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Land restitution in Colombia: why so few applications?

Frances Thomson

Halfway through Colombia's official land restitution process, questions arise as to why the number of claims is so much lower than anticipated.

The Victims and Land Restitution Law (Law 1448 of 2011¹) offers Colombia's displaced population a new route for reclaiming their land. It has received praise and criticism in almost equal measure, but there is one overarching concern: the low number of applicants. In 2012 Colombia's Ministry of Agriculture and Rural Development estimated that 360,000 cases of either land abandonment or land usurpation would be considered for restitution under the new Law.² But more than half way through the process (the Law expires in 2021), the number of land claimants is less than a third of what was projected in 2012: as of August 2017, the Land Restitution Unit had received 106,833 applications. It seems that the majority of people who may be eligible for restitution have not even applied. Why?

Land Restitution under Law 1448

Under Law 1448, those who were dispossessed in the context of the armed conflict (due to usurpation or forced abandonment) can apply for restitution or the legal and material return of their land. The Law also permits families who did not formally own their land at the time of their displacement (but were legitimate occupants or possessors) to receive a property title as part of the restitution process (Article 72), and promises institutional accompaniment and support – such as subsidies for acquiring or rebuilding homes – for all those who were displaced, whether they choose to return or resettle elsewhere (Article 66).

Law 1448 offers a number of safeguards not found in ordinary legal processes. For example, it allows for the use of varied and unconventional types of evidence to back restitution applications given that applicants have often lost relevant papers due precisely to their forced displacement. Furthermore, the Law presumes the absence of consent in land transfers between the victim(s) and anyone who has been convicted of belonging to,

collaborating with or financing illegal armed groups. The Law also allows judges to presume that a land transaction was not consensual (unless evidence suggests otherwise) when the amount actually paid or noted in the contract was less than 50% of the 'real value'. The same rule applies when mass forced displacement, grave human rights violations or acts of generalised violence occurred in the surrounding area and during the same time period as the alleged incident (threat or act of violence) that led to the usurpation or forced abandonment. If a transaction is not proven to be consensual, the transfer itself and any subsequent agreements that affect the plot of land in question can be considered invalid (Article 77). In short, the Law inverts the 'burden of proof' in favour of the claimant.

The Land Restitution Unit is charged with helping victims to document their case to submit for judicial review or must sub-contract a lawyer to this end. In general, the victim does not have to pay any legal fees. Specialist judges, who are familiar with land usurpation issues, are responsible for the legal decision.

It is evident that the Colombian land restitution programme, as defined by Law 1448, has many strengths, in addition to a number of weaknesses not discussed here. People working in other contexts may find there is a lot to learn from the Colombian experience, both good and bad.

Failure to attract applicants

There are numerous reasons for the lack of applications including: lack of trust in the authorities, especially in areas where they had/have links with armed groups; disillusionment with government agencies based on prior personal experiences or those of friends and family members; absence of awareness or limited understanding of the Law; or difficulties accessing the relevant institutions for various reasons, including travel distances and costs.³

In a meeting with people from a village in the municipality of Pensilvania (Caldas department), few seemed to be aware of the support available to returnees or the fact that restitution applies to abandoned (and not only usurped) land. One man claimed that the functionaries responsible “didn’t want to take their declarations” – to which a few neighbours nodded agreement. Another woman said she had walked eight hours to the municipal centre only to be turned away because everyone was too busy.

Javier,⁴ a leader from another municipality, who supports victims across the coffee-growing region, emphasised people’s lack of confidence in themselves and in the government’s will or ability to respond to their claims:

“I know how to defend myself when I speak but there are people who feel too uncomfortable, and they don’t have a way to say: ‘Look, they took my land, and I have this problem’ [...] and there are a lot of people who don’t believe in the State.”

But perhaps the most urgent threat to the restitution process is the attempt to crush it using violence. At least 72 land restitution claimants and leaders have been murdered, and thousands more have received threats against their lives. In some cases, the displaced are forced to flee their homes once again because of their involvement in restitution processes. Representatives from accompanying organisations and human rights defenders, as well as state officials involved in restitution cases, have also been targeted. Paramilitary ‘successor groups’ are responsible for the majority of crimes against land claimants and restitution leaders, as is well documented and widely acknowledged.

“In all of Caldas there is dispossession but there is more fear than dispossession. There are many that have told me [in response to suggestions that they should apply for restitution]: ‘definitely not, because my mother doesn’t want any more problems – we already had so many problems when they took us from the land’.” (Javier)

The police, who are supposed to provide protection for those under threat, often neglect their duties and government officials

frequently dismiss community members’ denunciations. Investigations into the violence and intimidation surrounding land restitution processes have been, at best, half-hearted.

Following numerous threats and attempts against his life, Javier – along with thousands of other people – solicited help from the National Protection Unit. He claims the protection offered is inadequate:

“I know, I am certain, that the threats are because of my leadership in the restitution process, because there are a lot of very powerful people with many interests in keeping that land. And the threats are clear: ‘leave the victims and land restitution [issue] alone or die’. At this moment the protection we have is a bulletproof vest and a telephone that doesn’t work.”

Law 1448 offers multiple mechanisms to help Colombia’s internally displaced population rebuild their lives. However, many displaced people who would like to return to their lands are too scared to seek State support, while others have returned without institutional accompaniment due to a lack of understanding of their rights or to difficulties accessing the relevant institutions. If the majority of eligible people do not even apply for land restitution under Law 1448, this in itself would represent a failure for Colombia’s transitional justice process.

Frances Thomson

frances.thomson.lynce@gmail.com

Doctoral candidate,⁵ University of Sussex
www.sussex.ac.uk

1. The Victims Law (1448 of 2011) applies to all victims of the armed conflict, regardless of whether they are reclaiming lost land, and as such contains many elements not discussed here.
2. Restrepo Salazar J C and Bernal Morales A (2014) *La cuestión agraria: Tierra y posconflicto en Colombia*, Bogotá: Penguin Random House Grupo Editorial Colombia, pp41-47.
3. Amnesty International (2014) *A land title is not enough: ensuring sustainable land restitution in Colombia* www.amnesty.org/en/documents/AMR23/031/2014/en/ Human Rights Watch (2013) *The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia* <http://bit.ly/HRW-risk-2013>
4. Name changed for security reasons.
5. Research funded by UK Economic and Social Research Council and the University of Sussex Centre for Global Political Economy (award number T83833F).

