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Case Studies on Transitional Justice and Displacement

# Forced Displacement and Gender Justice in Colombia

Between Disproportional Effects of Violence and Historical Injustice

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July 2012

### **Transitional Justice and Displacement Project**

From 2010-2012, the International Center for Transitional Justice (ICTJ) and the Brookings-LSE Project on Internal Displacement collaborated on a research project to examine the relationship between transitional justice and displacement. The project examined the capacity of transitional justice measures to respond to the issue of displacement, to engage the justice claims of displaced persons, and to contribute to durable solutions. It also analyzed the links between transitional justice and other policy interventions, including those of humanitarian, development, and peacebuilding actors. Please see: [www.ictj.org/our-work/research/transitional-justice-and-displacement](http://www.ictj.org/our-work/research/transitional-justice-and-displacement) and [www.brookings.edu/idp](http://www.brookings.edu/idp).

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### **Acknowledgements**

ICTJ and the Brookings-LSE Project on Internal Displacement wish to thank the Swiss Federal Department of Foreign Affairs (FDFA) and the Canadian Department of Foreign Affairs and International Trade (DFAIT), which provided the funding that made this project possible.

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## Introduction

This paper examines the relationship between forced displacement and transitional justice in Colombia, from a gender perspective. The text focuses on three main themes: first, the gendered impacts of forced displacement; second, the ways that official policy, as it has evolved from providing humanitarian assistance to seeking durable solutions, has dealt with the gender dimensions of displacement, and the monitoring role of the Colombian Constitutional Court in this process; and third, the gendered dimensions of the (incomplete and debated) process of transition—from the Justice and Peace Law of 2005 to Law 1448 of June 2011 on Victims and Land Restitution. Finally, the conclusion brings these two processes together in an examination of what gender justice should look like for displaced women, particularly in the critical area of policies for land restitution.

The paper points out how, in the Colombian context, there are two different ways of conceptualizing the displaced population: as a population that has suffered from the collateral effects of armed conflict and therefore should be the object of humanitarian assistance; or as a group that has been directly victimized by conflict, whose rights were violated and therefore should be restored. The question is not merely conceptual; it is also about understanding what the displaced have actually experienced. Indeed, the profiles of victimization clearly show that Colombians have frequently been doubly victimized: by displacement and by direct acts of violence.<sup>1</sup> Although these two conceptualizations are not necessarily mutually exclusive, they have different roots and belong to different legal frameworks and policy measures. They also emerged at different times. In Colombia, the humanitarian approach began in 1997, with the first law on forced internal displacement (no. 387), while the victims' rights approach appeared eight years later, in 2005, with the Justice and Peace Law and subsequent government decrees on reparations—the latter approach pushed by human rights and internally displaced persons' (IDP) organizations as part of heavy criticism of the Justice and Peace Law.

A related question is how to link the two frameworks—that of displacement and that of transitional justice—into one comprehensive approach. Which one takes the lead? Which approach is the broader framework, and therefore the one into which the other should be integrated? Should transitional justice fit within strategies to address displacement? Or should humanitarian measures that address displacement be integrated into a broader framework of (transitional) justice in which massive violations

of human rights are recognized and victims of displacement treated as rights claimants? In this paper, I argue for including displacement within a justice framework as a potential way to overcome the limitations of humanitarian action and to move forward to a more comprehensive human rights framework that takes justice (in one form or another) into account as a necessary element for reconciliation and peace.

Throughout the world, forced displacement has mainly been addressed by humanitarian action, which, even in its efforts to deal with complex emergencies and protracted conflicts, does not embrace the search for justice as one of its explicit goals. The central purpose of humanitarian action is to offer relief from suffering, provide for subsistence, defend human dignity, and protect fundamental rights.<sup>2</sup> In the same sense, the “durable solutions” approach to forcibly displaced populations seeks to counteract the destruction of socioeconomic communities and establish the foundations for their rehabilitation. However, it does not address accountability for human rights violations, redress for harms and losses, or the question of impunity, nor does it provide a guarantee of nonrepetition. It aims, we could say, at re-establishing the socioeconomic, not the political, subject.

On the other hand, transitional justice has been defined as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale human rights abuses, in order to ensure accountability, serve justice and achieve reconciliation.”<sup>3</sup> The inclusion of issues of accountability and justice in an approach to displacement might be considered a step beyond the (necessary) stages of humanitarian action. Moreover, Louise Arbour, former UN high commissioner for human rights, recently argued that there is a need for transitional justice to address gross violations of social, economic, and cultural rights, in addition to civil and political rights, making its outlook more inclusive.<sup>4</sup> This opens the way to focusing on a broad range of historical (and not only conflict-bound) inequalities that particularly affect women.

My argument is that the humanitarian “durable solutions” approach and the “justice and rights restitution” approach should be combined into a comprehensive framework in order to set the stage for achieving gender justice<sup>5</sup> in peacebuilding and development processes. The displaced population, particularly women, can play a pivotal role in this process: for them, “getting the past right” means not only truth-telling and historical memory about the impact of conflict, but also recognition of structural (gender) injustices that should be addressed and transformed by transitional justice measures. These very general statements will be exemplified through a case study of Colombia, where women have gained access to land after displacement, but have received neither compensation for the property they lost during the violence nor attention to their specific gender needs when starting new life projects.

## The Gendered Impacts of Forced Displacement in Colombia

Forced displacement in Colombia is an ongoing phenomenon, in spite of the start in 2005 of a supposed transition process under the Justice and Peace Law. This law brought about the (temporary and incomplete) disarmament and demobilization of Colombia’s paramilitaries, but it did not involve the guerrilla forces still active in the country, mainly the *Fuerzas Armadas Revolucionarias de Colombia*

(Revolutionary Armed Forces of Colombia, or FARC). Internal displacement in Colombia reached its peak between 2000 and 2002, with 1,138,974 people displaced in three years, according to official registries.<sup>6</sup> This period coincided with the breakdown in peace talks between the government of Andrés Pastrana and the FARC and with a decisive phase of paramilitary expansion by the *Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia, AUC), one that was accompanied by a strategy of massacring civilian populations as part of the AUC's territorial offensive against the guerrillas and their supposedly supporting populations. Statistically and geographically, the relationship between massacres and displacement can be proved<sup>7</sup> and explained in the context of struggles for territorial control by guerrilla and paramilitary forces—the latter often in connivance with state actors. From the victims' perspective, displacement must also be seen as a preventive reaction of communities to avoid being murdered. Frequently, but not always, these massacres are accompanied by acts of massive destruction of homes and property that further incentivize displacement and, above all, prevent the displaced from returning.

Between 2002 and 2007, the yearly numbers of displaced people decreased, due to—as has been generally accepted—the counteroffensive by the government against illegal violent actors under the Democratic Security Policy and the start of the demobilization process with the paramilitaries in 2003, formalized under the Justice and Peace Law of 2005. Violent acts, particularly massacres, decreased, at least during the first years of disarmament and demobilization; so did displacement, as the expectations of a less violent future enabled people to withstand the threats of violent acts for longer periods. However, since 2007, the number of displaced has risen again, this time the main actors responsible being the so-called *bacrim* (short for *bandas criminales*—newly labeled criminal bands, mostly organized by former paramilitary men heavily involved with drug trafficking), the guerrillas (who did not demobilize), and government forces. In this recent period, people have been displaced not only due to direct armed actions but also because of aerial fumigation of illicit crops.<sup>8</sup>

The total number of displaced persons over the last 15 years is 3,623,961 (1985–2010), according to *Acción Social*, the government office charged with the coordination of the multi-institutional system for humanitarian assistance and social and economic stabilization of the displaced population.<sup>9</sup> The dynamics of displacement have changed during this period, with a decrease in massive displacement (whole communities) over short distances and a steady increase in the already dominant modality of individual or small-family group displacement. This is in accordance with the evolution of the dynamics of conflict over the past decade, with selective murders replacing massacres as the main strategy of illegal armed actors for obtaining territorial control and obedience from civilians. With this “drop-by-drop” displacement, the presence among IDP populations of single adult women (with or without children) has increased, mostly as heads of families. Since 2006, nearly half of displaced families have reported themselves as headed by women. In 2008, the *Comisión de Seguimiento* (Monitoring Commission of the Public Policy on Internal Displacement) found that 43.4 percent of displaced households were headed by women, much higher than the 29.9 percent of female-headed households in the national population of Colombia, according to the 2005 national census. Moreover, 67.8 percent of displaced households headed by women have no spouse present.<sup>10</sup>

For many years, female-headed households were the only entry point for public policy measures to make “gender sensitivity” operational, both in general social policy and in specifically displacement-

related policy.<sup>11</sup> That is, displaced women who were heads of households were to receive priority treatment or more lax conditions when applying for extension of humanitarian aid or for work, subsidies for housing, or acquisition of land for agricultural activities.<sup>12</sup> This entry point remained relatively unchanged between 1997, when Law 387 on assistance to displaced populations was issued, and 2008, when the Constitutional Court broadened the spectrum in a special ruling on comprehensive assistance to displaced women, an issue I will return to later.

Meanwhile, the gendered impact of conflict and forced displacement became the object of sociological, psychological, economic, and policy analysis by the international community, academia, and national NGOs.<sup>13</sup> Broadly speaking, the “gender balance” of displacement has been addressed in the following five different dimensions, which have to some extent contributed to the foundations of policy design and Constitutional Court rulings.

### **Women Assume New Responsibilities as Heads of Households**

Many displaced women have to assume social and economic responsibility for their families due to a combination of factors, including assassination of husbands; family ruptures caused by the tensions of violence and uprooting; the burden of an anonymous life in the cities; different perceptions of rural security among women and men; and new labor dynamics in the cities that affect the traditional gender division of labor. As mentioned above, this has been addressed by humanitarian policy measures, mostly in terms of the prioritization of women heads of household in access to services. As we will see in the next section, the Constitutional Court addressed the case of women-headed households through a risk analysis, in particular of their employment situation. In terms of gender justice,<sup>14</sup> the unequal distribution of workload and income between male- and female-headed households has partially been addressed by positive actions<sup>15</sup> in the productive sphere and in housing, giving priority access to land, productive credit, and housing for women head of households, especially when these households are monoparental and include young children. However, these policies are still family-oriented and do not consider the situations of married women or women on their own. They constitute, nevertheless, an important area of convergence in gender-sensitive considerations of humanitarian action (Decree 250), social policy in general (Law 082), and the reparations measures contained in the recently approved Victims’ Law (Law 1448).

The Victims’ Law (with its emphasis—as its name indicates—on the victims of mass human rights violations during conflict) has been welcomed as an indispensable complement to the Justice and Peace Law (2005), which focused mainly on reduced sentences for demobilized and confessed perpetrators from one of the parties to the conflict (the paramilitaries). Now, the Victims’ Law provides “special actions for women” in its section on land restitution, which include giving out land deeds with priority to women heads of household and officially requiring “shared land titles” for couples in all restitution actions. In terms of Anne Marie Goetz’s definition of gender justice (see notes 5 and 14), the positive actions for displaced women as head of households have mainly been in the area of distribution of resources and opportunities, whereas the section of the law that refers to reparations for gender-based (particularly sexual) violence against women fits in the second part of the definition, on human dignity, physical integrity, and the right to choose a life project. These aspects are discussed further in the following sections.

## Displacement Impacts the Life Projects of Women and Men Differently

Uprooting affects traditionally isolated peasant women more harshly than men. The rupture of their intimate bonds with close kin and neighbors, their lack of social and geographical mobility before displacement, and the threat of family disintegration all constitute significant obstacles to the reconstruction of these women's life projects in a new, urban environment.<sup>16</sup> Moreover, precisely because of historical discrimination, the losses and harms suffered by women (for instance, loss of property or a house or nonregistered possession of land) are seldom taken into account or are considered less relevant than those more formalized losses of men or families. Although "harm to a life project" (*daño al proyecto de vida*) has been recognized as a human rights violation by the Inter-American Court of Human Rights<sup>17</sup> and thus may be grounds for reparations, it still is a concept difficult to grasp or define in exact terms. Moreover, many may say that a "life project" for a poor illiterate peasant woman in an isolated area is an illusion. However, if we disaggregate the concept into its necessary material and moral conditions, we find that the loss of a house may wipe away the basis for a small home-based business that would have increased a woman's autonomy, or that the loss of a minimum of solidarity and reciprocity among even distant neighbors may remove her chance to form or join an incipient social organization or network.

The recognition and redress of losses and harms to life projects suffered by displaced women is clearly an area in which notions of humanitarianism (protecting women's dignity and providing initial subsistence), gender justice (giving women access to new resources for rebuilding their life projects), and transitional justice (designing special mechanisms for assessing and restituting women's informal land possessions) come together. In practice, however, the National System for Comprehensive Assistance to the Displaced, in its component for durable solutions, approaches the problem from a different angle, namely that of providing support for starting a new living, without compensation for the losses and harms suffered. When these support programs do not sufficiently address gender needs and do not recognize what displaced women have lost because of displacement, the resulting gender injustices may be enormous, as I will illustrate later in this paper. Economist Ana María Ibáñez concluded in her detailed study on the economic losses suffered by the displaced population in Colombia that "displacement produces a fall in well-being and a loss of assets of such an enormous size that the displaced families will remain in the trap of poverty for several generations."<sup>18</sup> And again, the households that became women-headed during or after displacement are the most vulnerable.<sup>19</sup>

## Women and Men Differ in Attitudes Toward Return, But Women are Seldom Heard

In cases of programs for return, women and men may evaluate the security conditions in the rural areas from which they fled in different ways.<sup>20</sup> For instance, widows may refuse to go back to the places where their husbands were murdered because of fear, because they do not want to relive the trauma, or simply because they lost everything. Moreover, many women do not have the means to prove their possession of land before displacement. This is related to historical discrimination, as displaced women report having had less formal land ownership than men. Women may also prefer the opportunities for education for their children in cities to an economically and socially uncertain and potentially unsafe return, without knowing (and therefore without claiming) their right to compensation or restitution. In general, men have been more prone to return, motivated by



economic incentives sometimes offered by the government, and pushed away from the cities by their difficulties adapting to urban labor markets.

In terms of gender justice, therefore, it is important that women are heard in order to ensure that their return is voluntary, safe, and occurs under conditions of dignity.<sup>21</sup> Prevention of violence and protection of women's safety are important issues. Here again, the humanitarian and the transitional justice approaches potentially come together, as questions immediately arise about what is economically and socially viable and what is to be considered a "just" solution: Return to what lands and houses? Can land be restituted to its former possessors or owners? If women were not landowners before displacement, how can this be modified and by what means?

According to the latest survey by the Comisión de Seguimiento, about 6,638,195 hectares of land were forcibly abandoned by their owners or tenants or violently taken by armed actors between 2000 and 2010.<sup>22</sup> An earlier survey found that 385,000 families had lost their land, with an average holding of about 15 hectares per family, meaning they were smallholders or middle-sized peasantry.<sup>23</sup> Many of the displaced peasant families that lost their land did not possess official titles. Women are particularly vulnerable, as even when a document existed—a registered land deed or a document that refers to a sales transfer or inheritance—it usually remained in the hands of the male head of household. The Historical Memory Group, working in Colombia's Caribbean coastal zone, found that only about 30 percent of the displaced people who forcibly abandoned their land had a registered title, and less than 30 percent of those formal titleholders were women.<sup>24</sup> Thus, forced displacement, widowhood, and abandonment are circumstances that constitute particular difficulties for women—alone or as heads of households—when claiming the land they once possessed and worked on, but for which they never held a formal title.

### **Displaced Women Suffer Special Risks of Gender-Based Violence—Before, During, and After Displacement**

In recent years, more information on sexual violence (rape, sexually oriented torture, forced sexual services, forced prostitution, forced abortion, sexual harassment) and other gender-based violence (forced domestic services, social control, restrictions on mobility) has been made available.<sup>25</sup> The relationship between sexual violence and displacement is three-fold: sexual violence may have been part of the violent acts that caused the forced displacement; threats of sexual violence may have been the direct cause of displacement; and sexual violence may continue as one of the particular vulnerabilities of women during and after displacement. In her study on forms of victimization and reparations in Colombia, Angelika Rettberg found that 74.3 percent of the victims who participated had been forcibly displaced, and 7.2 percent of these displaced persons (mostly women) reported suffering sexual violence (themselves, in their family, or in their community).<sup>26</sup> A recent survey on the topic, carried out by several women's organizations and supported by Intermon/Oxfam in 407 municipalities with the presence of an armed actor (public force, guerrilla, or paramilitary), found that 17.58 percent of the adult female population of those territories reported having been the victim of sexual violence during the period 2001–2009, although less than 20 percent reported it to the authorities, mainly because of fear.<sup>27</sup>

Sexual violence, mainly although not exclusively directed toward women, has been reported in several cases in Colombia as a clear strategy of war. For instance, when several indigenous women were raped and killed in the Bahía Portete massacre in 2004, the reason was clear: women play a leading role in this matrilineal society. Raping and killing them constituted a direct attack on the community structure and the values of the ethnic group, and it subjugated the group to paramilitary dominance.<sup>28</sup> Another example is the massacre in El Salado in 2000, where peasant women were sexually tortured and killed as punishment for their (and their community's) supposed connections with the guerrillas.<sup>29</sup>

Sexual violence has been a special preoccupation of the Constitutional Court in its monitoring of the standards of assistance to displaced people. In its special ruling on displaced women, the court asked the general prosecutor to directly take care of the cases of sexual violence presented. On the other hand, evidence of sexual violence has been very scarce in the confessions the paramilitaries rendered under the Justice and Peace Law of 2005, although the leaders were supposed to confess their crimes in exchange for the reduction of punishment. Although in their so-called free confessions, members of the paramilitary forces admitted to massacres and assassinations, they did not do so for sexual violence, forced displacement, or land seizures. These issues may be considered the three “taboos” in the Justice and Peace process, and were covered with a blanket of silence by the perpetrators. They did not feel responsible for displacement or violent land seizures. They killed, it was acknowledged, but it was “the people’s decision to displace themselves and abandon their land.”<sup>30</sup> And unlike killings, which were justified as a legitimate counterinsurgency strategy, sexual violence, in addition to possibly constituting a crime against humanity, was seen even among perpetrators as a shameful or dubious act. At the same time, most information on sexual violence has been collected by women’s and human rights organizations, and it is only through the work of the National Commission on Reparations and Reconciliation (which embodies the Historical Memory Group) that these three themes have been officially taken up.<sup>31</sup>

### **Women’s Participation in IDP Organizations: Highlighting Sexual Violence and Other Disproportionate Impacts of Conflict on Women**

National organizations of displaced people have traditionally been dominated by male leadership and oriented toward political negotiations and judicial actions (*tutela*) to claim displaced persons’ rights, without a gender perspective. However, women have increasingly left these mixed organizations and formed their own, which have generally been more informal, grassroots, and oriented toward economic survival needs.<sup>32</sup> Several displaced women’s organizations, particularly those in small cities or towns not too far away from their rural origins, are also taking the initiative to buy land or apply for land assignments by the national land-reform institute.<sup>33</sup> At the national level, the “discovery” of the gendered dimensions of displacement and its acceptance by civil society and the international community has reinforced the claims put forward by displaced women’s organizations, together with women’s and human rights NGOs and within the framework of UN Security Council Resolution 1325, for the inclusion of a gender perspective in prevention and protection.<sup>34</sup> These claims, in turn, led to a public hearing by the Constitutional Court that fueled its special ruling on displaced women—the so called *Auto 092* (Ruling 092) that will be analyzed in the next section.

## Gender Dimensions of the Constitutional Court’s Monitoring Process: “Auto 092”

The Constitutional Court’s rulings comprise the first attempt in Colombia to bring together questions concerning the historical vulnerabilities of women, the disproportionate impact of the armed conflict on women, and the new risks that they face as part of the IDP population. The Constitutional Court has monitored displacement since 2004, when it introduced comparison with international standards, the concept of effective enjoyment of rights, and the recognition of the “extraordinary impact” of conflict on women (Auto 092). It also asked for a special commission to carry out national inquiries on the situation of IDPs, including the losses (of land, property, assets, future profits, and so on) they suffered: the Comisión de Seguimiento.

The constitution of 1991 created a series of mechanisms to demand and monitor the “effective enjoyment” of civilian rights: the “*tutela*” (charges against someone who is violating a citizen’s fundamental rights); the right to petition as a way of accessing information; and the creation of the human rights ombudsman (*defensoría del pueblo*). These new mechanisms gave the Constitutional Court a prominent and dynamic role in demanding respect for basic citizen rights. With regard to the IDP situation, the court has been particularly expansive in its rulings over the past five years. In 2004, it produced Sentence T 025,<sup>35</sup> ordering the government to meet international standards on protecting the rights of displaced populations and to follow up on this via verification commissions.<sup>36</sup> In the following years, nearly a hundred rulings ordering the compliance of the government followed the sentence.

In Auto 092, the Constitutional Court highlighted the disproportionate impact of violence on women and called on the state to prevent gender-based—especially sexual—violence against women in conflict and during or after forced displacement. It also mentioned a series of particular risks of revictimization for displaced women and ordered the central government and other territorial bodies to design 13 programs specifically oriented toward protection, comprehensive assistance, and rights restitution. These programs aimed, in broad terms, at the prevention of displacement’s disproportionate impact on women. This included the specific prevention of sexual violence and a series of measures to guarantee displaced women’s access to health care, education, and land, as well as their participation and protection—particularly protection of the rights of indigenous and Afro-Colombian women—and, at least nominally, the rights to truth, justice, and reparations.<sup>37</sup> These rights, however, were defined in a very general way, and were dismissed by the government as not being viable because the appropriate institutional framework for such claims should be part of a future (now finally approved) law on victims’ issues.

The government’s response to Auto 092 has been rather limited and has caused disappointment among women’s and displaced people’s organizations. However, the court’s ruling has fueled displaced women’s mobilization and carried far-reaching implications both for the way in which a gender-sensitive approach has to be conceived and for the way in which humanitarian action may be linked to transitional justice and development measures. It argued why the conflict has a disproportionate

effect on women and hence why they need particular positive action on the part of the government. It also used a broad definition of “victims”<sup>38</sup> and insisted on not only access to services, housing, and landed property through humanitarian schemes of assistance and recovery, but also the establishment of mainstreaming mechanisms for reparations for women. This approach comes close to the idea of gender justice defined above and contrasts strongly with traditional government policies in terms of rather narrowly defined humanitarian aid. It represents the rise of a new way of political thinking about IDPs. Formerly in a “humanitarian category,” IDPs are now thought of in a “rights category”—that is, as victims of conflict with a right not only to humanitarian assistance and economic recovery, but also to truth, justice, and reparations.<sup>39</sup>

However, institutional limitations became particularly visible in the treatment of the land question. In the ruling, the court phrases its description of the program for displaced women as “facilitating access” to land, not in terms of “restitution” of land and even less in terms of “doing justice” to women victims of conflict. In this way, the court did not fully integrate the rights approach. Indeed, the state’s response was to design a special call for displaced women to compete for land assignments in a market-oriented program implemented by the Rural Development Institute (INCODER). Although this program has reportedly improved displaced women’s access to land through special schemes, the government’s strongly selective procedures based on economic competitiveness do not guarantee restitution at all (and in fact, were not aimed at restitution) to displaced women who have lost their land.<sup>40</sup>

At the same time, however, for displaced women and their associations, “being a victim” has acquired a new political and practical meaning, beyond their former status of “displaced people.” They now want the government to go beyond the traditional parameters of humanitarian assistance. Women organized into victims’ groups in order to present their claims during the hearings with paramilitaries in the Justice and Peace process; indeed, more than 70 percent of the victims registered by the state’s Attorney’s Office are women—many of them victims not only of assassinations of family members but also of displacement.

It is clear that this double victimhood can lead to additional disadvantages when claiming rights. Widows, for example, after the assassination of partners and, usually, following threats or instances of sexual violence, are forced to abandon their homes and land. For these women, it is particularly important that transitional justice measures take into account their vulnerabilities and suitably adapt judicial procedures.<sup>41</sup> (Transitional justice measures mean, for the moment, reparations and land restitution, but should also include protection and guarantees of nonrepetition.) Most notably, access to the judicial system should be improved at the local level. And, effectively, the new Victims’ Law includes procedures that shift the burden of proof from the victims (the displaced who abandoned their land and now reclaim it) to the perpetrators (those who newly occupy the land and now must prove their legal acquirement). The law also includes the possibility of accepting oral testimony for the purpose of granting land titles (in cases of absence of any formal proof of land possession, most common among women); however, much depends on the implementation mechanisms that will be defined in future law-regulating decrees. The granting of land titles to women should be sped up, and special protection should be accorded to women and their organizations in order to avoid revictimization.<sup>42</sup>

Auto 92 has been celebrated as a true conquest by women's organizations of a traditionally male power bastion: the highest judicial entity in the country. The Constitutional Court's rulings are an example of the recognition of women's rights, and its risk analysis and conceptualization of disproportionate impacts on women added new dimensions to the formulation of public policy. The rulings may be seen as intended to bring IDP assistance and transitional justice measures together. However, as noted earlier, at this point several institutional limitations are visible: the government's response has been disappointing, not only due to lack of political will but also because of the executive branch's restricted ability to introduce changes in its operational architecture.

As mentioned above, attempts to "redress the legacies" of massive human rights violations suffered by displaced people came well after the recognition of displacement and the development of an assistance model for IDPs. Initially, before the recent Victims' Law, the displaced did not qualify as direct victims of conflict; they were seen as humanitarian objects who needed assistance independent of the causes of their uprooting. Therefore, the restitution of property was not considered a priority, and the individual reparations program launched by the government in 2008 (Decree 1290) excluded restitution of land and property because "victims" were those who had lost a family member.<sup>43</sup> Even in the Constitutional Court's ground-breaking work, this limited conceptualization of "victims" and the absence of concepts of "justice" or "redress" are still predominant, although the term "reparations" was marginally introduced in the text of Auto 092.

To address issues of gender justice and reparations for the displaced, new institutional mechanisms had to be designed and approved by Congress. This is what was at stake in the debate over the Victims' Bill. It was only in 2010 that a comprehensive Victims' Bill was presented to Congress,<sup>44</sup> which was then merged with a new proposal on land restitution, surprisingly presented by the government of Juan Manuel Santos, which took office in August 2010. Now the law has been approved, bringing new perspectives to the discussion. These will be analyzed in the last section of this paper.

## Gender Justice in the Victims' Law: New Perspectives on Land Restitution

After several failed attempts by Congress to pass a Victims' Bill in the Uribe era, a coalition of opposition parties (headed by the Liberals), civil society organizations, and President Santos' own Ministry of Agriculture (concerned with the issue of land restitution) presented a bill to Congress in November 2010. This time the initiative was more successful, and after several debates and modifications it was finally approved. On June 10, 2011, President Santos ratified a new and comprehensive Law on Victims and Land Restitution (Law 1448).<sup>45</sup> A short review of the law's text reveals that issues of justice—and particularly gender justice—for displaced populations have been included, but also that mechanisms of land restitution and redress of sexual violence may still be strengthened in their transformative potential (that is, the extent to which they address historical gender inequalities).

The law defines its object as a set of judicial and administrative measures in favor of victims' rights and their effective enjoyment, and promotes equal opportunities and the elimination of all forms of discrimination. It consists of two parts: assistance to victims (the humanitarian part) and reparations to victims (the transitional justice part). The first and foremost section of the chapter on "reparations" deals with the restitution of land to those who have been victims of violent land seizures (*despojo*) or have been forced to abandon their lands (and are displaced). There is no explicit mention of transformative measures, such as redistributive land reform, and the scope of the law is clear in its definition of "restitution": it aims at restoring the situation to that which existed before the human rights violations were committed.

A set of special measures seeks to create equal opportunities and protect women's rights. The first measure aims to prioritize women—particularly women heads of households—in administrative procedures and in the (individual) judicial process of restitution (carried out in newly established special land-restitution jurisdictions). A second measure aims to protect women by maintaining good security conditions for them and their land (no specification of how this will be done is given). A third aims to make sure that women in a process of land restitution have priority in obtaining benefits (productive credit, technical assistance, and so forth), based on an old and mostly inoperative law on "rural women" (Law 231, 2003).<sup>46</sup> These first three measures represent nothing new, and remain mainly in the realm of durable solutions. However, there is a fourth measure that is interesting because of its scope: it mandates that restitution of land and formalization of land titles (in itself a measure of redress for the historical injustice done by informal land titles to the peasantry and in particular to women) should in all cases be registered as a joint title for spouses. This is a measure that in normal circumstances could only be applied to the few landholdings assigned by INCODER.<sup>47</sup> Thus, this last measure may potentially make a small contribution to the transformation of the situation of women's land rights in Colombia.

## Conclusions

Bringing together humanitarian policies, gendered transitional justice, and development policies in a comprehensive framework is obviously an enormous task. It is important, therefore, to consider the evolution of the Colombian case—with respect to the enactment and implementation of the Victims' Law and the government's proposal to restore land to female and male victims of displacement, land abandonment, or violent land seizures—with the following difficulties in mind.<sup>48</sup>

Violent land seizures are more a process than a single act, one that generally starts with abandonment, extends over time, and involves multiple actors. Sometimes the process involves only the armed actors who took the land after massacres were perpetrated or left it to their *testaferros* (front men) to do so. Here, complex, special judicial measures are needed. In all cases, the burden of proof (even if now inverted and resting on the perpetrators) is a tremendously complicated process, as most of the peasantry does not have formal land titles, especially peasant women. Land titles for displaced peasant women, therefore, are a priority measure from a gender justice perspective.

At other times, opportunistic buyers of the land make use of several mechanisms, legal and illegal, such as buying debts the displaced can no longer pay, or using bureaucratic mechanisms or corruption (false land deeds, or pressuring the land-reform institution to have former beneficiaries sell their land in spite of its prohibition). So, forgiving debts to victims of displacement who want to return to their land may be a measure of economic justice in a period of transition. Anti-corruption measures reversing the perverse institutional involvement in the process are also needed. Women are the most vulnerable victims of the spiral of indebtedness, so they should particularly benefit.

Large enterprises (national and multinational) may be motivated to buy land for megaprojects, agro-industrial projects, or subsoil exploration for gas and oil. They may buy the land legally, but at a low value. The displaced are usually forced to sell at a ridiculous price and the agro-enterprises accumulate land. How can this process be reversed? Not only judicial but also political and economic measures are needed, as well as a development vision that gives a new place to the displaced in the social, economic, and political arena. This points to the need to create mechanisms to bring the displaced peasantry back into the organizational dynamics of rural development and to recognize the increasing female leadership in their organizations.

Finally, once land is restored, the “returned” need to start their life projects and production processes again, which requires all kinds of accompanying measures, particularly for women (capacity building, soft loans, and so on). Transitional justice measures of reparation and restitution of land rights need to include or be complemented by other public policy measures that give particular attention to women-headed households and their difficulties, and to women’s needs for capacity-building and technical assistance. In these spheres, the “durable solutions” approach and the “justice” approach can come together and reinforce each other. Land restitution programs should give land deeds to women as a measure of redress for historical discrimination, and gender-sensitive development programs should accompany their social and productive integration. The engagement of women’s and displaced organizations and rural communities in the assessment of land ownership and the recognition of women’s property rights, as well as the special protection measures they will need for their participation in these public activities, should all be a substantive part of the overall effort to foster gender justice in a transitional process.

## Notes

- <sup>1</sup> See for this last argument: Ana María Ibáñez, *El desplazamiento forzado en Colombia: Un camino sin retorno hacia la pobreza* (Bogotá: Universidad de los Andes, 2008), 19 and 27.
- <sup>2</sup> Joana Abrisketa and Karlos Pérez de Armiño, “Acción humanitaria: concepto y evolución,” *Diccionario de Acción Humanitaria y Cooperación al Desarrollo*, 2000, <http://www.dicc.hegoa.ehu.es/listar/mostrar/1>. See also Thomas G. Weiss, *Humanitarian Intervention* (Cambridge: Polity Press, 2007).
- <sup>3</sup> United Nations secretary-general, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, S/2004/616, 2004.
- <sup>4</sup> Louise Arbour, “Economic and Social Justice for Societies in Transition” (Second Annual Transitional Justice Lecture, New York University School of Law Center for Human Rights and Global Justice and the International Center for Transitional Justice, New York, October 2006).
- <sup>5</sup> In her prominent work on Gender Justice, Anne Marie Goetz spells out three outstanding elements of Gender Justice: (1) it starts from a substantive equality model that not only focuses on the equal treatment of the law but on the actual effects of the law; (2) it goes beyond the (substantive) equality paradigm because it implies not only access to and control over resources, but also agency; (3) it adds an element of redress and restitution to traditional models of women’s empowerment; and (4) it adds accountability by state institutions to the claims for inclusive citizenship by women. Anne Marie Goetz, “Gender Justice, Citizenship and Entitlements: Core Concepts, Central Debates and New Directions for Research,” in *Gender Justice, Citizenship and Development*, ed. Maitrayee Mukhopadhyay and Navsharan Singh (Ottawa: International Development Research Center, 2007), 15–58.
- <sup>6</sup> Agencia Presidencial de Acción Social y Cooperación Internacional, <http://www.accionsocial.gov.co/EstadisticasDesplazados/>.
- <sup>7</sup> See, for instance, the graphic presented by the Historical Memory group that shows similar trends for massacres and displacement figures in the Colombian Caribbean coast between 1996 and 2005: Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, *La Tierra en Disputa. Memorias del despojo y resistencias campesinas en la costa Caribe 1960-2010* (Bogotá: Fundación Semana/Taurus, 2010), 53.
- <sup>8</sup> Although the displaced themselves cite fumigation as a reason for their flight, it is not officially recognized by the government as a legitimate cause of “forced” displacement.
- <sup>9</sup> Agencia Presidencial de Acción Social y Cooperación Internacional, <http://www.accionsocial.gov.co/EstadisticasDesplazados/>; “Sistema Nacional de Atención Integral a Personas Desplazadas (SNAIPD),” <http://www.vertice.gov.co/english/SNAIPD.aspx>.



<sup>10</sup> Although women-headed households are frequently understood as households characterized by the absence of a husband or adult male, in development policy and anti-poverty debates the term is increasingly recognized as encompassing a more complex reality, related not only to the absence or presence of a male adult, but also to income-earning and decision-making. In Colombia, statistics related to the displaced population represent the subjective answers given by male and female respondents as to their status in the household. Thus, a woman who is the main provider may consider herself head of household, even though her husband is present. For the total absence of an adult male in the household, the concept “monoparental” has been introduced, and, in the English literature, “lone mother” households. See, among others: Sylvia Chant and Jo Campling, *Women-headed Households: Diversity and Dynamics in the Developing World* (Houndmills, Basingstoke, U.K.: Palgrave MacMillan, 1997); and Sylvia Chant, ed., *The International Handbook of Gender and Poverty: Concepts, Research, Policy* (Cheltenham, U.K./Northampton, U.S.: Edward Elgar, 2010).

For the statistics cited above, see Comisión de Seguimiento a la Política Pública de Desplazamiento, *Proceso Nacional de Verificación*, vol. 2, *El Reto ante la Tragedia Humanitaria del Desplazamiento Forzado: Garantizar la observancia de los derechos de la población desplazada* (Bogotá: Comisión de Seguimiento, 2009), 66.

<sup>11</sup> See, for instance, the Law on Special Support for Women Head of Households (Law 82 “Por la cual se expiden normas para apoyar de manera especial a la mujer cabeza de familia,” November 3, 1993, [http://www.secretariassenado.gov.co/senado/basedoc/ley/1993/ley\\_0082\\_1993.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/1993/ley_0082_1993.html)) for the general measures, and Decree 250 of 2005 that reforms the National System for Comprehensive Assistance to Internally Displaced People (Decreto Numero 250, “Por el cual se expide el Plan Nacional para la Atención Integral a la Población Desplazada por la Violencia y se dictan otras disposiciones,” February 7, 2005, [http://www.brookings.edu/~media/Files/Projects/IDP/Laws%20and%20Policies/Colombia/Colombia\\_DecretoNo250\\_2005.pdf](http://www.brookings.edu/~media/Files/Projects/IDP/Laws%20and%20Policies/Colombia/Colombia_DecretoNo250_2005.pdf)).

<sup>12</sup> UNHCR/ACNUR, *Balance de la Política Pública para la atención integral a la población desplazada en Colombia 2004-2007* (Bogotá: UNHCR/ACNUR, 2007). These priority measures are often counteracted in practice by other requirements, such as the amount of savings needed to provide a guarantee for a loan, a house, or, in the case of assignment of agricultural land, by the difficult financial and economic conditions that force women into a highly competitive agricultural enterprise and reduce their chances of being able to pay back the mortgages on their land.

<sup>13</sup> For examples, see Fernando Cubides and Camilo Domínguez, eds., *Desplazados, Migraciones Internas y Reestructuraciones territoriales* (Bogotá: Universidad Nacional de Colombia, 1999); Martha Nubia Bello, *Desplazamiento Forzado: Dinámicas de guerra, exclusión y desarraigo* (Bogotá: Universidad Nacional and UNHCR, 2004); as well as several works by Ana María Ibáñez (including *Desplazamiento forzoso*), by the Displacement Studies Network (REDIF), and many others.

<sup>14</sup> Goetz (in “Gender Justice,” 31) defines gender justice as “the ending of—and if necessary the provision of redress for—inequalities between women and men that results in women’s subordination to men. These inequalities may be in the distribution of resources and opportunities that enable individuals to build human social economic and political capital. Or they may be in the conceptions of human dignity, personal autonomy and rights that deny women physical integrity and the capacity to make choices about how to live their lives.”

<sup>15</sup> “Positive” or “affirmative” action has been defined as “a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality.” See, for this definition: Economic and Social Council, Commission on Human Rights, *Prevention of Discrimination: The Concept and Practice of Affirmative Action—Final report submitted by Mr. Marc Bossuyt, Special Rapporteur, in accordance with Sub-Commission resolution 1998/5 (E/CN.4/Sub.2/2002/21, June 17, 2002)*. With affirmative action measures, the intent is usually to remove or correct past or current societal discrimination and to redress

historical injustices through temporary compensation measures, particularly in those cases where discriminatory practices remain in spite of formal equality in law. In Colombia, the most visible uses of affirmative action at the national level have been quotas (of 30 percent) for women in positions of power in the state bureaucracy, and the prioritization of women heads of households and rural women in access to services, as we saw above.

- <sup>16</sup> Donny Meertens, “The Nostalgic Future: Terror, Displacement and Gender in Colombia,” in *Victims, Perpetrators or Actors*, ed. Caroline Moser and Fiona Clark (London: Zed Books, 2001), 133–148.
- <sup>17</sup> Inter-American Court of Human Rights, *Caso Loayza Tamayo vs. Perú*, Fondo, Judgement of September 17, 1997, Series C, No. 33. See also: David Suarez, “Las consecuencias morales del desplazamiento: una demanda por la reconstrucción del ‘proyecto de vida,’” in *Desplazamiento en Colombia: Prevenir, Asistir, Transformar: Cooperación Internacional e Iniciativas Locales*, comp. Cristina Churruca and Donny Meertens (Medellín: La Carreta Editores, 2010). See also: Ana María Ibáñez and Carlos Eduardo Vélez, “Civil Conflict and Forced Migration: The Micro Determinants and Welfare Losses of Displacement in Colombia,” *World Development* 36, no. 4 (2008): 659–676.
- <sup>18</sup> Ibáñez, *Desplazamiento forzoso*, 58; Ibáñez and Vélez, “Civil Conflict and Forced Migration.”
- <sup>19</sup> Ibáñez, *Desplazamiento forzoso*, 131.
- <sup>20</sup> Donny Meertens and María Eugenia Vásquez “¿De qué seguridad hablamos? Las mujeres retornadas en el contexto de la política de seguridad democrática,” in Mesa de Trabajo “Mujer y Conflicto Armado,” *Cuarto Informe sobre Violencia Sociopolítica contra mujeres, jóvenes y niñas en Colombia* (Bogotá: Mesa de Trabajo “Mujer y Conflicto Armado,” October 2004), 15–30. See also: Ibáñez, *Desplazamiento forzoso*, 243.
- <sup>21</sup> Part of the “Deng Principles” on forced displacement, adopted by the Colombian government. Sistema Nacional de Atención Integral a la Población Desplazada (SNAIPD), *Política pública de retorno para la población en situación de desplazamiento (ppr). Lineamientos, metodología e instrumentalización de la política pública de retorno para la población en situación de desplazamiento*, (Bogotá: SNAIPD, October 2009). Available at [http://www.accionsocial.gov.co/documentos/4636\\_Pol%C3%ADtica\\_P%C3%ABblica\\_de\\_Returnos.pdf](http://www.accionsocial.gov.co/documentos/4636_Pol%C3%ADtica_P%C3%ABblica_de_Returnos.pdf).
- <sup>22</sup> 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: Comisión de Seguimiento, January 2011), 8.
- <sup>23</sup> Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *El reto ante la tragedia humanitaria del desplazamiento*, vol. 5, *Reparar de manera integral el despojo de tierras y bienes* (Bogotá: Comisión de Seguimiento, 2009).
- <sup>24</sup> Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, *La Tierra en Disputa*, 380.
- <sup>25</sup> See: Amnesty International “*Scarred Bodies, Hidden Crimes*”: *Sexual Violence against Women in the Armed Conflict*, (New York: Amnesty International, 2004), <http://www.amnesty.org/en/library/info/AMR23/040/2004>; Corporación SISMA Mujer, *Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* (Bogotá: Corporación SISMA Mujer, 2009); Mesa de Trabajo “Mujer y Conflicto Armado,” *Décimo Informe sobre Violencia Sociopolítica contra mujeres, jóvenes, niños y niñas* (Bogotá: Mesa de Trabajo “Mujer y Conflicto Armado,” 2010).
- <sup>26</sup> Angelika Rettberg, *Reparación en Colombia: ¿Qué quieren las víctimas?* (Bogotá: Universidad de los Andes and GTZ, 2008): 52, 53.
- <sup>27</sup> Intermón Oxfam, “La violencia sexual en Colombia: Primera encuesta de prevalencia,” Nota informativa de Oxfam, December 9, 2010, [http://www.intermonoxfam.org/UnidadesInformacion/anexos/12033/101206\\_Violencia\\_sexual\\_Colombia.pdf](http://www.intermonoxfam.org/UnidadesInformacion/anexos/12033/101206_Violencia_sexual_Colombia.pdf).
- <sup>28</sup> Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, *La Masacre de Bahía Portete: Mujeres Wayuu en la mira* (Bogotá: Fundación Semana/ Taurus, 2010). Available at <http://www.memoriahistorica-cnrr.org.co>.

- <sup>29</sup> Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, *La Masacre de El Salado* (Bogotá: Fundación Semana/Taurus, 2009). Available at <http://www.memoriahistorica-cnrr.org.co>.
- <sup>30</sup> Only in one case did a paramilitary leader admit using intentional displacement as a counter guerrilla strategy. Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, *La Tierra en Disputa*, 192–4.
- <sup>31</sup> Whereas the results on gender-based violence and violent land seizures have already been (partly) published by the Historical Memory Group, the work on forced displacement started in 2011.
- <sup>32</sup> One of the most widely known displaced women’s organizations is the *Liga de Mujeres Desplazadas de Bolívar*, based in Cartagena, where they built a neighborhood by themselves.
- <sup>33</sup> Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, *La Tierra en Disputa*, 291–392.
- <sup>34</sup> Women, Peace and Security, Security Council Resolution 1325, October 31, 2000. Christine Chinkin and Hilary Charlesworth, “Building Women into Peace: the International Legal Framework,” *Third World Quarterly* 27, no. 5 (2006): 937–957. International Civil Society Network and MIT Center for International Studies, *¿Qué dicen las mujeres? Participación y Resolución 1325. Evaluación de Estudios de Caso* (New York: UNDP/UNIFEM, 2010).
- <sup>35</sup> Constitutional Court of Colombia, *Sentencia T-025*, January 22, 2004.
- <sup>36</sup> The following paragraphs are taken, with a few modifications, from: Donny Meertens, “Forced Displacement and Women’s Security in Colombia,” in “The Dynamics of Humanitarian Actors,” supplement, *Disasters* 34, no. S2 (April 2010): S147–S164.
- <sup>37</sup> Constitutional Court of Colombia, *Auto 092*, “Protección de los derechos fundamentales de las mujeres víctimas del desplazamiento forzado por causa del conflicto armado,” April 2008.
- <sup>38</sup> The two crucial debates on this definition focus on the inclusion of the displaced people as victims’ rights claimants (because there are so many displaced people, fiscal arguments immediately become a factor) and the inclusion of “victims of state agents”—an issue that alludes to state responsibility in the generation of violence. Both issues have been resolved in favor of the more inclusive interpretation of “victims” in the new law.
- <sup>39</sup> Meertens, “Forced Displacement and Women’s Security,” S157.
- <sup>40</sup> The following paragraphs are based on the argument developed in: Donny Meertens and Margarita Zambrano, “Citizenship Deferred: The Politics of Victimhood, Land Restitution and Gender Justice in the Colombian (Post?) Conflict,” *International Journal of Transitional Justice* 4, no. 2 (July 2010): 189–206.
- <sup>41</sup> According to the basic principles outlined in: UN General Assembly, Resolution 60/147, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” U.N. Doc. A/RES/60/147 (December 16, 2005); Centre on Housing Rights and Evictions, *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles)* (Geneva: COHRE, 2005).
- <sup>42</sup> The risks of revictimization for women seeking justice within the framework of the Justice and Peace Law were reported by the Mesa de Trabajo Mujer y Conflicto Armado in its *Seventh Report* (Mesa de Trabajo “Mujer y Conflicto Armado,” *Séptimo Informe sobre Violencia Sociopolítica contra mujeres, jóvenes y niños en Colombia* (Bogotá: Mesa de Trabajo “Mujer y Conflicto Armado,” December 2007) and *Eighth Report* (Mesa de Trabajo “Mujer y Conflicto Armado,” *Octavo Informe sobre Violencia Sociopolítica contra mujeres, jóvenes y niños en Colombia* (Bogotá: Mesa de Trabajo “Mujer y Conflicto Armado,” December 2008). These risks are related to obstacles to access to justice, as reported by the Inter-American Commission on Human Rights; see Inter-American Commission on Human Rights, *Violence and Discrimination Against Women in the Armed Conflict in Colombia* (Rapporteur Susana Villarán), October 18, 2006, OEA/Ser.L/V/II.Doc.67 (original in Spanish).

- <sup>43</sup> That is, no material losses, but only casualties and injuries figured among the human rights violations that could be objects of the reparations program.
- <sup>44</sup> The first version was debated and rejected in 2009, during the last year of the Uribe government.
- <sup>45</sup> Law 1448, officially titled “Por le cual se dictan medidas de atención, asistencia y reparación integral a víctimas del conflicto armado interno y se dictan otras disposiciones,” (Measures of Assistance and Comprehensive Reparations for the Victims of the Internal Armed Conflict), is commonly known in English as the Law on Victims and Land Restitution. See <http://www.archivogeneral.go.co/index.php?idcategoria=4419>.
- <sup>46</sup> See, for a rather critical analysis of the application of this law on rural women: Donny Meertens, “Tierra, Derechos y Género. Leyes, Políticas y Prácticas en Contextos de Guerra y Paz,” unpublished report for UNIFEM Peace and Security Program in Bogotá, 2006.
- <sup>47</sup> A joint title for spouses is clearly not enough for the effective enjoyment of land rights by women, as traditional values and entitlements may interfere with formal rights.
- <sup>48</sup> See also the Recommendations to the Colombian government in: Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, *La Tierra en Disputa*, 503–508.