

PROJECT PROFILE

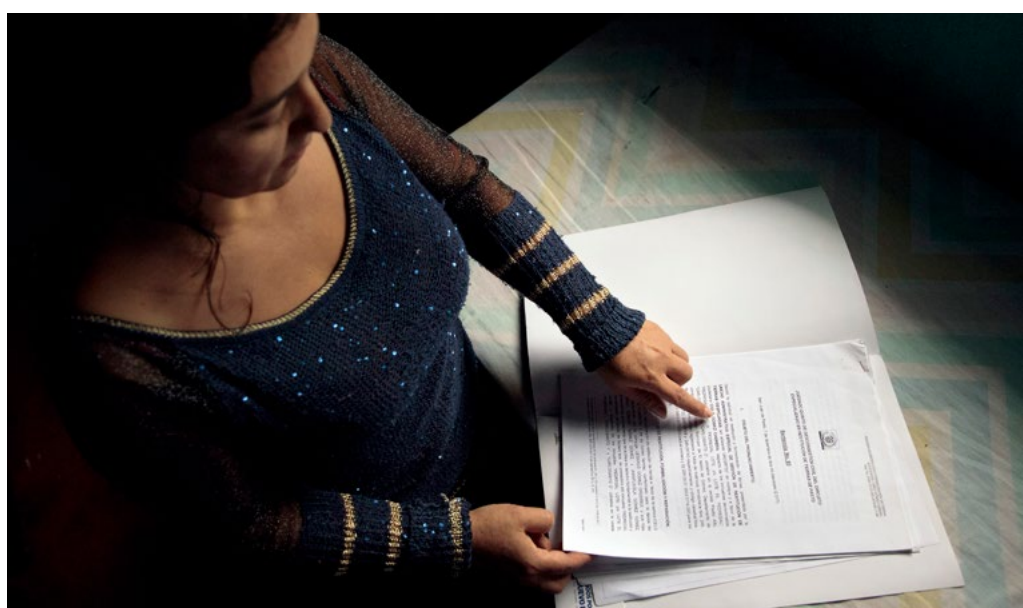
Land Reform, Peace and Informal Institutions

Hub Members

Aaron Alfredo Acosta,
Dejusticia

Elvia Sáenz, Dejusticia

Dr Nelson Camilo Sanchez,
Dejusticia



About the Project

Under the transitional justice framework, Colombia has embarked on addressing the severe impacts of armed conflict on property and land ownership. The enactment of Law 1448 in 2011, known as The Victims and Land Restitution Law, aimed to rectify these long-standing injustices and human rights violations, setting a foundation for the peace agreement with the FARC in 2016.

This research delves into the implementation and effects of land restitution within this framework, combining fieldwork and quantitative analysis to understand the experiences of dispossessed victims. It highlights the critical influence of informal institutions on transitional justice efforts, offering insights for both local and international audiences on the complexities of restoring rights in the aftermath of conflict.

Key Findings

- **The land restitution process is slow and there are high application rejection rates by the Land Restitution Unit (URT).** After a decade, only about 20.6% of applications have been presented to a judge, and a fraction of the dispossessed land has been returned. Moreover, only 170,042 hectares had been restituted, out of the millions of hectares of dispossessed or abandoned land resulting from forced displacement.
- **Many rejection decisions are based on erroneous interpretations of complex legal concepts.** In many cases, the URT has not followed the precedent or jurisprudence established by the Constitutional Court or by the special land restitution jurisdiction.
- **Design flaws in the land restitution policy have resulted in its marginal impact.** The process is divided into an administrative and a judicial step. The administrative step under the URT has become an insurmountable barrier for many victims due to faulty implementation and opaque processes with little public information or records for the stated reasons for rejecting claims.
- **The process of application withdrawals is widespread, despite this not being permitted.** Around 20% of land restitution application rejections are due to a concept called “withdrawal,” either initiated by the applicant or assumed by the URT for lack of response. Despite the Constitutional Court’s ban of this practice, it remains common, with unclear distinctions between intentional and tacit withdrawals.
- **Land ownership records in Colombia are often missing, lost, or destroyed due to conflict or corruption, complicating restitution.** There are also many cases where people were forced to sell their land. Landowners would be threatened, then offered very little money for the land whilst a team of lawyers would ‘legalise’ these corrupt transactions.
- **Individual institutions and mechanisms are influential in the success of the peace agreement, not just the government.** Contrary to the prevalent view that Colombia’s peace agreement is overly reliant on the President’s will, this research uncovers a more complex reality. It shows that certain institutions involved in the transitional process have gained significant autonomy and influence, operating independently of executive decisions. This complexity suggests the need for a more nuanced



The land restitution policy promises victims restitution of their lands, a policy designed to deal with the atrocious effects of the forced displacement of more than 15% of the population during the armed conflict, as well as with the historic concentration of land in the hands of the elite. ”

DR NELSON CAMILO SANCHEZ

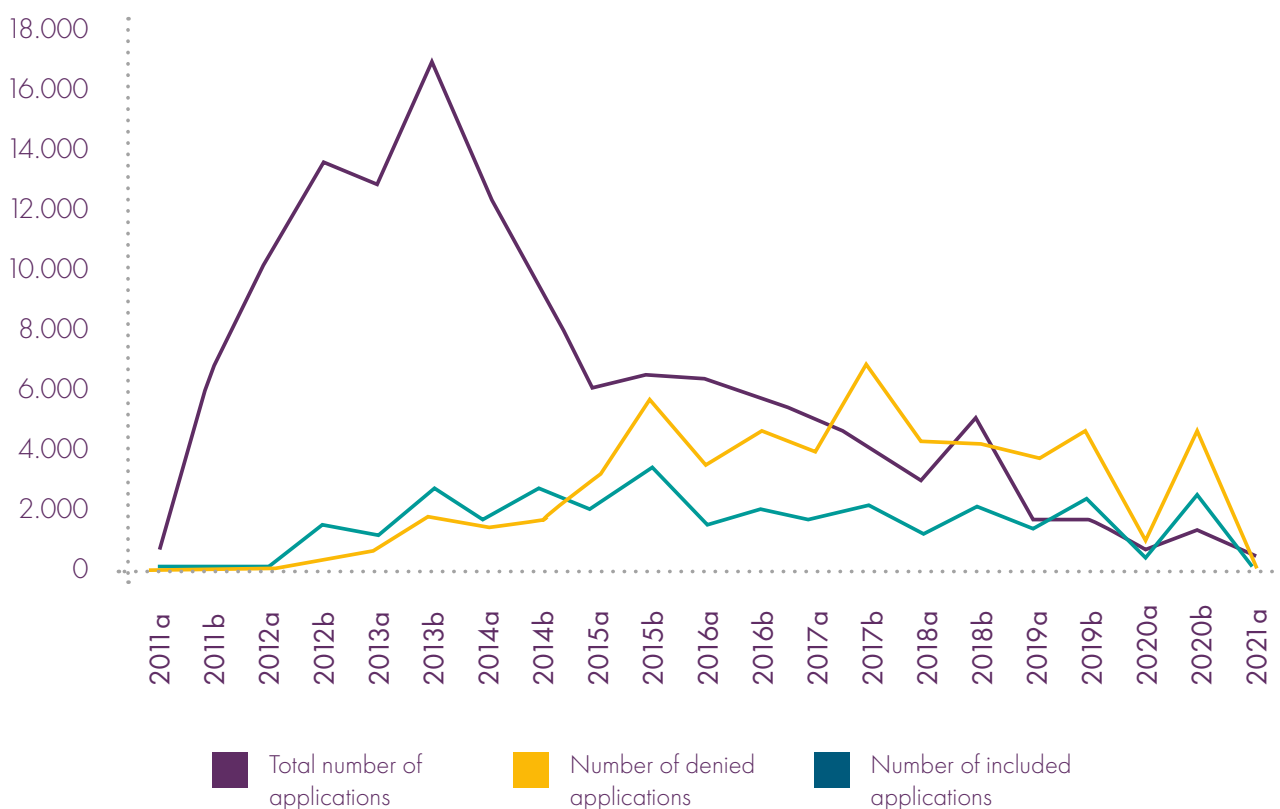
understanding of the peace process, recognising the diverse centres of power involved.

- **The data gathered did not show a great disparity between male and female claimants to land.** Across both the data gathered on the performance of institutions, and the qualitative work done with victims, public servants and experts, there was no substantial difference between how men and women experienced their journey through the restitution process. Importantly, this research found that women are not disproportionately negatively affected by the system.
- **Attention to gender in the peace agreement may have contributed to a near gendered balance in claimants.** The number of claimants that are men and women are almost 50/50 (55% women, 45% men). Part of the explanation for this is that many of the mechanisms that have been designed incorporated a gender lens. For example, once a victim of dispossession has been identified, the system takes into account the household. So, even if previously the land title was in the man’s name, the law provides that the land will be restituted in both the man’s and woman’s names.
- **Mechanisms to address land rights issues post conflict operate under liberal notions of property land rights that are not fit for purpose.** The absence of official land records compromises the efficacy of land restitution mechanisms rooted in the liberal property rights model, exemplified by the UN’s Pinheiro Principles. This model, emphasising individual ownership and the necessity of written records, proves inadequate, highlighting the potential advantages of alternative communal property frameworks.

- **Vast inequalities mean that many who do recover their land are then forced to sell due to economic necessity.** Some people who can recover their land are unable to use it to provide a livelihood. They are forced to re-sell their land because they are unable to compete with the large agricultural businesses, which undermines the land restitution process.

- **Bureaucratic mechanisms in the Colombia context cannot be treated as homogenous and resistant to the programme.** There is an assumption that bureaucracies are preventing progress, but this is not always the case. In Colombia, many of the bureaucrats working to create human rights and transitional justice policies are centring victims' rights.

Total Number of Applications Per Semester Versus Denials and Inclusions Per Semester



Video

¿Barreras insuperables?

<https://www.youtube.com/watch?v=ODXrjaAC104>



Recommendations

Policymakers and the Land Restitution Unit (URT)

- **Far-reaching reforms are needed in the land restitution policy to effectively secure victims' rights and achieve its intended transformative effects.**

Specifically, the URT needs to revise its policies and framework to adopt a victim-centred approach in land restitution, favouring victims in any uncertain situations. It should also cease the practice of withdrawing applications, in compliance with the Constitutional Court's decision.

- **Greater access to information and transparency in land restitution processes and outcomes.** Despite stipulations that information should be open source, accessible and transparent, in practice the decision-making process and outcomes when it comes to land restitution are not available. This access to information is important to ensure the process and its progress have external oversight.

- **A thorough examination of rejected applications is necessary to identify any violations of victims' rights, with immediate corrective measures required where breaches are detected.** In the case of application rejections constituting violations of victims' rights, the URT should expeditiously revoke the denials and include such applications in the Land Registry. Also, the URT should take appropriate measures to combat the adverse effects suffered by applicants due to the rejection of the applications.

- **Review and update the management and hiring processes for staff handling land restitution cases to align them with the unique reparative nature of their work.** Current hiring regulations, not designed for such specialised institutions, need revision to procure and retain staff effectively. Additionally, implement policies that encourage reaching out to victims, rather than rewarding staff based on the quantity of cases closed, to ensure complex cases are not ignored.



- **Review the policy for keeping contact with victims that come forward to claim land.** There are too many cases where a case has been closed because a victim who has come forward has then become unreachable. Adequate contact mechanisms and documentation should be put in place that account for the realities of internally displaced persons who are often forced to move frequently and change their contact numbers as they do not have adequate economic means to maintain phone contracts.



To learn more about this research project and read its publications visit:
<https://thegenderhub.com/stories/land-reform-peace-and-informal-institutions/>

This Project Profile was first published in the Hub's final report, *Gender, Justice and Security: Structural Challenges, Feminist Innovations and Radical Futures*. Go to www.TheGenderHub.com to read the full report and to learn more about all 38 research projects in the Hub.



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