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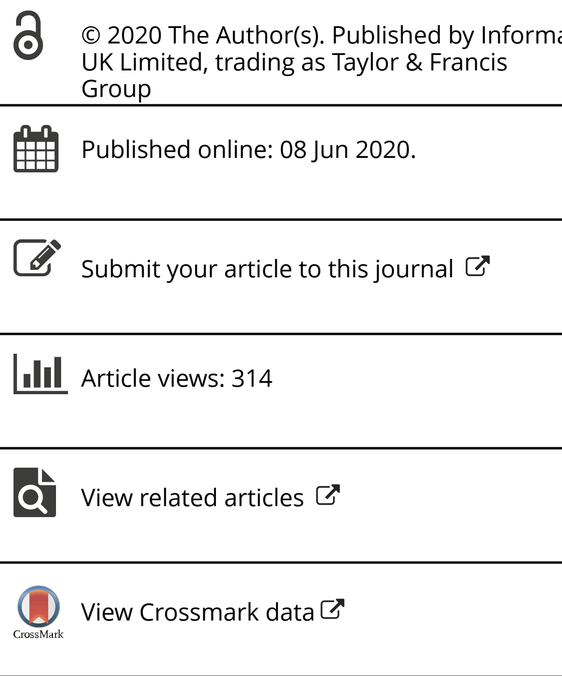

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Business actors and land restitution in the Colombian transition from armed conflict

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ABSTRACT

In the field of business and human rights, it is recognised that some of the worst human rights violations related to business actors occur in conflict-affected countries. Yet, little research adresses the potential of domestic transitional justice instruments to provide victims with access to remedy. This article seeks to better understand the functioning of such instruments by presenting a case study of the land restitution mechanism in Colombia. This mechanism constitutes a far-reaching remedy framework for cases of land dispossession, in which business actors appropriated the land of forcibly displaced persons, including extensive legal assistance measures, shifts and reductions in the burden of proof and a binding due diligence obligation for investors. However, its implementation has been rather weak. Drawing on qualitative interviews with experts involved in land restitution proceedings against business actors, the article identifies the main obstacles to these proceedings and develops recommendations on how to improve transitional justice instruments so as to redress victims of business-related human rights violations in post-conflict settings.

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One of the most important issues in the business and human rights debate is the role and responsibility of business actors in internal armed conflicts.[1] Today, there is an abundance of cases documenting different forms of private sector involvement in such conflicts, which include mediate and immediate business relationships with armed groups and oppressive regimes in the form of finance, trade and investment, but also direct collaboration in violations of human rights and humanitarian law committed in their course. Given that the judicial systems of conflict-affected countries are often dysfunctional, the field of business and human rights has mostly focused on international and transnational legal mechanisms to hold business actors accountable for such conduct and provide victims with access to remedy. These include, for example, binding due diligence obligations with extraterritorial effects or international sanctions regimes related to the trade of conflict minerals, but also criminal and civil law litigation against business actors for causing or contributing to overseas human rights violations before international

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tribunals or domestic courts in the countries where they are based.[2] However, these mechanisms are insufficient to provide victims of business-related human rights violations in conflict-affected countries with access to remedy, including restitution, compensation and rehabilitation.[3] While due-diligence and sanctions instruments create accountability for undue business relationships by imposing administrative and sometimes criminal sanctions, they rather have a preventative function and do not help to repair the victims.[4] International civil litigation, on the other hand, is usually 'complex, costly and uncertain' and can therefore only complement, but not substitute effective domestic law remedies.[5] In addition, international and transnational legal mechanisms do not absolve conflict-affected countries from their international law obligation to provide victims of business-related human rights violations in their territory with access to remedy through effective investigations, sanctions and redress, as set out in the United Nations Guiding Principles on Business and Human Rights (Guiding Principles). Therefore, one must ultimately turn to the domestic legal systems of these countries in order to redress the often wide-spread involvement of business actors in internal armed conflict.

Yet, little research addresses how conflict-affected countries can put their human rights obligations into practice and reduce the obstacles victims face in accessing remedy. Perhaps the most comprehensive study on domestic law remedies, albeit with a focus on Western countries, is the report developed by Jennifer Zerk for the Office of the United Nations High Commissioner for Human Rights (OHCHR), according to which 'the present system of domestic law remedies is patchy, unpredictable, often ineffective and fragile'.[6] This report identifies several types of obstacles domestic law remedies entail. These include legal barriers, for example, gaps in the incorporation of human rights standards into domestic law or restrictive rules with respect to the attribution of liability to corporate entities and across corporate groups. In addition, the report identifies practical and procedural barriers such as: limited availability of legal aid, lack of access to suitably qualified legal counsel, nonexistence of collective action arrangements, disclosure rules impeding access to evidence, insufficient resources within law enforcement authorities, corruption and political interference or fears of reprisals and intimidation of witnesses.[7] These obstacles are addressed in a subsequent OHCHR guidance that formulates recommendations on how to improve access to remedy. With respect to domestic civil law regimes, for example, it recommends that the principles for assessing corporate liability should be properly aligned with the responsibility of companies to exercise human rights due diligence across their operations, that claimants in financial hardship should have access to state funding or that there should be an appropriate balance between considerations of access to remedy and fairness to all parties in the distribution of evidential burdens of proof.[8] However, neither the report nor the guidelines have a clear conflict nexus.

In this context, the United Nations Working Group on Business and Human Rights currently examines the practical steps that states and businesses should take to implement the Guiding Principles in conflict and post-conflict settings. Among other aspects, it seeks to clarify how conflict-affected countries can adequately regulate and adjudicate business-related human rights violations, how enhanced due diligence practices by business enterprises can look like and what the role of transitional justice instruments should be in such settings.[9] This article contributes to the latter question, considering that domestic transitional justice instruments can be an interesting tool to provide victims of business-related human rights violations in conflict-affected countries with access to remedy, once a conflict has ended or declined in intensity. Aimed at clarifying the truth, holding the

main perpetrators criminally liable and repairing the victims of mass violence, transitional justice processes comprise both non-judicial and judicial instruments, including truth commissions, administrative reparation programmes and trials. As regards the judicial component, they usually provide perpetrators with legal benefits in exchange for cooperation in clarifying the truth and repairing the victims. In addition, modern transitional justice frameworks place the victims at their centre, providing them with ample participation rights and procedural advantages, for example, with respect to evidence standards. All this makes domestic transitional justice instruments an interesting option to redress business-related human rights violations in contexts of armed conflict and limited judicial capacity. However, the business and human rights debate has only recently started to explore the intersections with this field.[10] Vice versa, the role of business in armed conflict has rather been a blind spot in the transitional justice literature, possibly due to the field's traditional focus on state actors and armed groups.[11] The few works that address domestic transitional justice instruments with respect to business actors focus on truth commissions and criminal trials.[12] In contrast, instruments providing victims with access to remedy have not received any attention thus far. This is regrettable, given that reparation is an important component of justice for the victims, besides truth and criminal liability.

Against this background, the present article seeks to better understand the obstacles and potential of domestic transitional justice mechanisms in remedying business-related human rights violations in conflict-affected countries. It does so by presenting a case study of the Colombian Victims and Land Restitution Law and its implementation with respect to business actors.[13] This law constitutes the country's most important transitional justice instrument to provide the more than eight million victims of the armed conflict with access to remedy. As a part of this agenda, it established a far-reaching land restitution mechanism of administrative and civil law nature, which enables victims of land dispossessions related to the armed conflict, sometimes also referred to as land grabbing or primitive accumulation, to reclaim their properties. What makes this mechanism an interesting case study is that business actors were heavily involved in such dispossessions and today occupy many of the properties claimed in the land restitution process, which has resulted in a considerable number of rulings against business actors. Consequently, the case provides a wealth of empirical material to understand the functioning of transitional justice instruments in redressing business-related land dispossessions. Another interesting aspect is that the Victims and Land Restitution Law constitutes a very progressive instrument from a business and human rights perspective, given that it addresses many of the obstacles associated with domestic remedy mechanisms and incorporates important recommendations in this regard. These include a binding due diligence obligation for business actors investing in land in conflict areas, numerous legal aid measures as well as shifts and reductions in the burden of proof for the victims. Consequently, the case provides an opportunity to see how such instruments work in practice. As such, it is also relevant to other countries in transition, where the land of forcibly displaced communities was transformed into large estates to develop agroindustry, mining or similar resource extraction investments.

To understand the implications of the land restitution mechanism with respect to business actors, the article proceeds in three steps. First, it introduces the phenomenon of business-related land dispossession in the Colombian armed conflict, focusing on the different forms of private sector involvement in land dispossession. Second, it presents

the legal framework of the Victims and Land Restitution Law, outlining its many progressive elements as a domestic remedy mechanism for business-related human rights violations. Third, it analyses the law's implementation with respect to business actors, which, despite its progressive legal framework, has been rather poor. To explain this gap between the law and legal practice, the article identifies the main practical obstacles that have undermined the mechanism's performance, developing recommendations that other countries in transition may consider when designing similar instruments.

The article is based on 23 qualitative interviews and focus groups with experts involved in land restitution proceedings against business actors. These were conducted during a three-months research visit to Bogotá and to rural areas in the departments of Bolívar and Sucre, which were heavily affected by business-related land dispossessions. The interviewed experts include victims of business-related land dispossessions participating in land restitution proceedings (9), lawyers of nongovernmental organisations representing victims in such proceedings (5), current and former officials of the government agency administering these proceedings (6) as well as non-legal staff of nongovernmental organisations and researchers accompanying individual cases of business-related land dispossessions (7). Given the lack of previous research on the dynamics of land restitution proceedings against business actors in Colombia and the challenges of finding respective experts, the research followed a qualitative and explorative approach aimed at identifying the mechanisms impeding such proceedings. The interviewees were selected through snowball-sampling, that is, based on recommendations of previous interviewees. The interviews followed the methodology of explorative expert interviews based on semi-structured questionnaires tailored to the specific expertise of the interviewees. All interviews were transcribed and coded with a view to identify the main practical obstacles in such proceedings.[14]

Business-related land dispossession in the Colombian armed conflict: an introduction

> When the AUC gained ground, others came behind buying lands or doing business. They benefitted from the pain and the blood of the people who died there.
> (Jorge Iván Laverde, convicted AUC commander)[15]

In Colombia, more than seven million persons were forcibly displaced during the armed conflict. Therefore, the country has been described as 'a nation in displacement'.[16] While many were forced to abandon their land due to the violence caused by the military and the various paramilitary and rebel groups, leaving their farms unexploited and losing their source of income, a large number were also victims of land dispossession. This means that their land was subject to planned and coercive transfers from one agent to another.[17] In the absence of official figures, it is estimated that this applies to at least one million hectares of land, equalling more or less the national territory of Lebanon.[18]

Given the large scale of land dispossession, scholars have extensively studied this phenomenon, in particular with respect to the paramilitaries.[19] These initially emerged as smaller private militias of landowners to protect their interests against the leftist insurgency, but then developed into largely autonomous and regionally differentiated groups comprising thousands of mercenaries. Organised within the loose federation of the United Self-Defence Forces of Colombia (AUC), which were founded in 1997 and

demobilised between 2003 and 2006, they reached their highest level of territorial control, in particular in Northern Colombia.[20] An important aspect of paramilitarism was its relation with the elites. The paramilitaries not only cooperated with the public forces in combating the rebels, conducting asymmetric warfare, but also co-opted regional and national state institutions, a phenomenon known as para-politics: After their demobilisation, hundreds of congressmen, governors, majors and councillors were investigated for supporting the paramilitaries.[21] In addition, they also developed close relationships with the economic elites. These not only financed the paramilitaries, but at times also acted as founders or promotors of paramilitary groups or as collaborators in their crimes.[22]

In the literature, there is today a consensus that the paramilitaries caused displacements not only as a collateral to their violent encounters with the rebels, with civilians caught in the crossfire, but also through systematic massacres, targeted killings, torture and intimidation with the aim of appropriating and redistributing their properties among themselves and their supporters. Such practices of 'active dispossession' have been related to military objectives, in particular the destruction of the rebels' support networks and their replacement with other peasants, so as to gain control over the territories and assure the cooperation of the local population.[23] However, they have also been associated with historical land disputes between peasants and landowners, for whom the active dispossession of land constituted an opportunity to regain control over properties they had lost to peasants in the context of the country's agrarian redistribution policies.[24] In addition, active dispossessions have been associated with economic interests of land accumulation related to the development of large scale agroindustry, infrastructure and mining projects. Such cases have mainly been documented in in those regions, where the paramilitaries established close relationships with the elites, for example, in departments of Antioquia, Cesár, Chocó and Magdalena and in relation to oil palm plantations, cattle ranching and coal mining.[25]

The defining feature of active dispossessions is that the crimes causing the displacement were committed with the objective of appropriating the land of the victims. This practice needs to be distinguished from dispossessions following forced abandonments, in which the displacement itself is unrelated to any interest of land accumulation, but where the victims were forced to sell their properties later on, for example, because of their desperate economic condition after the displacement or because they could no longer pay their debts. One example is the region of Montes de María, at the Caribbean coast, where massive land acquisitions occurred after the conflict had declined in intensity: According to a sample of the national supervisory authority of the notaries, 37,273 hectares of land changed hands between 2005 and 2010, of which 60 percent were bought by only eight individual investors.[26] These acquisitions led to a concentration of land and to a change in land use from subsistence agriculture to monocultures and were in large parts illegal, because they violated displacement and agrarian reform-related protective measures prohibiting the transfer of the properties. Nonetheless, they were approved by local notary offices, which 'legalized' the illicit transfers.[27] Similar practices of land concentration involving negligent or corrupted state authorities have been documented in other parts of the country and also with respect to active dispossessions, for example, in the department of Antioquia.[28] Therefore, according to some authors, the massive dispossession of land in Colombia would not have been possible without the cooperation of state authorities.[29]

Besides armed groups and state authorities, business actors played an important role in land dispossession, given that it was often companies or businessmen who acquired the lands of forcibly displaced persons. While there is no quantitative information on the scale of this phenomenon, nongovernmental organisations and journalists have documented a large number of land disputes between business actors and forcibly displaced communities. Some of these found entry in the Tierras en Disputa database, which provides in information on forty land disputes relating to agroindustry, cattle ranching and mining activities.[30]

The involvement of business actors in land dispossession took different forms. On the one hand, there are cases in which business actors caused or contributed to active land dispossession. The most famous is Urapalma, in the municipalities of Riosucio and Carmen del Darién, which concerns a number of companies developing 17,000 hectares of oil palm monocultures on the collectively owned lands of Afro-Colombian communities in the region of Urabá. The paramilitaries forcibly displaced and dispossessed these communities in conjunction with the military and complicit notary offices and then established a form of joint venture with business actors investing in these companies.[31] A number of these actors were later convicted for conspiring with the paramilitaries. According to testimonies, they had not only proposed the project to the paramilitaries and promoted its development, but also employed members of the armed group to force landholders to cede their titles.[32] Another prominent case, also in the region of Urabá, concerns a land fund run by an association of cattle ranchers, which purchased 3,647 hectares of dispossessed land in the municipalities of Turbo and Necoclí, in large parts from intermediaries of the paramilitaries. The land was then resold to individual cattle ranchers and companies, which may consequently be regarded as being related to active dispossessions.[33] The director of the cattle ranchers' association, who had achieved this position with the help of paramilitary leaders, was later convicted for participation in a criminal enterprise, forced displacement and money laundering, among other crimes.[34]

In addition to their involvement in active dispossessions of land by the paramilitaries, business actors caused, contributed or were related to dispossessions following abandonment, that is, without any link to the crimes causing the displacement or the actors committing these crimes. The most famous case is that of Argos, a US- and Colombia-based multinational cement company, whose subsidiary Reforestadora del Caribe acquired 6,600 hectares to develop teak monocultures in Montes de María.[35] In part, the company purchased these lands from intermediaries, who had engaged in abusive practices to convince forcibly displaced persons to sell their abandoned properties, for example, by telling them that they would no longer be able to access their farms, given that they were purchasing all adjacent plots. These transactions were often concluded far below the market value of the properties.[36]

Business-related land dispossession under the Victims and Land Restitution Law

In response to the country's forced displacement crisis and the devastating humanitarian situation of the victims, the Colombian government of former president Juan Manuel Santos adopted the so-called Victims and Land Restitution Law in 2011.[37] Establishing

a wide range of administrative and judicial measures to grant victims of the armed conflict with rights to integral reparation, humanitarian aid and social services, this law constitutes the country's most important transitional justice instrument to provide the victims with access to remedy.[38] As a part of this agenda, it also created a land restitution mechanism, applicable for ten years, which enables forcibly displaced persons to reclaim abandoned and dispossessed lands. This mechanism is not specifically geared towards business-related dispossessions, but the whole population of forcibly displaced persons. In fact, the law rarely refers to business actors. However, when creating this mechanism, legislators took the fact that many properties are today occupied by third parties into account, creating perhaps the world's most progressive remedy mechanism for business-related land dispossessions. While its primary purpose is reparation, that is, to restitute the land to the victims, it also fulfils an accountability function, given that business actors who illegally acquired such lands can be required to cede them without compensation.

The land restitution mechanism: process and basic material requirements

The land restitution process consists of an administrative and a judicial phase. The administrative phase is administered by the Special Administrative Unit for the Restitution of Dispossessed Lands (URT), which the law created within the Ministry of Agriculture and Rural Development, with offices across the national territory. The subsequent judicial phase then takes place before specialised land restitution judges in the civil chambers of the circuit and district courts.[39]

The process starts with the administrative stage, in general with the submission of a request by forcibly displaced persons to the URT to be included in the Registry of Dispossessed and Forcibly Abandoned Lands (SRTDAF). The URT then identifies the precise location of the land and determines whether it falls into the areas prioritised for land restitution. This constitutes a first filter of the process. Considering the difficult security and return conditions in many regions, where armed groups or residues of these groups continue to operate, and the varying density of forced displacement across the national territory, the legislators opted for a gradual implementation of the land restitution mechanism. In order for a claim to proceed, the respective plot has to fall within the territorial macro- and micro-zones defined by the Ministry of Agriculture and Rural Development and the Ministry of National Defence on the basis of these criteria. If the claim falls outside these zones, its processing is suspended.[40] If it falls within these zones, the URT proceeds to collect evidence to determine whether the claimants have a right to land restitution.[41] The first requirement concerns their judicial relationship with the land: The claimants need to be owners, possessors or occupants or partners or heirs of such persons.[42] The second requirement relates to their status as victims: They need to have suffered harm after January 1985 and as a consequence of violations of international humanitarian or human rights law committed on occasion of the armed conflict, or constitute family members of such persons.[43] The third and the fourth requirement relate to the act of forced abandonment or dispossession: These must have occurred after January 1991 and as a consequence of violations of international humanitarian or human rights law committed on occasion of the armed conflict.[44] Where the displacement is the consequence of ordinary criminality, without any nexus to the armed conflict, or where the

sale of the property was unrelated to the displacement, the law does not grant a right to restitution.[45]

Based on the evidence collected, the URT then decides whether to include the claim in the SRTDAF, which constitutes a procedural requirement for the request to proceed to the judicial stage. If this applies, the claimants can file a claim with a civil judge specialised in land restitution, generally before the circuit court with territorial jurisdiction over the municipality, where the land is located.[46] The circuit court then determines the admissibility of the complaint and notifies all persons with a legitimate interest in the land to enable them to take part in the proceedings.[47] This includes, in particular, persons who are registered as owners or holders of the property, who may present themselves as opponents to the claim.[48] If there is no opposition, the circuit judge directly proceeds to dictate the judgment based on the evidence produced by the URT.[49] If there is opposition, the circuit court may open a brief probationary period.[50] Then it has to remit the complaint to a magistrate specialised in land restitution within the civil chamber of the higher judicial district courts, which dictates the ruling in single instance.[51]

The concept of land dispossession

What makes the land restitution mechanism a remarkable instrument to achieve remedy and accountability for business-related dispossessions are a number of aspects. A first aspect is its concept of land dispossession, which refers to acts that illegally deprive others of their land ownership, possession or occupation, taking advantage of the situation of violence. This may occur de facto or de jure, that is, through the commission of crimes related to the situation of violence, but also by way of business transactions, administrative acts or judicial decisions.[52] Consequently, the concept is quite broad, covering the whole range of business-related dispossessions. The courts can not only apply it to cases of active dispossession, in which armed groups and business actors forcibly displaced persons with the aim of appropriating their lands. Instead, they have also applied it to cases, in which the victims abandoned the land, but were later forced to sell it to business actors, who had no linkages with armed groups, but exploited their state of necessity, buying below market prices.[53] In addition, the concept recognises that dispossessions often took the form of apparently legal acts, including situations in which victims were forced into a contract, situations in which contracts were falsified or situations in which negligent or corrupted state institutions illegally adjudicated the land to third parties.[54]

Legal presumptions of dispossession

A second remarkable aspect of the law is that it creates a number of powerful legal presumptions of dispossession that significantly favour the claimants. First, the courts presume by law that a transfer of land lacked consent or was concluded through illicit means, where it was based on a contract with persons convicted as members, collaborators or financiers of illegal armed groups or for drug-trafficking or related crimes.[55] This non-rebuttable presumption is relevant in cases of active dispossession, where the victims were forced to sell their land to paramilitaries, intermediaries of the paramilitaries or private sector supporters. Second, the law creates a rebuttable presumption of dispossession in relation to lands transferred under specific conditions, shifting the burden to prove that

the transfer was made with consent and without illicit means onto the opponents.[56] This presumptions applies, for example, if the area adjacent to the land claimed was subject to collective forced displacements or grave human rights violations when the claimants ceded their lands, or if they had requested protective measures for the land on the grounds of forced displacement.[57] Interestingly, the rebuttable presumption also applies, if the price agreed in the contract or effectively paid for the land claimed was below 50 per cent of its value, or if the adjacent properties were, at the time or subsequent to the threats or acts of violence, subject to a concentration in property by one or more persons or to a significant change in land use, for example, from subsistence farming to monocultures, extensive livestock farming or industrial mining.[58] In effect, the law thus assumes dispossession in cases of massive land acquisitions and large-scale business projects, shifting the burden of proving the opposite on the involved business actors. If the opponents are unable to rebut these presumptions, all transactions of the land, all administrative acts that may have subsequently 'legalized' the transfer and all judicial decisions transferring the property after the displacement are declared void.[59]

Binding due diligence requirement for investors

This implies, as a third important aspect, that a finding of dispossession affects not only those actors who directly dispossessed the victims, but also third-party business actors to whom the land was sold later on. However, the courts can order the URT to compensate third-party opponents from public funds, if they are able to prove that they acquired the land in good faith exempt from fault (*buena fe exenta de culpa*). This judge-made figure constitutes a qualified version of the simple good faith standard in Colombian civil law. It requires third party opponents to prove not only that they believed to have acted lawfully when acquiring the property, but also that they took measures to attain certainty about the lawfulness of the transaction, in particular on whether the property was subject to forced abandonment or dispossession, on whether the vendors actually constituted its owners and on whether they had acquired it legally, paying a fair price.[60] In determining whether a third party acted in good faith exempt from fault, the courts distinguish between those who are themselves victims of the armed conflict, or belong to vulnerable groups, and those with larger economic and technical capacities, such as companies. From the latter they expect more demanding inquiries to assure the legality of a transaction. In addition, the courts also consider the context of the transaction, expecting more demanding inquiries if the property was located in areas of massive displacement or subject to protective measures, or if the adjacent area was subject to a dynamic of land concentration. In such circumstances, good faith exempt from fault has shown to be difficult to prove.[61] In cases in which business actors bought properties far below market prices from victims of forced displacement who see themselves obliged to sell due to their precarious living conditions, the courts have negated good faith exempt from fault, given the lack of diligence evidenced by such conduct.[62]

If the third-party opponents fail to demonstrate good faith exempt from fault, they lose the property without compensation. This implies that the land restitution mechanism not only provides victims of business-related dispossessions with reparation, but also includes an accountability function: It sanctions business actors who caused or contributed to dispossessions, but also those who were merely related to them by buying the properties

without exercising good faith exempt from fault. In essence, the law thus imposes a binding due diligence requirement on business actors investing in properties in conflict-affected areas.

Legal effects of dispossession

Whether or not the opponents acted in good faith exempt from fault also has an impact on the form of reparation for the claimants. In general, claimants are entitled to judicial and material restitution, given that they fulfil all the requirements of the law with respect to their victimhood status, their judicial relationship with the land, the temporality of the dispossession and its nexus with violations of international humanitarian and human rights law committed in the armed conflict.[63] Yet, if the land in restitution is subject to an agroindustry project, they can enter into a contract with the opponents to enable its continued exploitation, provided that these acted in good faith exempt from fault. Otherwise, the courts hand over the project to the URT, which is then responsible to exploit it through third parties and to distribute the gains among the claimants and other victims in the area by way of collective reparation programmes.[64] However, this provision of the law has been subject to an amendment of the Constitutional Court, according to which the transfer of the property to the URT requires the consent of the claimants, who can also opt for material restitution.[65]

Procedural advantages for the victims

A fourth important aspect of the law is that it grants claimants with a number of procedural advantages. First, they enjoy ample information and participation rights and may also file collective actions, which reduces process expenditure.[66] Second, the law acknowledges that the victims often face difficulties in proving their claims, given that many lack formal land titles and did not report the displacement to the authorities due to the presence of armed groups and the absence of functioning public institutions in many regions. To address this barrier, the law requires all entities involved in the restitution process to presume that the claimants act in good faith and introduces important reductions and shifts in the burden of proof: In the administrative stage, it is sufficient for the claimants to make a declaration on the damages they suffered to be relieved of the burden of proof. The URT has to consider these declarations as reliable and is in charge of collecting the evidence to decide on the claim. If doubts persist, they have to be resolved in favour of the claimants. In the judicial stage, it is sufficient for the claimants to present prima facie evidence of their judicial relationship with the land and its dispossession to shift the burden of proving the opposite onto the opponents, unless these are themselves victims of forced displacement.[67]

Material assistance to the victims

Finally, the mechanism addresses the many practical barriers victims face in accessing remedy. Perhaps most importantly, the law established regional URT offices across the national territory, so as to enable victims to access the system, and recognises that many of them, with the loss of their land, also lost their source of income and social

safety net. To prevent their precarious economic and social condition from impeding access to remedy, the law entails a number of measures. First, the land restitution process is free of cost and claimants can ask the URT to represent them before the civil courts to save the costs of a lawyer.[68] Furthermore, they can register to receive humanitarian aid and social services, including food, housing, education and healthcare as well as psychological and legal assistance.[69] Moreover, the law also recognises the claimants' vulnerability in terms of revictimization when claiming dispossessed properties in conflict-affected areas. To mitigate such risks, it requires the authorities to take protective measures during and after the restitution process, including risk assessments and protection programmes for claimants, witnesses and restitution officials.[70] Last but not least, the law recognises that forced displacement has differential effects on different groups, granting special assistance and protection measures to those most vulnerable.[71]

The implementation of the Victims and Land Restitution Law in cases of business-related dispossessions

In sum, the Victims and Land Restitution Law constitutes a very powerful legal instrument to achieve remedy and accountability for business-related land dispossessions, given its broad concept and far-reaching legal presumptions of dispossession, the assistance measures and procedural advantages it provides to claimants and the due diligence requirements it imposes on business actors investing in conflict-affected areas. However, despite its many progressive elements, the land restitution mechanism has produced relatively little results in terms of material land restitution, at least when compared to the scale of forced displacement. After almost eight years of implementation and with only two years before its lapse, the URT has concluded the administrative stage in 60 per cent of the total 122,159 land restitution requests submitted. But out of these, it excluded 65 per cent from the process.[72] Out of the remaining 35 per cent of requests that reached the judicial stage, almost 60 per cent are pending in court. Only 8 per cent of the total land restitution requests submitted resulted in a ruling thus far.[73] This indicates that both the administrative and the judicial stage constitute important bottle necks of the land restitution process. However, given that the authorities do not publish disaggregate information on the processing of the requests, for example, with respect to the reasons for exclusion, it is difficult to analyse these bottle necks in more detail on a quantitative basis.[74]

This also applies to the performance of the land restitution mechanism with respect to cases of business-related land dispossession. The above figures apply to the whole universe of claims, including those alleging forced abandonment and those alleging dispossessions. These, in turn, comprise cases involving business actors, but also cases in which other peasants, in many cases themselves victims of forced displacement, allegedly dispossessed the claimants. The land restitution authorities do not provide data that would allow to discriminate between these different types of requests. As a consequence, it is not possible to determine the number of requests involving business actors that were submitted to the URT and their respective outcomes in the administrative and judicial stage, nor to compare them with requests not involving business actors.

The only available information on such cases stems from civil society organisations reviewing land restitution rulings. The Colombian Commission of Jurists, for example, found 40 rulings in which companies acted as opponents to land restitution requests in

a review of March 2017. This amounted to merely 1.64 per cent of the total 2,435 rulings delivered by that time. In 29 of these rulings the company was unable to prove that it had acquired the property in good faith exempt from fault and thus lost the property without compensation.[75] The database of the foundation Forjando Futuros, which is regularly updated and currently contains 4,944 sentences, lists 132 rulings with opposition from 37 companies, including smaller agroindustry and forestry companies, but also large multinationals such as Ecopetrol or Anglogold Ashanti. This amounts to 2,67 per cent of the total number of reviewed rulings in the database, which only identifies 11 cases in which the company was able to prove good faith exempt from fault. In total, these 132 rulings led to the restitution of 60,201 hectares, which is little compared to the estimate of one million hectares of dispossessed lands in total.[76]

These figures suggest two conclusions. First, the small number of rulings involving companies in which these were able to prove good faith exempt from fault implies that many companies disregarded the situation of forced displacement when investigating in conflict-affected areas. The courts, on the other hand, do not shy away from restituting the victims in such cases without granting compensation to companies. As a consequence, once a land restitution claim reaches the judicial stage, companies face high risks of losing their investments. Second, the figures indicate that business-related land dispossessions have not been a priority in the land restitution process, given the small ratio of rulings involving opposition from companies compared to the total number of rulings. However, the available data does not allow to test this hypothesis, given that it only concerns companies and excludes individual businessmen. In addition, it only relates to the outcome of the restitution process in terms of rulings. To test the hypothesis that the restitution process has shied away from addressing business-related land dispossession, information on the total number of requests involving business actors submitted to the URT and their procedural stage in the administrative and judicial stage would be necessary.[77]

Due to the lack of disaggregate data, the most viable option to analyse the performance of the land restitution mechanism with respect to business actors is to focus on individual cases. In the Argos case, for example, which is perhaps the most prominent case of business-related land dispossession, the company admitted to have acquired 6,600 hectares in the Montes de María to develop teak monocultures, in part directly from victims of forced displacement and in part from intermediaries engaging in abusive practices to lead victims to sell.[78] As of September 2017, the courts had passed 9 restitution rulings, in which they found that the company's affiliates had not acted in good faith exempt from fault when acquiring these lands, restituting them to the claimants without granting compensation. In total, these lands amounted to 352 hectares. At the same time, proceedings concerning 891 hectares were pending in court. These compare to a total of approximately 2,000 hectares subject to land restitution requests.[79] This means that only 30 per cent of the surface area acquired by the company were subject to land restitution requests. Out of the surface area in restitution, 37,85 per cent had not passed the administrative stage while 44,55 per cent were pending in court. Only 17,6 per cent of the surface area subject to claims had been restituted. In addition to barriers in the administrative and judicial stage, this suggests that victims may face obstacles in accessing justice that may prevent them from initiating proceedings.

The perception that the land restitution process has been difficult with respect to cases of business-related dispossession was widely shared in the interviews conducted for this article. Several persons representing claimants in such proceedings voiced concerns that 'the land restitution process has shied away from companies' or that it concentrated on 'residual matters, small-scale dispossessions by individuals, little properties, leaving out the difficult cases'.[80] Based on their case work, the interviewees identified several obstacles specific to land restitution proceedings involving business actors that play out at the different stages of the process. These relate to the security and socio-economic situation of the victims, the imbalance of arms between the parties and the political repercussions of such proceedings.

Threats and violence against land restitution claimants

A defining feature of the land restitution process is that it takes place amidst an ongoing conflict. Although the state concluded a number of demobilisation agreements, various organised armed and criminal groups continue to operate in the national territory, which in many cases constitute residues of their demobilised predecessors. With respect to the AUC, for example, there are today twelve different groups that emerged with their demobilisation, such as the Clan del Golfo, the Puntilleros or the Rastrojos.[81] These groups continue to operate in the areas previously controlled by the paramilitaries, where they compete over illegal economies and engage in violence against the civilian population.[82] At the same time, the criminal justice system has largely failed to dismantle the local support networks of the paramilitaries in the economy, who often continue to exploit dispossessed properties.[83] This translates into high security risks for land restitution claimants and their representatives in cases of active dispossession involving business actors. In this context, one high risk area is Urabá, a stronghold of Clan del Golfo. In this region, the URT solicited protection measures and criminal investigations for threats against land restitution claimants in 314 cases.[84] In addition, it registered 40 murders of claimants in land restitution proceedings involving business actors. However, the figures of civil society organisations are much higher.[85] While the direct perpetrators of the homicides are usually members of the armed group, prosecutors also investigate business actors for their role in these crimes:

> In Urabá, […] there were massive displacements in the era of paramilitarism and persons with large economic power took advantage of them. Many businessmen came and started to sow palm tree […]. When we started to investigate, we found that we are facing Clan del Golfo. The majority of them were previously paramilitaries. And we also found that the threats emanate from those third parties involved in the land dispute. These persons don't want to give up the territory and initiated a series of violent acts. They eradicated the crops [of the returning communities]. It came to a point that they burned their houses, because they don't want to lose the territory. […] But in the homicides, it is not proven that the third parties intervened. These were committed by Clan del Golfo. […] In the beginning, our hypothesis was that there was some relation between the Clan and the businessmen. But we haven't been able to prove that.[86]

The consequence of the threats and homicides is that claimants, or their heirs, may abandon the restitution process. A claimant whose father was allegedly killed by a former paramilitary and whose property is today exploited by a cattle rancher recalls:

> When they killed our father, we lived in fear. I didn't want to sleep in my house. […] They threatened me several times, telling me to give up the process. I told the restitution unit that I don't want to know anything about restitution, nothing.[87]

However, such crimes not only impact the direct victims. They also have a chilling effect for other victims of business-related land dispossessions who participate or consider to participate in land restitution proceedings:

> The company came for the whole farm. They removed the remaining farmers. They passed by at night, with dogs, telling them to sell. […] And when the community started to organize, that's when the violence started. And although the authorities were there, they permitted that their employees carried arms, threatened us, burned our ranches. In 2014, they shot the vice president of our association, they gave him four bullets. […] There was a moment when nobody wanted to have anything to do with restitution, nobody. Because the effect of the violence is that you think 'If I lead this process, the same will happen to me, to my family' (Community leader representing 86 families in land restitution proceedings).[88]

In other words, the high rates of crimes against claimants detervictims of business-related land dispossession from initiating restitution proceedings: 'In Urabá, there are persons who decide not to file any restitution claim due to these reasons. They don't want to risk their life for the land. So yes, many people say that they are not claiming' (Lawyer representing victims in proceedings against business actors in that region).[89] An aggravating factor in this context is that the victims of the armed conflict often lack trust in the public institutions, given their long-term dysfunctionality and sometimes cooptation by armed groups.[90] As a consequence, many cases of business-related land dispossession may not have entered the restitution process.

Socio-economic situation of land restitution claimants

Another important obstacle to land restitution proceedings concerning business-related dispossessions is the socio-economic situation of the claimants, who are usually poor and live in precarious conditions. In addition, the lands in restitution are many times situated in remote areas the claimants left long ago, building a new life they are unwilling to give up in another and often urban location. Due to the legacy of the armed conflict, the local community and infrastructure in these areas do often not exist anymore. In addition, their farms may have reverted to wilderness or may be located in the middle of a mining site or monoculture that the claimants are unable to exploit or that may have suffered from soil degradation or other environmental impacts typically associated with such activities.[91] In combination with the difficult security situation, this means that many victims are unwilling or unable to return to their lands and to subsistence farming, despite the technical assistance measures provided by the land restitution mechanism to create adequate return conditions. Instead, victims are often interested in receiving compensation, so as to improve their precarious living conditions as fast as possible.[92] In many cases, business actors try to exploit this state of necessity, approaching the victims with settlement offers below the actual value of the property, which may play out in combination with threats against their physical integrity. According to a human rights lawyers and URT officers, this constitutes a regular practice:

> In many of our cases, the companies tried to make agreements with the victims to withdraw from the process. […] Many companies have chosen this strategy. They approach the victims

> and say: 'Look, the process takes a long time'. The victims often live in precarious conditions. So, when the company offers them some money to desist, many say: 'Better taking something today than continue waiting'.[93]

> Many victims told us that they had received visitors. And that those persons told them: 'Why the interest to go ahead with restitution?' In some cases, they also made offers to solve the problem.[94]

While the Constitutional Court prohibited settlements in the restitution process, the URT has interpreted this prohibition to apply only to the judicial phase. Between 2015 and 2017, it reported 6,251 cases in which claimants withdrew their claims during the administrative stage of the process.[95] However, it does not provide data on the number of withdrawals in cases of business-related dispossessions.

Imbalance of arms between the parties

In addition to the disparity in economic resources between the parties in land restitution proceedings involving business actors, there is a large imbalance of arms in terms of judicial capabilities. Due to their precarious conditions, the claimants are usually represented by the URT, which does not possess sufficient resources to address the large number of land restitution requests submitted and regularly causes delays far beyond the statutory time limits foreseen in the land restitution mechanism. Its officers face an extremely high case load. And the same applies to the specialised land restitution judges.[96] Companies, on the other hand, often employ whole teams of inhouse lawyers or hire law firms to represent them in land restitution proceedings, who sometimes use their judicial resources excessively, flooding the authorities with petitions and appeals. A URT officer recalls one of his cases:

> [The company] asked for meetings with the director, they were closely watching […] In that time, we received certain visits, generally persons above our age. They wanted to know in what stage the process was, what we were doing. They understood the administrative phase as an adversarial process. They solicited us to collect specific evidence. They wanted to attend when we took evidence. They wanted to know what the witnesses were saying and question them. […] The court audiences were extremely tense. Many times, they started in the morning and terminated late at night. The company had an extremely qualified team of lawyers. Normally, two of their lawyers would go, while from us, it was only one. […] It was always necessary to meet and discuss the legal strategy.[97]

As a consequence, proceedings against business actors are often subject to long delays.[98] More importantly, URT officers have to invest high efforts, which constitutes a disincentive to prioritise such proceedings and may lead them to instead concentrate on the abundance of other, less complicated cases. In this context, one problematic aspect are institutional reward systems. The same applies to the specialised land restitution judges:

> Some cases are pending three years before the courts waiting for the judgment and then the judges declare them invalid because the properties were not delimited correctly. But that decision should take them a month or two. So, what happens? The nullity is a positive statistic for the judges. They completed the case, it's not their responsibility anymore, they send it back to the URT. They get rid of the case and in terms of the institutional statistics, they complete it. They have a large case load. Everybody has to meet targets. And on the basis of the targets you get promoted. An invalid case is a completed case (URT Officer).[99]

Furthermore, business actors sometimes misuse their legal resources to delay and undermine restitution proceedings. This applies, for example, to the case of Las Franciscas in the department of Magdalena, concerning a number of banana companies, which managed to delay the implementation of a land restitution against them for more than two years.[100] According to URT officers, this constitutes a regular practice among business actors:

> There are opponents who have used different judicial figures with the objective of generating delays after the restitution judgment. So, the victims filed the claim, it was included in the register, it was submitted to the judge, there is a ruling ordering restitution, the opponent has to surrender the property, but after recognizing the judgment, the opponents sue the claimants for fraud. Or they sue the officer.[101]

A major problem in this context is the criminalisation of claimants on the basis of libel and slander lawsuits, which in some cases has led to the temporary suspension of restitution proceedings. Such practices have also targeted civil society organisations representing claimants.

> Criminalization is a big issue, of the leaders above all. Our legal representative, he had more than ten criminal investigations against him. But we managed to close all of them. They intend to obstruct our work. They even filed criminal complaints against the judges. Businessmen have used this strategy for years (Human rights lawyer).[102]

Political influence of business actors

Besides their superior economic and judicial capacities, some business actors possess very good political relationships, due to their importance for the regional and sometimes also the national economy. Some use these relationships to influence restitution proceedings. In the case of Argos, for example, it was reported that the company managed to obtain a meeting with former president Santos, during which he called the URT's national director telling him that he trusted the company and to revise its case carefully.[103] Such risks of influence are particularly high in the administrative stage, given that the URT is a government entity, and may result in pressures for the individual officers investigating business-related land dispossessions. This is confirmed by its own officers:

> There was pressure, much pressure. When I started to work for the URT, I remember that they called us from the central office and asked us for the state of the case. We told them that we had to take further evidence and they said 'okay' and never asked us again. We didn't think that we would raise so much interest. When we took the decision to include the case in the register, we had discussed it a long time and we all thought that it was clearly a case of restitution. The blast came when we presented the claim, because the judges notify the third parties that there is a claim. [The company] couldn't believe it and approached the central office. And that's when they reacted and said: 'How is it possible that we have a decision against this company, what's that?' [Whom?] The national director.[104]

> Many times, there were pressures from the central office, from the government. One time, they informed us that there would be a commission coming to our office. And we understood that some civil servants would visit. Our surprise was what kind of civil servants. It was [officer], the country's highest official on […]. It's not normal that the maximum authority of such an entity comes to a territorial URT office to review one specific case.[105]

In addition to intents to influence individual restitution proceedings, business actors have formed interest groups that engage in public relations campaigns and organise local protests to undermine the land restitution process as a whole.[106] These groups claim to represent 'the victims of the Victims Law',[107] which, in their eyes, 'has led to a victimisation of those who are today legitimate rural landowners'.[108] In this context, they usually refer to small peasants, often themselves victims of forced displacement, who took possession of abandoned lands of other forcibly displaced persons to build new farms and are today obliged to return these properties.[109] While this is an important argument in the land restitution process, these groups instrumentalize it to advance a political agenda benefitting large landowners. The most prominent advocate of this agenda is senator María Fernanda Cabal, member of the right-wing Democratic Centre and married to the president of the national cattle ranchers' association, who instigated a number of parliamentary debates to modify the land restitution mechanism.[110] With the Democratic Centre now in government, she presented a legislative proposal that would effectively exempt business actors from the land restitution process.[111] According to a URT officer, the political leverage of business actors, together with their judicial capacity, imply that land restitution officials may shy away from advancing cases of business-related land dispossessions:

> In my cases, the businessmen involved are very powerful persons. They own tens of thousands of hectares in the country, they have been politicians, they have held elective offices, they economically control whole regions and nobody wants to touch them. […] They tried to delay the cases as long as possible. They initiated disciplinary proceedings against us, they requested annulments. We had to present a legal action against a judge, because he had declared an annulment, which the law doesn't provide for. So, we had to file a complaint with the Supreme Court. These are the situations that have come up. This is my personal impression: The judges, and also some prosecutors and civil servants, are afraid of confronting businessmen. Because they also have political support in the parties close to them.[112]

Civil society organisations representing claimants in cases involving business actors share this impression, especially with respect to the conduct of the URT. In this context, several interviewees reported decisions in the administrative stage they considered as arbitrary. In particular, this applies to the inclusion of the respective properties in the so-called micro-zones, which constitutes a requirement for the claims to proceed.[113] One example is the case of Cucal in Montes de María, where a company owned by former Minister of Agriculture Carlos Murgas cultivates oil palm on the lands of ninety displaced families:[114]

> This case was presented to the URT three years ago, but they didn't do anything. They said it was a complicated case, for technical reasons. Because the lands are located in between two departments, Sucre and Bolívar. They said the other territorial office is responsible. So, we talked to the other office, but they haven't micro-focalized it. They promised to look at it, but it has been a year now and nothing happened. […] The people in the region say that this case will not go forward, because the opponent is Carlos Murgas (Researcher accompanying the case).[115]

Another example is the case of Finca Bellacruz in the department of Cesar, which concerns 180 families displaced by the paramilitaries. Today, their land is owned by oil palm companies.[116] According to their legal representatives, the URT took controversial decisions leading to delays in the process:

> We have been asking the URT to micro-focalize this case since the adoption of the Victims Law in 2011. They only micro-focalized it after the Constitutional Court ordered them to do so in a ruling of last year. That was ridiculous. When the URT micro-focalized the area, they micro-focalized all the adjacent properties, but not this one. That is absurd, because you assume that the process depends on factors that affect the whole area. The URT said that there was a lack of security. So, we asked them to take the case to the committee that coordinates with the security agencies. But within one year that never happened. Either there is a directive not to engage in such cases, if not formal than informal, or it's the individual directors in the regional offices who are scared and leave out the difficult cases.[117]

Implementing the Victims and Land Restitution Law: a gap between the law and legal practice

In sum, the implementation of the land restitution mechanism in cases of business-related dispossessions has suffered from various practical obstacles that undermine its progressive legal framework. In part, this gap between the law and legal practice results from difficulties that affect the restitution process in general: the high number of claims to be resolved, the limited resources of the administrative and judicial bodies to resolve them and the problematic socio-economic and security conditions in many conflict-affected regions. In cases of business-related dispossessions, these general difficulties combine with a number of specific obstacles.

One such obstacle is the high risk of re-victimisation, which prevents victims from initiating restitution proceedings or leads them to withdraw from the process. Although the land restitution mechanism provides a number of instruments to mitigate this risk, including its macro- and micro-zoning regime and individual protection programmes coordinated between the land restitution authorities and public security agencies, these measures have proven insufficient in many cases. In large parts, the risk of re-victimisation results from the fact that the land restitution mechanism operates in a context of ongoing conflict, where successor organisations of the armed groups responsible for land dispossessions are still present in many regions.

However, it is also due to the prevailing impunity of business actors, who collaborated with the armed groups in these practices and often continue to exploit the dispossessed properties, which creates incentives for acts of violence against land restitution claimants. In this sense, the high risk of re-victimisation is also a consequence of the failure of the criminal justice system to hold the private sector supporters of the armed groups to account.[118] In addition, it relates to a lack of coordination between the land restitution and criminal prosecution authorities: The former usually not investigate whether the conduct of the opponents gives rise to criminal liability, but confine their analysis to the good faith exempt from fault standard. If indications of criminal liability come up, they refer the evidence to the prosecution authorities.[119] Yet, such referrals only occur in very few cases and are rarely followed up effectively in the criminal justice system.[120]

Another major obstacle in land restitution proceedings against business actors are their economic, judicial and political resources, which they use to undermine the process at all stages. This implies that such proceedings are often lengthy and hard-fought, requiring land restitution officials to invest a lot of time and effort and to expose themselves to pressures that may constitute risks to their career. In other words, there are strong disincentives for them to advance such proceedings, which play out in combination with their already

high case load. Together with the excessive use of judicial means by corporate opponents, these disincentives may explain why land restitution proceedings against business actors do often not go forward, in particular during the administrative stage.

What has been lacking in this context is an institutional policy to address these disincentives and prioritise proceedings against business actors. In fact, there are indications that the government has taken exactly the opposite approach, at least with respect to land restitution to ethnic communities, where it created a technical group within the URT to review claims affecting the extractive industries. According to civil society organisations, this group was established to limit the adverse impacts of land restitution on the government's mining and energy policies after the first decision in ethnic restitution had suspended mining titles on the collectively owned lands of an indigenous community.[121] Such incidents reflect the political tensions caused by restitution proceedings involving business actors and the conflicts of interest that arise, also within governments, between land restitution on the one, and natural resource based development policy and investment security on the other hand.[122]

Conclusion: access to remedy through transitional justice instruments – obstacles and solutions

As a domestic remedy mechanism for business-related human rights violations, the land restitution process shows a mixed balance. When compared to the scope of land dispossession in Colombia, 132 rulings against business actors is a small number. But compared to other remedy mechanisms,the number is high. Transnational civil claims, for example, rarely reach the trial stage and if they do, they are often dismissed, while a few result in settlements.[123] This suggests that the business and human rights debate should give more emphasis to domestic transitional justice processes to provide victims of business-related human rights violations in conflict-affected countries with access to remedy.

As this research demonstrates, post-conflict contexts pose specific barriers to remedy that legislators should consider. In contrast to transnational civil litigation, practical obstacles weigh heavier than legal ones.[124] These include the lack of economic resources, rights awareness and trust in public institutions among the victims and the difficulties they face in proving their claims due to the long-term absence of the state and the resulting gaps in official documentation. The reason why the land restitution mechanism has resulted in 132 rulings against business actors is because it adresses these barriers through legal assistance measures and procedural advantages, in particular with respect to evidence standards. In post-conflict settings, such arrangements constitute a basic prerequisite to provide victims with access to remedy.

In this context, the most progressive element of the land restitution process is the creation of a public agency with territorial presence across the country to advise, accompany and represent claimants, to collect evidence and develop complaints free of cost. Without this agency, many victims of forced displacement would not have been able to participate in the land restitution process. In situations of widespread and systematic forced displacements, the creation of a specific legal and procedural architecture, including such an agency, but also specialised judges, constitutes an example of good practice that other countries in transition should take up to facilitate access to remedy. However, they should also consider that displacements may be followed, if not motivated by large-

scale land acquisitions and establish specialised entities within these agencies in this regard. Needless to say, these agencies must be adequately funded.

Yet, the implementation of the land restitution mechanism also shows that public agencies are prone to political influence by business actors – another obstacle to remedy in post-conflict contexts. Therefore, legislators should think of mechanisms to shield them from undue interference. In case of the land restitution process, the responsible agency was ascribed to a ministry. One solution could be to opt for a more independent model, for example, in the form of publicly funded non-profit organisations as they are often found among consumer protection entities. Another option could be to implement strong transparency and accountability measures to limit the use of enforcement discretion, which have been lacking in the land restitution process. This could imply, for example, to create a monitoring system to follow up on the outcomes of the proceedings and to publish the respective data.

A further obstacle to remedy consists in the large imbalance of arms in terms of judicial resources between the parties. As the land restitution process shows, this imbalance also affects the conduct of civil servants who may shy away from taking up complicated cases against business actors. Therefore, any public entity responsible to advance such cases needs a clear institutional policy to address the related disincentives, including the high work load associated with these cases. This policy should be reflected in the performance targets of civil servants and should also involve the creation of flexible working groups to prioritise and support the respective proceedings.

An important finding of this research is that an inadequate institutional setup and an inappropriate institutional policy may undermine even the most progressive material law provisions with respect to business-related human rights violations. In the land restitution process, these consist in a binding due diligence obligation for land investors in conflict areas, which leads to a form of negligence liability with a reversed burden of proof, also for investors further up the transaction chain. In addition, it creates a number of rebuttable presumptions of dispossession, for example, in cases of land concentration, with respect to changes in land use from subsistence farming to monocultures, extensive livestock farming or industrial mining or where the price paid for the properties was below fifty percent of its market value. Consequently, the land restitution mechanism not only covers active dispossessions in which business actors conspired with armed groups to displace the victims, but also situations in which they simply purchased abandoned lands in conflict areas, without any linkages to armed groups, but disregarding or exploiting the situation of the victims. These elements make the land restitution mechanism a far-reaching and comprehensive instrument to address business-related land dispossessions. However, they have also been the most controversial ones, given that many companies argue that such due diligence requirements did not exist at the time of their investments, but were introduced retrospectively, and that they were invited to invest in conflict zones by the Uribe government in the course of its post-conflict stabilisation and reconstruction policies. To reduce conflicts of interests between the protection of forcibly displaced persons and business-led reconstruction, countries in transition should define due diligence requirements for land investors as early as possible, preferably already during the conflict, so as to provide investors with legal security.

Another severe obstacle to accessing remedy in transitional justice contexts is post-war violence. In the land restitution process, such violence relates to the presence of organised

armed and criminal groups that emerged with the demobilisation of the paramilitaries and continue to operate in the regions where these caused massive land dispossessions. In these regions, they co-opt public institutions, including law enforcement authorities, and threaten and kill land restitution claimants, while business actors in some cases continue to exploit dispossessed properties, despite restitution orders. To mitigate the ensuing risks of re-victimisation, the land restitution mechanism established a range of measures, including a gradual implementation policy according to the security situation of the respective territories and individual protection schemes for claimants coordinated with security agencies. Legislators in other countries in transition should take up such measures. However, these have proven insufficient in many cases. In post-conflict settings, transitional justice instruments to repair the victims need to be combined with an effective criminal law approach to hold the perpetrators of post-war violence and their private sector accomplices accountable so as to prevent further violence against claimants. This should involve strong coordination mechanisms with public prosecutors and protection agencies, on a case-by-case basis.

Yet, in some circumstances, access to remedy through adversarial proceedings against business actors may simply be unfeasible for the victims. In Colombia, there are many areas controlled by armed groups where the state is unable to provide protection. In such cases, victims should be allowed to transfer their claim to the state and receive compensation from public funds in exchange. With respect to land restitution proceedings, legislators could also consider to provide claimants with the option to choose between the material restitution of the land and compensation by business actors. This would favour victims who are unwilling to go back to their properties due to difficult return conditions. In addition, compensation would allow business actors to continue their operations on these properties. Thereby, it would reduce their incentives to oppose land restitution proceedings and also the political conflict of interest between protecting forcibly displaced persons and business-led reconstruction.

Notes

1. This article uses the term business actors to refer to both, natural and judicial persons, that is, individual businessmen and companies.
2. With respect to international and transnational criminal and civil law litigation, see for, example: Wolfgang Kaleck and Miriam Saage-Maaß, 'Corporate Accountability for Human Rights Violations Amounting to International Crimes. The Status Quo and its Challenges', *Journal of International Criminal Justice* 8, no. 3 (2010): 699; James G. Stewart, *Prosecuting the Pillage of Natural Resources* (New York: Open Society Institute, 2011); Sabine Michalowski, 'No Complicity Liability for Funding Gross Human Rights Violations?' *Berkeley Journal of International Law* 30 (2012): 451; Joanna Kyriakakis, 'Developments in International Criminal Law and the Case of Business Involvement in International Crimes', *International Review of the Red Cross* 94, no. 887 (2013): 981; James G. Stewart, 'The Turn to Corporate Criminal Liability for International Crimes: Transcending the Alien Tort Statute', *New York University Journal of International Law and Politics* 47, no. 1 (2014): 121; Sabine Michalowski, 'Doing Business with a Bad Actor: How to Draw the Line Between Legitimate Commercial Activities and Those that Trigger Corporate Complicity Liability', *Texas International Law Journal* 50, no. 3 (2015): 403.
3. Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework,* Report of the Special

Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/31, 21 March 2011, 22.
4. Note that some due diligence mechanisms with extraterritorial effects do provide victims with access to remedy by providing them with a cause of action against companies in civil law for damages caused by non-compliance with due diligence requirements. This applies, for example, to the French Loi de Vigilance (Loi n° 2017–399 du 27 mars 2017 relative au devoir de vigilance dessociétés mères et des entreprises donneuses d'ordre).
5. Jennifer Zerk, *Corporate Liability for Gross Human Rights Abuses. Towards a Fairer and more Effective System of Domestic Law Remedies,* Report prepared for the Office of the High Commissioner for Human Rights, (2018), 79.
6. Ibid., 7.
7. Ibid., 64f.
8. Human Rights Council, *Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse,* Report of the United Nations High Commissioner for Human Rights, A/HRC/32/19, 10 May 2016.
9. Office of the United Nations High Commissioner on Human Rights. Office of the High Commissioner, *UN Working Group on Business and Human Rights. Project on business in conflict and post-conflict contexts,* https://www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx (accessed April 29, 2020).
10. The seminal work, but also with a focus on international mechanisms, was edited by Sabine Michalowski: *Corporate Accountability in the Context of Transitional Justice* (New York: Routledge, 2013).
11. Leigh A. Payne and Gabriel Pereira, 'Corporate Complicity in International Human Rights Violations', *Annual Review of Law and Social Science* 12 (2016): 65.
12. Horacio Verbitsky and Juan Pablo Bohoslavsky, *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts* (Cambridge, UK: Cambridge Univ. Press, 2015); Sabine Michalowski and Juan Pablo Cardona Claves, 'Responsabilidad corporativa y justicia transicional', *Anuario de Derechos Humanos* 11 (2015): 173–82; Leigh A. Payne, 'Complicidad corporativa y justicia transicional: preparando la escena', in *La Paz, responsabilidad de todos. La responsabilidad corporativa en la justicia transicional: lecciones para Colombia*, ed. Joris van de Sandt and Marianne Moor (Utrecht: Pax, 2017); Sabine Michalowski et al., *Entre coacción y colaboración. Verdad judicial, actores económicos y conflicto armado en Colombia* (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2018); Philipp Wesche, 'Business Actors, Paramilitaries and Transitional Criminal Justice in Colombia', *International Journal of Transitional Justice* 13, no. 3 (2019): 478.
13. Law 1448/2011. The article examines the implementation of the Victims and Land Restitution Law between 2011, when it entered into force, until 2017, when the field research for this article was conducted.
14. All interviewees gave their free and informed consent to participate in the research and, if applicable, to be recorded and cited in the article. Given that all interviews were conducted in Spanish, citations were translated by the author. To protect theidentity of the interviewees, all citations were anonymized. Contextual information that could reveal their identity was blanked or changed.
15. Testimony of Jorge Iván Laverde, Encuentro Hablemos la Verdad en Cúcuta, 15 August 2019, https://www.elespectador.com/colombia2020/justicia/verdad/en-video-jorge-ivan-laverde-y-emiro-romero-hablan-de-las-verdades-de-la-guerra-en-norte-de-santander-articulo-876205.
16. As of March 2019, 7.469.351 persons were recognized as victims of forced displacement in the national Victims' Register. See: Unidad para las Víctimas, 'Víctimas por tipo de hecho victimizante', https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394 (accessed April 8, 2019); Centro Nacional de Memoria Histórica, *Una nación desplazada. Informe nacional del desplazamiento forzado en Colombia* (Bogotá: Centro Nacional de Memoria Histórica, 2015).

17. This definition is based on the concepts of Francisco Gutiérrez-Sanín and Rocío del Pilar Peña-Huertas. See: Francisco Gutiérrez Sanín, 'Propiedad, seguridad y despojo: el caso paramilitar', *Estudios Socio-Jurídicos* 16, no. 1 (2014): 45; Rocío del Pilar Peña-Huertas et al., 'Legal dispossession and civil war in Colombia', *Journal of Agrarian Change* 17 (2017): 761.
18. Note that this is the estimate of the director of the government's land restitution unit. Other sources estimate that the scale of dispossession could be six times as high. Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *Cuantificación y valoración de las tierras y los bienes abandonados o despojados a la población desplazada en Colombia* (Bogotá, 2011).
19. Jacobo Grajales, 'The Rifle and the Title: Paramilitary Violence, Land Grab and Land Control in Colombia', *Journal of Peasant Studies* 38, no. 3 (2011): 771; Yamile Salinas Abdala and Juan Manuel Zarama Santacruz, *Justicia y Paz. Tierras y Territorios en las Versiones de los Paramilitares,* (Bogotá: CNMH, 2012); Jacobo Grajales, 'State Involvement, Land Grabbing and Counter-Insurgency in Colombia', *Development and Change* 44, no.2 (2013): 211; Francisco Gutiérrez Sanín, supra n 17; Carlos J. L. Gómez, Luis Sánchez-Ayala and Gonzalo A. Vargas, 'Armed Conflict, Land Grabs Andprimitive Accumulation in Colombia:Micro Processes, Macro Trends and Thepuzzles in Between', *Journal of Peasant Studies* 42, no. 2 (2015): 255; César Molinares Dueñas and Nathan Jaccard, *La maldita tierra. Guerrilla, paramilitares, mineras y conflicto armado en el departamento de Cesar* (Bogotá: CNMH, 2016); Francisco Gutiérrez Sanín and Jenniffer Vargas (eds.), *El despojo paramilitar y su variación: quiénes, cómo, por qué* (Bogotá: Editorial Universidad del Rosario, 2016); Francisco Gutiérrez Sanín and Jenniffer Vargas, 'Agrarian elite participation in Colombia's civil war', *Journal of Agrarian Change* 17 (2017): 739; Jenniffer Vargas and Sonia Uribe, 'State, War, and Land Dispossession: The Multiple Paths to Land Concentration' *Journal of Agrarian Change* 17 (2017): 749.
20. On the history of paramilitarism in Colombia, see: Centro Nacional de Memoria Histórica, *Grupos armados* posdesmovilización (2006–2015): Trayectorias, rupturas y continuidades (Bogotá: CNMH, 2017).
21. As of 2016, 102 members of the house of representatives and 97 senators had been investigated for ties with paramilitary groups, of whom 42 were convicted. 'El informe que indica que la parapolítica no es cosa del pasado,' *Semana*, 17 April 2016. See also: Claudia López, ed., *Y refundaron la patria: De cómo mafiosos y politicos reconfiguraron el estado colombiano* (Bogotá: Debate, 2010).
22. For an overview, see: Philipp Wesche, supra n 12. See also: Francisco Gutiérrez Sanín and Jenniffer Vargas, supra n 19.
23. Francisco Gutiérrez Sanín, supra n 17.
24. Yamile Salinas Abdala and Juan Manuel Zarama, supra n 19.
25. Francisco Gutiérrez Sanín and Jenniffer Vargas, supra n 19; César Molinares Dueñas and Nathan Jaccard, supra n 19.
26. These figures have been documented by the Superintendence of the Notary and Registry out of a sample of land transactions. Note that the true dimension of dispossession in the region may be much higher. Superintendencia del Notariado y Registro, *Situación registral de predios rurales en los Montes de María* (Bogotá, DC, 2011); Centro Nacional de Memoria Histórica, *Tierras y conflictos rurales. Historia, Políticas Agrarias y protagonistas* (Bogotá: CNMH, 2016), 283.
27. Superintendencia del Notariado y Registro, supra n 26.
28. Superintendencia del Notariado y Registro, *Situación Registral de Predios Rurales en los Municipios de Apartadó, Arboletes, Necoclí, San Pedro de Urabá, San Juán de Urabá y Turbo* (Bogotá, DC, 2011); Superintendencia del Notariado y Registro, Comunicado de Prensa No. 28, Supernotariado detecta irregularidades en compraventa de tierras en Urabá, 26 de agosto de 2011; Centro Nacional de Memoria Histórica, supra n 26, 306ff;
29. Jacobo Grajales, supra n 19.
30. Tierra en Disputa, http://tierraendisputa.com/home (accessed August 6, 2019).

31. Vilma Liliana Franco and Juan Diego Restrepo, 'Empresarios Palmeros, Poderes de Facto y Despojo de Tierras en el Bajo Atrato', in *La economía de los paramilitares. Redes de corrupción, negocios y política*, ed. Mauricio Romero Vidal (Bogotá: Corporación NuevoArco Iris, 2011).
32. In addition, a number of company representatives and middlemen were convicted for these crimes. Tribunal Superior de Medellín, *Gabriel Jaime Sierra Moreno y otros*, Rad. 050013107005201101799, noviembre cuatro (4) de dos dieciséis (2016); Juzgado Quinto Penal del Circuito Especializado de Medellín, *Gabriel Jaime Sierra Moreno y otros*, Rad. 050013107005201101799, octubre treinta (30) de dos mil catorce (2014); Juzgado Quinto Penal del Circuito Especializado de Medellín, *Irving Jorge Bernal Giraldo*, Rad. 050013107005201301274, agosto diez (10) de dos mil quince (2015); Fiscalía General de la Nación, *A 10 años de prisión fue condenado socio de Urapalma por desplazamiento y despojo de tierras en el Bajo Atrato chocoano* (June 8, 2017).
33. Superintendencia del Notariado y Registro, note 28, 20; Tribunal Superior de Medellín, Sala de Justicia y Paz, *Jesús Ignacio Roldán Pérez*, Rad. 110016000253-2006-82611, diciembre nueve (9) de dos mil catorce (2014) 285; 'Compra irregular de tierras en el Fondo Ganadero de Córdoba' *Verdadabierta.com* (5 January 2014), https://verdadabierta.com/compra-irregular-de-tierras-en-el-fondo-ganadero-de-cordoba/ (accessed April 8, 2019).
34. Fiscalía General de la Nación, Ratifican condena de 19 años de cárcel a Benito Osorio Villadiego, expresidente del Fondo Ganadero de Córdoba (18 August 2015).
35. For an overview about the case, see: Camila Osorio, 'La difícil reconciliación de Argos con Montes de María', *La Silla Vacía* (October 22, 2015); 'Argos no probó buena fe exenta de culpa en compra de tierras', *Verdadabierta.com* (April 12, 2016).
36. Such practices have been documented in a number of restitution proceedings relating to the Argos case: See, for example: Tribunal Superior del Distrito de Santiago de Cali, Sala Civil Especializada en Restitución de Tierras, Sentencia Rad. No.13244312100220140000401, 18 de Agosto de 2016; Tribunal Superior de Antioquia, Sala Civil Especializada en Restitución de Tierras, Sentencia Rad. No. 13244312100220130007700(11), 12 de Octubre de 2016; Tribunal Superior del Distrito Judicial de Cartagena, Sala Civil Especializada en Restitución de Tierras, Sentencia Rad. No. 13244-31-21-001-2014-00087-00, 31 de Octubre de 2016.
37. Law 1448/2011.
38. For an overview about the law and its context, see: Nicole Summers, 'Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict', *Harvard Human Rights Journal* 25 (2012): 219.
39. For a detailed overview about the land restitution process, see: Sergio Raúl Chaparro Hernández et al., *La restitución de tierras y territorios. Justificaciones, dilemas y estrategias* (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2016). Note that land restitution to ethnic communities follows a different procedure than restitution to individual peasants, which goes beyond the scope of this article.
40. As of today, these macro-zones cover the whole national territory. Law 1448/2011, art 76; Decree 1071 of 2015, adopted 26 May 2015, arts 2.15.1.2.1–2.15.1.2.5.
41. Ibid., arts 2.15.1.3.1–2.15.1.4.5.
42. Law 1448/2011, arts 75, 81.
43. This also covers victims of forced displacement, who abandoned or were dispossessed of their land as a consequence of fear generated by the presence of armed groups and the violence these deployed in the region. To qualify as a victim within the meaning of the law, it is not necessary to have suffered damages against one's life or physical integrity, nor to have been directly threatened. Ibid., art 3; Aura Patricia Bolívar Jaime, Laura Gabriela Gutiérrez Baquero and Angie Paola Botero Giraldo, *La buena fe en la restitución de tierras. Sistematización de jurisprudencia* (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2017), 21.
44. Law 1448/2011, art 75.
45. Note that the courts have sometimes interpreted this nexus requirement in a broad way, in the sense that the displacement created a state of necessity, which forced the victims to sell the property.

46. Ibid., art 80.
47. If the case is admissible, the court will order to suspend all commercial transactions and administrative or judicial processes over the land.
48. Ibid., arts 86–88.
49. Ibid., art 88.
50. Ibid., arts 89 and 90.
51. Ibid., art 79.
52. Law 1448/2011, art 74.
53. Bolivar Jaime, Gutiérrez Baquero and Botero Giraldo, note 43, 63.
54. For a typology of the different modalities of land dispossession, see: Chaparro Hernández et al, note 39.
55. Law 1448/2011, art 77(1).
56. Ibid., art 77(2).
57. Ibid., art 77(2a).
58. Ibid., art 77(2b and d).
59. Ibid., art 77(1, 2e, 3 and 4).
60. Ibid., arts 88, 91 and 98. On the concept, see: Corte Constitucional, Sentencia C-1007/02 de 18 de noviembre de 2002.
61. Interviews with URT officials and human rights lawyer, September 2017.
62. Corte Constitucional, Sentencia C-330 de 2016 de 23 de junio de 2016; Bolívar Jaime, Gutiérrez Baquero and Botero Giraldo, note 43, 30–72.
63. In the event that the material restitution of their land is not possible or that they cannot return for threats against their life or physical integrity, they are restituted with an equivalent plot. Only if no form of restitution is possible they receive monetary compensation. Law 1448/2011, arts 72, 75.
64. Ibid., art 99.
65. Corte Constitucional, Sentencia C-820 de 2012, Bogotá D.C.18 de octubre de 2012.
66. Law 1448/2011, art 82.
67. Ibid., arts 5 and 78; Aura Patricia Bolívar Jaime et al., *Debates sobre la acción de restitución* (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2017), 143.
68. Law 1448/2011, arts 81–84.
69. This process is administered by the Special Administrative Unit for Victims Assistance and Reparation, also created under the law. Claimants can initiate the process by submitting a written declaration and supporting prima facie evidence to be included in the so-called Single Victims Register. The Unit decides the request within sixty days applying principles of favourability and good faith. Law 1448/2011, arts 49–68, 154–158.
70. Ibid., arts 31 and 32. See also: Directive 01 of 2011 of the Ministry of Agriculture and Rural Development, Decree 4912 of 2011 and Decree 1225 of 2012 of the Ministry of the Interior and the National Protection Unit.
71. This includes women, children, elderly persons, persons with disabilities, peasants, social leaders, trade union members and human rights defenders. Land restitution proceedings initiated by female claimants enjoy priority over others and the URT also runs specific programs to guarantee women's access to remedy. Law 1448/2011, arts 31, 114–118.
72. Unidad de Restitución de Tierras, *Estadísticas de Restitución de Tierras*, https://www.restituciondetierras.gov.co/estadisticas-de-restitucion-de-tierras (accessed August 8, 2019).
73. As of July 2019, the URT had concluded the administrative stage in 73,393 of the total 122,159 land restitution requests. 47,516 had been excluded and 25,549 included in the SRTDAF. Out of the latter, 10,338 resulted in a ruling. Ibid.
74. Civil society organizations suspect that the URT excludes requests to improve its performance, given that an excluded is a completed case. Interviews with civil society representatives, September 2017.
75. Comisión Colombiana de Juristas, *Restitución de Tierras y Empresas* (Bogotá: Comisión Colombiana de Juristas, 2017), 35, 18.

76. Forjando Futuros, *Sistema de Información Sembrando* Paz, http://sifff.eaconsultores.com.co/Datos/Index.To consult individual rulings against companies: Forjando Futuros, *Buscador de Sentencias*, http://sifff.eaconsultores.com.co/Buscador/Index. For an overview of 46 sentences relating to 33 companies, including the most important findings, see: Forjando Futuros, *Empresas, desplazamiento y despojo de tierras en Colombia* (Bogotá: Forjando Futuros, 2018).
77. It would be interesting to compare the numbers of requests involving and not involving private sector opponents in terms of their procedural stage in order to identify possible filters in the administrative and judicial stage. Unfortunately, the URT does not collect disaggregate data that would allow to identify and distinguish requests involving private sector opponents. In order to find out whether a request in the administrative stage involves interested third parties or whether these third parties did in fact oppose the request in the judicial stage, it is thus necessary to consult the individual case files, which are subject to confidentiality requirements pending the ruling. Interviews with URT Representatives; URT response to an information petition filed by the author.
78. See, for example: Tribunal Superior del Distrito Judicial de Cartagena, Sala Civil Especializada en Restitución de Tierras, Sentencia, Rad. 70001-13-21-002-2014-00078-00, Cartagena, 26 de Noviembre de 2018; Tribunal Superior del Distrito de Santiago de Cali, Sala Civil Especializada en Restitución de Tierras, Sentencia Rad. No.13244312100220140000401, 18 de Agosto de 2016; Tribunal Superior de Antioquia, Sala Civil Especializada en Restitución de Tierras, Sentencia Rad. No. 13244312100220130007700(11), 12 de Octubre de 2016; Tribunal Superior del Distrito Judicial de Cartagena, Sala Civil Especializada en Restitución de Tierras, Sentencia Rad. No. 13244-31-21-001-2014-00087-00, 31 de Octubre de 2016.
79. Interview with and material provided by company official, September 2017.
80. Interview with URT official, September 2017; Interview with human rights lawyer, September 2017.
81. Indepaz, *Conflictos Armados Focalizados. Informe sobre Grupos Armados Ilegales Colombia 2017–2018* (Bogotá: Indepaz, 2018).
82. Defensoría del Pueblo, *Informe Especial: Economías Ilegales, Actores Armados y Nuevos Escenarios de Riesgo en el Posacuerdo* (Bogotá: Defensoría del Pueblo, 2018); Fundación Ideas para la Paz, *La Fragilidad de la Transición. La paz incompleta y la continuidad de la confrontación armada* (Bogotá: Fundación Ideas para la Paz, 2019).
83. Philipp Wesche, supra n 12.
84. URT, Grupo Gestión en Prevención, Protección y Seguridad (GPPS), 2 May 2017.
85. The URT has registered 40 homicides against land restitution claimants since the enactment of the Victims' Law, many occurring in Urabá, but also in other parts of the national territory. According to the Colombian Commission of Jurists, 330 persons related to land restitution proceedings suffered attacks over this period, out of which 97 were murdered. Procuraduría General de la Nación, *Violencia sistemática contra defensores de derechos territoriales en Colombia* (Bogotá: Procuraduría General de la Nación, 2018), 19; Comisión Colombiana de Juristas, *Radiografía de la restitución de tierras en Colombia* (Bogotá: Comisión Colombiana de Juristas, 2019), 82.
86. Interview with public prosecutor investigating homicides and threats against land restitution claimants in cases of business-related dispossession, Bogotá, January 2019.
87. Interview with land restitution claimant in Montes de María, whose land is currently occupied by a cattle rancher and whose father was allegedly murdered by a former paramilitary, September 2017.
88. Interview with community leader, who represents 86 families in land restitution proceedings against an agroindustry company in Montes de María, September 2017.
89. Interview with human rights lawyer, September 2017.
90. Interview with URT official, August 2017.
91. Interview with former URT official, August 2017.
92. Ibid.
93. Interview with human rights lawyer, August 2017.
94. Interview with URT official, August 2017.

95. Comisión Colombiana de Juristas, supra n 85, 17f.
96. Interview with human rights lawyer, September 2017.
97. Interview with URT official representing claimants in restitution proceedings involving a large company, September 2017.
98. Ibid.
99. Interview with URT official, September 2017.
100. Comisión Colombiana de Juristas, supra n 85, 42. For an overview about the case, see: Comisión Colombiana de Juristas, *La comunidad de Las Franciscas volverá a su tierra,* 26 de abril de 2018.
101. Interview with URT official, September 2017.
102. Interview with human rights lawyer representing land restitution claimants in cases against business actors, September 2017.
103. Camila Osorio, supra n 35.
104. Interview with URT official representing claimants in restitution proceedings involving a large company, September 2017.
105. Ibid.
106. Interview with URT officials, August 2017; El Heraldo, *Ley de Restitución de tierras debe der modificada,* 8 de abril de 2016; La Silla Vacía, *El rostro antirrestitución del Magdalena Medio*, 17 de abril de 2016.
107. Comisión Colombiana de Juristas, supra n 85, 78.
108. President of the Cattle Ranchers' Association of Santander, cited in: Contextoganadero, *Ganaderos son víctimas el programa de restitución de tierras,* 12 de abril de 2016.
109. See, for example: Contextoganadero, *Uso indebido de Ley de Víctimas perjudica a dueños legítimos de tierra,* 30 de septiembre de 2015.
110. Verdadabierta.com, *El tema de tierras no es como lo pinta Cabal,* 30 de julio de 2015.
111. Among other aspects, this proposal foresees that opponents can keep the property in restitution, unless it is proven that they were directly or indirectly related with the displacement or the armed groups. In such cases, the claimants receive compensation or a similar property. In addition, the proposal intends to reduce the good faith exempt from fault standard, so that opponents no longer have to demonstrate due diligence measures to receive compensation for restituted properties. Taken together, these measures would imply that business actors further up the transaction chain, who acquired dispossessed lands from intermediaries, are excluded from liability. But considering the poor performance of the criminal justice system in investigating land dispossessions and the relationships between businessmen and armed groups, it would probably also constitute a de facto carte blanche for other, criminal business actors. Furthermore, the proposal intends to modify the procedure of the restitution process, allowing opponents to contradict the evidence and the decisions taken in the administrative stage and introducing new instances of appeal in the judicial stage, which would delay such proceedings for years. Finally, the proposal includes a provision to punish third parties with eight to twelve years of imprisonment, who incite persons not constituting victims of forced displacement to initiate restitution proceedings for ideological or political purposes. This provision involves a high risk of abuse to criminalize human rights defenders and community leaders supporting land restitution claimants. See: Proyecto de Ley_2018 por medio de la cual se modifica la ley 1448 de 2011 y se dictan otras disposiciones, arts. 6, 20, 21, 12, 15, 30.
112. Interview with URT official, September 2017.
113. See section II A.
114. For an overview about the case, see: Verdadabierta.com, *La restitución de tierras que aún no llega al Cucal*, without date.
115. Interview with academic accompanying communities in land restitution proceedings against business actors, September 2017.
116. For an overview about the case, see: Verdadabierta.com, *Campesinos de la Hacienda Bellacruz, esperanzados en la justicia,* 23 de agosto de 2018.
117. Interview with human rights lawyer, September 2017.

118. Philipp Wesche, supra n 12.
119. Interview with URT official, September 2017.
120. Comisión Colombiana de Juristas, supra n 85, 43, 49ff; Jimena Bautista Revelo and Leonel Plazas Mendieta, *Tensiones entre la política extractivista y la restitución de tierras y los derechos territoriales* (Bogotá: Movimiento Nacional de Víctimas de Crímenes del Estado, 2018), 75f.
121. Comisión Colombiana de Juristas, supra n 85, 32ff.
122. Another initiative to limit the adverse effects of land restitution on the country's resource extraction-based development policy found entry into the government's national development plan of 2014-2018, which intended to legally prevent the restitution of lands forming part of mining, hydrocarbon, infrastructure projects of national interest. However, this provision was declared unconstitutional. See: Ibid, 45; For further information on political tensions between restitution and economic policy, see: Jimena Bautista Revelo and Leonel Plazas Mendieta, supra n 120.
123. Jennifer Zerk, supra n 5, 94.
124. On barriers to transnational litigation, see: Gwynne Skinner, Robert Mc Corquodale, Olivier De Schutter and Andie Lambe, *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business,* December 2013.

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