



Land Restitution

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Implementation of recommendations from the previous period

In the past period, Australia, Bolivia, and Togo positively valued the existence of the legal and institutional framework for land restitution. Two of these countries emphasized the importance of strengthening collective reparations.

In addition, El Salvador, France, Australia, the Plurinational State of Bolivia, and Haiti highlighted the need to continue implementing the Victims and Land Restitution Law, improve the effectiveness of procedures for the restitution of land taken during the conflict, and increase funding for the related public institutions. These countries also emphasized the importance of guaranteeing land rights for Indigenous peoples, peasants and others who work in rural areas while taking all necessary measures to protect Afro-Colombian authorities and organizations and assist them with their collective land restitution claims.

Although the land restitution process is a milestone in guaranteeing and protecting the rights of victims of dispossession, displacement and forced abandonment in Colombia, there is a need to emphatically address the challenges that have been identified since Law 1448 of 2011 was passed 12 years ago.

Current Status

A total of 6,998 land restitution rulings have been issued for individual claims in 26 departments and 183,466 hectares have been ordered to be restituted and/or compensated during the last decade. While this is a significant figure, it is low compared to the estimated 6 million hectares of land dispossessed during the armed conflict. Land restitution judges have issued 33,999 restitution orders, of which 19,046 remain unfulfilled, representing 56% (1) of the total. The constitutional recognition of the peasantry as subjects of rights and the creation of an agrarian jurisdiction during the first half of 2023 were notable positive developments in this area.

There are several persistent obstacles that prevent the effective fulfillment of the right to land restitution in Colombia. There are bottlenecks in all stages of restitution, including the initial stage with the Land Restitution Unit, the judicial stage with judges and justices, and what is known as the “post-judgment stage” with public entities, judges, and justices responsible for enforcing the rulings.

The current obstacles in land restitution include:

- i) barriers imposed on the Land Restitution Unit by previous administrations that affect the initial stage of the land restitution procedure;
- ii) judicial delays in restitution cases caused by manifold factors including an overburdened legal system; (2)
- iii) apathy and a lack of political will from governing bodies and public officials, both in previous and the current administration, which has led to implementation delays in restitution procedures during the “post-judgment stage”;
- iv) insufficient budget allocations for the public entities responsible for ensuring the enforcement of land restitution rulings; and
- v) internal processes in public entities that ignore the case contexts and generate delays in ruling compliance.

(1) Follow-up and Monitoring Commission for the Victims and Land Restitution Law, IX Follow-up Report, 2022

(2) Justified (produced by factors such as an overburdened legal system and congestion) and unjustified (caused by arbitrary decisions or a lack of diligence).

In Ruling T-341 of 2022, the Constitutional Court recognized the existence of judicial delays with these processes.

This has contributed to impunity on serious human rights violations as there are no legal sanctions for those who dispossess or forcibly displace victims who have applied for land restitution. In this ruling, the Court recognized that relative to the territorial rights of Indigenous communities, “the State’s response did not resolve situations that cause legal and material insecurity in the territories.”

There is an urgent need to advance in the fulfillment of the 2016 Peace Agreement and implement the recent Agrarian Jurisdiction. (3)

This will unify the advances made in different aspects of land restitution and guarantee the continuity of this right for all victims of dispossession and forced abandonment.

(3) Ministry of Agriculture. “Colombia tendrá jurisdicción agraria: Congreso aprueba definitivamente el proyecto que la crea” (Colombia will have an agrarian jurisdiction: Congress definitively approves the project that creates it). June 13, 2023. Available at: <https://www.minagricultura.gov.co/noticias/Paginas/Colombia-tendr%C3%A1-jurisdicci%C3%B3n-agraria-Congreso-aprueba-definitivamente-el-proyecto-que-la-crea.aspx>

Recommendations

1. The right to land restitution for victims of dispossession and forced abandonment should prevail over development agendas that include mining, fossil fuel exploitation, agribusiness, and infrastructure.
2. Establish measures that ensure compatibility between environmental protection and land restitution.
3. Implement a comprehensive public policy for the “post-judgment” stage that has sufficient resources to guarantee implementation. This should be based on a unified system to monitoring court sentences that prioritizes the legal and material restitution of lands and territories and ensures the necessary conditions for people’s safe and dignified return to their lands.
4. Monitor the actions undertaken by the Attorney General’s Office, the criminal justice system, and the Special Jurisdiction for Peace (JEP) in relation to the investigation and prosecution of public officials and third parties involved in forced displacement, dispossession, and land grabbing.