

Institutional Design and Transitional Justice: An Analysis of Colombia's Land Restitution Policy**-*******

Diseño institucional y Justicia Transicional: un análisis de la política de restitución de tierras en Colombia

ABSTRACT

This paper examines over 12 years of the implementation of Colombia's land restitution policy to provide insight into the ongoing debate over effective institutions for managing property disputes in contexts of violence and inequitable access to land. The authors compiled statistical information on processed claims, conducted interviews and focus group discussions, and analyzed over 860 decisions retrieved from the government agency website to provide a comprehensive analysis of the reasons why the Colombian Land Restitution Bureau has rejected over 65% of all the claims it has received. The study makes significant contributions to the literature on transitional justice (TJ) and land governance in three key aspects: by providing empirical evidence, connecting the literature on transitional bureaucracies with empirical findings,

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and contributing to a better understanding of the design and functioning of TJ structures related to land. The authors argue that while innovative normative frameworks and high-level political initiatives are necessary for the successful implementation of TJ mechanisms, additional factors needed to be considered to explain the success or failure of such mechanisms. The paper draws upon academic literature, analyzes the main features of the Colombian restitution model, and concludes by providing insights into the limitations of institutional reform in transitional contexts.

KEY WORDS

Land restitution, transitional justice, property disputes, institutional reform, Colombia.

RESUMEN

Este artículo analiza la implementación de la política de restitución de tierras de Colombia durante más de 12 años, con el objetivo de proporcionar información sobre el debate acerca del desempeño y la eficacia de las instituciones para abordar los problemas de propiedad en contextos de conflicto armado y acceso desigual a la tierra. Los autores recopilaron información estadística sobre las reclamaciones tramitadas, realizaron entrevistas y discusiones en grupos focales y analizaron más de 860 decisiones extraídas de la página web de la agencia gubernamental para comprender por qué la Agencia para la Restitución de Tierras de Colombia ha rechazado más del 65 % de todas las reclamaciones recibidas. El artículo busca contribuir a la literatura sobre justicia transicional (JT) y gobernanza de la tierra de tres maneras: proporciona pruebas empíricas, facilita la conexión entre los hallazgos empíricos y la literatura sobre burocracias transicionales, y mejora la comprensión del diseño y funcionamiento de las burocracias JT relacionadas con la tierra. Los autores sostienen que, si bien los marcos normativos innovadores y los impulsos políticos al más alto nivel son necesarios para una implementación de los mecanismos de justicia transicional de manera exitosa, es necesario ofrecer una explicación más detallada del éxito o fracaso de dichos mecanismos. El artículo se centra en la literatura académica, examina las principales características del modelo de restitución colombiano, y concluye con una serie de reflexiones sobre los límites de la reforma institucional en contextos de transición.

PALABRAS CLAVE

Restitución de tierras, Justicia Transicional, Disputas sobre la propiedad, reformas institucionales, Colombia.

SUMMARY

Introduction. 1. Assessing Land Reform Institutions in Transitional Contexts. 1.1. The Push for International Standards and Good Practices. 1.2. The Limits of Institutional Reform in Transitional Contexts. 1.3. Bureaucracies and Transition. 2. The Colombian Restitution System. 2.1. The Design. 2.2. The URT's Humanitarian and Traditional Bureaucracies. 2.3. The Implementation Gap. 3. Research and Discussion. 3.1. Political Influence. 3.2. A Pro-Status Quo Institutional Culture. 3.2.1. The Withdrawals. 3.2.2. Reasoned Rejections. 3.2.3. The Lack of Judicial Challenge of Rejections. Conclusion. References.

INTRODUCTION

The restitution of land dispossessed during armed conflict and massive repression has proven to be a worldwide challenge.¹ The implementation of large-scale property restitution programs, particularly those involving rural communities, continues to generate more frustration than satisfaction.² Considering the complexity of resolving property disputes in contexts characterized by pervasive violence and inequitable access to land, there is intense debate deliberation institutions suitable for the purpose.³

This paper examines twelve years of implementing Colombia's land restitution policy to contribute to this discussion. In 2011, Colombia created a mixed transitional mechanism divided into administrative and judicial stages, with the former being a prerequisite for the latter. The system has shown relative efficiency in managing received claims, possibly suggesting the adequacy of its institutional design. However the majority of cases were dismissed during the early administrative stage without undergoing judicial review. Since the government does not disclose its individual decisions, the reasons for such rejections remain unknown.⁴ As a result, victims and activists

1 Perhaps the most studied example is South Africa. After three decades of post-apartheid land reform, the country is currently contemplating new mechanisms for managing outstanding land claims. It is important to note that this is not the first reform of the system. Since 1994, various land committees, restitution courts, commissioners, masters, and other types of administrators have been appointed to address the slow progress of the policy. Despite these efforts, the majority of South Africans still believe that the country needs to find an effective formula to achieve equity in land ownership. See, Kirsten & Sihlobo, 2021; Walker et al., 2010; DRDLR, 2019; Cohen, 2021.

2 Ballard, M. J. "Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations". In *Berkeley Journal of International Law*, 28, 2010; Fay, D., & James, D. (Eds.). *The rights and wrongs of land restitution: restoring what was ours*, 2009.

3 Unruh, J., Abdul-Jalil, M.A. "Housing, Land and Property Rights in Transitional Justice". In *International Journal of Transitional Justice*, 15, March 1, 2021

4 Counter, M. "In Good Faith: Land Grabbing, Legal Dispossession, and Land Restitution in Colombia". In *Journal of Latin American Geography*, 18(1), 2019, 172

have heavily criticized the system. Many believe that the mechanisms weak institutional design has allowed the government to make decisions guided by political interests. Others claim that the system is ill-suited to address the deeply ingrained bureaucratic culture that perpetuates the status quo of land ownership in the country.

To examine these alleged deficiencies, we applied a combination of qualitative and quantitative tools to take stock of the claims management system's initial stage. We began by compiling disaggregated statistical information on claims the respective government agencies processed. We also conducted interviews and focus group discussions with officials and experts on the subject, and closely observed the procedure in the field for over three years. Finally, we rounded off the data with a sample of over 860 decisions retrieved from the government agency website, using a web scraper. We used data-mining techniques, an advanced commercial Optical Character Recognition (OCR) system, and tailor-made document structures to study and classify decisions as accurately as possible.

Based on this data, our paper presents the most robust analysis available of why the Colombian Land Restitution Bureau (Unidad de Restitución de Tierras—URT for its Spanish acronym) has led to sweeping away more than 65% of all received claims. We leveraged this information to answer two central questions that frequently arise in local analyses of the system's effectiveness: to what extent has the central government influenced the progress of restitution policy? and how much has the new agency improved its ability to address victims' needs and overcome bureaucratic obstacles inherited from the old regime?

This study advances the literature on transitional justice (TJ) and land governance in three critical ways. It provides empirical evidence; this is the first academic piece to analyze the URT's performance in depth.⁵ Because the decisions of government agencies are not readily available, there has been lack of monitoring and analysis. This study fills this gap in the literature.

Secondly, this study connects the literature on 'transitional bureaucracies' with empirical findings. To do so, this study compares the results of these studies, usually obtained through institutional ethnographies, with hypotheses and evidence derived from aggregated and disaggregated institutional performance data. By integrating these methodologies, this study offers a

5 While other academic works and policy papers have assessed and theorized on Colombia's land restitution process, they primarily focus on the judicial stage and assess the rulings of the restitution judges. To mention a few available in English, see, Garcia-Godos & Wiig, (2018), Coulter (2019), Guzman-Rodriguez (2017), Peña (2018), & Ruiz-Gonzalez. L., *et al.*, (2021). There are also other remarkable empirical studies on the issue. See, *i.e.*, Bogliacino F. *et al.*, (2021); Marin *et al.* (2022).

comprehensive and nuanced understanding of transitional bureaucracies and their roles in post-conflict societies.

Finally, the empirical findings contribute to a better understanding of the design and functioning of land-related TJ structures. We argue that ineffectiveness or lack of progress does not necessarily mean that political interests have co-opted for the mechanism. Instead, we view state institutions as complex entities that respond to diverse incentives. From the leadership down to the various rank-and-file administrators, bureaucrats swing between maintaining the old regime and adhering to the marching orders of the transitional project. Innovative normative frameworks and high-level political initiatives are vital for successfully implementing the TJ agenda. However, these two factors are insufficient to explain the success or failure of TJ mechanisms and to address the challenges that arise.

The following sections of this paper are organized as follows. Firstly, we review relevant academic literature to analyze the limitations of institutional reform projects in transitional contexts. Secondly, we provide an overview of the Colombian restitution model, outlining its main features and assessing its achievements and missed opportunities. Next, we analyze the data collected during our study, utilizing descriptive statistics in conjunction with qualitative information from expert interviews and other sources gathered during our fieldwork. Finally, we conclude the paper by considering how the development of the Colombian land restitution system can contribute to some of the theoretical debates on the efficacy and limitations of institutional reform in transitional contexts.

1. ASSESSING LAND REFORM INSTITUTIONS IN TRANSITIONAL CONTEXTS

1.1. The Push for International Standards and Good Practices

In light of property restitution being recognized as one of the components of victims' rights to obtain reparations, any institutional framework put in place to manage land claims must adhere to international human rights law and other legal standards. The Pinheiro Principles, issued by the United Nations assert that "individuals who have been arbitrarily or unlawfully" deprived of their land rights should have the right to submit a claim "to an independent and impartial body, to receive a determination on their claim and to be notified of such determination."⁶ To this end, the *Pinheiro Principles* call on States to establish "equitable, timely, independent, transparent and

6 Paulo Sérgio Pinheiro, Principles on housing and property restitution for refugees and displaced persons, E/CN.4/Sub.2/2005/17 (28 June 2005) [hereinafter Pinheiro Principles for his position as special rapporteur].

non-discriminatory procedures, institutions and mechanisms.” And, to guide the process, states must issue:

guidelines pertaining to institutional organisation, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decision-making, enforcement, and appeals mechanisms. (Principle 12.4).

However, the abstract nature of international standards offers little practical guidance to those responsible for designing these complex restitution systems on the ground. In reality, any mass restitution system implemented post-conflict must overcome two significant obstacles. First, it must confront the legacy of violence against land rights, resulting in complex situations that include secondary occupation, destruction of property, loss or destruction of property records, displacement, and uprooting. Further, post-conflict societies suffer from weak institutions –often co-opted by warring political factions– lacking the technical and logistical capacity to fulfill their mandates.

In recent years, an increasing number of countries have resorted to creating new transitional institutions to manage restitution claims, with the hope that starting from scratch would prove easier than curbing the existing institutions’ culture and structural limitations. Their successes and failures have led to a range of best-practice recommendations. Following the dominant practice in TJ, these lessons have circled the globe, passing through dissimilar places such as Afghanistan, Mozambique, and Kosovo.⁷

These transitional land restitution management systems have struggled to balance the four competing objectives of efficiency, fairness, legitimacy, and meaningful victim participation. Balancing these values have implications for institutional design. For example, a common point of contention among seasoned policymakers is whether the system should rest on a judicial or a quasi-judicial structure. Some argue that, for the system to be efficient and for decisions to be consistent, there needs to be a central structure with sufficient power to manage a massive docket of cases expeditiously and coordinately. Therefore, those who defend this position prefer a government agency that leads restitution efforts instead of the judiciary. In contrast, other analysts consider that judges play a unique role in maintaining credibility

⁷ In a comparative study of international experiences, A. Smit lists 13 “modern” experiences of post-conflict restitution programs, including Israel/Palestine, Cyprus, Cambodia, Mozambique, Tajikistan, Rwanda, Guatemala, Bosnia-Herzegovina, East Timor, Kosovo, Afghanistan, Iraq, Georgia (South Ossetia) Smit, A. R. *The property rights of refugees and internally displaced persons: Beyond restitution*, New York, Routledge, 2012. . This list, however, is far from exhaustive. It does not include, for example, one of the most studied comparative cases: South Africa. Nor does it include post-repression restitution systems such as those common in former communist countries, such as the Czech Republic and Latvia.

and fairness, especially when it comes to high-stakes affairs such as land rights. They also argue that in contexts of violence, institutional weakness, and widespread injustice, the executive branch is often associated with past violence and dispossession, which creates a cloud of doubt regarding its impartiality. As discussed in subsequent sections, this discussion is relevant to the Colombian case.

1.2. The Limits of Institutional Reform in transitional Contexts

TJ scholarship has long argued that institutional strength is capital to achieve the goals of lasting peace, rule of law, and accountability. Therefore, TJ enthusiasts have promoted institutional reform in many ways, including reforming the judiciary, security sector, and public administration. Conventional wisdom suggests that by enhancing institutions' effectiveness, independence, and accountability, society can establish the necessary conditions for TJ to break from the past.⁸ De Greiff and other influential scholars have added that institutions perceived as fair, impartial, and accountable play a key role in fostering legitimacy and trust, which are vital for promoting social cohesion and reconciliation.⁹

However, the assumption of a direct and positive relationship between these two phenomena has recently been questioned. Lars Waldorf stresses that the academic production of the TJ field has actually "given given limited attention to the institutional prerequisites for the effective implementation of the advocated measures." Similarly, Waldorf argues that the field has slowly recognized "the importance of institutional context and institutional change".¹⁰

As scholars have raised questions about the assumed relationship between institutional strength and the effectiveness of TJ measures, there has been growing recognition of the importance of considering both formal and informal institutions in post-conflict transitional contexts. Classical institutionalist studies had already highlighted that informal institutions usually emerge in weak states either as a response to a problem that is not solved by state institutions or opportunistically to replace them. Furthermore, in post-conflict transitional contexts, it is common for transition and peacebuilding policies and efforts to face the challenges of dealing with weak state institutions, as

8 World Bank. *World Development Report 2011: Conflict, Security, and Development*. World Bank, 2011. Retrieved from: <https://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-8439-8> [Accessed 25 June 2023]

9 De Greiff, P. "Theorizing Transitional Justice". *Nomos*, 51, 2012, 31-77.

10 Waldorf, L. "Institutional Gardening in Unsettled Times: Transitional Justice and Institutional Context," in *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, Duthie R, Seils (ed.), 2017, 41

well as the strong resistance from informal institutions.¹¹ However, as lamented by Mohamed Sesay, “the peacebuilding literature has so far failed to specify which traditional functions are susceptible to change and the mechanisms for informal institutional change” (Id. at 1).

Hence, there is much to explore regarding the interaction between TJ measures and the land governance institutions of post-conflict societies, especially regarding the relationship between formal and informal institutions and the impact on land ownership and administration. The extent to which improvements in land governance can be undermined by both types of institutions, and how such changes can benefit rural communities and victims of violence, is not yet well understood due to limited available knowledge.

1.3. Bureaucracies and Transition

Bureaucrats are critical actors in institutional reform processes. However, TJ promoters and local bureaucracies are usually at odds. In fact, one of the goals of mainstream transitional projects is to dismantle bureaucracies involved in human rights violations.¹² In addition, even bureaucracies not directly involved in repression have often been viewed as hindrances to rapid institutional change.¹³ Nevertheless, recognizing that bureaucracies are not faceless, monolithic entities can provide valuable opportunities to examine the consequences of conflicts over power relations in the design and operation of institutions¹⁴. In fact, a growing body of research, particularly from the Global South, has provided a more comprehensive and nuanced understanding of the role of bureaucracy and legal and justice mechanisms in transitional countries.¹⁵

11 Sesay, M. “Informal institutional change and the place of traditional justice in Sierra Leone’s post-war reconstruction”, *African Affairs*, 118(470), 2019, 2

12 Lustration and vetting policies are regarded as central mechanisms in TJ efforts, see, Horne, C. “Transitional Justice: Vetting and Lustration”. In research handbook on transitional justice, the Netherlands, 2017.

13 Asatryan, Z., Heinemann, F., Pitlik, H., & Wöhlbier, F. *Reforming the Public Administration: The Role of Crisis and the Power of Bureaucracy*. ZEW - Centre for European Economic Research Discussion Paper No. 15049, 2015.

14 McFee, E.K. “Introduction to Bureaucracy, Justice, and the State in a Post-Accord Colombia”. In E.K. McFee & J. Curtis (Eds.), *Emergent Conversations: Bureaucracy, Justice and the State in a Post-Accord Colombia. Political and Legal Anthropology Review*, 2020.

15 Lamont, C. K., Quinn, J. R., & Wiebelhaus-Brahm, E. “The Ministerialization of Transitional Justice”. In *Human Rights Review*, 20(1), 2019, 103-122.; Roll, K. “Street Level Bureaucrats and Post-Conflict Policymaking: Corruption, Correctives, and the Rise of Veterans’ Pensions in Timor-Leste”. In *Civil Wars*, 20(2), 2018, 262-285.; Vera, J. *The Humanitarian State: Bureaucracy and Social Policy in Colombia*. Ph.D. Thesis, Rutgers University, Lakewood, NJ, USA, 2017; Buchely, L. “Peace, Land, and Bureaucracy in Colombia: An Analysis of the Implementation of the Victims and Land Restitution Law from a Multiscale Perspective of State Bureaucracies”, *Land*, 9(6), 2020, 181.

Most existing research has focused on ethnographic studies that explore the relationships between officials involved in the implementation of peace-building policies¹⁶. These studies investigated the dynamics between victims and the state, the elites or hierarchies that emerge around these policies, and the impact of bureaucratic structures on these arrangements.

This literature underscores that protecting victims' rights heavily relies on a complex bureaucratic system. The system requires heavy involvement of bureaucracies, ranging from registration and enrollment proceedings to the distribution of benefits.¹⁷ As a result, bureaucracies that engage with victims ultimately determine the level of the state response they receive. Therefore, analyzing these bureaucracies is critical for understanding post-conflict institutional arrangements.

Furthermore, research indicates that in countries where transitional efforts extend over a prolonged period, networks of expertise and technical knowledge have emerged to manage the implementation of these measures, referred to as "humanitarian bureaucracies."¹⁸ Such bureaucracies often comprise individuals with diverse backgrounds, including technical specialists, human rights advocates, and survivors of violence. They are crucial in both the practical execution of transitional measures and shaping the institution's character as a whole.

2. THE COLOMBIAN RESTITUTION SYSTEM

2.1. The Design

In the past 12 years, under the flag of TJ, Colombia has sought to implement a series of measures regarding property and land tenancy to confront the legacy of its armed conflict. In 2011, the government enacted Law 1448 (The Victims and Land Restitution Bill) to address these historic injustices and human rights abuses and lay the groundwork for a possible peace agreement (which was reached between Colombia and the FARC in 2016). Concerning land issues, the bill promised restitution for dispossessed and abandoned lands resulting from the forced displacement of more than 15 percent of the country's population during the armed conflict.¹⁹ The land restitution policy

16 Vera-Lugo, J. P. & Jaramillo, J. "Etnografías desde y sobre el Sur Global. Reflexiones introductorias", *Colombia Universitas Humanistica*, 2013, 13-34.; Jaramillo Sierra, I. C., & Buchely Ibarra, L. F. (Eds.). *Etnografías burocráticas: una nueva mirada a la construcción del Estado en Colombia*. Ediciones Uniandes: Universidad de los Andes, Facultad de Derecho, Bogotá, 2020.

17 Recalde Castañeda, G. "En la base de la ruta: barreras de acceso y estrategias de atención en la ruta de declaración y registro de víctimas del conflicto", *Revista CS*, (20), 2016, 123-142; Krystalli, R. "Attendance sheets and bureaucracies of victimhood in Colombia", *Political and Legal Anthropology Review*, 43(1), 2020, 43-62.

18 Vera, J. *The Humanitarian State: Bureaucracy and Social Policy in Colombia*, *cit.*

19 Ruiz-Gonzalez, L., et al. "Who Owns What in Macondo? The Flexibilization of the Rules of Evidence in Land Restitution in Colombia", *International Journal of Transitional Justice*, 15, 2021,

was promoted not only as a formula to revert dispossession but also as a measure to confront the chronic weakness of official institutions in rural areas. Indeed, this TJ process made two grand promises to Colombian victims of the armed conflict: 1) that the new institutions created by the law would be distinct from existing state institutions, thereby guaranteeing more justice and legitimacy, and 2) that, because of this newfound legitimacy, victims would have more incentives to access this TJ system than non-formal institutions.²⁰

Following the UN-sanctioned *Pinheiro Principles*, the law offers a path for restitution to the majority of peaceful occupants, regardless of previous formal rights.²¹ Notably, the law provides a mechanism for the conversion of past possessions into complete ownership rights.²² Unlike the South African “willing buyer willing seller” model, Colombian law creates a procedure whereby whomever is officially recognized as a victim of dispossession can forcibly demand the restoration of a plot of land. Secondary occupants could participate in the proceedings arguing they ignored the acts of forced dispossession when they acquired land rights. However, even if secondary occupants prove good faith in their transactions, they are not entitled to keep the plot for themselves; they can only request monetary compensation to be paid by the state.

The proceedings consist of two principal stages. In the administrative stage, an applicant submits its application to be assessed by a government agency within the Ministry of Agriculture, the URT, with the aim of registering the properties in the newly established land dispossession and forced abandonment land registry. Only if an applicant’s property is registered in the land registry can the applicant initiate the judicial proceeding by submitting their case to a land restitution judge or magistrate to adjudicate the claim. The scheme combines an administrative and judicial stage to settle heated disputes among bill supporters, where each group favored a fully judicial or administrative system. The objective of the dual mechanism is that, on the one hand, the administrative component ensures timeliness, coherence, and efficiency. On the other hand, judicial review is set to ensure fairness and to correct possible errors and biases of the administration.²³

26-46; Esquirol, J. L. “The presumptions and burdens of land restitution in Colombia”, *Transnational Law and Contemporary Problems*, 31(1), 2021, 93-120; Sánchez, N.C. *Tierra en transición. Justicia transicional, restitución de tierras y política agraria en Colombia*, Bogotá, 2017.

20 Sánchez, N.C. “Land reform and transition in contemporary Colombia”. In Molina-Ochoa, A. and Doubleday, N.C. *The Colombian Peace Agreement: A Multidisciplinary Assessment*, J.L. Fabra-Zamora (Ed.), Routledge, 2021.

21 Attanasio, D. & Sánchez, N.C., Return within the Bounds of the Pinheiro Principles: The Colombian Land Restitution Experience, *Washington University Global Studies Law Review*, 11, 2012.

22 Esquirol, J. L. “The presumptions and burdens of land restitution in Colombia”. In *Transnational Law and Contemporary Problems*, 31(1), 2021, 93-120.

23 However, the arrangement did not satisfy all stakeholders. A group of human rights organizations appealed to the Constitutional Court. They argued that requiring victims to undergo

2.2. The URT'S Humanitarian and Traditional Bureaucracies

Following the passage of the law, the government selected an existing team from a hybrid institution created through international cooperation, specifically through funds from the World Bank, to develop details of the Land Restitution Unit.²⁴ This team, predominantly composed of Colombian experts and known as the *Land Project*, had over a decade of experience in pioneering innovative efforts to protect land abandoned by people displaced by armed conflict. The Land Project differed from traditional land governance institutions in three critical ways: it was staffed by professionals with high technical expertise, it did not adhere to traditional bureaucratic structures, and it was independent of the government due to its World Bank funding.

The URT's initial "core strategic and managerial team" was primarily composed of professionals from various disciplines within the Land Project. One of the most important responsibilities of this core team was to identify numerous professionals (lawyers, social workers, and topographers) throughout the country and to train them so that the philosophy of the land project would spread throughout the URT. The Land Project operated as a relatively small outfit in Bogota, the capital. Still, the URT opened regional offices in all provinces of the country (known as territorial directorates). Hence, the goal was to maintain mainstream humanitarian bureaucracy in every URT regional office.

However, a range of factors made this task more challenging than anticipated. First, the working conditions of state employees were less flexible than those enjoyed by independent World Bank in-country contractors, which many Land Project officials perceived as downgrades from their previous conditions. Additionally, in a market where job with other internationally funded projects were plentiful, many quickly resigned from the URT. Second, some regions had limited talent pods and had difficulty attracting workers from elsewhere. Third, many newly hired officials are employed as independent contractors, which resulted in a high turnover of officials. In addition, contracts must include specific management metrics to evaluate contractors' performance. As it will be discussed later, some of these metrics had adverse effects on implementing the victim-centric ideology of the land restitution process.

This resulted in the URT having a significant number of top-level humanitarian bureaucrats committed to the project's ideology and overall objectives. However, most intermediate-level functionaries showed limited adherence to the project.

the administrative step as a prerequisite to have their case heard by a judge was inconsistent with the constitutional right to access justice. The Constitutional Court, however, upheld the institutional design set forth by the law. See. Constitutional Court. Ruling C-715 of 2012.

24 For a comprehensive and detailed account of the Land Project and its evolution into the Core team at the URT, see Davila, *cit.*; Sánchez, N.C. *Tierra en transición. Justicia transicional, restitución de tierras y política agraria en Colombia, cit.*

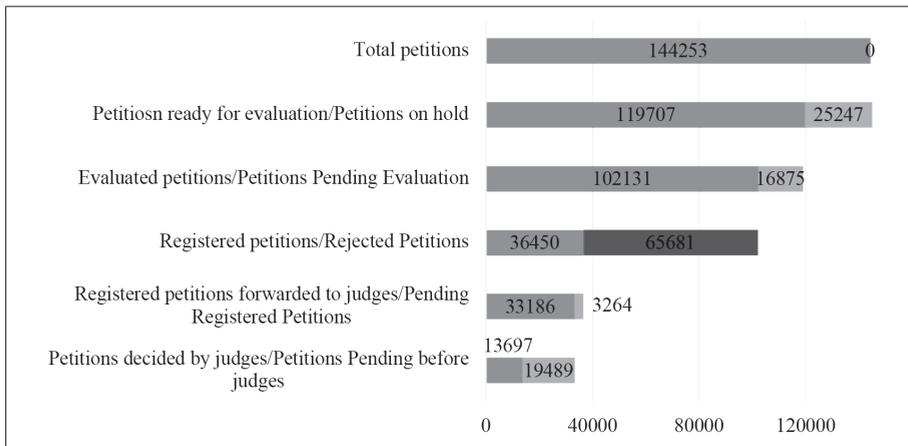
They had less understanding of the policy’s overall objectives, and their background was aligned with the ordinary procedures the law aimed to challenge.

Moreover, with the change of government in 2018, a considerable number of officials who were part of this humanitarian bureaucracy were either removed or resigned because they did not share the new government’s objectives or views on what the focus of the restitution policy should be.

2.3. THE IMPLEMENTATION GAP

As of March 28, 2023, the URT had received 144,253 land restitution applications.²⁵ Among these applications, 25,247 are on hold because the properties are located in zones that do not meet the minimum safety requirements to continue the process. Once these zones meet the minimum safety requirements, the URT reviews the applications. The other 119,006 applications were analyzed by the URT to determine whether the application fulfills the criteria for granting restitution. After said analysis, the URT renders a resolution to either include the application in the land registry or not, thereby ending the possibility of land restitution. GRAPH 1 summarizes the existing data on petition flow through the different stages of the process.

GRAPH 1
LAND RESTITUTIONS CLAIMS



Source: Own elaboration, from URT. *Estadísticas de Restitución* [March 28, 2023]. Retrieved from: <https://www.urt.gov.co/estadisticas-de-restitucion-de-tierras>

25 The figures presented in this section are based on publicly available information from the URT, which is summarized in the “Restitution Statistics” graph as of March 28, 2023. In addition, the authors have received disaggregated information from the URT on March 13, 2023, in response to a FOIA request.

Of the 119,006 applications that meet the minimum-security requirements, the urt has made final determinations regarding 102,131 applications. Of these final decisions, only 36,6450 applications were included in the land registry. The remaining 65,681 applications (*i.e.*, 64,3% of those with final decisions—the dotted black bar in Graph 1) were not included in the land registry, due to either urt rejection or applicant withdrawal. As such, the only legal recourse for applicants seeking to challenge the decision not to include their property in the land registry is to file a lawsuit against the urt in an administrative court.

Regarding these 65,681 applications, there is limited information on the reasons for their withdrawal or rejection. In fact, although the URT began rejecting applications towards the end of 2011 (and applications started being withdrawn in 2012), it did not start registering said reasons of each application until 2019.

From the material reviewed for this study through the access to information requests, it is known that about 15,438 (24%) of the rejected applications were not included in the land registry because of the withdrawal of applications. Under Colombian law, any government petitioner can formally withdraw their application at any stage, referred to as an “express withdrawal”. The URT can also withdraw the application if the applicant fails to respond within a specified period, this latter being referred to as a “tacit withdrawal”. The Colombian Constitutional Court ruled that tacit withdrawals within the land restitution process were unconstitutional.²⁶ However, there is very limited information regarding the number of expressed withdrawals and tacit withdrawals.

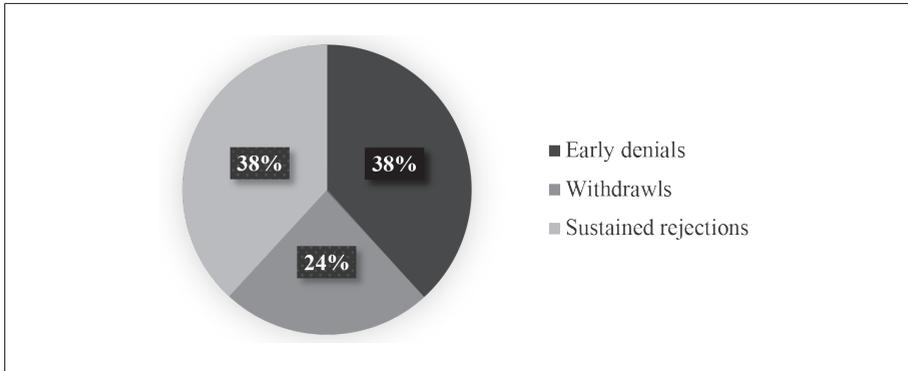
As for the remaining 76% of rejected applications, there is little information on the reasons for the URT’s rejections. This research shows that the URT can reject these requests in two stages. First, the URT lawyers conduct an initial review of all petitions to the agency. At this stage, the lawyers check that the petition complies *prima facie* with the basic filing requirements established by the law and other complementary regulations adopted by the government. If the application does not meet these requirements, the URT will remove the request from the docket without further investigation. These are called early denials. Conversely, if the application surpasses this examination, the URT opens a case, collects additional evidence as needed, and issues a reasoned decision on whether to include the case in the registry. Petitions that have been studied but are not included in the land registry are referred to as reasoned rejections.

In summary, three types of petitions exit the system at the administrative stage: early denials, withdrawals, and reasoned rejections. As shown in Graph 2, the information provided by the urt reports that early denials account for

26 One of the concerns with withdrawals has to do with whether the applicant voluntarily withdrew their application or whether it was done out of fear or under threat.

38% of all rejected petitions, withdrawals for 24%, and reasoned rejections for another 38%.

GRAPH 2
REJECTED CLAIMS BREAKDOWN



Source: Own elaboration, from URT. *Estadísticas de Restitución* [March 28, 2023]. Retrieved from at: <https://www.urt.gov.co/estadisticas-de-restitucion-de-tierras>

Moreover, not all claimants whose cases have been registered by the URT (34,615) have had their cases heard in court. As of March 2023, the URT forwarded 33,186 of those cases to land restitution judges. Restitution judges issued rulings covering 13,697 applications, the overwhelming majority favoring claimants. The remaining 19,487 applications still pend the final judicial decision.

Here, the evaluation becomes a matter of perspective, either seeing the glass as half-full or half-empty. The URT claims a high success rate in their case management, stating that the agency issued a substantive decision regarding 70.7% of the received petitions. this figure overlooks that the URT has been unable to process one-third of these claims due to security concerns. If this factor is considered, the URT reached a final decision on 85.8% of the processable petitions.²⁷

However, other evaluations focus on the number of claims in favor of the claimants as decided by the system. . In this regard, both the numbers and percentages drop dramatically. Only 9.4% of the petitions obtained a judicial ruling that recognizes the claimants' right to restitution or compensation.

²⁷ This percentage fares positively when compared to the progress of other transitional justice mechanisms set up by the same bill. For example, in the same period, the agency in charge of providing economic compensation to victims has managed to disburse benefits to only 12 percent of its targeted population.

3. RESEARCH AND DISCUSSION

The takeaways of the overall and disaggregated statistical data on both applications and their rejections have been considered elsewhere.²⁸ Analyzing this data in our previous work, it was concluded that “Law 1448 of 2011 had only a marginal impact” on addressing patterns of mass dispossession in the country.²⁹ Our findings suggest that the URT’s flawed and opaque implementation during the administrative stage hindered the land restitution policy’s potential to be an effective instrument for resolving land restitution applications and serving as a transformative transitional mechanism. In our view, “instead of facilitating the collection and processing of information and applications, the administrative stage has, for a large number of victims, become an insurmountable barrier in their quest for land restitution.”³⁰

In this study, two new dimensions to our analysis are added. We begin by supplementing the statistical information with a novel dataset consisting of 869 tacit withdrawal decisions retrieved from the URT’s website through a web scraper. As far as we know, this is the first dataset to compile information on cases ring-fenced by the URT. Next, we triangulated the available statistical information,³¹ qualitative analysis,³² and our exclusive datasets on withdrawals³³ and judicial challenges to rejections³⁴ to examine the two alleged system design flaws. The two hypotheses that we investigate are as follows:

28 Acosta, A., & Sánchez, N. C. *¿Barreras insuperables? Un análisis de la etapa administrativa del proceso de restitución de tierras*, Documentos No. 75, Bogotá, Dejusticia, 2021.

29 Ibid., 67

30 Ibid., 68

31 The statistical information is composed of public information available on the URT website, the portal <https://www.datos.gov.co/>, and data directly provided by the URT in response to a dozen access to information requests submitted between 2019 and 2022 by the authors.

32 Our field observation of the process began in 2018. Since then, we have followed policy developments, reviewed agency performance reports, press releases, and other public statements, and partake in forums, expert seminars, and other public discussions. In addition, we conducted more than 20 semi-structured interviews with restitution experts, including judges, administrators, law professors, and other academics.

33 We used the web scraping technique to extract data from the URT website. Then, we mined the data through optical character recognition system (OCR) to collect and store legal document information in a database. We used as the cut-off date December 31, 2021. The data gathering resulted in the collection of 1525 documents. After filtering, we identified 1131 rejection resolutions (1032 withdrawals and 99 early dismissals and Reasoned rejections). This sample amounts to 5% of the total number of withdrawn petitions. Of these, 869 correspond to tacit withdrawal resolutions and 263 to express withdrawal resolutions. The 869 decisions were read and coded by one of the authors.

34 This database compiles cases of administrative litigation filed against the URT. The database contains 56 entries that correspond to the same number of cases. Although we have identified 89 cases, we have only been able to access court records in 56 of them. Administrative courts throughout the country (at first instance and appellate levels) have handled these cases. The information that feeds the database was extracted from the human reading of the files.

H1) A government agency is not immune to the government's political preferences, which inevitably affect case adjudication decisions.

H2) An entrenched pro-status quo institutional culture contradicts the proactive management principles of the transitional project.

3.1. Political Influence

The Colombian case seems ideal for examining how powerful political interests influence the performance of transitional institutions. During the 12 years of existence of the restitution system, the country has witnessed the rule of two administrations with significantly opposed political positions.³⁵ Between 2010 and 2018, Colombia was presided over by Juan Manuel Santos, leader from the center-right who defended a modernizing vision of the Colombian government and society. Santos believed that for modernization and free-market agendas to flourish, the country needed to eliminate the guerrilla threat - and the most effective approach was the through the negotiation of a peace agreement. He also wanted to bring order to the distorted land market for which addressing the legacy of violent dispossession was critical. Due to these reasons, openly challenging the conservative political forces that brought him to power, Santos set two priorities for his mandate: the passing of a Victims' Reparation Bill, which would include the restitution of land seized during the conflict, and the negotiation of a peace agreement with left-wing guerrillas.

These proposals threatened the country's influential conservative sector. Mainly, two factors contribute to this sentiment. On the one hand, these traditional factions have used the guerrilla threat as the basis of their political manifesto, making them more ideologized than Santos' sector, and therefore less open to options for ending the conflict other than the military defeat of their enemy. On the other hand, these sectors have a long history of clientelism politics that rely on informality and lack of certainty of land ownership for their political and economic gains. Therefore, defending the status quo in land ownership -under the slogan of the protection of private property- is one of their main banners.

Against all odds, Santos prevailed in Congress. By mid-2011, the legislative branch had passed Santos' proposed land restitution bill. This initial success provided Santos with two significant incentives to ensure the implementation of the law. Primarily, since it stemmed from his administration initiative, any shortcomings would reflect poorly in his government's performance. In addition, Santos argued that the land restitution policy was the initial installment of a broader transformation of the country's land tenure system. Early steps in the transformative agenda

³⁵ In addition, in each of these administrations, the same executive director oversaw the URT during each presidential term. This is unusual in the country, where the heads of ministries and executive agencies usually undergo several changes.

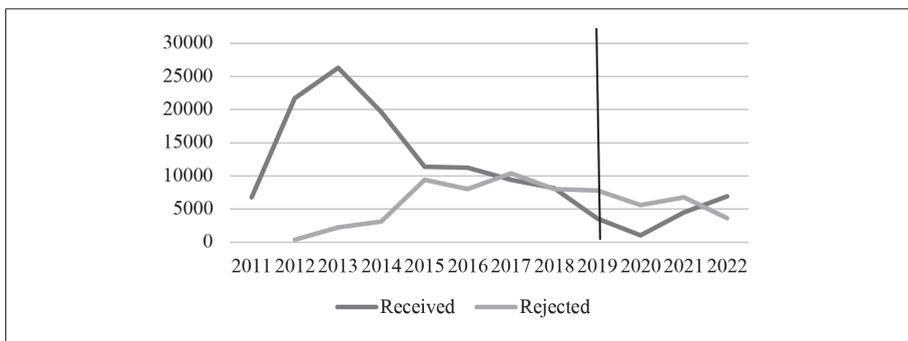
were aimed at showing the guerrillas that changes in agrarian structures were possible by democratic means. Santos sought to make peace negotiations easier with guerrillas. Therefore, the rapid success of the restitution policy was critical for Santos in unlocking the second goal of his presidency.

Fast forward seven years, Iván Duque’s presidency (2018-2022) was inaugurated in a new political context. With Duque’s victory, the traditional conservative sectors recaptured the power they felt they had lost to Santos’s alleged betrayal. As expected, Duque’s political platform pledged to reverse Santos’ accomplishments in both the peace agreement and the land restitution policy as much as possible. Regarding said policy, Duque’s supporters felt that it had infringed the legitimate rights of bona fide secondary possessors who lacked sufficient means to protect themselves, given the illegitimate constraints imposed by the bill. Hence, they requested that the Duque government support an amendment to the law to grant more significant guarantees to secondary occupants.³⁶

Against this political backdrop, it is plausible to assume that the administrative restitution agency demonstrated a more pro-victim approach during the Santos administration. Under Duque’s leadership, the rejection of applications would have probably increased due to political directives aligned with the new ruling party’s interests.

However, the collected data showed no significant variations between the two administrations. Data on rejection suggests a steady pace of the URT approach during the two government terms. As shown in GRAPH 3, the number of denied petitions, including rejected and withdrawn petitions, increased significantly halfway through Santos administration. It remained stable over the four years of the Duque government.

GRAPH 3
RECEIVED VS. REJECTED RESTITUTION CLAIMS



Source: Own elaboration, from URT. *Estadísticas de Restitución* [March 28, 2023]. Retrieved from: <https://www.urt.gov.co/estadisticas-de-restitucion-de-tierras>.

36 Sánchez, N.C. “Land reform and transition in contemporary Colombia”, *cit.*

It could even be argued that, in proportion to each docket, the Duque government rejected fewer petitions than the Santos administration. From the initiation of the policy through to the end of Juan Manuel Santos' tenure, the system had a load of 118,007 petitions, of which 37,094 were rejected. This means the URT rejected 31.4% of all processed petitions during this era. Fast forward to August 2022, and the Duque government had a backlog of 98,067 restitution requests on its plate. This tally includes the unresolved balance from the Santos regime, as well as the new petitions accumulated from August 2018 through August 2022. During this later phase, the URT dismissed 26,131 petitions, constituting 26.6% of the total figure under consideration.

The consulted experts had a similar assessment to the findings presented in the graph. Many of them have direct knowledge of the URT's inner functioning.³⁷ The interviewees stated that they had no information indicating that higher-ups were pressuring field officers to reject petitions.³⁸ Similarly, the perception of experts, especially those litigating restitution cases, was of continuity rather than rupture in the face of the 2018 government change.

Our close follow-up on the implementation of the policy also allowed us to identify three significant factors marking the system's trend towards the restricted processing of cases. All of these factors are rooted in the Santos government, and they continued to be institutional policy despite the administration change.

The first element is the issuance of administrative regulations that expand the grounds on which the URT can render early rejections.³⁹ As seen in graph 2, the URT used the early rejection prerogative to deny almost 40% of all evaluated applications. Legal experts consulted during the field research argued that these provisions were unconstitutional. Although there is no judicial decision in this regard, the reason for such alleged unconstitutionality is that the regulation contradicts what the law intended: the burden of the investigation should fall on the URT and not on the petitioners.

The second significant factor is the emergence of the doctrine of withdrawal. As noted above, the Land Restitution Bill does not establish this option. Instead, the URT officials adopted some provisions from ordinary Colombian administrative law and developed this doctrine. As in the previ-

37 Many of them served at different points as agency employees or consultants or had a direct relationship with the URT's legal teams in charge of making these decisions.

38 We don't mean to imply that there are no documented cases in which a particular political interest has attempted to influence specific decisions. For example, Wesche has reported how during the Santos administration senior officials exerted undue pressure on cases involving companies in the mining and energy sector to protect corporate interests. Wesche, Philip. "Business actors and land restitution in the Colombian transition from armed conflict", *International Journal of Human Rights*, 25 (2), 2020, 295-322.

39 See Decree 1071 of 2015, art. 2.15.1.3.4.

ous case, local experts consulted for this research considered the legal basis for this doctrine questionable.

The third element relates to the government's incentives to encourage agency performance. Local organizations, such as the reputable Colombian Commission of Jurists (CCJ), have pointed out that a significant increase in rejection decisions correlates with a URT institutional policy to scale up management results. The Santos government adopted such a policy to reassure the Colombian public and international community that the implementation of the bill was on the right track. The CCJ argued that this drive would bring results at the expense of the victims' right to have their cases thoroughly investigated and decided on fairly.⁴⁰

While our data does not allow for explanation of the reasons behind this high number of rejections, this information simply enables us to challenge one of the most used explanations for such denials. There is no evidence to suggest that the administrative agency was manipulated by high-level political interests that directly opposed the restitution policy, nor is there confirmation that the faction that came to the government under a banner of confrontation against peace and TJ derailed a process that would have otherwise resulted in quicker and positive decisions for the claimants.

Institutional inertia, path dependency, and the impact of strategic decisions taken in the early stages of the policy seem to be more plausible explanations for the phenomenon studied. The straight forward notion that a government agency lacks the independence to challenge entrenched interests on the ground does not appear to be the most obvious explanation. A more granular analysis of what occurs inside an agency is necessary to resolve many of these doubts. The focus will now shift towards this matter.

3.2. A *Pro-Status Quo* Institutional Culture

The diagnoses that informed the drafting of the Victims' Law pointed to two factors that were instrumental in *masse* dispossession. The first is the disconnect between outdated property laws and social reality in rural areas. The second is the implementation of these norms by institutions, with little regard for fair resolution of agrarian conflicts.

Reversing dispossession requires a two-pronged strategy in tandem. On one hand, it was indispensable to invalidate or reinterpret these property laws. On the other hand, Congress had to establish new institutions to implement these novel principles and interpretations. Creating new institutions –rather than adapting existing ones– was regarded as fundamental to prevent bureau-

40 Comisión Colombiana de Juristas – CCJ. *Cumplir metas, negar derechos: Balance de la implementación del proceso de restitución de tierras en su fase administrativa 2012-2017*. Bogotá, CCJ, 2018.

crats, already familiarized with the old regime, from distorting the mandate of the new law. Consequently, the law created a new government agency to deal with the first step of the procedure, the URT, and delegated the second step to a group of specialized judges.

It was also recognized that new institutions had to start with a fresh approach to implementing the law. Hence, the unofficial motto of the new restitution policy was that administrators should adjust their default “ordinary law” thinking to the new mindset of TJ.⁴¹

To what extent were these new institutions able to leave the old regime’s ways behind? The following section responds to this question based on three factors associated with the rejection of petitions at the administrative proceeding stage.

3.2.1. The Withdrawals

The withdrawal of applications is one of the most controversial case management decisions made by the URT. As highlighted earlier, the Victims Bill does not provide for withdrawal and the Constitutional Court ruled that this figure should not be applied to land restitution cases. Even so, URT has defended the practice arguing that it is a necessary measure to manage its case docket. It argues that without claimants’ input, including information that only they can provide, the agency cannot process petitions.

Since the URT does not publicly disclose withdrawal decisions, it has been impossible to determine whether these rejections have been fairly adopted. However, our database makes it plausible to provide insights into this issue for the first time.

After reviewing over 860 ‘Tacit Withdrawal’ resolutions, an initial finding is that the decisions do not follow an established pattern. Regional URT offices exhibit significant variations in critical matters, such as the procedure to communicate with claimants, grounds to determine that a victim has withdrawn, and granted length of time for actions to be taken.

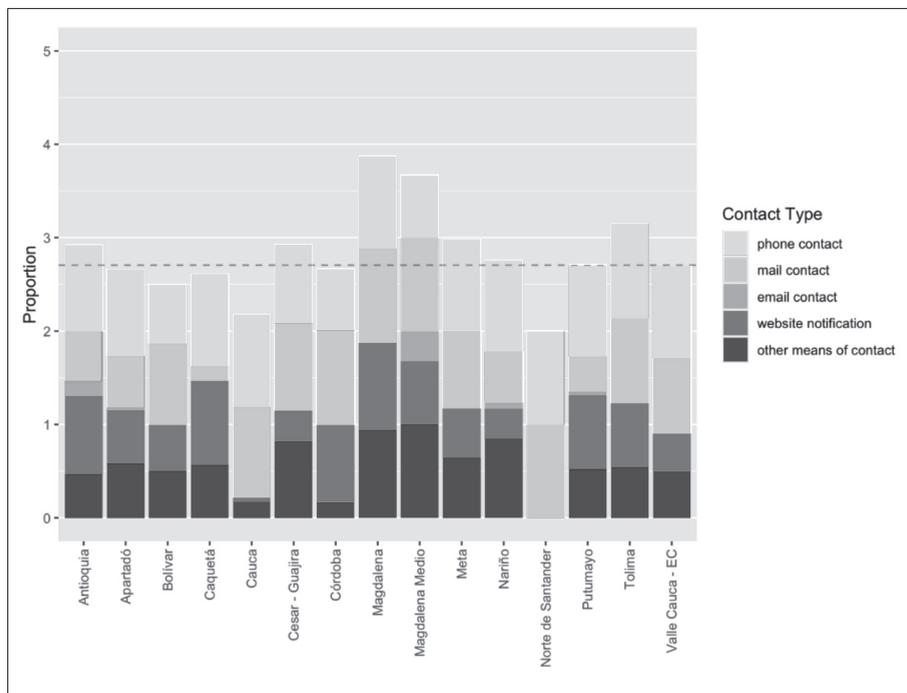
Our sample shows that it appears that the URT’s regional offices have encountered difficulties to contact claimants via regular mail, email, telephone calls, posts on the agency’s website, and by “other means of contact.”⁴² However, the fact that the URT resorted to different forms of communication does not mean that the agency necessarily used all these forms of contact for each case. The aggregate analysis of the implemented means of communication

41 *Semana. Los justicieros de la Ley de Víctimas*. May 18, 2012. Retrieved from: <https://www.semana.com/los-justicieros-ley-victimas/258177-3/> [Accessed 25 June 2023]

42 This category includes a wide range of different forms of attempted contact. For example, some regional offices occasionally sent communications to other state agencies asking them to check their databases for updated mailing addresses or telephone numbers. In other cases, the regional offices held “service fairs” and included the call for these fairs as a form of notification to claimants.

shows that, on average, the URT attempted to establish contact by using three different methods per request (See graph 4).

GRAPH 4
COMBINED PROPORTIONS OF CONTACT METHODS PER TERRITORIAL



Source: Own elaboration, based on URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023.

Our data reveals that nearly all the withdrawn petitions correspond to cases in which petitioners did not answer the URT’s contact attempt.⁴³ However, the majority of the methods utilized by the URT to contact victims did not accommodate the needs of the displaced population in Colombia. Well-known studies have shown that the displaced population is mostly itinerant and struggling to keep up with rent and phone payments. Therefore, displaced families have a higher rate of relocation and changing telephone numbers than the rest of the population.⁴⁴

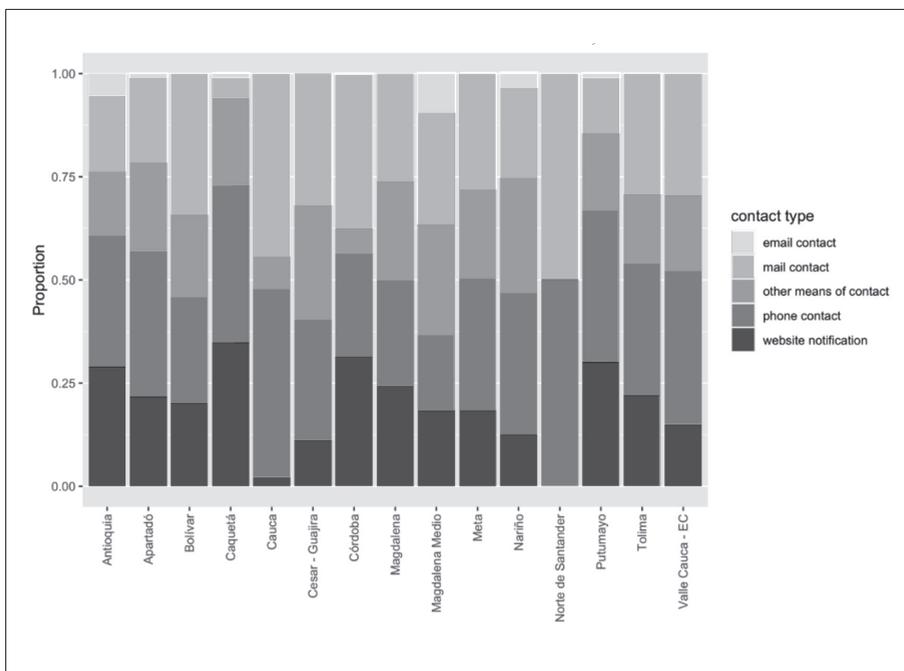
43 In significantly few rare cases, the resolutions stated that the claimant answered the phone but that they manifested to be unable to appear before the agency to continue processing the claim.

44 Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado. Proceso Nacional de Verificación de los Derechos de la Población Desplazada. Sexto Informe a la Corte

As illustrated in graph 5, the two most common means of contact were telephone calls and postal mailings (32,35% & 27,94% respectively). Additionally, it was found that in a significant number of cases, contact relied on posting notices on the URT website as the only way for victims to become aware of the agency's attempts to contact them (18.5%). Furthermore, the URT did not frequently use other means that would allow the message to be consulted remotely and at a more convenient time for the claimant, including notifications via e-mail, text message, or social media, despite the knowledge that a significant number of rural and displaced households have access to WhatsApp and Facebook.

GRAPH 5

PROPORTION OF CONTACT INSTANCES PER TERRITORIAL, COLORED BY CONTACT TYPE



Source: Own elaboration, based on URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023.

More importantly, in our opinion, the resolutions we had access to do not show that the URT took concrete action to investigate (i) the whereabouts of the claimants and (ii) why these individuals might not respond to their calls.

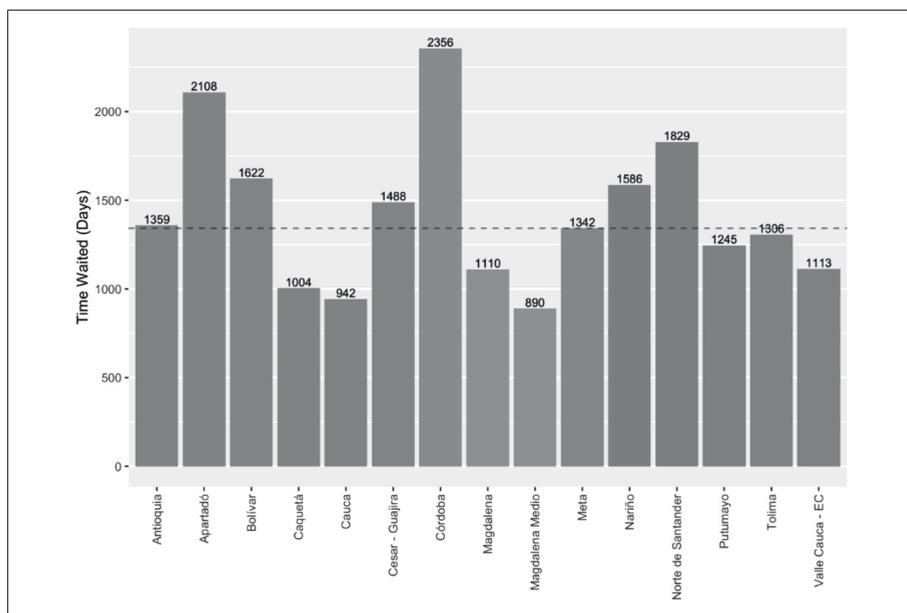
Constitucional. La restitución como parte de la reparación integral de las víctimas del desplazamiento en Colombia, Bogotá, 2008.

The category labelled as “other forms of contact” encompasses proactive measures, such as sending official communications to other government agencies and asking them to check their databases. However, these actions counted as exceptions and were only practiced by a few regional offices.

Furthermore, we found concrete context investigation activities in only a few resolutions corresponding to cases processed in the Bolivar territorial directorate before 2014. In these cases, territorial directorate officials wondered whether indications such as fear or generalized violence would lead them to believe that the claimants were being coerced not to appear. However, again, these cases are exceptional and correspond to when the number of petitions to be processed was low, before the number of rejections increased exponentially (see GRAPH 3).

The need for proactive investigation becomes even more evident when one considers that the attempt to contact the claimant occurred years after the initial submission of the restitution claim. Our sample indicates that on average, the URT took three years and nine months to take the first action on a case, counting from the day its petition was submitted (1,431 days) (GRAPH 6). Likewise, an average of 15 months (496 days) elapsed between the first action taken and when URT issued an official decision declaring a case dismissed (graph 7). In aggregate, the average time these petitions spent in the system was five years and two months (1605 days) (graph 8).

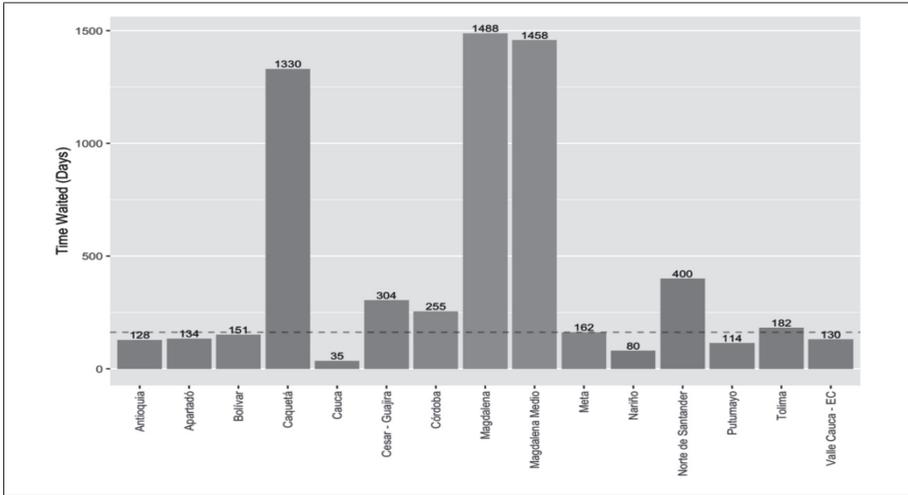
GRAPH 6
AVERAGE TIME WAITED BETWEEN PETITION SUBMISSION AND FIRST ACTION



Source: Own elaboration, based on URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023.

GRAPH 7

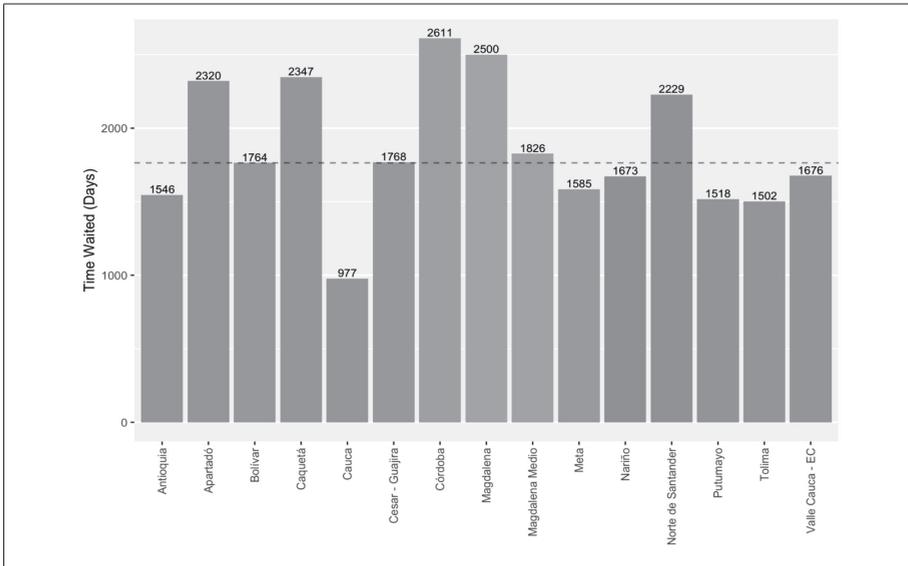
AVERAGE TIME WAITED BETWEEN FIRST ACTION AND FINAL DECISION



Source: Own elaboration, based on URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023.

GRAPH 8

AVERAGE TOTAL TIME WAITED BETWEEN PETITION SUBMISSION AND FINAL DECISION



Source: Own elaboration, based on URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023.

Suppose we consider the perspective of the affected families. In such a scenario, the data suggests that a family must be available at the address or phone number they provided the URT with almost four years after filing their complaint. Even more challenging is the situation of a family who, for whatever reason, cannot be contacted by the URT. To ensure their chance to challenge a rejection, a family in this position must regularly inquire about the URT between 3.5 and 6.5 years after filing their complaint.

We also know that the URT turnover rate is high among expert interviewers and field observations. This leads us to believe that the legal officer who is supposed to be responsible for each of the three procedural acts (submission of the application, attempted contact, and final decision) differs throughout the process. This assumption aligns with the claim consistently raised by the URT ex-officials in our observations. They claim that, in most cases, a newly hired junior attorney would be assigned to many unresolved petitions, many of which would have been pending for years with no procedural activity and no contact with the victims. In these cases, the decision to declare rejection was to be blamed, according to our interviewees, on the structural limitations of the system rather than on an official's eagerness to deny restoring land to claimants.

Overall, the analysis of our sample leads us to conclude that the URT leadership did not provide the right incentives for field officers to administer the system in such a way that it could favor the law's principles of material justice and victim-centeredness. We believe that the decisions do not appear to be grossly arbitrary or unjust when examined individually. However, a different story can be told when we combine them and assess the context. It then becomes evident that the withdrawal mechanism does not seem to be any different from the flawed, ordinary justice system it was meant to replace.

3.2.2. Reasoned Rejections

After conducting extensive research, including fact-finding, evidentiary analysis, and adjudication, the URT has denied over one-third of all land restitution claims. Considering the significant time and resources required to process these claims, it would be unfair to automatically accuse the URT of deliberately denying restitution requests. The situation is distinct from that of withdrawal cases, as the URT's due diligence suggests that the rejected claims lack substantial evidence. It is possible, for instance, that some of these claimants have submitted false claims to obtain land rights they were not entitled to, resulting in legitimate denials of restitution claims.

Therefore, it is critical to examine the reasoning of these decisions to properly evaluate URT performance. However, regarding sustained rejections, we encountered a similar issue of limited data access as with withdrawals. The URT

does not disclose those decisions, claiming that they contain applicants' sensitive information.⁴⁵

However, during our comprehensive research on this topic revealed significant insights into the URT's prevailing institutional culture. First, we were surprised that for a long time, the URT did not perceive these rejections as a problem worth analyzing. The URT overlooked the issue even though, since 2014, it has been evident that the volume of rejections exponentially exceeded the number of admitted cases. It was not until July 2019, after seven years of operation and five years after the peak in rejections, that the URT began compiling information on the grounds for rejections.⁴⁶

However, the URT did not have defined internal mechanisms to raise concerns in such circumstances. Externally, victims, civil society organizations, and government monitoring institutions had already set alarm bells. For example, in 2016, a Congressional Monitoring Panel conducted a random review of rejection decisions and found discrepancies between the grounds for rejection and stipulations of the victim's bill.⁴⁷ In 2018, the Procuraduría General, an independent government watchdog, undertook a similar review, requesting that the URT overturn 429 reasoned rejections. The Procuraduría found that these denials violated the rights of victims established by the Constitution and Victims Bill.⁴⁸

Another issue worth mentioning was the multiple and disparate reasons recorded since mid-2019 for tabulating rejection. The URT response suggests that central leadership has not consistently established criteria across regional directorates. Instead, the response indicates that each territorial directorate makes decisions at their convenience and sends information to the central level for compilation purposes. Table 1 presents our translated version of the URT's stated grounds for rejection, as officially communicated to us by the URT, and the percentage of rejected requests per category.

45 URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023.

46 URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023, authors.

47 Comisión de Seguimiento y Monitoreo a la Implementación de la Ley 1448 de 2011. *Tercer informe al Congreso de la República sobre la implementación de la Ley de Víctimas y Restitución de Tierras*. Defensoría del Pueblo, Contraloría General de la República, Procuraduría General de la Nación y Mesa Nacional de Participación Efectiva, Bogotá, 2016.

48 Procuraduría General de la Nación. "Procuraduría solicitó a la Unidad de Restitución de Tierras revocar 429 negaciones de inclusión en el registro de tierras despojadas en Bolívar", *Boletín 685*, Bogotá, 2019. Retrieved from: <https://apps.procuraduria.gov.co/portal/Procuraduria-solicito-a-la-Unidad-de-Restitucion-de-Tierras-revocar-429-negaciones-de-inclusion-en-el-registro-de-tierras-despojadas-en-Bolivar.news> [Accessed 25 June 2023].

TABLE 1
 GROUNDS FOR REJECTION

Lack of nexus of causation	23%
Lack of nexus of causation between transaction and victimizing events	18%
Lack of legal status as a victim of the armed conflict	17%
Lack of disconnection from the property	11%
Lack of status of victim of the armed conflict	9%
Temporal jurisdiction limitations	9%
Impossibility of identifying the property	3%
Legitimacy concerns	3%
Factual discrepancies in the applicant's claim	1%
Overlapping with Community Council and/or Indigenous Reservation	1%
Massive dispossession and abandonment issues	0.7%
Environmental impacts of restitution	0.6%
Notorious victimizing events that do not have sufficient evidence	0.4%
Agrarian conflicts that predated the armed conflict	0.1%
Returned landowner claims	0.1%
Acts of God (Decree 1167 of 2018)	0.02%
Force majeure (Decree 1167 of 2018)	0.01%

Source: Own elaboration, based on URT. *Response to Freedom of Information Request* [On file with the authors]. March 13, 2023.

A quick look at Table 1 is enough to demonstrate that several criteria overlap. This overlap includes the primary reason for rejections: the lack of a nexus between the act of dispossession and the context of armed conflict. The large percentage of rejections in this category (at least 40%) creates an additional basis for disagreement between defenders and critics of the system. First, to a large extent, these decisions rely on judgment calls. Considering the system characteristics discussed earlier, the two-step scheme sought to have judges make such decisions. The system designers believed that this would ensure transparency, independence, and impartiality in adjudicating hard cases. Thus, critics accuse the URT of exceeding its authority.

Second, there is evidence that the territorial directorates have different criteria for interpreting and applying what they consider to be the “causal nexus.” Some of these criteria conflict with the Constitutional Court’s jurisprudence and standards set by restitution judges. In fact, the URT shared with us a legal memo, drafted by its central Legal Division, aimed at homog-

enizing the different regional offices' responses while complying with court precedents. However, we have evidence of decisions that have deviated from the memo's suggested approach.

In summary, URT appears to have two chronic weaknesses reminiscent of the old regime: lack of self-criticism and reluctance to listen to external appraisal. Even today, the system appears slow and inflexible, and requires greater signs of transparency. We do not imply that all reasoned rejection decisions lack merit, but that the agency's defensiveness has generated significant levels of distrust. Again, this outcome undermines a system whose central promise is to rebuild victims' trust in state-sanctioned institutions.

3.2.3. The Lack of Judicial Challenge of Rejections

As the final element of our analysis, we tracked cases in which land claimants appealed to a judge seeking to reverse a denial decision. To this end, as a first step, we submitted access to information requests to the URT, seeking information on cases in which they had served as defendants. As a result, we obtained information on 89 cases that have either been adjudicated or are currently pending in the contentious-administrative jurisdiction. As we explained in detail in previous sections, we monitored, analyzed, classified, and recorded these decisions in a separate database.⁴⁹

Here, we want to use this data to highlight four aspects that shed light on institutional interactions among different system parts. First, as the diagnoses had anticipated, a meager minority of petitioners went into the ordinary justice system to air out these disputes. Court cases constituted 0.013% of the total number of rejections. This evidently indicates that the URT does have a *de facto* final say in the lion's share of restitution requests. The URT undoubtedly plays a significant among the institutions involved in land restitution in Colombia. The question to be asked is whether the URT itself is fully aware of the extent of its power.

Second, overwhelmingly, the cases litigated before the contentious-administrative jurisdiction stem from disputes over the interpretation of the concept of "nexus of causation." These situations corroborate the existing tension over the role that administrative and judicial steps play –or should play– in the procedure.

Third, an examination of court cases allows us to conclude that once disputes reach the ordinary justice system, all the principles and objectives established in the TJ program are no longer upheld. For example, the centrality of the victim, reversal of the burden of proof, and flexibilization of land relations are notions that have no place before administrative judges. It

49 Acosta, A., & Sánchez, N. C. *¿Barreras insuperables? Un análisis de la etapa administrativa del proceso de restitución de tierras*, cit., 39

appears that the responsibility for implementing transitional principles lies solely with a select group of temporary and specialized institutions. Both the direction of the process and the decisions of administrative judges are proof of this. The fact that only one judicial challenge has resulted in favorable outcome for the claimants is definitely noteworthy.

Finally, in the proceedings before the contentious-administrative jurisdiction, the Colombian State has broken its promise that the victims would not walk alone, and that state institutions would always provide effective support. To begin with, in none of the cases did we find that the Ombudsman's Office took part in the proceedings. However, more relevant to this paper are our findings on the role of the URT when acting as a defendant. What emerges from court records is an excessively solid institutional defense that resorts to the classic ordinary ritualistic tools to get rid of the case at hand. One notable example, which is somewhat ironic, is the frequent reliance on the presumption of the legality of the administration's decisions. Ironically, the purpose of the Victims' Bill was precisely to rectify administrative decisions that, abusing these principles of administrative law, have thrown a cloak of legality to forced dispossession.

CONCLUSION

Drawing from the growing and substantial comparative experience in mass reparations for victims of violence in transitional contexts, several factors must be present for a reparations program to achieve fundamental objectives, such as adequate coverage and fairness. First, the program must have clear and specific objectives that can be monitored for progress or setbacks. Second, an enabling regulatory framework must be established, which may require legal reform to eliminate barriers and create favorable conditions for successful implementation. Third, institutions must be created and staffed with trained personnel committed to adhering to the regulatory framework. Lastly, due to the bureaucratic nature of state undertakings, strong leadership from the top is necessary to overcome obstacles and prevent the program's derailment.

In the Colombian context, the interpretation of the results from the 12 years of restitution policy implementation is often reduced to a simplistic power struggle between different political factions. One faction is depicted as advocating for peace and victims' rights, while the other is portrayed as conservative and resistant to change. According to this perspective, the conservative sector is prevailing, and any progress made by the pro-peace and pro-victims' rights faction has been dismantled. Alternatively, some argue that the conflict lies between a traditional pro-status quo bureaucracy and a pro-human rights bureaucracy seeking to transform intricate institutional processes and culture. In this scenario, the bureaucratic contingent of the status quo has been victorious.

However, our research provides a more nuanced and detailed view of these seemingly explanatory rationales. Our findings suggest that the change in government did not have significant impact on the performance of the restitution system, as there was no significant difference between the two administrations. The rejection of applications remained steady, with the Duque government even rejecting fewer petitions than the Santos administration. Instead, our research highlights three significant factors that have contributed to the system's tendency towards restricted processing of cases: the issuance of administrative regulations expanding the grounds for early rejections, the emergence of a legal doctrine that made it easier to remove cases from the record, the withdrawal doctrine, and the government's incentives to encourage agency performance. Our findings suggest that institutional inertia, path dependency, and strategic decisions taken in the early stages of the policy may be more plausible explanations for the observed phenomenon than political interference.

In summary, the findings of this research demonstrate that the challenges facing the implementation of the Colombian land restitution policy in are not reducible to a simplistic power struggle between different political factions or bureaucracies. They reveal that the factors that influence the system's trend towards restricted processing of cases are complex and multifaceted.

These findings have both theoretical and policy implications. First, the implementation of the Colombian land restitution program illustrates that officials in positions of authority often rely on familiar approaches when confronted with uncertainty. The massive use of the withdrawal doctrine attests to this trend. In a context where the docket was growing exponentially and analysts were under pressure to show management results, and where it was significantly difficult to identify and locate victims, officials defaulted to a familiar approach. Other similar legal figures allowed them to cope with the docket pressures and expectations more flexibly. This probably also explains why, despite the criticisms, these legal figures continue to be part of the repertoire of action for the URT officials.

Simultaneously, temporal and regional variations challenge the notion of a uniform implementation plan, further debunking the hypothesis that the implementation outcome directly results from the interference of the dominant political elite. The processing of these petitions reveals a narrative that features diverse forces acting in various directions, showcasing innovation, conformism, resistance, co-optation, self-preservation, among other motives. This context created enough space for different streams within the URT, including humanitarian bureaucracies, pro-regime appointees, and potentially unaffiliated officials to position themselves and attempt to push for their interpretation of the laws and goals of the project.

The research findings have implications beyond informing similar restitution systems. They can also assist the Colombian government in reevaluat-

ing and adjusting its restitution strategy. At present, the responsibility for executing the policy lies with a third government. While the presidency has attributed the limited progress in providing justice to the victims to the lack of political will of the previous administration, the new URT leadership is taking a more comprehensive approach by examining the implementation failures and devising solutions to address them.

REFERENCES

- Acosta, A., & Sánchez, N. C. *¿Barreras insuperables? Un análisis de la etapa administrativa del proceso de restitución de tierras*, Documentos No. 75, Bogotá, Dejusticia, 2021.
- Asatryan, Z., Heinemann, F., Pitlik, H., & Wöhlbier, F. *Reforming the Public Administration: The Role of Crisis and the Power of Bureaucracy*. ZEW - Centre for European Economic Research Discussion Paper No. 15049, 2015.
- Attanasio, D. L., & Sanchez, N. "Return within the Bounds of the Pinheiro Principles: The Colombian Land Restitution Experience". In *Washington University Global Studies Law Review*, 11(1), 2012, 1-54.
- Ballard, M. J. "Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations". In *Berkeley Journal of International Law*, 28, 2010, 462-496.
- Bogliacino, F., Grimalda, G., Jiménez, L., Maldonado, L., & Ortega, J. "Trust and trustworthiness after a land restitution program: lab-in-the-field evidence from Colombia". In *Constitutional Political Economy*, 33(2), 2022, 135-161.
- Buchely, L. "Peace, Land, and Bureaucracy in Colombia: An Analysis of the Implementation of the Victims and Land Restitution Law from a Multiscale Perspective of State Bureaucracies". In *Land*, 9(6), 2020, 181.
- Cohen, M. "Why South Africa Is Stuck in a Land Reform Quagmire". *The Washington Post*. September 15, 2021. Retrieved from: https://www.washingtonpost.com/business/why-south-africa-is-stuck-in-a-land-reform-quagmire/2021/09/15/2e33b786-15da-11ec-a019-cb193b28aa73_story.html [Accessed 25 June 2023]
- Comisión Colombiana de Juristas – CCJ. *Cumplir metas, negar derechos: Balance de la implementación del proceso de restitución de tierras en su fase administrativa 2012-2017*. Bogotá, CCJ, 2018.
- Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado. *Proceso Nacional de Verificación de los Derechos de la Población Desplazada. Sexto Informe a la Corte Constitucional. La restitución como parte de la reparación integral de las víctimas del desplazamiento en Colombia*, Bogotá, 2008.
- Comisión de Seguimiento y Monitoreo a la Implementación de la Ley 1448 de 2011. *Tercer informe al Congreso de la República sobre la implementación de la Ley de Víctimas y Restitución de Tierras*. Defensoría del Pueblo, Contraloría General de la República, Procuraduría General de la Nación y Mesa Nacional de Participación Efectiva, Bogotá, 2016.

- Counter, M. "In Good Faith: Land Grabbing, Legal Dispossession, and Land Restitution in Colombia". In *Journal of Latin American Geography*, 18(1), 2019, 169-192.
- Dávila, J. *A Land of Lawyers, Experts and "Men Without Land": The Politics of Land Restitution and the Techno-Legal Production of "Dispossessed People" in Colombia*, Bogotá, 2018.
- De Greiff, P. "Theorizing Transitional Justice". *Nomos*, 51, 2012, 31-77.
- Department of Rural Development and Land Reform, DRDLR. Towards a 25 Year Review 1994-2019, South Africa, 2019. Retrieved from https://www.gov.za/sites/default/files/gcis_document/201911/towards25yearreview.pdf [Accessed 25 June 2023]
- Esquirol, J. L. "The presumptions and burdens of land restitution in Colombia". In *Transnational Law and Contemporary Problems*, 31(1), 2021, 93-120.
- Fay, D., & James, D. (Eds.). *The Rights and Wrongs of Land Restitution: Restoring What Was Ours*, 2009.
- García-Godos, J., & Wiig, H. "Ideals and Realities of Restitution: The Colombian Land Restitution Programme". In *Journal of Human Rights Practice*, 10(1), 2018, 40-57.
- Guzman-Rodriguez, D. "Dignity takings and dignity restoration: A case study of the Colombian land restitution program". In *Chicago-Kent Law Review*, 92(3), 2017, 871-904.
- Helmke, G., & Levitsky, S. "Informal Institutions and Comparative Politics: A Research Agenda". In *Perspectives on Politics*, 2(4), 2004, 725-740.
- Horne, C. "Transitional Justice: Vetting and Lustration". In *Research Handbook on Transitional Justice*, the Netherlands, 2017.
- Jaramillo Sierra, I. C., & Buchely Ibarra, L. F. (Eds.). *Etnografías burocráticas: una nueva mirada a la construcción del estado en Colombia*. Ediciones Uniandes: Universidad de los Andes, Facultad de Derecho, Bogotá, 2020.
- Kirsten, J., & Sihlobo, W. "How a land reform agency could break South Africa's land redistribution deadlock". In *The Conversation*. August 3, 2021. Retrieved from: <https://theconversation.com/how-a-land-reform-agency-could-break-south-africas-land-redistribution-deadlock-165450> [Accessed 25 June 2023]
- Krystalli, R. "Attendance sheets and bureaucracies of victimhood in Colombia". In *Political and Legal Anthropology Review*, 43(1), 2020, 43-62.
- Lamont, C. K., Quinn, J. R., & Wiebelhaus-Brahm, E. "The Ministerialization of Transitional Justice". In *Human Rights Review*, 20(1), 2019, 103-122.
- Marin L., Velasquez M., & Velez M. *Land Restitution and Selective Violence: Evidence from Colombia*. Documentos Cede No. 16, Bogotá, Universidad de los Andes, 2022.
- McAuliffe, P. *Transitional Justice and Rule of Law Reconstruction: A Contentious Relationship*, New York, Routledge, 2013.

- McFee, E.K. "Introduction to Bureaucracy, Justice, and the State in a Post-Accord Colombia". In E.K. McFee & J. Curtis (Eds.), *Emergent Conversations: Bureaucracy, Justice and the State in a Post-Accord Colombia*. *Political and Legal Anthropology Review*, 2020.
- Peña, R. "From transitional justice to post-agreement rural reform: Many obstacles and a long way to go". In F.A. Díaz Pabón (Ed.), *Truth, Justice and Reconciliation in Colombia: Transitioning from Violence*, Routledge, 2018, 39-53.
- Procuraduría General de la Nación. "Procuraduría solicitó a la Unidad de Restitución de Tierras revocar 429 negaciones de inclusión en el registro de tierras despojadas en Bolívar". In *Boletín 685*, Bogotá, 2019. Retrieved from: <https://apps.procuraduria.gov.co/portal/Procuraduria-solicito-a-la-Unidad-de-Restitucion-de-Tierras-revocar-429-negaciones-de-inclusion-en-el-registro-de-tierras-despojadas-en-Bolivar.news> [Accessed 25 June 2023]
- Recalde Castañeda, G. "En la base de la ruta: barreras de acceso y estrategias de atención en la ruta de declaración y registro de víctimas del conflicto". In *Revista CS*, (20), 2016, 123-142.
- Roll, K. "Street Level Bureaucrats and Post-Conflict Policymaking: Corruption, Correctives, and the Rise of Veterans' Pensions in Timor-Leste". In *Civil Wars*, 20(2), 2018, 262-285.
- Ruiz-Gonzalez, L., et al. "Who Owns What in Macondo? The Flexibilization of the Rules of Evidence in Land Restitution in Colombia". In *International Journal of Transitional Justice*, 15, 2021, 26-46.
- Sánchez, N.C. "Land reform and transition in contemporary Colombia". In Molina-Ochoa, A. and Doubleday, N.C. *The Colombian Peace Agreement: A Multidisciplinary Assessment*, J.L. Fabra-Zamora (Ed.), Routledge, 2021.
- Sánchez, N.C. *Tierra en transición. Justicia transicional, restitución de tierras y política agraria en Colombia*, Bogotá, 2017.
- Semana. *Los justicieros de la Ley de Víctimas*. May 18, 2012. Retrieved from: <https://www.semana.com/los-justicieros-ley-victimas/258177-3/> [Accessed 25 June 2023]
- Sesay, M. "Informal institutional change and the place of traditional justice in Sierra Leone's post-war reconstruction". In *African Affairs*, 118(470), 2019, 1-23.
- Smit, A. R. *The property rights of refugees and internally displaced persons: Beyond restitution*, New York, Routledge, 2012.
- Unruh, J., Abdul-Jalil, M.A. "Housing, Land and Property Rights in Transitional Justice". In *International Journal of Transitional Justice*, 15, March 1, 2021, 1-6.
- Vera-Lugo, J. P. & Jaramillo, J. "Etnografías desde y sobre el sur global. Reflexiones introductorias". In *Colombia Universitas Humanistica*, 2013, 13-34.
- Vera, J. *The Humanitarian State: Bureaucracy and Social Policy in Colombia*. Ph.D. Thesis, Rutgers University, Lakewood, NJ, USA, 2017.

- Waldorf, L. "Institutional Gardening in Unsettled Times: Transitional Justice and Institutional Context," in *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, Duthie R, Seils (ed.), 2017.
- Walker, C., Bohlin, A., Hall R., & Kepe T., (eds.) *Land, Memory, Reconstruction, and Justice: Perspectives on Land Claims in South Africa*, Ohio University Press, 2010.
- Wesche, Philip. "Business actors and land restitution in the Colombian transition from armed conflict". In *International Journal of Human Rights*, 25:2, 2020, 295-322.
- World Bank. *World Development Report 2011: Conflict, Security, and Development*. World Bank, 2011. Retrieved from: <https://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-8439-8> [Accessed 25 June 2023]