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The Conflict of the Indicators

A Case Study on the Implementation of the Victims' and Land Restitution Law in Cali, Valle del Cauca, Colombia

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Abstract

This text presents a critique of the version of the Colombian conflict constructed by Law 1448 of 2011 and the indicators designed to evaluate its implementation. The principal argument is that the text of the law and the indicators used have produced, consolidated and normalized an exclusionary vision of the armed conflict and created an exotic idea of the conflict, centred on the rural and the distant, ignoring its nearby, everyday nature. This exotic concept of the conflict is linked to the way in which the model of transitional justice has been constructed and globalized. The text is based on a case study carried out in Cali, the capital of the Department of Valle del Cauca, and currently the most violent urban centre in the country. The conclusion of the paper is that indicators are not only measures — they shape reality and profoundly impact people's lives.

Keywords

conflict – transitional justice – indicators – governance – victims' law – land restitution law

1 The author wish to thank his research assistant Felipe Trujillo for his marvelous contribution to the field work that supports this study.

1 The Victims' Voices

Claudia² was forced off her land eight years ago, in 2006. She had just celebrated her sixteenth birthday and was in the tenth grade at the Colegio Juan Pablo II. She, her parents and her brothers had been volunteer members of the *Fuerzas Armadas Revolucionarias de Colombia* ('FARC') guerrilla group until they decided to desert and try their luck in Siloé (Comuna 20) in the city of Cali in southwest Colombia. They were fleeing the violence that had plagued the Cañón de las Hermosas zone in the Department of Tolima. Claudia has lived in Comuna 20, one of the poorest parts of Cali, since then. Initially, they made a rudimentary home of bamboo and palm leaves and later, once they had adjusted to city life, they built a house of brick and cement. Her parents died of cancer three years after the family arrived in Cali, first Claudia's mother and then, two months later, her father. Five years ago her older brother, Emerson, was killed as a result of gang violence, and she was later forced to leave Siloé as a result of death threats directed at her, her younger brother, Edison, and her newborn son. Now Claudia is renting a room for herself and her child and works at a set of traffic lights in the city centre selling minutes of cell phone credit. She works there because there are few opportunities to get a regular job, and she prefers selling minutes and cigarettes to prostitution.

I heard about Claudia's story through the rumour mill that is the queue at the *Unidad de Atención y Orientación a Desplazados* ('UAO'), or the Attention and Advice Unit for the Displaced Population, in the centre of Cali. Following recent threats, Claudia sought immediate help for herself and her child. An official saw her crying as she stood at the attention desk but told her there was nothing they could do for her. She was not a victim of the conflict and could not be considered displaced because she failed to meet the criteria established by the law: she did not accept a formal mobilisation plan, she was not in the victims' register, and her home was not in one of the microfocalised rural areas.³ She was told that her parents should have registered their case as soon as they decided to move to Cali.

The conflict in Colombia has lasted for more than 50 years. Its most important actors have been the State,⁴ the guerrilla movements, paramilitary groups

2 All the names used in this document have been changed for safety reasons.

3 Microfocalisation is a process involving geo-referencing and the accumulation of legal information by which the Victims' Unit is able fully to identify land holdings.

4 One of the most direct interventions of the state in the conflict involved the phenomenon known as false positives: civilians were executed by the army, then presented as guerrilla members killed in combat. See J. F. Cristo, *La guerra por las víctimas. Lo que nunca se supo de la Ley* (Ediciones B, Buenos Aires, 2012.)

and drugs cartels.⁵ Civil society has suffered the effects of the confrontations between these groups, and there has been a disastrous impact on the social fabric of the country, and on human rights.⁶ In order to stop the confrontations, reduce military spending and protect civil society, different governments have promoted peace processes and initiated agreements with the armed groups. These negotiations have led to the creation of legal frameworks intended to construct processes of transition 'to peace'.⁷ Within this context and over the last decade, the Colombian government has been committed to the consolidation of a legal framework to help victims of the conflict and provide reparation. This is the context in which Law 1448 of 2011, known as the Victims' and Land Restitution Law (*ley de víctimas y restitución de tierras*), was enacted and regulated.

It was this instrument that prompted the realisation that the armed conflict has left a trail of victims whose status is yet to be recognised. Despite the criticisms that may be made of the law, many commentators have noted that it is the first national-level public policy instrument to be centred on victims.⁸ Previous legislation, such as Law 975 of 2005, largely operated to address the situation of the perpetrators (or 'victimisers'),⁹ seeking to reintegrate them into society and focusing on the benefits they would receive: seldom was it based on the perspective or needs of the victim. This new public policy focus has generated a significant national consensus in favour of the process.

Law 1448 of 2011 created the Register of Dispossessed or Abandoned Lands (*Registro de Tierras Despojadas o Abandonadas*), which differs from the victims' register administered by the Social Action Program and the Unique Register of the Displaced Population (*Registro Único de Desplazados*). This implies that the censuses, registers and measurements of the population represent a particular way in which the State relates to subalterns, defining them, naming them and constructing their very existence.¹⁰ The official registers of

5 O. Fals Borda *et. al.*, *La violencia en Colombia* (Tomo I), (Taurus, Bogotá, 2005).

6 A. Rettberg, 'Reflexiones Introductorias sobre la Relación entre Construcción de Paz y Justicia Transicional' in A. Rettberg, *Entre el Perdón y el Paredón. Preguntas y Dilemas de la Justicia Transicional*. (Universidad de los Andes, Facultad de Ciencias Sociales CESO, Canadá: International Development Research Centre, Bogotá, 2006).

7 Cristo, *supra* note 3.

8 *Ibid.*

9 The word 'victimizers', rather than the more usual 'perpetrators', is used frequently in this article to reflect the term *victimarios* commonly used in Colombia, and which is the direct counterpart of the term 'victim'.

10 D. Cabrera, *Lo Tecnológico y lo Imaginario: Las Nuevas Tecnologías como Creencias y Esperanzas Colectivas* (Biblios, Buenos Aires, 2006) p. 171.

the conflict are processes of domination. Individuals who have had different experiences with the authorities must endure bureaucratic longueurs, telling their stories in the hope that the official charged with handling their case will register their names in the appropriate database and identify them correctly as 'proprietors', 'dispossessed', 'possessors', 'victims', or as members of some other category established under Law 1418 of 2011.

This normative compilation is evidence that the Colombian state has recognised the importance of victims' rights. And the government has taken various steps to establish these rights, such as encouraging social initiatives that acknowledge what happened during the conflict, analysing the context within which events occurred, taking into account the victims' situations, and identifying those responsible. Law 1448 of 2011 is one such step.

This article examines how stories like Claudia's have been excluded from global discourse on the armed conflict in Colombia. In different ways, the indicators used by the government and international institutions have produced a fragmented view of the conflict and its impact. They have helped create bureaucratic platforms of attention that consolidate this version of the problem and have popularised the language used to discuss the conflict and transitional justice in Colombia. Indicators are used to measure, to teach how to measure, to establish mechanisms for measuring, and to find terms to discuss a particular perspective of the conflict. I seek to demonstrate how indicators have the power to define reality, and that the way in which we choose to deal with the conflict is less apparent than the representation of reality constructed by indicators.

The traditional history on the conflict in Colombia always begins in distant zones, among the mountains, lush vegetation, rivers and green spaces. Global and government discourse on the conflict has constructed the space in which the problem occurs as *there*, and the political creation of these spaces has been fundamental to managing the conflict. This space of conflict is always distant: it cannot be felt in the cities and the Colombian citizens and international observers cannot understand it well, or know in any detail how it occurs or who it involves.

This construction of public discourse has many implications. Because the conflict is considered distant and rural, government data focuses on lands as opposed to lives, social processes of reintegration into everyday life, welfare, or tranquillity. Their role is simply to measure precarious landholdings in Colombia's periphery, lands that are *there, far away*. And the bureaucracy established with the intention of ending the conflict is strangely linked to the bureaucracy that measures, recognises and restores possession of these lands. It does not deal with urban spaces, nor does it take into account stories like Claudia's.

Her story encapsulates this study neatly, weaving together its analytical threads. This article examines the way in which a given battery of indicators, with its own specific origins and limitations, contributes to the management of the conflict in Colombia and simultaneously constructs its history, meaning and bounds. Claudia's narrative shows how the state, with its version of the conflict, appears in the lives of individuals: as a generally, but not exclusively, stubborn and apathetic bureaucracy. This model of transitional justice is implemented amid the crossfire in what can be interpreted more as a strategy to manage the conflict than to achieve transition. It is also a conflict that, over more than 50 years, has mutated, moved, and now occurs among us. This article speaks of government narratives that insist on presenting the conflict as something that is distant and rural, and it speaks of the complexity of the armed actors, of the narrowness of the categories of the conflict, of the limitations of the maps that are drawn up, in which yesterday's victimisers are today's victims, and no one really knows who is guilty and who has suffered from injustice.

2 The Arrival of the 'Transitional Justice' Model

The current government has been engaged in dialogue with FARC, the most important guerrilla group in the country, since 2010. In line with this initiative, institutional efforts have focused on creating a governmental structure to deal with the post-conflict period and victims' rights. The legislative framework behind the controversial mechanisms of 'Transitional Justice' in Colombia, proposed in the context of a conflict that has still not ended, is robust.¹¹ This article focuses on Law 1448 of 2011 and its effects as demonstrations of the government's latest attempts to define the conflict and reparation for its victims.¹²

11 The norms that constitute the legal framework for the reparation of victims are Laws 387 of 1997, 418 of 1997, 782 of 2002, 975 of 2005 and, finally, Law 1448 of 2011.

12 However, it would be an exaggeration to say that victims' reparation began with Law 1448 of 2011. Laws passed following the enactment of the 1991 Constitution, such as Law 387 of 1997, 418 of 1997, 782 of 2002, and even Law 975 of 2005, developed instruments, aid programs and support designed to alleviate some of the damage suffered by the victims of the armed conflict. Additionally, Law 975 of 2005 established legal definitions of the attention that the state should offer victims, brought the corresponding regulations together in a single body of law and, above all, created an institutional implementation structure, such as that involving the Land Restitution Judges, who are responsible, when ordered by the Land Restitution Unit, for studying thousands of informal dispossession requests and recognising victim status on the basis of damages suffered.

As several authors have pointed out, speaking about transitional justice is difficult when the conflict is ongoing.¹³ The legal definition of the Colombian conflict has been the subject of fierce debate and in recent years governments have gone from denying the existence of an internal armed conflict to strategically recognising it to pave the way to peace negotiations with the FARC.

Nevertheless, despite this apparent normative ‘confusion’, the laws enacted between 2005 and 2011 have been very influential in developing the institutional framework associated with the conflict, and have led to the state emerging as a significant actor that attends to, recognises and helps victims. This new state activity has been closely connected with a normalised definition of the conflict that is also problematic because it excludes regulatory arrangements or versions of the conflict that might be more redistributive. The law’s emphasis on land restitution and the rural nature of the conflict is having disastrous effects in cities like Cali.

A standard global critique of transitional justice is that it ignores or normalises economic/distributive concerns.¹⁴ Miller’s piece about the search for the ‘economic’ in transitional justice could tie this local discussion to more global concerns regarding indicators. In the model put forward by Miller, transitional justice is a globalised post-conflict management model that conceals its connections with a specific development model and concrete visions of the rule of law.¹⁵ Thus, models of transitional justice — whose beginnings and evolution have also been marked by dealings between the Global North and South for advancing the development agenda — exclude topics related to inequality and income distribution, structural poverty and violence, and social policy. In terms of the discourse of rights, transitional justice is built on narratives that are much more closely related to civil and political rights, the reconstruction of democracy and the imposition of a classical rule of law framework than they are to new normative arrangements based around social, economic and cultural rights.

Here, it seems important to mention that these specific Colombian measures are related to the overall global ‘field’ of transitional justice, where the

13 H. Alviar and I.C. Jaramillo. *Feminismo y Crítica Jurídica* (Universidad de los Andes, Bogotá, 2012); C. De Gamboa Tapias et al., *El Tránsito Hacia la Paz: De las Herramientas Nacionales a las Locales. Estrategias de la Transición en Cinco Países y en Tres Ciudades Colombianas* (Editorial del Rosario, Bogotá, 2010).

14 Zinaida Miller, ‘Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice’ (2008) 2(3) *The International Journal of Transitional Justice* pp. 266–291.

15 S. Rose-Ackerman, ‘Establishing the Rule of Law’ in Robert Rotberg (ed.), *When States Fail: Causes and Consequences* (Princeton University Press, Princeton, 2004).

drive for data is also omnipresent. As Miller said, transitional justice is a global model that has been imposed by the global north on newly colonised spaces in the global south. In this way, the Colombian case study becomes useful in reflecting on the role of indicators and international institutions in transitional justice. Indicators are not only a type of global governance that have the power to regulate the conduct of the actors involved, and to distribute power and resources: they are also governing instruments that challenge classical concepts in the discipline of international law. The indicators empower those actors that have the technical capacity to produce this type of global governance technology, such as the Inter-American System, or the World Bank itself, in areas related to transitional justice models.

There is therefore a close connection between the field of transitional justice studies, indicators, and international law. If we take as a given the emergence of a new model of governance where indicators are the form in which new political aspirations are expressed, and the measurement of indicators drives the functioning of international law (and demonstrates its enforcement), then the creation of indicators for transitional justice is one of the new banners of development agendas. Increasingly, development that had previously made themselves felt through programs to modernise public administration, the rule of law, or anti-corruption initiatives, are now concealed as methods of managing the post-conflict, and place a suspicious emphasis on individual reparation and retribution rather than structural causes.

From this point of view, the globalised construction of the conflict as something exotic is imposed, making other versions of social conflicts invisible. And when the idea of the conflict as something irregular and exotic is centrally established in transitional justice, the actors, in turn, tend to be local subjects with individual responsibilities. The economic system, multinationals and the distribution of income are largely ignored in these reflections on transitional justice, while their effects on the conflict or their role in concrete social issues go increasingly undocumented.¹⁶

Thus, quantitative logic plays an important role in any conflict.¹⁷ The legislation aimed at assisting victims has established administrative units that are responsible for conducting censuses and measurements. The identity of the displaced, the victims, the perpetrators and their lands and spaces have been the focus of detailed governmental micro-technology, which creates identities

16 See generally Miller, *supra* note 14.

17 See G. Dancy, 'Impact Assessments, not Evaluation: Defining a Limited Role for Positivism in the Study of Transitional Justice' (2010) Vol. 4 *The International Journal of Transitional Justice* pp. 355-376.

at the point of naming and administering future beneficiaries after labelling the people who suffer this phenomenon.¹⁸

The critique I wish to make of the indicators of the conflict is related to this dynamic. In particular, the dialogue with the literature on indicators at the core of this work seeks to bring together two critical narratives concerning this governance mechanism.¹⁹ First, following an approach allied with Science and Technology Studies ('STS'), it is assumed that indicators are perceived as a governance tool that produces or shapes reality at the same time that it regulates it. In this sense, indicators are self-referential and co-produce a reality that they are subsequently used to measure and quantify.²⁰

Second, the text is inspired by the critique that highlights the negative ways in which indicators have been converted into a form of global governance that has the ability to obscure this operation and present it as neutral and impartial. In the case examined here, the indicators cloak political choices that have been made about the way the conflict is defined, its resolution, and the distributive arrangements made as a result of these choices. The increasingly technical nature of indicators, as well as their sophistication and proliferation, make it difficult to see and understand how their power — and power in general — manifests itself in people's daily lives and changes them.²¹ Accordingly, this article demonstrates how indicators function as a form of *governmentality*, deciding the destiny of individuals, constructing the reality they live in and, at the same time, determining their bargaining position — a position derived from their 'indicatorisation' (classification, registration, enumeration, and quantification).

The three main sections of this article are based on a case study examining the processing of victims in Cali in the Department of Valle de Cauca. Cali is Colombia's third largest city with approximately 2.5 million inhabitants, and has the highest index of violence in the country, measured by the number of

18 See E. Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance' (2011) 52 (S3) *Current Anthropology*. See also A. Rosga and M. L. Satterthwaite, 'The Trust in Indicators: Measuring Human Rights' (2009) 27 (2) *Berkeley Journal of International Law*, pp. 253–315.

19 See C. Arndt and C. Oman, *Uses and Abuses of Governance Indicators* (Development Centre of the OECD, Paris, 2006). See also K. Rittich, 'Governing by Measuring: The Millenium Development Goals in Global Governance', in Helene Ruiz, Rudiger Wolfrum and Jana Gogolin (eds.), *Select Proceedings of the European Society of International Law, Vol. II, 2008* (Hart Publishing, 2010).

20 See the contribution of R. Urueña to this special forum.

21 T. Krever, 'Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense' (2013) Vol. 34 No.1 *Third World Quarterly* pp. 131–150.

homicides per year.²² Semi-structured interviews with people residing in Cali were used to shed light on facets of the conflict hidden behind the text of the Law, and on the different actors involved in the implementation of the Victims' Law.

The research was conducted using a straightforward methodology. Soon after the first visits were made in order to diagnose the situation it became clear that the most important research tool would be observation. These observations were conducted in the offices that Law 1448 has provided to manage the conflict, where most of the 'post-conflict' activity takes place. By being present in the offices, it was possible to capture accounts and observe dynamics that would have been extremely difficult to obtain without access to the bureaucracy and using only personal contacts. Furthermore, this observation revealed the interaction between officials and victims, and produced specific findings that are presented in the final section of this article.

The research began in April 2014, with daily visits to the Cali's centres of attention for victims. After a month observing the operation of three different offices, a series of semi-structured interviews was initiated with people who were attending the offices and who wished to share their stories. The sample was not constructed rigorously due to challenges associated with obtaining information from individuals involved in this kind of process. Given the research topic and the fact that the conflict is ongoing, the process was open and flexible, with methodological decisions being taken on the ground.²³ In all, 15 interviews were conducted with victims, in addition to four with officials in the municipal reception bureaus and three with leaders of victims' organisations.

In Bogotá, three officials with close ties to the Victims' Unit who were involved in the implementation of government programs for victims in the central region were also interviewed. The field work in Cali ended on June 16, 2014.

3 The Legal Production of the Conflict in Colombia

Law 1448 of 2011 constructs and normalises a vision of the conflict through two fundamental tools: the text of the law; and its implementation, a process in which the indicators chosen play a fundamental role. It could be said that the indicators constitute the way in which the concepts contained in the law are crystallised, changing the lives of the victims, providing protocols that govern

²² Observatorio Social de la Alcaldía de Santiago de Cali, *Atlas de la Violencia* (2013).

²³ R. Emerson, R. Fretz and L. Shaw, *Writing Ethnographic Fieldnotes* (The University of Chicago Press, 1995) p. 38.

the actions of the officials responsible for attending them, restricting the circumstances in which the victims can live, and quantifying the benefits available to them under the law. Laws and indicators are fundamental to the vocabulary of the system of *governmentality* that deeply alters the lives of affected persons.

Authors such as Alviar and Jaramillo have already put forward two critiques of the version of the conflict established by Law 1448 of 2011: this article supports their arguments.²⁴ The first critique is that the legal framework ‘exoticises’ the conflict — it constructs the commonsense view of the conflict as something exceptional, marginal and abnormal.²⁵ The rural aspect of the definitions, the emphasis on forced displacement from the countryside to the city, and the focus on the armed actors as the quintessential victimisers denies that the conflict is something of an everyday nature, something complex and in close proximity. According to these perspectives, the conflict in Colombia is the new everyday situation.²⁶ Displacements occur within the major cities, reflecting invisible borders established by armed groups (which are also made up of migrants), in situations where it is hard to preserve the dichotomy between victim and victimiser that is essential specifically for the operation of the law, and in general for the model of transitional justice. Claudia’s story, described at the beginning of this study, shows this. The conflict now exists in the cities and its actors are ensconced among us: they are our parents and our siblings, and it is very difficult to apply the legal definition of the conflict — something that occurred in the past, and far away from us — to the reality.

The ‘exoticisation’ of the conflict is performed in part through indicators, which create a ‘normal’ reality, then measure disturbances in this. Although Internally Displaced People (‘IDP’) indicators helped put the humanitarian emergency of displacement (as opposed to urban poverty, for example) on the mainstream agenda, they also contributed to this exoticisation process. Indicators helped to say: this is not normal poverty, this is not normal violence, Colombia is a global humanitarian tragedy. But in doing so, they also reinforced the view that urban life was normal.

24 The criticisms of these authors are focused on the version of the conflict supported by Law 975, which was subsequently ratified by Law 1448 of 2011. Although several of the critiques were originally built on positions developed by liberal and radical feminist movements in Colombia, their reflections may also be applied to a more general vision of the conflict.

25 Alviar & Jaramillo, *supra* note 13, p. 141.

26 *Ibid.*, p. 173.

The second critique put forward is that Law 1448 of 2011 consolidates a tendency in the national legislation on the conflict to attach excessive importance to international standards (that is, from the UN in the case of sexual violence and the Inter-American System in the case of constitutional standards), which frequently offer fewer legal guarantees than the local constitutional measures.²⁷ This is the case, for example, for social and economic rights, which have a much more important position in the local system than in the Inter-American one. This relates to the manner in which the Colombian state has been strategically constructing the conflict as a phenomenon with both a regional and an international dimension. Rather than ensuring synergy between the law under construction and the existing regional standards, the Colombian state employs the discourse of the Inter-American Commission on Human Rights ('IACHR') to legitimise its positions before the international community, while for local consumption it creates measurement indicators that to a large extent ignore the content of the international standard. The day-to-day operation of the law, therefore, does not comply with the Inter-American standards the State purports to uphold.

This means that, as Huneeus claims, the Inter-American Human Rights System ('IAHRS') gives national spaces a ready-made veneer of global legitimacy.²⁸ This vocabulary has played a pivotal role in regional legal integration, but it does not mean that real integration exists. National spaces will be jealous of supra-national power, sidelining these organisations to retain final control. Thus, although there are many similarities between the IACHR standards and the local indicators adopted by the National Comptroller's Office (*Contraloría General de la Nación*) in writing, there may also be various explanations as to why these standards are not met in practice, as shown in the final part of this article.

In the sections that follow, I examine three issues. First, I describe the interaction between Law 1448 of 2011 and the IACHR standards, in order to demonstrate how public policy has been constructed, its regional reach, and its disconnection from the ways in which the conflict is experienced locally. The second section illustrates the ways in which this framing of the conflict has been adapted to local conditions through the construction of indicators. In the

27 *Ibid.*, p. 147. In the last five years, UN bodies have started to produce reports about 'best practices' in transitional justice that the Colombian government has followed. See UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict State* (S/2004/616).

28 A. Huneeus, 'Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights' (2011) 44(3) *Cornell International Law Journal* pp. 493–533.

third section, I analyse indicators constructed by the National Comptroller's Office at a national level and consider them alongside the ways in which they have been appropriated by the Land Restitution Unit of the Municipality of Cali (*Unidad de Restitución de Tierras de Cali*). This section demonstrates how global practices, such as the need to apply indicators, take on unique local forms in response to power balances that are just as complex as their international equivalents.

A *IACHR Standards on Internal Armed Conflicts*²⁹ *and the Colombian Legal Framework*

All legal frameworks applied to internal conflicts in the Americas must satisfy the standards of truth, justice and integral reparation established by the IASHR. These standards have been developed by the IACHR and the Inter-American Court.³⁰ The literature on indicators states that one of the roles of indicators in the field of international law is to enable enforcement.³¹ Thus, the purpose of Law 1448 of 2011 is to fulfil IACHR standards relating to truth, justice and reparation. The Colombian legal standards establish a connection between local indicators and international institutions, helping to track and monitor compliance with international norms. In the following section I will show how the IACHR standards are reflected in the battery of indicators designed by the National Comptroller's Office, the body responsible for monitoring this process. There is thus a direct link between the IACHR standards and national standards for managing the issue domestically.³²

In the context of Latin America, the Colombian case is unique. The country is a party to both the Inter-American Declaration and the Convention on Human Rights, and has been recognised as the legitimate authority by both the Commission and the Court. This means that its national legal framework must satisfy the standards that have been developed by the two bodies in relation to

29 Reconstructed by Inter-American Commission of Human Rights, 'Follow-up on the demobilization process of the AUC in Colombia', Digest of published documents (2004–2007), *Report on the demobilization process in Colombia* (13 December 2004).

30 M. Quinche, *Los estándares de la Corte Interamericana y la Ley de Justicia y Paz* (Editorial Universidad del Rosario, Bogotá, 2009).

31 R. Urueña, *supra* note 20.

32 C. Peña, *Reparación integral. Consideraciones críticas. Una aproximación a la jurisprudencia del Consejo de Estado y de la Corte Interamericana de Derechos Humanos* (Ediciones Veramar, Bogotá, 2011); M. Quinche, *supra* note 30; Contraloría General de la República, Contraloría delegada para el sector Agropecuario, Despacho del Vicecontralor, *II Informe del proceso de restitución de tierras, Sistema de indicadores de la CGR para el seguimiento y monitoreo a la restitución de tierras* (2013).

internal armed conflicts, standards that include integral reparation for victims, justice and truth.³³

Colombia has been careful to strengthen its observance of the Inter-American conventions and to contribute to the creation of a climate of regional compliance. The Colombian legal framework includes each of the forms of reparation established by the Commission and the Court, following the standards of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, which are points of minimum compliance within the Inter-American framework.³⁴ However, the ongoing nature of the conflict in Colombia makes it difficult to fully implement many forms of reparation.

The importance of the interaction between national law and the IACHR standards is accepted in Washington as well as in Bogotá.³⁵ In contrast to previous approaches to working with victims or interacting with grass roots social movements used by other state bodies such as the Constitutional Court in the matter of forced displacement, Law 1448 of 2011 was designed to have a high degree of synergy with the Inter-American framework.³⁶ The law was influenced directly by prior standards developed by the IACHR, which operated almost as its only guideline and orientation, and was produced in conjunction with experts in the IACHR standards from the Ministry of the Interior who, working with existing documents and with an abundance of cross-referenced literature, travelled to the headquarters of the IACHR in Washington.³⁷

Certain indicators at the Inter-American level are used at the domestic level for the purpose of defining the conflict as exotic, as I have hinted at in my opening remarks. The connection between these international normative standards and my overall argument regarding indicators relates to the project of 'exoticising' the conflict. This frames the way in which the conflict relates to a global model of transitional justice that is constructed to deploy a concrete development agenda by excluding the discussion of resource distribution from the post-conflict management agenda. Thus, the IACHR has an impact on the Colombian government, influencing it to make the conflict exotic. This section attempts to reveal how this happens in the short step from the international standard to domestic law.

33 L. Guzman, *Between Despair and Hope: The Case of Colombia about the Implementation of the Standards of Reparation, Truth and Justice, of the Inter-American System of Human Rights* [sic.] (2014)(on file with author).

34 *Ibid.*

35 Interview with female official in the Central Region, No. 2.

36 C. Rodríguez & D. Rodríguez, *Cortes y Cambio Social. Cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia* (Colección DeJusticia, Bogotá, 2010).

37 *Ibid.*

I have already mentioned models of transitional justice that stifle discussion about distribution and how they operate on a theoretical level.³⁸ This discussion between standards and domestic regulations shows exactly how this occurs. First, it is clear that reparation takes a central role in the international model adopted by Law 1448 in Colombia. This focus on reparation is important because it shows us how structural problems of distribution are hidden. Thus, individual reparation concentrates to an excessive degree on individual instances of the problem, and excludes other general discussions, whether they are about the 'context' or structural issues.

Secondly, the approach of the IACHR and Law 1448 reduce the post-conflict to a single definition of resolution, centred on the victims, in the recognition and repudiation of certain acts, and the return to the status quo that existed previously, without allowing the distribution of resources to be questioned, the structural causes to be debated, or a revised model to be invented. Moreover, this idealises the past, without asking whether it is desirable to return to it, and without critically analysing history or asking why things have occurred.

Thirdly, truth and transitional justice commissions construct the discussion with a specific vocabulary and with obvious discursive limitations: peace, reconciliation, forgiveness, forgetting and memory. As stated above, this vocabulary is much more closely related to civil and political rights than economic and social rights, for example, and thus both restricts and excludes other ways of approaching the subject of the conflict.

Tying transitional justice to individual reparation, with an emphasis on truth and highlighting concrete acts and specific people, conceals the absence of real economic distribution and the structural causes of violence and the conflict. This is the exoticisation of the conflict that runs from global models of transitional justice right through to the indicators used to measure management of the conflict in Colombian public administration.

In spite of the apparently solid human rights foundations of these public policies, there is a gap between the written law and its implementation. The high-ranking bureaucrats involved in the day-to-day exchanges with the IACHR differ substantially from the street-level bureaucrats who attend to the victims directly and who follow the protocols established for the production of indicators, whose emphasis differs from those established by the IACHR standards. While the interaction with the Inter-American System seeks to provide comprehensive attention, for the street-level bureaucracy there is only one guideline: attend to the largest number of people possible, focusing on 'proprietors', 'possessors' and de facto 'occupiers', to the exclusion of victims who are not so

38 See generally Miller, *supra* note 14.

identified (in other words, the majority). Thus, the implementation of the of the Victims' and Land Restitution Law not only creates new content and emphases for public policy, but also helps establish a limited and exclusive idea of the conflict. The following sections narrate how this occurs at national and local levels, and how the indicators play a critical role in the process.

B *From the Standards to the Indicators: The Construction of Measurement Tools by the National Comptroller's Office*

In October 2013, the National Comptroller's Office (*Contraloría General de la República*, the state agency responsible for the oversight and control of public bodies) published the *Second Monitoring Report on the Land Restitution Process – System of Indicators of the National Comptroller's Office for Monitoring Land Restitution*. For the Comptroller's Office, the indicators are vital tools for the implementation of public policies in general, in particular for the implementation of public policy on victims and land restitution, as well as their design and development. In the words of the Comptroller's Office:³⁹

Indicators are measures that synthesize important situations, whose evolution over time it is important to understand. They are a specific measure that is used to determine performance; a signal that reveals progress towards objectives; a means for measuring what really occurs as opposed to what has been planned in different areas. When they are backed by accurate data-gathering indicators they permit administrators to follow progress, demonstrate results and adopt corrective measures to improve the provision of services. They offer evaluators an effective method for quantifying the progress that has been made towards achieving the objectives and final goals, and they help to establish the reference points for comparing the different organizational units and districts over time.

This approach to indicators comes from a standardised global discourse about the way such tools should be used.⁴⁰ Staff at the Comptroller's office say that the decision to use indicators in this way is directly influenced by the interaction between the national government and the IACHR described in the previous section.⁴¹ In this sense, by using the language of indicators, the Comptroller's Office reproduces measurement strategies that have been requested during the process to standardise human rights debated in the Inter-American system.

³⁹ Contraloría General de la República, *supra* note 32, p.75.

⁴⁰ R. Urueña, *supra* note 20.

⁴¹ Interview with male official N°. 2.

It is paradoxical, but the treatment given to the conflict in Colombia has achieved a confluence between two opposing approaches to employing indicators: the ‘activist use of indicators’ developed by human rights organisations; and their ‘technical’ use, developed by forms of public administration and promoted by state agendas dedicated to efficiency.⁴² In relation to the conflict, a strange aspect of the technocracy of indicators is that they are used to deal with rights, as is clear from the excerpt from the Comptroller’s report quoted above. Despite this, the fact that the task of measuring the implementation of the policy has been placed in the hands of the Comptroller’s Office — the body charged by the Constitution with exercising oversight and control over state institutions — implies that the language of ‘efficiency’ and ‘technocracy’ is intended to set the overall agenda for the process.

For the Comptroller’s Office, the construction of indicators is very important to ensuring a quantitative overview of the advances in public policy. Thus it is not difficult to understand why, among the division of tasks between the national public authorities designed according to a liberal order framework, the government named this body to lead the evaluation process of the Victims’ Law. This decision means that the emphasis of the evaluation is characterised by efficiency and technical criteria to the exclusion of other institutional arrangements that would have favoured different logics of evaluation: the Department of Social Prosperity, the Interior Ministry and the Victims’ Unit could have focused on the satisfaction of the needs of the beneficiaries with whom these bodies work every day.

Bureaucratic ethnographies have shown that different state institutions operate according to different discourses.⁴³ The Comptroller’s Office is the part of the state in which results, the efficient distribution of income and administrative techniques are prioritised above the discourse of rights, equitable distribution of wealth and guarantees of social prerogatives. It is not, then, ‘the social’ that is in play in this operation but, on the contrary, oversight and control strategies based on trends in New Public Management.

The emphasis of the national-level implementation of the victims’ policy is fiscal in nature. According to this logic, the generation of indicators as an operational tool is central. The Comptroller’s Office says:⁴⁴

42 D. Kennedy, ‘Challenging Expert Rule: The Politics of Global Governance’ (2005) 27 *Sydney Law Review* p. 1.

43 C. Rodríguez & A. Portes (Coord). *Las instituciones en Colombia. Un análisis sociológico* (Ediciones Uniandes, Bogotá, 2012).

44 Contraloría General de la República, *supra* note 32, p. 77.

The objective that was established for this work was to translate the road map for the restitution of lands into processes and variables and finally into indicators that record the fulfilment of the products, results and impacts of the policy and, as a result, realize each of the potential approaches to the evaluation.

However, the indicators do not fulfil the function of measuring the results. The Comptroller's Office itself reports powerful contradictions in the methodology used to measure the data:⁴⁵

[G]iven the difficulties faced by the [Land Restitution] Unit in coming up with some of the requested variables because they have not been systematized, it proved necessary to adjust the application of the indicators to the information available.

Beyond this, the battery of indicators constructed by the Comptroller's Office functions as a system to normalise a particular vision of the conflict. Each government report on the implementation of Law 1448 of 2011 is produced according to a semiotics intended to advance the acceptance of a rural and marginal vision of the Colombian conflict. The photographs used in the reports, the logos used by the institutions involved and the images found in the offices where the services are provided, all point towards the same end. For example, the cover of the report produced by the Comptroller's Office quotes the following words of a popular Colombian historian and writer:⁴⁶

To this should be added the fact that, starting in the 1940s, an extraordinary exodus of peasants began to head for the cities, fleeing the pitiless violence of the rural areas. This process inverted the proportions of rural and urban dwellers in the country, which would not matter if not for the fact that this small urban population, led by the arrogant capital of the Republic [Bogotá], felt a deep shame at the country to which it belonged and received the peasants with a truly opprobrious incomprehension, hostility and inhumanity. The peasants came from a well-established culture. They were possessed of wisdom born of their relation with the land, a language full of grace in which the crude and the tender found eloquent and lively expression. They were dignified and serene people who enjoyed

45 *Ibid.*, p. 79.

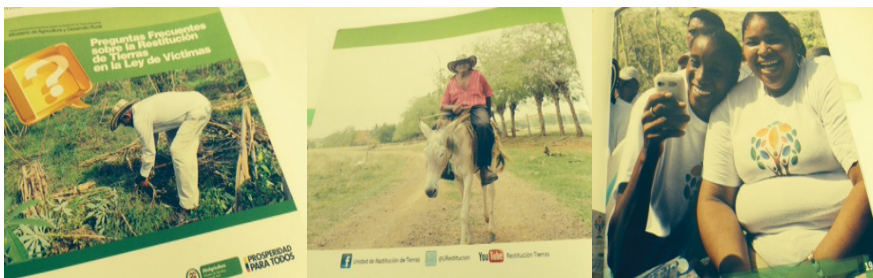
46 Extract from W. Ospina, *¿Dónde está la franja amarilla?* (2012), reproduced on the cover of Contraloría General de la República, 2012(1).

a profound and productive relationship with the earth. Overnight, these people were swept up in a furious wind that uprooted them from the ancient solidity of their universe and deposited them, defenseless, in an implacable world. Their simplicity was taken to be ignorance, their elemental wisdom to be ineptitude. It is impossible to describe in how many ways the great masses of peasants, expelled from their lands, were suddenly converted into foreigners in their own country, and the term *montaño* [literally: mountain-dweller] became the stigmatic formula with which Colombia turned its back on its past and abandoned its children, leaving them prey to the prejudices of modernity.

The reports that formulate the indicators used as evaluation tools for the implementation of the public policy are accompanied by photographs such as the following:

The logo of the Restitution Unit, which appears on the shirts worn by the women in the third photograph, is a tree whose trunk is formed by a family. The photographs in the reports and leaflets produced by the Unit show elderly, male peasants in the countryside, surrounded by the abundance of nature. Green is one of the most common colours used in these documents and male peasants, in work poses, are among the predominant images. This is so despite the fact that the majority of people who go to the attention centres are women who have absolutely no interest in returning ‘to their land.’⁴⁷ This also links back to the story of Claudia, described at the beginning of this article.

The contents of the reports have much in common with the predominant green of their photographs. The battery of indicators designed by the Comptroller’s Office has several special characteristics, one of which is the prominence of the land restitution process in the victims’ policy. As already indicated, this emphasis on land restitution is a feature of Law 1448 of 2011.



47 F. Trujillo, *Field diary* (2014).

But the law also specifies that the component of ‘reparation’ is composed of four dimensions: restitution, compensation, rehabilitation and satisfaction, and guarantees of non-repetition.

Despite this, the indicators formulated by the Comptroller’s Office are dedicated exclusively to quantifying the status of the land restitution process. This is closely related to the limits of the transitional justice model adopted by Colombia, mentioned above. The over-simplification of a resolution to the conflict is designed, in accordance with international standards, to silence structural discussions about distribution and individualise and simplify the task of transition without looking for underlying causes or involving actors such as multinationals.

This has a very important impact on the day-to-day management of the bureaucracy of the conflict. Only people who are connected with the land and who have been displaced or dispossessed are reflected in the macro policy on victims. The performance indicators are therefore related not only to the state of the process (success being represented by advances in bureaucratic procedures and in compiling the index of lands that have been — or that are about to be — restored), but also to the area in question: where the claim was presented, where the land was and the time elapsed since the claim was made.

This vision of the conflict is apparent from the list of indicators designed by the Comptroller’s Office to evaluate the public policies derived from Law 1448 of 2011. The battery focuses on four levels of analysis in what the Comptroller’s Office has called the “map of the Comptroller’s system of indicators for the monitoring of land restitution”. At the first level is the measurement indicator (including the state of the restitution processes classified by victimiser, department, initiation of the administrative process and gender). The second level describes the objective of the indicator (for example, to weight the actors responsible for the land seizure or forced abandonment in each of the restitution processes). At the third level, the Comptroller’s Office establishes the variables of the indicators (number of landholdings per victimiser, total number of holdings per restitution request, number of holdings included in the register per victimiser, number of holdings per victimiser with a judicial decision). Finally, the Comptroller’s Office registers the focalisation of the analysis (that is, by victimiser, age and security concept).

Various aspects of this system of indicators may be highlighted. The first of these is the centrality of measurement of the land as a material thing, easily quantified. All the indicators are directly intended to quantify areas or spaces of action and the processes related to the restitution of those spaces. The second is the development of constitutive categories: victimiser groups, victimising acts, geographical zones, gender. The third is the presence of categories that reinforce governmental dynamics associated with the conflict, and

convert bureaucratic processes and associated procedures into self-referential questions: there is a constant allusion to registers, processes, decisions. Clearly, the conflict is a problem for people who have lost their land, left it as a result of the violence and who are now, while living in places away from their place of origin, seeking restitution because they wish to return.

While the battery of basic indicators is the same, they centre on the focalisation of information that the Comptroller's Office considers important. These focalisation factors are related to the victimising act (rape, murder of members of the nuclear family, massacres in places of origin, demobilisation of family members from armed groups), victimiser (FARC, the *Ejército de Liberación Nacional* ('ELN'), paramilitary groups), age and gender of applicants and their department of origin. As is clear from the support manuals used by the Land Restitution Unit, these criteria for the selection of information are used in order to capture the implementation of the so-called differentiated approach, defined as "an analytical and methodological tool that takes into account existing human needs and inequities, making it possible to identify and highlight concrete vulnerabilities and patterns of violation, specific situations of exclusion and/or discrimination".⁴⁸ Effectively, this approach develops the provisions contained in article 13 of Law 1448 of 2011.⁴⁹

There are several things that are not quantified by the Comptroller's Office indicators and which, therefore, do not exist for the State as expressions of the conflict. These include, among many others: what did the victims do before they arrived here? What do they do now in order to support themselves? What do they want to do in the future? Where do they live? Who did they turn to

48 Unidad de Restitución de Tierras, *Preguntas Frecuentes sobre la Restitución de Tierras en la Ley de Víctimas* (Ministerio de Agricultura y Desarrollo Rural, 2013) p. 17.

49 Article 13 of Law 1448 of 2011 states:

Article 13. Differentiated Approach. The principal of a differentiated approach is to recognise that there are populations with specific characteristics in terms of age, gender, sexual orientation and disability. Thus, the humanitarian aid, attention, assistance and comprehensive reparation measures established by this law will follow said approach.

The state will offer special guarantees and measures of protection to those groups at greatest risk of the violations covered by article 3 of the current Law such as women, young people, children, the elderly, people with a disability, rural dwellers, social leaders, members of union organisations, Human Rights defenders and victims of forced displacement.

The National Government, in effecting, executing and adopting assistance and reparation policies in the carrying out of this law, should adopt differentiated criteria according to the particular nature and degree of vulnerability of each of these populations. Likewise, the state will make efforts to ensure that the measures of attention, assistance and reparation included in this law contribute to eliminating patterns of discrimination and marginalisation that could have caused the victimising acts.

following their displacement? How many times have they been displaced? Have they had any contact with the perpetrators in the place where they now live? Might they themselves belong to the group of ‘victimisers’ (in the case of demobilised fighters, for example)? These unasked questions are related to the invisibility of social policy in the transitional justice model, referred to previously. For the officials responsible for implementing the public policy, these questions are not posed for a variety of reasons:⁵⁰

First, the attention offered to victims is neither improvised nor ruled by a handout mentality. Second, many of these claims are covered by other aspects of the state’s social policy response to victims of the conflict. There are other offices that are directly responsible for this kind of attention I understand the question but it does not fall under our remit.

As was argued previously, this visualisation of the conflict through the lens of the indicators helps to normalise its image: that the conflict is something that occurred in the past and that can be resolved if the victims return to their lands of origin, which are far away, because the conflict was always *there*, not here, and the violations were the responsibility of *others*, and never ours. These are what the Comptroller’s Office calls the “area claimed”, the “location of the area claimed”, and the perpetrator or “victimizing actor”.

The exclusions that are created by this story may be perceived in local settings, where the indicators create dynamics in which the claims limit or extend benefits for people who, in terms of the conflict, are categorised by the ‘official’ story as having been more or less close to it. This matter is analysed in the following section.

C *The Conflict, in Spite of the Indicators*

The ways in which the State is formed, constructed and consolidated also has a lot to do with the meanings it produces and the ways in which it moulds the lives of individuals. The Administrative Unit for the Restitution of Lands (*Unidad Administrativa de Restitución de Tierras*) — the cornerstone of Law 1448 of 2011 and institutional flagship of the public policy on victims — is the responsibility of the Ministry of Agriculture and Rural Development (*Ministerio de Agricultura y Desarrollo Rural*).

The Unit has established 23 regional offices across the country, under the responsibility of the ‘territorial entities’.⁵¹ In Cali, the Territorial Administrative

⁵⁰ Rodríguez & Rodríguez, *supra* note 36.

⁵¹ Essentially, the departments and the ‘districts’ responsible for governing certain major cities.

Office for the Department of the Valle del Cauca (*Dirección Territorial del Valle del Cauca, Cali*) is located in the centre of the city. The office is staffed by young workers, including social workers, who are responsible for attending the hundreds of people who come to the office every day. As is always the case, informal information about how the official procedures function is in the hands of people the system qualifies as 'incidental': the security guards responsible for supervising the entrance, the people selling minutes of cell phone time on the street outside, and the workers in the photocopying booths that operate in the vicinity. Officially, a person who requires help should not need to follow these informal procedures (which are not documented by the Land Restitution Unit) but go straight to the Attention and Advice Unit for the Displaced Population (*Unidad de Atención y Orientación al Desplazado*), known as the UAO. But that is not what happens in real life.

The way in which the State interacts with people who wish to become beneficiaries of the protection framework for victims is mediated by two actions: *declaration* and *registration*. Individuals are required to declare their situation to officials, whose duty it is to inscribe the details in the correct register. At this stage, the state requests and administers information with a single objective: to feed the centralised databases that are used to report back on the implementation of the public policy.⁵² In other words, the day-to-day lives of the people who represent the State and attend to the victims and the experiences of the victims themselves when they encounter the State are mediated by the indicators that have been constructed to quantify the implementation of the policy.

In this daily reality the version of the conflict established by the Victim's Law, which is set in stone ('stabilized') by the indicators constructed by the National Comptroller's Office, is converted into questions, guidelines on attention and pre-ordained responses. The questions are designed to nourish the principal function of the system: recording numbers and creating a register. The Colombian state has invested a vast amount of energy in quantifying the conflict in registers. Currently, anyone who seeks support within the context of Law 1448 of 2011 is familiar with the existence of three parallel registers: the Register of Dispossessed or Abandoned Lands, administered by the Land Restitution Unit; the Victims' Register, previously administered by Social Action agency and now by the Unit for the Attention and Reparation of Victims; and the Single Register of the Displaced. As one interviewee stated:⁵³

I went to the Human Rights Ombudsman's office [*Defensoría*] first because when I arrived here my friend who sells cell phone minutes sent

52 Rodríguez & Rodríguez, *supra* note 36.

53 Interview with victim N°. 1

me there. It's the best place to make the [first] declaration. You go there and declare, they register you and then you come here and register, but it takes a long time. It's taken me three days and I still have not got the ticket and that's even though I sleep here. It's that there's a mountain of people here since last week [sic].

The different registers seem to be the same, but appearing in a different register implies a different status within the system, different possibilities of negotiation with the bureaucracy and a different likelihood of obtaining the support and opportunities financed by the State. The long queues that form outside the UAO from 3am onwards are made up of groups of people wishing to be registered by the state: people who are anxious to receive official identification so they can understand what opportunities they have to increase their power of negotiation with the authorities, a procedure that often becomes a way of life for days, weeks, even months.⁵⁴

For the State, the applicants might simply be displaced, proprietors, possessors or de facto occupiers. Though they may have different histories, they form part of the same queue and become confidantes during hours and days of waiting, finally identifying their stories as part of the same tragedy. Everything starts with the interview with the social security system, which most applicants have already undergone. They are then required to make a declaration, which is followed by an interview. In the Land Restitution Unit's procedural manuals, the procedure is defined as follows:⁵⁵

- (1) You should approach the Special Administrative Management Unit for the Restitution of Dispossessed Lands.
- (2) You should respond truthfully to the questions asked by the official attending you and explain as clearly as possible the facts relating to the dispossession or abandonment of the lands of which you have been a victim, explaining what you are hoping to achieve from the authorities and providing a copy (not originals) of any documentation (if you possess any) to support your claim.
- (3) Once you have presented your claim you should sign the form (record of request to be included in the register) which the interviewing official will provide for you along with the preceding information.
- (4) At the end of the interview you will receive a voucher with the number of your interview, signed by the official who dealt with your case. This is a copy of the form requesting inclusion in the Register.

54 Trujillo, *supra* note 47.

55 Unidad de Restitución de Tierras, *supra* note 48, p. 37.

- (5) If the lands in question do not appear in a microfocalized zone the official dealing with your case will give you a NON microfocalized zone certificate. In this case your request will be expedited in order to identify the title holder, land and facts of the abandonment or dispossession. But the formal examination will not have been initiated (article 76 of Law 1448 of 2011)
- (6) Wait for any further request to supply additional information or to correct or clarify what you declared in your interview.

In this context the focus on land as the central problem of the conflict becomes clearer.

When this description was read out during the fieldwork carried out in the preparation of this paper it provoked laughter and jokes among the people waiting in the sun outside the UAO, because there were never enough tickets for everyone waiting to be attended. One of the reasons the official explanation of the procedure was funny was because it was not realistic. In the first section of this paper it was mentioned that one of the effects of ‘stabilizing’ the version of the conflict contained within Law 1448 of 2011 was the exoticisation of the war. Experiencing the war as a day-to-day reality in the cities is a recurrent theme among the people making up the long queues outside these offices:⁵⁶

No one will end up registered. Those bastards do not want to register anyone. What lands? What documents? I’ve never had anything like that. Yes, I had a miserable little house but I fled with the clothes I was wearing and with my kids but I do not have any papers because I never had any — I was a squatter. But that was more than ten years ago and I’ve lived the life of a beggar ever since. I do not have anything except the fear I feel because, like you’ve heard, those people are here handing out threats.

One of the unexpected findings of this research has to do with the consolidated presence of the urban militias of the armed groups in the offices established to attend to the victims. These places are commonly used for ‘*el tráfico de papas*’ — the distribution of documents containing threats against demobilised fighters or their families who have left conflict zones or the neighbourhoods where the urban militias operate. In Cali, many of the stories of the people queuing up at these offices have nothing to do with events that originate in the countryside. They start in the poor neighbourhoods, in the streets

⁵⁶ Interview with victim N° 5.

where the members of the armed groups are expelled because of the lack of internal rules or because of family problems:

The city is full of invisible frontiers. You know there are places where you can go, though there are no walls. This is not a peasant thing, it's not a question of cattle and chickens, it's a question of the fact that we are killing each other here in Cali. Those people are not shooting at each other in the countryside, they've been here for ages.⁵⁷

One characteristic of the stories we heard in the offices was the difficulty of understanding the dynamics governing victims and perpetrators. As a good simplification of the conflict, the law and the indicators have done an effective job of classifying groups — classifications that are hard to match with real-life experience, as the majority of the people there have an intimate relationship with others who the law might classify as 'perpetrators': "Yes, I'm a demobilised fighter. I was in the FARC for 20 years or so and I ran away a month ago and if you see me here I'm thinking: you've worked it out and you're going to betray me. I have not eaten for weeks, I've got nowhere to stay, I need them to help me".⁵⁸

What is paradoxical about these findings is that they are not really 'findings' at all. This is not something the state does not know about. In last year's *Atlas of Violence*, the Office of the Mayor of Cali recognised these phenomena.⁵⁹ The security data, which are reported monthly, show that violence in the cities has become unmanageable, and in recent years the forensic medicine services have reported that more people are killed as a result of the conflict in the cities than in the countryside.⁶⁰ Sufficient information is available to demonstrate the limitations of the version of the conflict established by the law and its indicators. In spite of this, it would seem that Colombians are perfectly content with the idea that the conflict is a 'distant' thing.⁶¹ This is the topic of the next section.

D *The Actors in the Conflict: Local Networks and 'Bureaucratic Activism'*

The UAO offices in Cali are unexpected meeting places. The state is there, weakly represented by the scared and tired young people responsible for

⁵⁷ *Ibid.*

⁵⁸ Interview with victim N°. 8.

⁵⁹ Observatorio Social de la Alcaldía de Santiago de Cali, *Atlas de la Violencia* (2013).

⁶⁰ Interview with male official N°. 1.

⁶¹ J. Alves, V. Moreno & B. Ramos, *Notas preliminares para un análisis interseccional de la violencia en el Distrito de Agua Blanca (Cali- Colombia)* (Documentos de trabajo CIES, Cali, 2014).

attending the victims. The current victims may even be former perpetrators who are fleeing today's perpetrators who themselves are frequently present in the office gathering information in order to arrange retribution.⁶²

Within this complex scenario many people referred us to Walter, an employee of the UAO based on the second floor of the Unit. He has established himself as the leader of the victims in the city: "He's different — he helps us and knows how to help us."⁶³ Walter has a clear political agenda: to help people who approach the UAO.

Far from conforming to the image of the model bureaucrat sitting in his Weberian iron cage, Walter has his own agenda and bends the law as much as he can so that people are able to come under its purview:⁶⁴

Well, it's simple. You have to help the people register. In this office, registering them as land claimants means doing them harm. These are processes that require real economic muscle but, also, the problem here is a different one. You already know that here there are people from the FARC on the look-out ['pisteando'], as they say. The people who come here are really people who have no alternative, people who are running a risk because they're dying of hunger, because they have no other resources, no other option. So, what you have to do is find them immediate help. The stuff about land is the least important thing. This means ignoring the law of course because you're not emphasising the process as you should. But here people are living a different reality altogether.

Walter, then, is an 'activist' bureaucrat. He was the one who put us in contact with the leaders of victims' organisations and who began to explain what it meant to risk everything in order to implement Law 1448 of 2011. As has been mentioned already, what is surprising about the law is that it has had relatively few critics. Despite the fact that it consolidates a limited version of the conflict, very few organisations have spoken out against it.

Recognising these situations where bureaucratic activism took place was very important within the ethnographic work in this study, as it linked in with the central criticisms of the globalised transitional justice model.⁶⁵ In many ways, Walter was the living voice of the economic criticisms directed at the schema adopted by transitional justice through harmonisation with IACHR

62 Interview with victim N° 5, *supra* note 58.

63 Ibid.

64 *Supra* note 60. [Author to confirm] Interview with male official N° 1.

65 Miller, *supra* note 14.

standards. While Law 1448 and the indicators designed by the Comptroller's Office responded to international influence *in writing*, in practice the implementation of public policy in the social spaces analysed testified to a different reality and revealed gaps and errors in the actual design of the policy: a lack of social policies that dealt with discussions about income distribution. Walter clearly understood that the problems of the conflict in the cities were more related to poverty, hunger and misery, and less related to reparation and restitution of land and other spaces that families had left behind, as seen in the story of Claudia at the beginning of this article.

Walter strongly believed that he had to help the victims in other ways, facilitating their entry in a register that would allow them to receive income, sustain themselves in the city, and eat. He created public policy for attending to people that was different to that which existed, and although his policy was unwritten and not legitimised by international bodies, it resolved the day-to-day issues of the conflict, operating in the grey areas of the law.

Likewise, during the fieldwork it was clear that officials used their knowledge about elements of declarations (more highly valued in the National Subdirectorate of Registry), to help declarants make statements that included these elements and could be entered in the Unique Register of the Displaced Population ('RUV'). To do this they worked within the same model of activism as Walter. Officials do this very carefully, attempting to never cross the line into blatantly illegal behaviour or breaking of the regulations. On one occasion, an officer attended a family that had been displaced in a municipality close to Valle del Cauca after receiving threats from an ordinary criminal group. The official specifically asked whether the criminals were part of an illegal armed group according to the terms of Law 1448, to which the declarants answered no. The official asked the question three times and repeatedly looked at the interviewees — he was well aware that a positive response to this question was needed for the family to be included in the RUV and therefore stressed the question. At the end of the process, the official said: "There are very few innocent people who arrive here and tell the truth, like that family. They don't lie or change their story to receive state benefits. But God I wish I could have got them to say 'yes' so I could have helped them."⁶⁶

The officials are aware of these 'form' accounts, and this standardisation is one of the factors that influences their discretion with respect to 'helping' a declarant in their process. They know that some declarants are not really victims of the conflict, but people who have been 'coached' in the elements that a declaration must contain to be included in the RUV (mention a known conflict

66 *Supra* note 60. [Author to confirm] Interview with male official N°. 1.

zone, an illegal armed actor, and a time which is not before 1985, as made clear in the indicators designed by the Comptroller's Office). The officials are always wary of 'fraud' or 'false victims' and have developed their own protocols in the field to resolve these issues. One commented: "For these kinds of users, those who you don't think are telling the truth, you attend them politely but ask them extra questions in order to show that their account is not consistent in the transcription. You know, as the people here are so needy, they tell lies to try to get help as a victim of the conflict."⁶⁷ Here, once again, it becomes apparent that there is a lack of discussion about income distribution in the transitional justice framework, and that the street-level bureaucrats are aware of this gap in the instruments created in line with IACHR standards.

Strangely, among the victims' organisations, Law 1448 of 2011 has generated a basic consensus.⁶⁸

I know, what you are saying is true. It could be that the focus of the law is all wrong; I know there are people dying of hunger and I know that the institutional path lacks immediate measures for certain profiles, but Law 1448 is the best thing we've had in a long time. At least here we've got a name, someone we can speak to. But above all there is a clear aim. Peace has to be achieved [in] any way it can. It's so important that this is happening now; it's almost a prerequisite if we are going to expand on what we are talking about. Social policy for the victims, yes — but after we have peace.

This statement is very important for the argument put forward in this article. The research was carried out in an electoral period during which one of the principal themes of the campaign of one of the candidates, serving President Juan Manuel Santos, was the signing of a peace agreement with the FARC. Santos won the election on 15 June 2014 on the back of the possibility of peace. He garnered support not only from some left-wing movements, non-aligned voters and dissidents from other campaigns, but was able to attract enough voters to win the election. This support for the peace process, capable of tipping the election result, also explains the 'pact of silence' referred to in this article. The different social organisations replicate the electoral consensus in relation to Law 1448 of 2011 and its implementation. They know about its negative effects and understand the forms of exclusion it involves, but they subscribe to a pact of silence to advance towards the goal of peace.

67 Rodríguez & Rodríguez, *supra* note 36.

68 Interview with female leader of victims' organization N°. 1.

The implicit trade off here is the sacrifice of political mobilisation in which social policies are demanded to favour the victims and provide immediate responses that really advance the social dimensions included in public policy, in exchange for an agreement with the armed groups that could end the conflict. To negotiate “with the weapons in the jungle”, as one of the interviewees put it, is very difficult. The victims’ leaders want the “war in the countryside” to continue to co-opt government resources, and they want the peace agreement to open the door to real discussions about redistribution.⁶⁹ That means that many organizations want the conflict to continue, because it represents an opportunity to access public resources. However, the focus of the land restitution process, carried out using indicators in a process that normalises a vision of a distant conflict, might make it harder for this redistribution to be achieved in the post-conflict phase. This is the complexity of the national conflict that Colombia faces today.

5 Conclusions

This study makes a contribution to the critical literature on indicators in three ways. First, in methodological terms, it constitutes an attempt to demonstrate how indicators mould reality in a concrete context such as the Victims’ and Land Restitution Law. The empirical basis of the research and the attempt to demonstrate how the indicators determine local realities is in itself a critique of the mainstream literature on indicators, which portrays them as neutral tools for the quantification of a pre-existing reality or as mere techniques for the evaluation of results.

From a methodological angle, the case study provides a good opportunity to visualise the ways in which qualitative logic destabilises quantitative records. In this sense, the research is a reaction against the functionalist fallacy that has dominated this canon of literature, demonstrating how indicators are not helpful in measuring a given reality. They create reality at the same time as they convert it into a result.

Second, the case study provides evidence of two particular ways in which indicators are produced through atypical interactions that challenge the view that indicators are technical, neutral and impartial tools. Thus, Colombia’s Victims’ and Land Restitution Law is an example of the regional stabilisation of human rights achieved through the interplay between the actors that participate in the Inter-American System.

69 *Ibid.*

By looking at the role of indicators as a mechanism for the enforcement of international law, this text raises an interesting aspect of their role within legal projects, particularly within regional and international human rights systems. That is: the use of indicators both to define, and to enumerate, a legal standard and then to monitor the performance of a given state, which will be evaluated as either 'good' or 'bad'.

According to this same perspective, the case study also breaks with a recent pattern found in the literature on indicators in the global south, which has likened them to political spaces.⁷⁰ This literature analyses case studies that have demonstrated how actors in the global south appropriate the logic of indicators to advance concrete political agendas that are favourable to them. This vision is also interesting because it destabilises the post-colonial dynamic in which the south always loses.⁷¹ But this case study opens up another area in this kind of study of indicators in the global south. In this case, the actors involved in the process (victims, NGOs, grass roots organisations and bureaucrats) develop an agenda in opposition to that of the indicators. By failing to discuss and question the existing indicators they participate in an implicit agreement as an attempt to construct a path to peace. This seems to constitute a consensus that goes beyond political differences, social class and the emotional manifestations. The resulting statistical exclusion of 'other' manifestations of the conflict is, therefore, an example of strategic behaviour in which southern actors do not so much 'use' indicators as administer their omissions.⁷²

Third, the text speaks to a very prominent theme in indicators literature concerning how indicators create reality by defining terms and by choosing which data to include and which to exclude. In this regard, the article represents an advance on two fronts, contributing both to the literature on transitional justice and on indicators. It makes a contribution to the literature on

70 M. Abadia, *Criminal Policy Through the Use of Indicators* (on file with author, 2014); L. Céspedes, *Far Beyond What Is Measured. Governance, Feminism and Indicators In Colombia* (on file with author, 2014); R. Urueña, 'Internally Displaced Population in Colombia A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance' in Kevin Davis, Angelina Fisher, Benedict Kingsbury and Sally Engle Merry (eds.), *Governance by Indicators. Global Power through Quantification and Rankings* (Institute for International Law and Justice, New York University School of Law, Oxford University Press, 2012).

71 L. Buchely, 'Indicators as a Form of Resistance' (2014) 25 *International Law, Revista Colombiana de Derecho Internacional* pp. 225–266.

72 L. Simpson, 'Statistical exclusion and social exclusion: the impact of missing data' (2009) 71 *Radical Statistics*.

transitional justice in Colombia because past processes through which other countries have striven to achieve truth, justice and reparation have occurred following periods of prolonged conflict and marginalisation, whereas in the case of Colombia the conflict is still ongoing. Law 1448 of 2011 therefore marks a very interesting development in relation to a unique situation. By exploring the three aspects of the Victims' Law, this article offers insights into how the Colombian state seeks to present its response to the conflict to a wider international audience and how that narrative is received. Specifically, it shows how the law shapes notions of history and the very story of the conflict; it sheds light on the political effects of the law in terms of public debate, the engagement of civil society, the role of actors such as NGOs and the state, and the relationships between them.