 2006 to 2015, 13 legislative bills were presented relating to marine-coastal land use planning, low tide zones and beach safety, but none of these proposals resulted in the enactment of a law (Botero; Marin, 2018).

2 The legal status of Santa Marta's beaches

There is no climate change mitigation work on the beaches of Santa Marta, and real estate projects continue to emerge without having to follow the guidelines of any type or territorial or fishing planning. There is also no legal clarity regarding properties adjacent to the sea. According to Art. 83 of the Code of Renewable Natural Resources and Environmental Protection,

*Except for rights acquired by private individuals, the following are inalienable and imprescriptible assets of the State [...] c) sea, river, and lake beaches; d) a strip parallel to the line of maximum tides or the permanent bed of rivers and lakes, up to thirty meters wide [...]*¹¹ (Colombia, 1974, emphasis added, free translation).

According to Barreto (2013), two circumstances could present acquired rights in this case: (1) those that already existed at the time the code was issued; or (2) those arising from a *de facto* situation after issuance of the code, such as situations generated by coastal erosion processes. However, regarding Art. 83 of the Code, the Council of State indicated that

[...] There is no legal basis whatsoever that could allow a person or group of people to acquire or have acquired the right of ownership over a beach or a low-tide land, or over part of it, no matter how old the traditional titles with which they intended to justify this right were¹² (Colombia, 2014, free translation).

¹¹ In the original: “[s]alvo derechos adquiridos por particulares, son bienes inalienables e imprescriptibles del Estado [...] c) las playas marítimas, fluviales y lacustres; d) una faja paralela a la línea de mareas máximas o la del cauce permanente de ríos y lagos, *hasta treinta metros de ancho*”.

¹² In the original: “[...] no existe fundamento jurídico alguno que pudiera permitirle a una persona o grupo de personas adquirir o haber adquirido el derecho de dominio sobre una playa o un terreno de bajamar o sobre parte del mismo, por muy antiguos que fuesen los títulos de tradición con los que pretendiera justificar este derecho”.

2.1 The administrative jurisdiction of municipalities

The Constitutional Court has made it clear that mayors have sufficient authority, granted by Art. 123 of the National Police Code, to order the restitution of public property in the event of occupation (Colombia, 2016). Mayors also “have the power to impose restrictions on their use for reasons of common interest, without the reasonable exercise of this power representing a disrespect for constitutional rights or guarantees”¹³ (Colombia, 1999, free translation). The National Police Code establishes that police officers have the power to prevent attacks on the integrity of public property and ensure its adequate protection (Colombia, 2016).

According to Art. 315 of the Constitution, mayors are the first police authority in the area of their jurisdiction and “must comply with and enforce, in their respective territorial area, the constitutional and legal norms and those issued by the corresponding Municipal Council, including those related to the concept of public space”¹⁴ (Colombia, 1991a, free translation). In other words, “undoubtedly, it is the mayors who, by express constitutional attribution, are responsible for ensuring that all citizens comply with the rules relating to the protection of and access to public spaces, in their respective localities [...]”¹⁵ (Colombia, 1999, free translation). Similarly, in territorial planning, mayors are responsible for ensuring compliance with regulations on conservation, preservation, use, and management of the environment and its resources in marine and coastal areas (Colombia, 1997).

The use of public property may only be modified by municipal and district councils, on the initiative of mayors and on condition that it is exchanged for other public property with similar characteristics (Colombia, 1989).

In this regard, the State Council clarified that the agreements or concessions that the competent authorities make regarding the management of these assets “do not alter the nature of such assets, since only the aforementioned entities are legally authorized to alter the nature of such assets, subject to compliance with

¹³ In the original: “tienen competencia para señalar restricciones en lo relativo a su uso por razones de interés común, sin que el razonable ejercicio de esta facultad represente desconocimiento de derechos o garantías constitucionales”.

¹⁴ In the original: “quienes deben cumplir y hacer cumplir en el respectivo ámbito territorial, las normas constitucionales y legales y las que expida el Concejo Municipal correspondiente, entre las que se encuentran aquellas relacionadas con el concepto de espacio público”.

¹⁵ In the original: “es en los Alcaldes sin duda alguna en quienes recae por expresa atribución constitucional la responsabilidad de hacer cumplir por todos los ciudadanos las normas relativas a la protección y acceso al espacio público, en su respectiva localidad [...]”.

the substantive and procedural requirements established by law for this purpose”¹⁶ (Colombia, 2010, free translation).

On the other hand, responsibility for managing the coasts and their surrounding areas lies with departmental or district entities. Article 15 of the Law of the Districts of Santa Marta, Barranquilla, and Cartagena (Colombia, 2002a) establishes that the mayor, as head of the District Administration, has the authority to grant licenses for the occupation of beaches for tourist, cultural, artistic, or recreational purposes. Such powers must be exercised after a favorable technical opinion issued by the General Directorate of Maritime Affairs (DIMAR). Article 16 of this law also establishes that the district authorities of Barranquilla, Cartagena, and Santa Marta have the power to regulate, direct, and establish uses and activities in canals, inland lagoons, and tourist beaches within their jurisdiction.

However, the administrative jurisdiction of mayors over maritime and coastal beach areas has not been a settled issue in case law. As Barreto (2013, p. 156, free translation) points out, the State Council observed that

[...] the jurisdiction attributed to mayors over public use assets, included within the public space of their municipalities—specifically those such as beaches and low tide lands—would be non-existent, or would give way to that which falls to DIMAR, due to the specialty of the regime¹⁷.

This, according to the author, represents a lack of clarity on the part of the Council of State and a disregard for the possibility of two administrative authorities having jurisdiction over the same subject or public asset.

2.2 The administrative jurisdiction of the regional autonomous corporation

In addition to the jurisdiction of municipalities over urban spaces, the Ministry of Environment and Sustainable Development (MADS) has the jurisdiction to “regulate the conditions for the conservation and management of swamps, marshes, lakes, lagoons, and other continental water ecosystems”¹⁸ (Colombia, 1993, free translation), and the Regional Autonomous Corporations,

¹⁶ In the original: “no varían la naturaleza de los mismos, pues sólo los entes mencionados se encuentran normativamente autorizados para mutar la naturaleza de tales bienes, previa observancia de las exigencias tanto sustanciales como procedimentales establecidas en la ley para tal efecto”.

¹⁷ In the original: “[...] la competencia asignada a los alcaldes sobre los bienes de uso público, incluidos dentro del espacio público de sus municipios, específicamente aquellos como las playas y los terrenos de bajamar, sería inexistente, o cedería frente a aquellas que reposan en cabeza de la Dimar, debido a la especialidad del régimen”.

¹⁸ In the original: “regular las condiciones de conservación y manejo de ciénagas, pantanos, lagos, lagunas y demás ecosistemas hídricos continentales”.

part of the National Environmental System (SINA – *Sistema Nacional Ambiental*), have the jurisdiction to “carry out, within the area of jurisdiction and within the scope of their powers, the demarcation of the strip parallel to the bodies of water referred to in item d of Art. 83¹⁹ of Decree-Law 2.811 of 1974”²⁰ (Colombia, 2011, free translation), that is, to restore or demarcate public lands that have been improperly appropriated.

2.3 The administrative jurisdiction of DIMAR

Within the structure of the Ministry of Defense is DIMAR, whose jurisdiction covers all marine and river-marine systems in the territorial sea and up to the limit of the exclusive economic area, including coastlines, beaches, and low-tide lands (Colombia, 1984).

DIMAR was created to regulate, authorize, and control concessions and permits in waters, low tide lands, beaches, and other public use assets in the areas under its jurisdiction (Colombia, 1984).

However, DIMAR is prohibited from granting permission for the construction of houses on sea beaches, in accordance with Article 177 of the same decree. In fact, Article 42 of Law 1 of 1991 extended this prohibition to all administrative authorities (Colombia, 1991b).

Construction concessions granted by DIMAR on the beach and low tide land must include

[...] a certificate from the Mayor or the competent police authority stating that the land on which it is intended to be built is not occupied by another person; that it is not intended for any public use, nor for any official service; and that the planned construction does not present any inconvenience for the respective municipality²¹ (Colombia, 1984, free translation).

DIMAR regulates and monitors concessions and authorizations to prevent undue occupation of beaches, but when its work is not effective, they cannot

¹⁹ Article 83. Excepting rights acquired by private individuals, the following are inalienable and imprescriptible assets of the State: a.- Natural bed of watercourses; b.- Bed of natural water reservoirs; c.- Maritime, river and lake beaches; d.- A strip parallel to the line of maximum tides or to the line of the permanent course of rivers and lakes, up to thirty meters wide; e.- Areas occupied by snow-capped mountains and glacier channels; f.- Groundwater strata or deposits (Colombia, 1974).

²⁰ In the original: “efectuar, en el área de jurisdicción y en el marco de sus competencias, el acotamiento de la faja paralela a los cuerpos de agua a que se refiere el literal d) del artículo 83 de Decreto Ley 2811 de 1974”.

²¹ In the original: “[...] una certificación del Alcalde o autoridad policiva correspondiente en la cual conste que el terreno sobre el cual se va a construir no está ocupado por otra persona; que no está destinado a ningún uso público, ni a ningún servicio oficial; que la construcción proyectada no ofrece ningún inconveniente a la respectiva municipalidad”.

guarantee the recovery of these spaces, as it does not have enforcement powers. It is the local authority with power to punish offenders (Velásquez-Muñoz; Consuegra-Vargas, 2017). Finally, it cannot be said that DIMAR's jurisdiction over beaches and lowlands is more specific than the jurisdiction of municipalities over *urban beaches* within their jurisdiction, or of regional autonomous corporations in the area of their jurisdiction.

In the absence of national legislation on the subject, the authorities acquire a multitude of functions that, in many cases, overlap. To date, there are three areas of jurisdiction in the management of the Pozos Colorados beaches: City Hall, responsible for regulating the use of public areas of the beach, protecting access to public space, including with the use of police force; Corpamag, the environmental authority of the area, responsible for restituting or demarcating public lands; and DIMAR which, although it regulates and controls concessions on public beaches, does not have the authority to authorize concessions for urban development.

3 Simulacrum in the dispute over public space on Pozos Colorados beach, Santa Marta

One of Santa Marta's biggest challenges is reconciling the preservation of its resources and landscapes—its tourist attraction—with port activities and growing real estate speculation. Luxury tourism and mass tourism (Gudynas, 2010), which in coastal areas can generally be associated with commodification and monopolization strategies of public spaces, imply transforming land, territory, and nature into a commodity (the opposite of the inalienability of public space), distorting access, use, and control of natural spaces that are supports of social reproduction (Torres *et al.*, 2022). This type of tourism is considered an extractive economic activity, as it promotes the expansion of capitalism through the exploitation of natural resources like soil, air, and water (Torres *et al.*, 2022). One of the first actions of this type of tourism on coastal sea beaches is the acquisition, often illegal or illegitimate, of low-lying land. Owning land means having the exclusive right to benefit from it; it is a way of ordering the world, categorizing, and codifying spaces and people according to their relationship with nature (Blomley, 2003).

Space is dynamic. The possibilities of property spaces are produced by rituals that regulate social life. Specific actions are assigned to spaces, what is acceptable to do or not to do in certain places and, from this point of view, property is a regime of shared agreements in which, ultimately, violence is used as an instrument of

persuasion (Blomley, 2003). Given the legal impossibility of physically closing the beaches where large tourist resorts are located (Colombia, 2004), the managers of these companies use simulacra of authority that have proven effective in territorial demarcation.

3.1 The Sierra Laguna Condominium

The beach area where the Sierra Laguna Condominium is located, in Pozos Colorados, is one such example. Its construction, together with other buildings in the coastal lagoons of Cabo Tortuga, Dulcino, and Plenomar, “did not respect the thirty-meter distance required by law”;²² furthermore, due to the lack of a sewage network, wastewater dumping is common in the region (Díaz-Roca, 2020, p. 104, free translation), “as a result of the uncontrolled construction of urban projects on publicly owned assets”²³ (*Controladuría Generale de la República – CGR*, 2017, free translation). Some of the impacts from the gradual destruction of Lake El Ducino, highlighted by the CGR, include increased coastal erosion, loss of coastline, loss of sand on beaches, depletion of the water table, and decreased fishing activities due to the loss of habitat for juvenile stages of commercial species (CGR, 2017).

Among the various irregularities pointed out by the CGR during the construction of the Sierra Laguna Condominium²⁴ was the failure to comply with restoration rules by planting palm trees in the beach area, violating DIMAR Resolution 190/2007, which indicates that these plantings should be carried out on consolidated land (CGR, 2017). According to CGR, DIMAR reported signs of environmental damage and beach erosion

[...] without there being any evidence of action by the Santa Marta District Government, DADMA and CORPAMAG, as the first Police Authority and Environmental Authorities, respectively, in fulfilling their function of ordering the surveillance and protection of public assets within their jurisdiction and the environment, in defense of the interests of the community²⁵ (CGR, 2017, free translation).

²² In the original: “no respetaron la distancia de los treinta metros de ronda de protección que por ley corresponde”.

²³ In the original: “a causa de la construcción no controlada de proyectos urbanos en bienes de uso público”.

²⁴ One such example is the Resolution of the District Administrative Department of the Environment (Resolution 312 of September 30, 2008) which gives a favorable opinion to an environmental license for a lake restoration project within the lot for which the construction of a “spike and embankment” was authorized without DIMAR’s approval (CGR, 2017, free translation). In the original: “espolón y relleno de terreno”.

²⁵ In the original: “[...] sin que exista evidencia de gestión por parte de la Alcaldía Distrital de Santa

However, in 2017, a CGR audit team found that the palm trees planted in the beach area had not been removed and that, in addition, others had been planted, together with the construction of 52 kiosks for the benefit of the condominium's residents (CGR, 2017). Most egregious, however, is the fact that the building was constructed in a public space²⁶. These and other irregularities were presented in 2017 to the Public Prosecutor's Office and the Attorney General's Office, among other authorities, but the situation has not changed. On the contrary, it got worse. In 2018, some stones were placed in the public access area to the beach in front of the condominium, preventing pedestrians from passing through (Restringsen..., 2016).

In 2018, the Sierra Laguna Condominium requested a concession from DIMAR to develop the project to install fixed and removable furniture for use

Marta, DADMA y CORPAMAG, como primera Autoridad de Policía y Autoridades Ambientales respectivamente, en cumplimiento de su función de ordenar la vigilancia y protección de los bienes de uso público en su jurisdicción y del medio ambiente en defensa de los intereses de la comunidad”.

²⁶ According to the Comptroller's report, “The situation found by CGR in this property is one of the most relevant, because, in addition to the environmental damage observed in the previous paragraphs, it is built on land supposedly belonging to the Public Use Heritage, covered by titles originating from Judicial Declarations of Property and covers an area larger than that stated in the registrations and property titles. This situation was also highlighted, at the time, by PGN which calculated the additional area occupied by this project at 83.87M2. In relation to the above, it should be noted that the differences existing in the areas reported by IGAC are not supported by the registered titles of the properties. This means that the properties currently occupy areas that are not included in the property titles or registration documents. The Mayor's Office ignored Resolution No. 4,464 of December 31, 2007, issued by DIMAR, by which it refrained from granting construction licenses, declaring that the entire area where the project is being built is for public use (sea beach), which was confirmed by Resolution 2,235 of July 29, 2008, and by the suspension requests mentioned in the previous paragraph. Failure of the local authority to perform its assigned function of protecting public property has resulted in the lands now occupied by the Sierra Laguna residential condominium in the hands of private individuals. These facts will be brought to the attention of the Attorney General' Office, the Superintendence of Notaries and Registrars and the National Agency for the Legal Defense of the State” (CGR, 2017, free translation). In the original: “La situación encontrada por la CGR dentro de este predio es de las más relevantes, debido a que adicional al daño ambiental observado en acápite anteriores, está construido en predios presuntamente de Bienes de Uso Público, amparados en títulos originados por Declaraciones Judiciales de Pertenencia y abarca un área mayor al consignado en los folios de matrícula y títulos de dominio. Dicha situación también fue evidenciada en su momento por la PGN, la cual calculó el área adicional ocupada por este proyecto en 83.87M2. En relación con lo expuesto, debe anotarse que las diferencias existentes en las áreas reportadas por el IGAC, no encuentran sustento en los títulos registrados de los predios. Ello quiere decir que actualmente los predios ocupan áreas no incluidas, ni en el título de dominio, ni en el folio de matrícula. La Alcaldía hizo caso omiso de la Resolución No. 0464 del 31 de diciembre de 2007, emitida por la Dimar, mediante el cual se abstiene de otorgar permisos de construcción, declarando que toda el área donde se construye el proyecto en mención en Bien de Uso Público (playa marítima), la cual fue confirmada mediante Resolución 0235 del 29 de julio de 2008 y de las solicitudes de suspensión mencionadas en el acápite anterior. La omisión por parte de la autoridad local en la función atribuida de proteger los bienes de uso público, originó que los terrenos hoy se encuentran ocupados por el condominio residencial Sierra Laguna en manos de particulares. de estos hechos serán puestos en conocimiento ante la Fiscalía General de la Nación, Procuraduría General de la Nación y Superintendencia de Notaría y Registro y la Agencia Nacional de Defensa Jurídica del Estado”.

and enjoyment of the beach area adjacent to the property (DIMAR, Resolution 0310-2019). Following the guidelines of Decree 2324/1984, the condominium attached to its request a certification issued by the City of Santa Marta indicating that the requested area

[...] is not occupied by anyone else, is not *intended for any public use* or any official service, and that the planned occupation does not *present any inconveniences* for the District of Santa Marta, nor does it contravene the land use standards established by the Territorial Planning Layout.²⁷ (DIMAR, 2019, emphasis added, free translation).

DIMAR decided to grant the concession and authorized “only the construction and/or location of the works and elements described [...]”²⁸ which are wooden and straw kiosks, removable beach tents and sun loungers (DIMAR, 2019, free translation).

In possession of the concession, the Sierra Laguna Condominium placed a large sign in front of the beach indicating that the *area* (not specified) was granted under concession for the use and enjoyment of the Sierra Laguna Condominium. Besides the fact that the concession itself is questionable, it was not granted for the use of the beach, nor could it be, since it is a public asset. However, the placement of a sign next to kiosks, umbrellas and the close surveillance of private security agents constitute a ritual of persuasion, simulating an administrative authority that it lacks and whose objective is social regulation for the physical monopolization of the public area.



Figure 1. Luxury condominium sign on a traditional fishing beach, Pozos Colorados. DIMAR’s concession promotes the privatization of the beach.

Source: Isabela Figueroa, Cabo Tortuga, 2019.

²⁷ In the original: “[...] no se encuentra ocupada por otra persona, *no está destinada a ningún uso público* ni a ningún servicio oficial, y que la ocupación proyectada *no ofrece inconvenientes* con el Distrito de Santa Marta, ni contravienen las normas de uso del suelo dictaminada por el Plan de Ordenamiento Territorial”

²⁸ In the original: “únicamente la construcción y/o ubicación de las obras y elementos descritos [...]”.

Regarding this concession, three issues stand out: (1) DIMAR was aware of the numerous irregularities raised by the CGR in its 2017 report; (2) neither DIMAR nor any other entity could have issued a license for housing construction in a beach area, so that this prohibition can be understood as extending to housing furniture; and (3) the city government certified that the beach area was not intended for public use and that its occupation by the condominium was not inconvenient, even though it is one of the most popular beaches in Pozos Colorados. Ever since the installation of the kiosks, there have been a series of conflicts between users and security personnel of the condominiums, often with the complicity of members of the public forces (Exclusividad..., 2018).

Conclusion

Public spaces are very important assets for the healthy coexistence of a city's inhabitants. In addition to offering places of leisure and generating bonds that go beyond the institutional boundaries of Santa Marta, the beaches of Pozos Colorados contain a rich biodiversity that enhances the culture and wellbeing of the city's inhabitants. Moreover, such traditional practices closely linked to the place's history as artisan fishing still survive on these beaches. In short, specific cultural rights associated with the legal notion of public space are exercised in Pozos Colorados.

However, priority has been given to the construction of hotel and tourist infrastructure to the detriment of preserving public natural heritage. The private is privileged over the public. Many legislative and administrative loopholes enable the appropriation of public spaces, either by omission, negligence, or complicity of the public administrator. In the case of Pozos Colorados beaches, these gaps have facilitated the monopolization of hydrological systems of great importance for the stability of the marine-coastal ecosystem, such as Lake El Dulcino.

DIMAR's lack of jurisdiction to sanction actions of misappropriation of coastal public spaces puts this responsibility in the hands of territorial entities which, in turn, have failed to fulfill their duties to protect the cultural rights of the Santa Marta population and the socio-environmental rights of all Colombians, even when summoned by the bodies of the Republic, as in CGR's 2017 Audit Report (2017).

Amid the omission, and even complicity, of local authorities in the practices described, the increase in real estate projects in the area tends to replicate such practices. Every time local authorities let these actions go unpunished, they signal

to new developers that these are not only acceptable, but that they can also add exclusivity value to new real estate projects.

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