

**CLOSE TO PEACE BUT FAR FROM HOME: FORCED
DISPLACEMENT AND LAND RESTITUTION IN POST-ACCORD
COLOMBIA**

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Abstract

My research looks at the opportunities and challenges of the Colombian transitional justice process to produce long-overdue societal transformations. It critically examines the land restitution framework established by Law 1448 using the transformative justice analytical lens in order to expose enduring patterns of violence that are embedded in, or influenced by, the current transitional justice process. Based on four months of fieldwork in various regions of Colombia in the summer of 2018, my research first suggests that the discrepancies between victims' expectations of the transitional justice process and the state's approach, which are most visible when considering reparations for collective non-material forms of harms, have significant implications for victims' recovery. Secondly, my research challenges the assumption that transitional justice and development are complementary concepts and brings attention to instances in which the transitional justice process was conditioned by state's development priorities that are in direct conflict with some of the fundamental elements of Law 1448.

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1. Introduction

In 2011, despite the endurance of the five-decade long military conflict, the Colombian government passed the Victim and Land Restitution Law, known as Law 1448 of 2011, initiating an ambitious transitional justice process that would bring reparations to the millions of victims of the war. Five years later, the Colombian government and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) signed a historical peace agreement that officially put an end to the conflict and laid down pathways for durable peace. Both documents, at different levels, took on a transformative mandate and were recognized by the international community for their potential to address some of the long lasting grievances that led to the conflict.

A few years into the implementation of these two legal landmarks, an important number of scholars and practitioners have raised their concerns about the transformative potential of these documents. Civil society actors have denounced the enduring precarious situation of victims, the majority of whom are internally displaced people (IDPs) living in urban centres like Bogota who have been forced to leave their land as a consequence of rural violence. In my research, I suggest that using the transformative justice analytical lens to study the land restitution program put in place by Law 1448 reveals the tensions that exist between the state's immediate responsibility to provide reparations to the victims of the conflict and its responsibility to address enduring social inequalities to ensure durable peace. Conceptualizing land dispossession and massive displacement as a form of structural violence further complicates this relationship and emphasizes the need to study the transformative potential of the Colombian

transitional justice process. My research frames the social movements that demand land restitution within the literature on transformative justice to highlight the importance of understanding the question of transitional justice within the broader economic and political context that has shaped dynamics of land dispossession and forced displacement for most of Colombia's contemporary history.

1.2. Research questions

Two years after the signing of the peace agreement, the implementation of both the transitional justice law and the peace agreement remain very limited. Even more worrying, hundreds of activists, social leaders and social organizations fighting for land rights and the rights of victims have been targeted by post-demobilization paramilitary groups in various rural areas of the country.¹ Why is it then that even after the creation of a comprehensive institutional framework for addressing victims' needs and the signing of an inclusive peace agreement committed to creating the conditions for victims' redress, full reparation for IDPs remains inaccessible to most? What are the barriers faced by IDPs that prevents them from fully realizing the rights they are entitled to? And, in such a repressive political environment, how do IDPs in Bogota resist, organize and mobilize on a daily basis to overcome their situation of vulnerability and gain a political voice? My research aims to

¹ The Research Institute for Development and Peace (*Instituto de Estudios para el Desarrollo y la Paz, INDEPAZ*) reports 566 assassinations of social leaders and human rights advocates in Colombia between January 1st, 2016 and January 10, 2019 in various regions of the country. Retrieved from <http://www.indepaz.org.co/566-lideres-sociales-y-defensores-de-derechos-humanos-han-sido-asesinados-desde-el-1-de-enero-de-2016-al-10-de-enero-de-2019/>

- ▶ Critically examine the discrepancies between the IDPs' experiences and perceptions of transitional justice and the state framework for land restitution in Colombia;
- ▶ Critically examine the discourses and strategies employed by social movements for land restitution in Bogota and the effects of urban mobilization on the representation of marginalized communities;² and
- ▶ Critically examine the opportunities and challenges for the realization of transformative justice in Colombia.

1.3. Background

1.3.1. The Conflict

Arguably, one of the most significant achievements of the 2016 peace agreement was the disarmament of the FARC and its transformation into a political party. The FARC was established in 1964, initially as a peasant-based resistance movement in the department of Tolima of the Andean region. It quickly became Colombia's biggest guerrilla insurgency group. The establishment of the FARC is often associated with the aftermath of *La Violencia*, a violent decade of bipartisan politics in the 1950s that left thousands of casualties and caused massive displacement. In 1958, the Liberals and Conservatives reached a power sharing agreement,

² Throughout the thesis, I use the term 'social movements for land restitution' to refer to the formal and informal networks of individuals and organizations that employ similar strategies for the pursuit of the shared objective of producing social change in the areas of social justice, land restitution and the rights of victims of the conflict in the context of the transitional justice process. The plural form is used to illustrate the fragmentation of social mobilization on these issues. Mobilization for land restitution is highly polarized in Colombia and while my research seeks to bring together the discourses of various sectors of society, it does not claim to cover extensively all aspects of social mobilization around such issues.

known as the National Front (*Frente Nacional*), which slowed down violence in the short term but resulted in the creation and consolidation of multiple non-state armed groups (Bouvier, 2016). Apart from the FARC, the Colombian conflict opposed other smaller leftist guerrilla groups inspired by Marxist-Leninist ideologies as well as right-wing regional paramilitary groups, known for engaging in a “dirty war”, targeting human right defenders and opponents of the neoliberal paradigm through forced disappearances, social cleansing, torture, targeted assassinations and death threats (Bouvier, 2016).

More than just a period of military violence, *La Violencia* also became known for its impact on forced displacement and land dispossession (Karl, 2017). At the time of the signing of the peace agreement, it is estimated that more than 8.3 million hectares of land had been seized or forcibly abandoned as a consequence of the conflict, which resulted in mass displacement and the violent reconfiguration of the countryside (Centro De Memoria Histórica, 2016). The UN High Commissioner for Refugees (UNHCR) estimates that more than 7.6 million Colombians remain displaced by the conflict since 1985 (UNHCR, 2017), with the highest number registered in early 2000s, a time coinciding with the political rule of former President Uribe and the expansion of a market-driven approach to development that heavily relied on the accumulation of rural land (Centro De Memoria Histórica, 2016). The outcomes of the peace agreement aimed at transforming enduring socio-economic grievances that led to the conflict will greatly depend on the capacity of the agreement to address the needs of the victims of forced displacement and unlawful land dispossession.

1.3.2. Past Peace and Transitional Justice Efforts

While the current peace process is certainly an unprecedented effort to bring peace and justice to Colombia, these discourses are far from new in the Colombian political arena. By the 1990s, five of Colombia's most important insurgency groups had signed peace agreements with the Colombian government and undertook demobilization processes. This was followed by a failed peace process between the FARC and the Pastrana government between 1999 and 2002, which was the most promising prospect of peace with the country's largest guerrilla group until the 2016 peace agreement (Bouvier, 2016). The United Self Defence Forces of Colombia (*Autodefensas, Unidas de Colombia*, AUC), an umbrella organization of paramilitary groups officially demobilized between 2003 and 2006, following a state-initiated peace process. While the cessation of paramilitary activities in many regions of Colombia remains highly contested in public debates, the peace process led to the creation of Law 975 of 2005, or the Justice and Peace Law, a milestone in the evolution of transitional justice practice in Colombia. The law was ambitious in both its content and the institutional framework it created; the extent to which it allowed for the full realization of the rights of the victims is very debated (Garcia-Godos and O. Lid, 2010), however it was undeniably a significant influence for the most recent transitional justice approach, adopted in Law 1448 of 2011 (Summers, 2012).

1.3.3. Transitional Justice, Land Restitution and Law 1448

In 2011, despite the absence of a comprehensive peace agreement, the Colombian government adopted the Victims and Land Restitution Law, best known as Law 1448 of 2011, an ambitious and unprecedented initiative to bring reparations to the millions of victims of the conflict. The law is a combination of the victims reparation legal framework and the land restitution legal framework. It defines victims as “any person that has suffered individual or collective harm for events that occurred from January 1st of 1985, as a consequence of violations of the International Humanitarian Law or serious and manifest violations of international human rights that has occurred during the internal armed conflict” (Law 1448, Article 3). Among its main achievements are the two main government agencies responsible with the implementation of the law, the Victims Agency (*La Unidad para la Atención y Reparación Integral a las Víctimas*) that processes victims’ claims and deliver assistance and reparation, and the Land Restitution Agency (*Unidad de Restitución de Tierras*) that receives and processes land restitution claims.

A core concept of Law 1448 is the notion of ‘integral reparation’ (*reparación integral*), which is based on the idea that victims could overcome their situation of vulnerability caused by the conflict and its effects if all the elements of integral reparation would be achieved (Article 25). The law sets out five elements of integral reparation: restitution, indemnization, rehabilitation, satisfaction and the guarantee of non-repetition, which must all complement each other (Article 12). Restitution is understood as the implementation of measures for the restoration of the situation of the victims prior to the violations recognized by the law (Article 71). Indemnization refers to a determined amount of money that will be delivered to the victims as administrative compensation depending on the victimizing act (Article 132). Rehabilitation

consists of a set of strategies, plans, programs and legal, medical, psychosocial and social actions, aimed at restoring the physical and psychosocial conditions of victims (Article 135). The means of satisfaction refer to the measures taken by the government to restore the dignity of the victim and spread the truth about what happened (Article 139). Finally, the law outlines multiple measures that must be taken by the state to ensure that the conflict will not repeat itself (Article 149). The law has been recognized for its inclusiveness by the international community, notably for its differential focus (*enfoque diferencial*), which recognizes that some populations are more vulnerable and are entitled to receive special assistance (Article 13) and for its strong gender component, which proposes special support mechanisms for women that aim at facilitating their access to reparations and particularly land restitution processes (Article 114).

Chapter three of the law established the land restitution framework that I examine in my research. It recognizes the right of the victims to retrieve stolen lands or to access equivalent reparation if return to the original land is not feasible or desirable and recognizes the responsibility of the state in that process (Article 72). Furthermore, the law was unprecedented in that it recognized that there had been a conflict, that land dispossession was a main feature of it, and that the state had been, in some instances, the perpetrator of violence. In cases where return and the restitution of the stolen land is impossible or undesirable, claimants can either access a relocation program and receive a new piece of land or receive a cash compensation equivalent to the value of the land, according to Articles 97 and 98 of the law. Given the importance of land in the conflict, and the magnitude of the displacement crisis, my research focuses on forced displacement resulting from land dispossession as a category of harm. While I acknowledge that the transitional justice process is much broader than land restitution and that the beneficiaries of

the land restitution will require extended justice and reparation measure to be ‘integrally repaired’, land restitution is arguably a crucial element, not only for the fulfilment of transitional justice principle, but also for the full realization of the right of the victims, both as victims of the conflict and as citizens.

1.3.4. The 2016 Peace Agreement and the Peace Process

November 2016 marked the signing of the peace agreement between the Colombian government and the FARC. The final peace agreement highlights a strong commitment to the guarantee of non-repetition and both parties agreed to address long-lasting grievances that have disproportionately affected rural populations, especially women and indigenous and Afro-Colombian populations. According to the Norwegian Centre for Conflict Resolution (NOREF), an important guarantor of international human rights standards during the negotiations in Cuba, the peace accord signed by the Colombian government and the FARC in 2016 was “by far the most inclusive peace agreement in history” (NOREF, 2017, p. 1).

While the issue of land restitution is not addressed at length in the peace agreement, the document reinstates the right of the victims to land and property restitution (Article 1.1.7.) and establishes measures to facilitate the implementation of the land restitution framework set by Law 1448, notably through Chapter one, entitled Integral Rural Reform (RRI). The RRI creates Development Programmes with a Territorial-Based Focus (Planes de Desarrollo con Enfoque Territorial or PDET). The objective of the RRI is “to achieve the structural transformation of the countryside and the rural environment and to promote an equitable relationship between rural

and urban areas” (Article 1.2.1.). Chapter one also outlines the need to understand rural development beyond its economic significance and to adopt means of social development (Article 1.3.7.).

Finally, the peace agreement also establishes a new set of transitional justice initiatives and victims reparation mechanisms. The peace agreement reinstates the five principles of ‘integral reparation’ set by Law 1448 and creates an ambitious institutional framework to deliver transitional justice measures. The fifth principle of the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence (*Sistema Integral de Verdad, Justicia, Reparación y No Repetición*) established by the peace agreement, introduces the mechanisms for integral reparation and reinstates the centrality of victims in the peace process (Article 5.1.3.). Finally, Article 5.1.3.6. recognizes that land dispossession was an important feature of the conflict and highlights the importance of land restitution as a mean of reparation for the construction of durable peace in Colombia.

1.4 Land Restitution in Perspective

The 2016 peace agreement marks the end of the conflict between the two key parties, but portraying the war as simply the confrontation between these two actors is widely problematic and leads to a reductionist view of the conflict that largely overlooks the dynamics of land dispossession I wish to expose. A closer look at the challenges of transitional justice and land restitution reveals deeper issues for the realization of peace in Colombia that are not always addressed in the literature on the peace process. Land restitution as well as other attempts at

democratizing land ownership have always been a source of contention in Colombia, and these continue to fuel violence after 2016. On that matter, the main achievements of Law 1448, notably the creation of a legal and institutional apparatus for land restitution, tends to be overshadowed by the outcomes of the peace process in media accounts and popular opinion, which sustains a certain view of the conflict that rests mainly on military violence and overlooks the role of natural resources in fuelling violence. My research looks at the content and implementation of Law 1448 but takes into account the additional measures of victims reparation proposed by the 2016 peace agreement. I underscore that major challenges remain to the full realization of the commitments made to victims in both initiatives.

1.4.1. History of Highly Unequal Land Tenure

Latin America is a continent of great inequalities, where the land-holding elites have consolidated and maintained power through the accumulation of rural property and violent opposition to most attempts to land reforms (Reygadas, 2010). Colombia is no exception to this regional tendency. In fact, OXFAM estimates that Colombia is the country with the highest level of land concentration in the region, a trend that has intensified despite numerous attempts to agrarian reform starting in the 1960s (OXFAM, 2016). The highly unequal distribution of land that has its roots in the colonial era was deepened by violence and the growth of legal and illegal forms of natural resources extraction as well as the growing presence of paramilitarism that embodies violent processes of land and capital accumulation in the neoliberal era (Hristov, 2013). As land became a high-value commodity, the land-holding elite opposed land

redistribution efforts, which sparked Indigenous, Afro-Colombian and agrarian movements that resisted violence, development-induced displacement and the complicity of the state with economic actors.³

The enduring land concentration and the role it has played in reproducing the grievances that fuelled the conflict represented a core area of debate during the peace negotiations. The presence of the FARC as well as significant pressure from the Colombian civil society and the international community resulted in the inclusion of ground-breaking mechanisms promoting rural reforms, which have brought hope to the victims' community that the transitional justice and the peace process could trigger meaningful transformations of the countryside. Despite these advances, repression against social and political movements organized around demands for social justice has continued. This reality suggests the endurance of practices that make security discourses and the criminalization of dissent a fundamental component of the political reality of Colombia. (Rochlin, 2012; Ojeda, 2013). The dominant state discourse in Colombia has contributed to sustain the idea of an overarching security threat in which narco-trafficking, guerrilla insurgency and terrorism are inherently linked and represent the main challenge to peace and development (Ojeda, 2013). In the postaccord era, enduring land concentration in the hands a powerful elite and the limited political channel for the expression of the interests of the victims of unlawful land dispossession risk complicating any attempt of state-led land restitution.

1.4.2. The Multiple Dimensions of Land

³ For the purpose of my research, the term 'economic actors' is used to refer to legal and illegal groups or individuals involved in economic activities that rely on the extraction of natural resources for the pursuit of profit. These include international actors as well as domestic actors, including the Colombian state, who engage in or directly benefit from such activities.

As violence escalated in the 1970s and 1980s, land acquired a new political, economic and military significance for the different actors involved in the conflict, which exacerbated violence, displacement and forced abandonment of land in key regions (O. Lid, 2009). In the same years, following a global trend toward trade liberalization, the Colombian state encouraged foreign direct investment, and promoted the establishment of a strong extractive sector and intensifying in the 1990s and 2000s (Ojeda, 2013). The three most recent presidents of Colombia, regardless of their party affiliations, have strongly supported an economic development model that heavily relies on the accumulation of rural lands and the extraction of natural resources (Lavaux, 2006; McNeish, 2017). In fact, both Law 1448 and the 2016 peace agreement, arguably contain elements that impede land restitution by placing economic actors and their interest above the ones of the victims, which will be discussed in more details in chapter six.

These dynamics present tremendous challenges to the implementation of the land restitution framework in the post-conflict era. The main opposition movement, led by former President Uribe, protects the interests of the land-holding elite by opposing recent attempts to rural reforms and facilitating the establishment of a business-oriented development paradigm at the expense of social justice (Legrand and al., 2017). It has also widely criticized all attempts of the Santos government to address the question of land, notably with Law 1448, and to bring the FARC to the negotiating table. Uribe successfully led the “No” campaign that encouraged Colombians to reject the proposed peace agreement through the referendum held on October 2, 2016. The complex web of interests that exist around the question of land in Colombia

complicates the implementation of most transitional justice mechanisms and particularly affect the land restitution framework that is in direct conflict with the interests of these powerful groups (Meertens, 2015).

1.4.3. Endurance of the Conflict

It is important to see the current peace process as what it is: the end of one military conflict, which given the length and magnitude of the conflict, is a major achievement, but that does not yet guarantee that the conditions that led to the conflict will be transformed. It also certainly doesn't represent the end of the enduring repression of the Left by the Colombian state, nor does it has much effect on national, regional and global dynamics of capital accumulation that impede social justice.

There is much evidence challenging the idea that the FARC was the main actor perpetuating violence in Colombia (Bouvier, 2016). Many agree that the military and especially the paramilitaries have caused much more victims than the FARC during the conflict (Petras, 2014, Hristov, 2013). It is also crucial to point out that the FARC is not the only group responsible for massive displacement in Colombia. Right-wing paramilitaries, groups related to narco trafficking, left-wing guerrillas and even outside powers, in their attempt to fight narco trafficking, have forced many Colombians to flee (Rochlin, 2012). Furthermore, although the AUC, the country's largest paramilitary organization, officially demobilized in 2006, experts argue that paramilitary structures have been reorganized rather than eliminated, actually making the group more efficient (Hristov, 2013). The demobilization of the AUC resulted in the new

threat of *Bandas Criminales*, also known as BACRIM, whose ties with the old paramilitary structure is still the subject of much debate. The ties between paramilitarism, economic forces, narcotrafficking and the state remain extremely complex and the subject of multiple investigations (Bouvier, 2016). Nevertheless, these groups employ similar strategies of violence and remain a major threat to the implementation of Law 1448, the peace agreement and rural social movements for victims' rights and social justice.

1.5 Structure of the thesis

The thesis is divided as follows. Chapter two reviews the methodological approach and discusses how issues of positionality affected the knowledge produced. Chapter three outlines the theoretical approach of the research. It presents the debates in the critical literature on transitional justice, peacebuilding and development and argues that the concept of 'transformative justice' can reconcile objectives from the three fields. Chapters four and five present the main findings of the research, collected over a four-month fieldwork in Colombia. Finally, chapter six presents a discussion on the theoretical and practical implications of the findings for transitional justice literature and societal transformations in highly unequal post-conflict societies.

2. Methodology

My research is based on four-months of fieldwork I conducted from April to August 2018 in various regions of Colombia. The capital Bogota hosts the largest population of IDPs of the country and is the site of contestation and mobilization for peace, justice and development in a country where social movements remain violently repressed in most regions. It was an ideal place for examining the role of civil society organizations in challenging state discourses on peace and the effects of this resistance on the lives of displaced people in urban areas. The present chapter is divided into four parts, each representing a stage of the research process. The first section looks at the first stage, which took place in Toronto, prior to fieldwork and highlights the challenges of reviewing the literature and preparing for the field. The second stage took place in various regions of Colombia during the data collection portion of the research and is detailed in section two. Section three reviews the data analysis process and the challenges encountered during that stage. Finally, section four reflects on the question of positionality in the field.

2.1. Research Design and Review of the Literature

I should begin this section with a caveat. Issues related to the researcher's power and positionality start at the very beginning of the research process. The choice of topic, location for fieldwork, the literature reviewed and the methodological approach reflects the researcher's power over the research process (Katz, 1994). My interest in better understanding how state-

initiated institutional changes could address people's needs in post-conflict societies led me to review the literature on transitional justice, peacebuilding and development, three fields of social science that have recently produced significant bodies of literature questioning the theoretical and practical implications of their core assumptions. I also reviewed a wide range of empirically-produced material from local peace actors including national NGOs and community-based organizations including the Centre for Popular Research and Education in Colombia (*Centro de Investigación y Educación Popular, CINEP*), the National Movement of Victims of State-sponsored Crimes (*Movimiento Nacional de Víctimas de Crímenes de Estado, MOVICE*), the Consultancy on Human Rights and displacement (*Consultoría para los Derechos Humanos y el Desplazamiento, CODHES*), Open Truth (*Verdad Abierta*), the Centre for the Study of Law, Justice and Society (*Centro de estudios de derecho, justicia y sociedad, DeJusticia*) and the Latin America Institute for a Society and an Alternative Law (*Instituto Latinoamérica para una Sociedad y un Derecho Alternativo, ILSA*). I also reviewed media coverage on the peace process and related issues, which was particularly useful since my fieldwork took place during the summer when the first presidential elections since the signing of the peace agreement were held. Finally, I looked at government documents, especially publications from the Victims Agency and the Land Restitution Agency, the two government bodies created by Law 1448 with the role of assisting victims of the conflict and implementing the transitional justice law.

Critical transitional justice literature developed its own approach to research methods, which provided important insights for the development of my methodology and inspired me throughout the research process. It highlights the importance of understanding “how violations impact and transform affected populations and allows for the creation of local approaches to

address ongoing legacies of violence that are invisible to national transitional justice processes” (Robins and Wilson, 2015, p. 223). The growing concern to integrate local knowledge in social science has led scholars from various fields to rethink traditional research methods and search for methodological approaches that don’t contribute to the reproduction of discriminative power relations within the community studied. These concerns resonate in the participatory action approach to research (PAR), which has explicit emancipatory goals and seeks to integrate local knowledge in a way that empowers the communities studied and produce change (O’Leary, 2004). Increasingly, scholars implement such approaches in their research on Colombia, using emancipatory and participatory fieldwork methods to collect data on indigenous knowledge, including story telling, ethnographies and community-led research (see for example Acosta and al., 2018). Such exercise requires a research methodology that draws on emancipatory and participatory fieldwork methods that promote agency, control and ownership throughout the research process. Critical transitional justice scholars increasingly adopt a ‘transformative’ approach in their research methodologies as well as in their theoretical framework. Most recently, Rooney and Ní Aoláin have suggested that the failure of transitional justice to reach the ‘margins’ translates in ineffective and sometimes hurtful practices.

The margins are places, bodies, people, language, hurt and peripheries. Simultaneously, the fringes are power, voice, unencumbered, liberated and unexpected. In paying attention to people and places considered at the edges of transitional justice, we elevate the unseen and reframe what is required of law and politics by naming obligations and contracts that are owed as much to the boundaries as they are to the centre. When we focus our scholarly gaze to the edges, the centre shifts, and sometimes what is seen to be at the heart of transitional justice loses its hold. (Rooney and Ní Aoláin, 2018, p.8).

The move towards participatory approach in the field of development can first appear as a good thing, but has been subject to widespread critics. Not at all exclusive to development studies, this shift to the local has translated into the co-optation of peace actors and the continuing marginalization of less visible actors. “While participation has the potential to challenge patterns of dominance, it may also be the means through which existing power relations are entrenched and reproduced” (Rooney and Ní Aoláin, 2018, p. 283). Research seeking to integrate local knowledge runs the risk of contributing to the politics of exclusion by representing certain groups and their interests over others or by misrepresenting the diversity of local knowledge. Paffenholz warns that mistakenly portraying the local and the international as the only spheres of power leads scholars to overlook the role of local dynamics (Paffenholz, 2015). “Civil society is a reflection of broader society, and is therefore not always the ‘good society’ that can be counted on to support peace and democratization. Research has found that inclusive, civic, bridging and pro-peace organizations work alongside polarized, sectarian, and occasionally militant civil society organizations” (Paffenholz, 2015, p. 109).

In a similar vein, Sundberg warns that overlooking the dynamics of power that play out in the early stages of research may lead researchers to perpetuate the image of the region as inferior (Sundberg, 2003). Individuals from the same social group or with similar socio-economic or ethnic background will not automatically have the same knowledge and experience of the same situation depending on their position towards the issue. For example, discourses of activists in Bogota often contained the same elements as the discourses found in rural areas but problems were framed differently. While both can fall under the category of local knowledge and can be

understood to be part of the same movement, they had different, sometimes conflicting views of the peace process and considering all their narratives as one would have overlooked the subtle variations within the social movement studied.

2.2. Data Collection

Colombia appeared as a perfect choice for fieldwork because of the relevance of the case study and to a lesser extent, for practical considerations. The Colombian peace process is interesting from an academic perspective because it informs scholarly debates on the role of peacebuilding and justice in development and offers new perspectives on the concept of transformative justice. My choice was also inevitably affected by my previous experience working in Colombia as a teacher in 2015-2016. Deep knowledge of a community's beliefs and practices can only partially be obtained through short-term fieldwork so I expected that realizing research in a more familiar environment would facilitate my integration in the community. My language proficiency in the local language helped 'breaking the ice' with participants and make new contacts within the community. I have also been engaged with issues related to the peace process for a few years as a student in Canada and as an instructor in Colombia. This involvement with the researched topic helped me to create bonds with the participants and to establish more comfortable environment for interviews. As a young and relatively unexperienced researcher, knowledge of the topic and the cultural subtleties of the country were also used to gain credibility as a professional researcher.

2.2.1. Interviews

Semi-structured interviews were used as the main data collection tool. Twenty-one individual interviews were conducted in Bogota and four interviews were conducted in Urabá, a rural region in the north of the country. Interview questions explored the experiences and perceptions with the transitional justice process and the peace agreement, as well as general questions about the situation of IDPs in Bogota and the prospect of return, and, at the end of the interview, participants had the opportunity to discuss topics they consider important to the implementation of the land restitution framework. The use of semi-structured interviews was chosen to allow unexpected themes to emerge. I ended each interview with an open question which often led to more comfortable and informal exchanges and allowed me to better understand the different dimensions of the social movement for land restitution. This exchange was also an opportunity to constantly challenge the understanding of the data previously collected as well as to refine my research questions.

Participants were initially found through contacts I previously had and through a snowball technique. I interviewed Colombians who were engaged social mobilization for land restitution and the rights of the victims, most of which were displaced themselves. Additionally, I conducted several interviews with government officials as well as with victims of the conflict who were engaged in land restitution processes at the time of the research. Throughout the research process, I was aware that the conflict contributed to further marginalize vulnerable groups and that gender, race and ethnicity had played a key role in these patterns of exclusion. I ensured to take this into account in the selection process as to more effectively represent the

population studied. Of the twenty-five participants, eleven were women and fourteen were men, five identified as Afro-Colombians, two as indigenous and four as peasants (*campesinos*) (see Annex 5 for the complete list of participants).

2.2.2. Internship

Throughout the fieldwork, I interned at the *Instituto Latinoamericano para una Sociedad y un Derecho Alternativo* (ILSA), a Bogota-based NGO that has been fighting for the rights of marginalized populations for 40 years. Working with a civil society organization provides a rich source of local knowledge and can serve as entry points for researchers (Mercer, 2006). At the moment of my internship, ILSA was implementing a project assisting a community in its ongoing land restitution process, which allowed me to gain knowledge on the practical realities of this complex process. NGOs are also ‘field area experts’ and can serve as a link between researchers and local communities (Mercer, 2006). The knowledge that can be acquired from working with civil society organizations, especially grassroots movements, was crucial for my research as these actors have practical knowledge of the realities on the ground as well as a deep understanding of the legal and political context that is crucial in research. In addition to gaining practical experience, the affiliation with the organization allowed me to work closely with practitioners and academics from various disciplines throughout the fieldwork, which was useful for exchanging ideas and verify my understanding of key concepts.

Knowing that the final results would be inaccessible to most participants and in line with the PAR principles on data dissemination, I maintained close ties with ILSA as well as with other

NGOs and participants, which allowed me both to verify some information during the data analysis process, and also to contribute to the organization by producing a translated summary of the findings. In addition, the dissemination of results in the Global North through conferences can help increase the visibility of the social movements, which generally receive little attention in international media.

2.3. Data Analysis

I used coding as a data analysis tool that is rooted in grounded theory and allows the researcher to analyze themes as they emerge (Bryman, 2004). Open coding allowed me to interpret data by grouping emerging themes into categories that can be linked back to the theoretical framework. ‘Constant comparison’, which consists in maintaining a close connection between data and the literature, allowed me to maintain close connections between the literature and the data collected (Bryman, 2004). After transcribing my interviews, I undertook several rounds of coding of the data and, drawing on the same codes, reviewed Law 1448 of 2011 and the peace agreement of 2016. I then established themes and categories using Lambourne’s four aspects of transformative justice, legal justice (accountability), psychosocial justice (truth and acknowledgement), socioeconomic justice (reparation, restitution and compensation) and political justice (political reform, governance, democratization) (Lambourne, 2009. p. 46). The final categories allowed me not only to examine the relations between the codes, but the also the internal variations. I then identified the main discrepancies between the state discourse of peace and justice and the core demands of the social movements for land restitution and victims’ rights.

Different strategies were used to ensure rigour in every step of the research process. Throughout the fieldwork, I used a field diary to note my impressions and perceptions and to systematically question my assumptions. The diary also served as a way to prevent decontextualizing interview transcripts during the data analysis process. I also interviewed people who have different experiences with the conflict and social mobilization around land issues in order to include a variety of sources in the analysis and better capture local knowledge (Momsen, 2006). I interviewed government officials working with the two government agencies set up by Law 1448 as well as lawyers who accompany victims of forced displacement in their legal struggles as a way to triangulate information and support the central narrative of my research.

As previously mentioned, one of the main debates in the literature on local knowledge is its translation into practice (Rooney and Ní Aoláin, 2017). Reporting local knowledge requires a deep understanding of the society researched that can probably only come from prolonged and participatory fieldworks. One of the main issues with coding is that fragments of transcripts can be taken out of context. One way to overcome that was to keep a field diary with all my perceptions and reflections. The field diary was then used throughout the coding process to ensure a more representative analysis of the data. Another issue is that categorizing narratives can lead to the fragmentation of discourses (Bryman, 2004). For many people I interviewed, sharing their knowledge meant reliving their experiences with the armed conflict. Sometimes, this sharing took the form of testimonies. The interviews were designed to let the participants discuss themes they considered important in the peace process, reflecting their conceptions of peace and justice. I found it somewhat challenging to compartmentalize these narratives because

the categories didn't seem to be so clearly defined in the perception of the participants. Also, since most of the interviewees were personally and professionally involved with the issues discussed, it was sometimes not clear how their background affected different responses and I could not identify these subtle distinctions myself. Maintaining contacts with my internship supervisors as well as a few respondents proved really useful in partially overcoming this barrier. Having worked closely with IDPs or being displaced themselves, people who worked with me over the course of my internship had a much better grasp on the factors that contribute to shaping individual and collective identities among victims of the conflict. Discussing some of the findings of my research with them helped to ensure that the evidence collected during the fieldwork remained grounded in the reality of the post-conflict in Colombia.

Finally, drawing on Katz's notion of displacement in the field, I wanted to travel to the countryside at some point of my fieldwork to validate the data I had gathered in Bogota. Despite being based in an urban setting, social movements are oriented toward a transformation of the countryside, where the conflict took place and almost all my respondents mentioned 'the countryside' or 'the territory' during their interviews. Despite the fact that they were from various backgrounds and from different regions, all participants seemed to have a very similar vision of "the countryside" as if it was one region of the country. Colombian scholar Diana Ojeda talks about 'imaginative geographies of everyday life experiences', which she believes reinforce the dualistic conception of the 'here' vs. 'there' and consequently 'us' vs. 'them' in discourses of war and peace (Ojeda, 2013, p. 760). I travelled to three rural areas in different regions of the country during my internship and conducted interviews in one of them. By contrasting people's experiences in the countryside with the perceptions that people from Bogota

have of the rural area, I could obtain a much better image of the conceptual roots of social mobilization for land restitution and best capture the strategies employed by urban actors to represent the interests of marginalized rural communities.

2.4 Reflections and Discussion

Researchers, just like participants, are exposed to multiple processes of socialization, which frames their conception of the world (Funder, 2005). Completely removing the researcher's identity from the research to produce unbiased knowledge is probably impossible, and arguably undesirable, and researchers should rather acknowledge and reflect on their role in the knowledge producing process (Bryman, 2004). In contrast, scholars increasingly argue that researchers are active participants in their research, which allow for more grounded methodological approaches that trigger local participation and knowledge production (Robins and Wilson, 2015; Rooney and Ní Aoláin). "Such a vision calls for a critical, active, humanizing, and accountable social research grounded in principles of social justice and aimed at contributing to social transformation" (Hristov, 2013, p. 27).

Prior to going to the field, I was aware that my identity as a young female Canadian student would have an important impact on my research process. While my previous experience with 'the field' contributed to alleviate some of the practical difficulties of arriving in a completely new environment and previous contacts were useful in getting the fieldwork started, I remained an outsider in this country and, more importantly, to the world of the IDPs and victims of the conflict I wished to capture in my research. I quickly realized that my familiarity with the

context of the research didn't reduce the gap I perceived between me and the people I interviewed. With most of the respondents, it seemed to be my language proficiency that contributed the most to close the gap between us, since I could discuss with them easily and didn't require the help of an interpreter or translator. Even when there seemed to be a remaining barrier, I realize that I could use the outsider status as an opportunity to build a 'mutual curiosity', which can be used as a way to trigger knowledge exchange. (Apentiik and Parpart, 2006). The outsider identity also can help justify asking questions that insiders would be expected to know, which can help the researcher uncover meaning and relation between concepts (Katz, 1994).

Regardless of their outsider/insider status, researchers must navigate pre-established norms and power dynamics throughout the research process, which are determined by a wide range of societal factors that determine the way gender, age, religion, ethnicity, race and class are perceived within a society at a particular given time in history (Seale, 2001). Sundberg, in a reflective piece on her fieldwork in Guatemala, discusses the challenges facing researchers when conducting fieldwork in Latin America. One of the main challenges identified by her respondents was the difficulty to establish trusting relations with locals (Sundberg, 2003). During the fieldwork, I contacted around fifteen people who initially agreed to help but who would later ignore my calls, or systematically find excuses until I eventually turn my attention away. After discussing the issue with friends not involved in the research as well as with ILSA, it seemed that the most probable reason why these people would not follow up on my calls was the lack of incentive for them to take the time out of their day and talk with me, which I can very much understand given that the peace process has been overstudied in the last years and some people

may have lost trust that change could come from research or might not believe that it is the best way to change things. Since I didn't provide material incentives for my interviews, I then wondered why the other people decided to talk with me. I noticed that people who tended to seem the least interested were people from Bogota who were generally from a higher socio-economic status, often holding government jobs, and not direct victims of the conflict. Victims of the conflict, on the contrary, always seemed eager to share their experience with me, which beyond the 'double-curiosity' phenomena can suggest two different perspectives to peace and justice as social issues. On the one hand, people from urban backgrounds have more individualistic perceptions of the armed conflict and not being directly affected by it gives them little incentive to participate in the research. For instance, government officials and NGO workers who were from Bogota and had not experienced the conflict directly often put more emphasis on the content of the laws and less on the barriers to their implementation. On the other hand, people who experienced violence first hand, often peasants and ethnic minorities, may see the prospect of peace as a community process and therefore may have more incentive to participate in the research even if there is even a small prospect that it could bring change to them personally. Their narratives were often framed within a language of change, suggesting that the mere fact of participating in the research and sharing their knowledge was part of the social mobilization I wished to research.

Sundberg also highlights the dynamics of power related to gender for Latin American researchers. Some form of patriarchal social order is perpetuated in most regions of the work, and Latin America is certainly no exception. Some Latin American countries are known for having a particular *macho* culture that inevitably affects all aspects of research, and social

interactions in general (Sundberg, 2003). In his discussion on ‘power-intimacy relations’, Funder argues that “the role of intimacy and power in qualitative fieldwork raises significant moral questions, of course, but also - more cynically - illuminates the analytical pitfalls involved” (Funder, 2005, p. 5). Adding a gender perspective to the ‘power-intimacy relations’ approach reveals complex and often unspoken power relations that exist when female researchers interview male participants. Sundberg adds that gender intersects with other ‘axes of powers’ like class, social background, ethnicity and race to create complex power dynamics (Sundberg, 2003). Women researchers doing research in Latin America will navigate these power structures, which offer both opportunities and barriers for research.

During my fieldwork in Colombia, a few encounters I had during my fieldwork caused me some discomfort, as they confronted me with alternative conceptions of the world. The patriarchal character of the Colombian society and the power relations infused by it is something that I had experienced and navigated when working with mainly male Colombians a few years ago. In a few instances during my fieldwork, I felt that this affected my conversation with participants. Older male interviewees in particular, often wished to maintain contact after the interview and while the language used and actions were always appropriate in the given context, taking the situation into another context, which I did unconsciously, challenged my perceptions in many ways. Reflecting on the impacts of these considerations on my research required acknowledging that different social experiences lead to different views of the world and relations between individuals. It would have been overly simplistic to attribute uncomfortable encounters solely to the patriarchal culture. Different identities intersect and translate into complex power dynamics in the field. Therefore, it is easy to perceive most social interactions as mainly defined

by gender but one must not overlook the socialization process that is behind simple everyday actions and shape power dynamics in the field.

In conclusion, the discussion presented in this chapter reflects on the opportunities and challenges of integrating local knowledge in research methodologies. Local knowledge is rich and diversified, and it is crucial to social science research that seeks to uncover deep social inequalities and their effects. However, due to its complexity and the challenges related to access for outsiders, it can be a very difficult task for researchers to fully grasp it and translate it into theories. Critical scholars increasingly agree that research methodologies must be more innovative and promote participation of the communities studied, not just superficially, but in a way that encourages agency and ownership of research subjects in the knowledge production process. The section also highlighted the importance of positionality and reflexivity in research in development studies. Dynamics of power are present in all stages of research and it is crucial for the researcher to be aware of them. Research topics and subjects in social science are incredibly complex and observing them requires the research to be in constant questioning of its own set of values and beliefs, which affects his/her view of the world. Acknowledging that the researcher is an instrument to his/her research rather than an unbiased outside observer only increases the value of the knowledge produced.

3. Land Restitution as Transformative Reparation: Rethinking the Links Between Transitional Justice and Development

This chapter critically examines the literature on transitional justice, peacebuilding and development as well as the theoretical links among the three fields. Through the review of the literature on transformative justice, a relatively new concept in critical transitional justice literature, I wish to challenge some fundamental assumptions related to peace and justice in highly unequal post-conflict societies. I suggest that applying the concept of transformative justice to transitional justice literature and practice can help to uncover patterns of discrimination that go beyond the set of violations traditionally addressed by transitional justice processes. Using the social movement praxis is useful for studying the gaps of state-initiated transitional justice processes and allows to better understand how peace and justice agendas are promoted within the society (Evans, 2016).

3.1. Transitional Justice and Peacebuilding: Distinct Fields, Common Objectives

While sharing a number of concerns and objectives, the fields of transitional justice and peacebuilding have generally evolved parallel to each other and most transitional justice scholars do not situate their work in the literature on peacebuilding and vice versa (Baker and Obradovic-Wochnik, 2016). Transitional justice as a field emerged in the 1990s from a need to address serious human rights violations in countries that were undergoing democratic transitions and was initially meant to be temporary and past-oriented. It draws largely from international law

principles and emphasizes the responsibility of states to provide redress for gross violations of political and civil rights committed during conflicts or periods of authoritarian rule (Waldorf, 2012). Peacebuilding refers to initiatives by civil society, the government and the international community to prevent the outbreak, recurrence or continuation of armed conflict (Lambourne, 2009). It draws from multiple disciplines including humanitarianism, development and conflict transformation and has both short and long term objectives aimed at restoring security and the rule of law to avoid repetition.

Recent research has suggested that actively promoting the links between transitional justice and peacebuilding can increase the potential for sustainable peace and contribute to more transformative transitions in post-conflict societies (Lambourne, 2009; Baker and Obradovic-Wochnik, 2016). There are, however, ongoing debates in the literature on what ‘peace’ and ‘justice’ entail and more empirical research is needed to uncover the meaning of transitional justice and peacebuilding for victims of conflicts and marginalized populations.

3.1.1 Rethinking the Links Between Peace and Justice in a Changing World

Most transitional justice and peacebuilding scholars agree that there are limitations to the core assumptions of liberal peace theory, which have undeniably shaped both fields and their objectives, as well as the international community’s approach to conflict transformation. Critical transitional justice and peacebuilding scholars question the commonly accepted idea that transitions to Western-style democracy and the promotion of market liberalization in post-conflict contexts reinforce the prospect of peace after mass violence (Sriram, 2007; Lambourne,

2009; Sharp, 2014). Similarly, critical transitional justice literature challenges the emphasis on human rights and the rule of law in mainstream discourses, that has contributed to reinforcing a conception of conflicts in which some forms of violations are overlooked. The prevailing emphasis on traditional human rights, or civil and political rights (CPR), has sustained to a view of transitional justice that is largely legalistic and apolitical making violations of economic social and cultural right (ESCR) ‘invisible’ to most transitional justice processes (Sharp, 2014).

Understanding the weaknesses of transitional justice and peacebuilding initiatives requires examining these processes within the broader global context in which they are taking place (Lambourne, 2009; Sharp, 2014). Nagy suggests that transitional justice is an inherently selective process because of *when* it takes place, to *whom* it applies and for *what* (Nagy, 2008). Rethinking the concepts of peace and justice and, most importantly, the relation between them in post-conflict societies reveals the discrepancies between local and international conceptions of conflict and allows for a better lecture of the conditions for durable peace.

3.1.1.1. Rethinking the ‘Transition’ in Transitional Justice

Critical transitional justice literature first invites us to rethink the nature of the ‘transition’ that is implied in transitional justice and peacebuilding efforts. The ‘transition’ component that is central to the field of transitional justice can itself take different meanings and the way the ‘to’ and the ‘from’ are conceptualized will contribute to shaping post-conflict power relations. “Notions of ‘breaking with the past’ and ‘never again’, which align with the dominant transitional mechanisms, mould a definitive sense of ‘now’ and ‘then’” (Nagy, 2008, p. 280).

These considerations were addressed by critical transitional justice scholars who proposed a more comprehensive understanding of 'transition'. In Lambourne's holistic approach to transitional justice, there is a transition to what she calls 'sustainable peacebuilding', which "requires the pursuit of the twin objectives of preserving 'negative peace' (absence of physical violence) and building 'positive peace' (presence of social justice), as "well as the alleviation, if not elimination, of the underlying causes of conflict" (Lambourne, 2009, p. 34). Similarly, Sharp proposes to see the 'transition' in transitional justice as a move to what he calls 'positive peace' in which "justice for both physical violence and economic violence receives equal pride of place" (Sharp, 2014, p. 4). The idea of a 'transition' in transitional justice literature and practice risks obscuring the endurance of violence and patterns of exclusion, which can be even more intense in periods of precarious peace (Nagy, 2008). Finally, the emphasis of transitional justice on human rights as a category of harm sustains the idea that civil and political rights violations are exceptional and not rooted in everyday practices of structural discrimination.

3.1.1.2. Transitional Justice, Perpetrators and Accountability

A second critique of mainstream transitional justice points to the limited actors to whom it applies and the consequences for durable peacebuilding. A key area of debate in the literature revolves around the issue of 'corrupt war economies', a concept used by Mani to refer to the role of natural resources in the perpetuation of violence (Mani, 2008). Increasingly, conflicts involve a wide range of domestic and international actors whose economic and political interests transcend questions of identity that are traditionally understood to be the roots of violence. In

Colombia, as in many other countries, research has demonstrated that economic actors, mainly domestic and multinational companies involved in the extraction of natural resources, have played a significant role in financing the war economy and fuelling violence (Richani, 2005; Lavaux, 2006).

Arguably, issues related to corporate complicity in armed conflicts should be addressed by transitional justice processes since patterns of land dispossession and accumulation carry elements of civil and political violence that fall under the traditional mandate of transitional justice (Sharp, 2014). Furthermore, issues of poverty and economic violence that result from these violent processes can contribute to legitimize, or at least cover up, serious human rights violations if not addressed by transitional justice processes (Sharp, 2014). Finally, it has been demonstrated that, in many cases, actors involved in the perpetuation of this kind of violence come from that are traditionally targeted by transitional justice processes. For instance, research has suggested that violent dynamics of natural resource extraction are often supported and facilitated by the complicity of state officials and other political actors who benefited from such practices (Mani, 2008).

The exclusion of ESCR from transitional justice processes perpetuates violence in the post-conflict era and restrains the prospect of transforming the causes of the conflict, a pillar of sustainable peace (Sharp, 2014). Transitional justice processes in countries like Sierra Leone, and South Africa have examined issues of economic violence and have developed transitional justice mechanisms that recognize the role of natural resource extraction in the perpetuation of violence (Selim and Murithi, 2012; Duthie, 2014). However, many also point to the challenges of translating the outcomes of transitional justice into a meaningful transformation of discriminative

practices (Mani, 2008; Waldorf, 2012) The real impact of truth commissions' recommendations, progressive reparation programs and transitional justice courts on the transformation of economic grievances needs to be further examined to better understand the dynamics that shape post-conflict power dynamics. Nevertheless the exercise of identifying discriminative practices rooted in land conflicts can help uncovering new forms of violence and trigger discussions on these issues in post-conflict societies (Selim and Murithi, 2012; Evans, 2016).

3.1.1.3. Transitional Justice, Socio-Economic and Cultural Rights and Structural Violence

Finally, the nature of violations addressed by transitional justice processes has a direct effect on post-conflict reconstruction and sustainable peacebuilding (Mani, 2008; Sharp, 2014). The exclusion of ESCR violations from transitional justice and peacebuilding efforts reflects the consensus within the international community that transition to western liberal market economies is the desired outcome in post-conflict reconstruction (Sharp, 2014). This has translated into the establishment of certain forms of victimhood that hinders the implementation of transitional justice and peacebuilding initiatives that truly responds to victims' needs (Robins and Wilson, 2015). With two powerful examples, Miller shows that the 'constructed invisibility' of economic rights in transitional justice literature and institutions deeply affects our understanding of violence. According to her, it contributes to the reproduction of narratives of war and peace in which patterns of structural discrimination rooted in colonial practices are overshadowed by discourses of individual human rights violations:

Since transitional justice mechanisms, particularly truth commissions, are discursive tools just as much as they are instruments of accountability or reconciliation, they may frame the conflict in one dimension without providing an alternative vocabulary. Thus, apartheid in South Africa after the TRC can become a story about racism or about specific, individual rights violations rather than about long-term, systemic abuses born of a colonial project with economic objectives. [...] The genocide in Rwanda can become a story of historic ethnic hatred between Hutu and Tutsi rather than a narrative of decades-long resource inequity, unequal land distribution and colonial constructions. These narratives, partially constructed by the new state, are potentially echoed and reinforced by transitional justice mechanisms, which narrow the narrative of the past in a variety of ways (Miller, 2008, p. 280).

In a similar vein, Mani argues that the prevalence of socio-economic grievances continues to be a significant source of violence and exclusion in post-conflict periods and suggests that violations of civil and political rights, which are the focus of traditional transitional justice, can't be dissociated from socio-economic rights violations:

We cannot divorce criminal violence from social injustice, from the rising inequality, discrimination and economic stagnation that breed despair on one side and stoke intolerance on the other. We must be deeply concerned with how the patterns of violence that emerge during conflict rapidly become endemic and normalized in a post conflict society. Would the level of child rape and abuse in South Africa today be possible without the entrenched violence of the apartheid era? Would lynching and gang rape be as rancidly prevalent in Haiti today if decades of violence and abuse did not precede them? TJ must speak not only to past patterns of unacceptable abuse and violation, which call for accountability, but also to the continuation of these violent patterns, which have to be curtailed immediately if they are not to become entrenched (Mani, 2008, p. 259).

These valuable examples suggest that both categories of rights emerge from similar patterns of discrimination that often have their roots in pre-conflict grievances. Not addressing them in the transition period contributes to the reproduction of certain conceptions of war and peace that sustain patterns of exclusion in the post-conflict period. Furthermore, transitional justice often fails to recognize that protracted conflicts result in new social tensions that sustain marginalization and the ‘politics of visibility and invisibility’ (Friedman, 2018). These dynamics of exclusion inform the way transitional justice processes are designed and implemented as well as the issues and actors they target. For example, the complex and prolonged process of displacement in Colombia has contributed to the creation of new kinds of vulnerabilities among the displaced population and simply reversing displacement would not be a sustainable solution in that case (Arias and al., 2014). Any durable solution must take into account the prolonged state of displacement as well as the other forms of discrimination and exclusion that result from this situation.

3.2 Transformative Justice, Reconciling The Past and the Future?

Concerns to build theoretical and practical links between the fields of transitional justice and peacebuilding are illustrated in the more recent concept of ‘transformative justice’. It is still debated what transformative justice should entail and what it would look like in practice. Lambourne suggests a ‘transformative model of transitional justice’ that is both backward and forward looking and involves elements of both retributive and distributive justice:

It requires us to rethink our focus on ‘transition’ as an interim process that links the past and the future, and to shift it to ‘transformation,’ which implies long-term, sustainable processes embedded in society and adoption of psychosocial, political and economic, as well as legal, perspectives on justice. It also involves identifying, understanding and including, where appropriate, the various cultural approaches to justice that coexist with the dominant western worldview and practice (Lambourne, 2009, p. 28).

Critics of this approach point to the unnecessary and unrealistic burdening of transitional justice with additional mandates and the risk of creating ‘unrealizable expectations’ (Waldorf, 2012). While Waldorf recognizes the importance of addressing socio-economic and cultural violence in post-conflict societies, he believes that they should be addressed through broader development programs rather than by transitional justice, which is in his view ‘short-term, legalistic and inherently punitive’ (Waldorf, 2012, p. 179). In contrast, Gready and Robins draw their definition of transformative justice from various fields including peacebuilding, gender justice and human-rights based approach to development and have developed a concept of transformative justice that is analytically distinct from transitional justice:

While transformative justice does not seek to completely dismiss or replace transitional justice, it does seek to radically reform its politics, locus and priorities. Transformative justice entails a shift in focus from the legal to the social and political, and from the state and institutions to communities and everyday concerns. Transformative justice is not the result of a top-down imposition of external legal frameworks or institutional templates, but of a more bottom-up understanding and analysis of the lives and needs of populations. Similarly, the tools of transformation will not be restricted to the courts and truth commissions of transitional justice, but will comprise a range of policies and approaches that can impact on the social, political and economic status of a large range of stakeholders (Gready and Robins, 2014, p. 340).

Another alternative has been developed by the International Center for Transitional Justice, an NGO based in New York that investigates peace and transitional justice processes worldwide. This approach was promoted by Roger Duthie and Pablo de Greiff and it questions the expansion of the field of transitional justice. It proposes instead to increase the links between the fields of transitional justice and development in theory and practice in order to broaden the scope of what transitional justice processes can achieve without directly adding to its mandate:

What transitional justice can and should do, when appropriate, is address the links between economic and social injustice and massive atrocities, draw public attention to these links, and, where possible, suggest the types of broader reforms that are necessary for societal transformation and the establishment of just societies, in the broadest sense of the term. In other words, they can contribute to shaping the broader narrative in public discourse, which may have a long-term impact on development (Duthie, 2014, p. 198).

This approach rests on the idea that actively linking transitional justice efforts, which have a focus on corrective justice, with development programs, which are concerned with issues of distributive justice, or social justice, could contribute to addressing the causes of conflicts and other socio-economic grievances without assigning transitional justice processes with tasks it is not equipped to achieve (De Greiff, 2009; Duthie, 2014). It is worth noting that, in this approach, ‘development’ is generally defined using the UNDP definition of ‘human development’, which is largely state-centric and puts significant importance on human rights and economic development. Furthermore, Waldorf rightly pointed out that increasing the links between transitional justice and development runs the risk of increasing the role of the state in transitional justice processes, which is already contested (Waldorf, 2012). Countries that undergo transitional justice processes after mass violence often face important socio-economic challenges, including rampant

inequalities and poverty. In spite of this, it is generally seen as state responsibility to provide reparation to the victims on one hand, and development programs for the population in general on the other. While transformative justice appears as a promising opportunity to address issues of corrective and distributive justice, it remains unclear how this can be implemented in fragile political transitions.

3.2.1. Justice, Peace and Development in Highly Unequal Post-conflict Societies

Colombian scholar Rodrigo Uprimny Yepes, who is also the former president of the Colombian Centre of Studies Dejusticia, a Colombian NGO working on socio-legal issues, suggests the concept of ‘transformative reparation’ to harmonize corrective and distributive forms of justice (Uprimny, 2009). According to him, the need for an approach that reconciles imperatives of corrective and distributive justice is rooted in the state’s double responsibility to protect both victims and citizens in general in highly unequal transitioning societies:

It is an effort to harmonise the duty to repair victims in transitional contexts of ‘well-disorganised societies’ with considerations of distributive justice. It is then an effort to articulate the dominant idea of reparations, that in current legal theory is backward looking and grounded in corrective justice, with the concept of distributive justice, that is present and forward looking and takes into consideration current needs of the population. (Uprimny, 2009, p. 637).

Uprimny’s argument is based on the idea that there is a ‘reparation paradox’ in contemporary transitional justice processes in which states simultaneously face a legal duty to provide reparations to victims of conflicts and an ethical, or philosophical, duty to provide social

services and development programs to its citizens (Uprimny, 2009). In post-conflict societies, states often face economic and institutional limitations that prevent them from fully implementing these programs, let alone implementing them simultaneously in a fragile political context. As Uprimny puts it: “should a state that is settling an armed conflict and with very limited resources use the only available funds it has to compensate one middle-class victim who was tortured? Or should that State use these funds to build ten houses for ten low-income families who were not victims of heinous crimes but desperately need shelter?” (Uprimny, 2009, p. 627). Uprimny uses the following table to illustrate the tensions that exist between different groups in transitional justice processes:

	Victims	Non victims
Poor people	I	II
Middle class and high income persons	III	IV

Source: Uprimny, 2009

According to Uprimny, the most apparent tension exists between group II and III. While group I and III are entitled to receive reparation regardless of their socioeconomic status according to international law, he suggests that addressing the grievances of group I and II means that the corrective justice imperative of reparation could be outweighed by the pursuit of distributive justice (Uprimny, 2009). To be sure, Uprimny argues that this approach would be most accurate in ‘well-disorganized societies’, that is countries with high levels of inequalities, poverty and discrimination. In contrast, in ‘well-organized societies’, some level of distributive justice has already been achieved and therefore the need to repair victims for gross human rights violations

appears most justifiable (Uprimny, 2009). Transformative reparation thus looks at both the past and the future and promotes the strengthening of democracy in order to transform both the lives of the victims and the society as a whole (Uprimny, 2009).

While Uprimny's conception is somehow problematic in that it reinforces the assumption that democracy and the rule of law are automatically translated into lower levels of discrimination, it helps to illuminate certain forms of discrimination that occur during conflicts but are not necessarily related to physical violence as well as the tensions between development and transitional justice. For example, indigenous, Afro-Colombians and peasants have faced structural discrimination and while many fall into group II, the discrimination and exclusion they have suffered stems from the same grievances as those that have led to the conflict. Similarly, women, and especially rural women, have suffered the effects of the war under the form of domestic violence or socioeconomic harm that results from losing the household's breadwinner, which are direct consequences of the conflict but don't always translate in them being recognized as victims by Law 1448 because of its relatively narrow conception of violence. Research on the Colombian transitional justice process suggests that the differential focus of Law 1448, and the narrow conceptions of gender and victimhood it is based on, limits the transformative potential of reparation programs because it fails to link reparation with citizenship and overlooks the need for structural transformations and the pursuit of social justice (Weber, 2018).

While there is a strong argument for the harmonization of corrective and distributive forms of justice, building strong links between reparation for human rights violations, development programs and social services can also lead to confusion and even tensions in the post-conflict era. While the arrival of IDPs in a community can have positive effects for the

whole community because it favours ‘social development dynamics’, tensions can also arise and lead to discrimination if the displaced are seen as receiving more assistance than the impoverished local population (Pérez-Murcia, 2013). Attempts to pair restitution programs with land tenure reforms in post-Apartheid South Africa led to confusion and limited the achievements of both initiatives (Williams, 2007). Despite the potential to transform the bigger issue of land concentration in the post-Apartheid period, the over reliance of transitional justice mechanisms on more traditional legalistic matters prevented the transformation of some forms of structural violence rooted in land inequalities and contributed to perpetuating the exclusion of certain groups, notably landless peasants. Therefore, a conflict emerged between the legal right of landowners to land restitution and the moral right of landless citizens to agrarian reform and social justice (Evans, 2016). To address such shortcomings, Pérez Murcia proposes to differentiate reparative justice measures from social policies on the basis of the nature of state’s obligation and to make explicit the scope and objective of both types of programs to the population (Pérez-Murcia, 2013).

While Pérez-Murcia shows that simultaneously implementing reparation measures and development policies can lead to tension, Firchow shows that separating the two can lead to revictimization and ineffective peace building (Firchow, 2013). Her argument is based on the idea that the right to reparation and the right to development are inherently ‘indivisible’ and that both categories of rights should be addressed together to avoid tensions that arise from separating victims from the rest of the population. In fact, talking about collective reparation programs in Colombia, she mentioned cases that suggest that reparation programs cannot be properly implemented without first providing some level of basic development to all the community

(Firchow, 2013). As argued by Uprimny and Pérez-Murcia, she points to the importance of state presence throughout the process to ensure that the broken ties between communities and the state be repaired. It is worth noting that her research took place in a small community in rural Colombia and it is still uncertain whether similar findings could be replicated on a larger scale. Also, it remains to be seen how the government could effectively provide information about reparation and social programs to citizens in a society where education and trust in government institution remain very low, as suggested by Pérez-Murcia.

3.3. Land Restitution: Reparation or Development?

3.3.1. Land Restitution, Corrective Justice and Forced Displacement

Land and property restitution has been a leading feature of numerous political transitions since the end of the Cold War and is increasingly seen as a measure to redress violations that occurred during conflict or authoritarian rule (Williams, 2007). According to international law, land restitution can be used as an element of durable solution in cases where wrongful dispossession has occurred, resulting in mass displacement (Duthie, 2011). As per Principle 28 of the Guiding Principles on Internal Displacement (United Nations, 1998), “Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country” (United Nations, 1998). In 2005, the 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 reinforced the link between transitional justice and restitution, with specific reference to the right to ‘return to one’s place of residence’ and the right to ‘return of property’ (United Nations, 2005). Additionally, the Principles on Housing and Property Restitution for Refugees and Displaced Persons, or the Pinheiro Principles of 2005, emphasize the right of displaced persons to land and property restitution that has been wrongfully deprived or the provision of a compensation when return is judged impossible. It adds:

States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution (Pinheiro Principles, 2005, Principle 2.2).

Bradley defines ‘just return’ as a situation that “puts returnees back on an equal footing with their non-displaced co-nationals by restoring a normal relationship of rights and duties between the state and its returning citizens.” (Bradley, 2008, p. 286). While this definition refers to refugees, that is, displaced people who have crossed an international border, the literature on refugee return illuminates significant challenges faced by IDPs (Bradley, 2018). Applying her conception of ‘just return’ to the Colombian transitional justice process reveals the centrality of land restitution in the reparation framework. The majority of displaced people come from rural areas and relied on this particular asset for survival prior to the conflict. In the case of indigenous and Afro-Colombians, it is also a question of safeguarding their culture as well as embracing

their constitutional right to collective territory and participation in any project being implemented on their land.

However, most scholars recognize that pre-war conditions entailed some form of exclusion or exploitation and that ‘full restitution’ can be ‘almost cruel’ in many cases as it would imply a return to unjust, and sometimes discriminative, conditions (Uprimny, 2009; Long, 2013; Bradley, 2018). Long has acknowledged that land restitution, and return all together, is not always possible or desirable and therefore there is a need to think of ‘repatriation without return’ (Long, 2013). Durable solution to displacement doesn’t always mean *reversing* it, but rather supporting individual preferences and creating the environment for a viable return or resettlement (Williams, 2007; Arias and al., 2014). In her analysis, Long challenges the commonly accepted idea that durable solutions for forcibly displaced people involve a cessation of the physical displacement. Rather, she argues that repatriation should be understood as a state in which the migrants have the ability to fully exercise their rights, regardless of where they choose to settle (Long, 2013). ‘Repatriation without return’ thus relies on local integration programs that respect the will of refugees and recognizes that a durable solution to forced displacement may involve further mobility (Long, 2013). Applying this approach to the Colombian displacement crisis helps to illuminate the effects of protracted displacement of displaced individuals and communities and promotes a view of transitional justice that goes beyond the correction of the harm caused during the conflict. The situation of displaced people today is much different than when they were displaced and programs that seek to implement a durable solution for IDPs must respect the principle of voluntary return and provide meaningful alternative solutions (Arias and al., 2014).

These concerns are increasingly prevalent in debates on durable solutions for forcibly displaced people, reflecting a move away from the ‘return as the best durable solution’ discourse prevailing in international norms and practice (Williams, 2007; Long, 2013). Transitional justice processes rarely translate into immediate societal transformations and this is even more challenging when there are sectors of the society that clearly oppose these initiatives. Therefore, land restitution processes must always be context-sensitive and externally coherent as to avoid the revictimization of victims of displacement. They need to have a complementary and reinforcing relation with other reparation measures if return and restitution efforts are to be durable and dignifying to the beneficiaries (Williams, 2007).

3.3.2. Land Restitution Beyond Transitional Justice

A less researched area in the transformative justice literature is the role that transitional justice can play in transforming highly unequal agrarian systems. Land is not just an asset, it represents a form livelihood for populations in the countryside and has an important significance for collective identities and values for ethnic minority groups and rural populations (Unruh and Williams, 2013). Apart from being a form of material reparation for the damages caused by conflict, land restitution can represent a formal recognition of citizenship and a form of symbolic justice for people who have suffered harm. Furthermore, addressing land inequalities in transitional justice can contribute to durable peace by addressing the root causes of the conflict and avoiding repetition.

Through the study of various truth commissions in Africa, Selim and Murithi argue that transitional justice processes should address development concerns in order to achieve distributive justice. Their research shows that poverty and inequality rooted in unequal land distribution contributed to fuel violence and therefore needed to be addressed in the transition period in order to produce ‘complete narratives of the past’ and ensure sustainable peace (Selim and Murithi, 2011). However, the immense financial and political costs and the lack of guarantee for people who had returned to the countryside led to the failure of these transitional justice processes to fully identify and address the root causes of violence and limited the transformative potential of these ambitious initiatives (Williams, 2007; Selim and Murithi, 2011). Similarly, while land disputes were identified as a leading cause of violence in Guatemala, the endurance of elite privilege and the low level of participation of affected populations prevented the realization of land restitution programs with great implications for peacebuilding and societal transformations (Williams, 2007). These cases emphasize the key role of truth commissions in the politicization of historical patterns of land dispossession and socio-economic and cultural rights violations and, more importantly, the urge to translate conclusions of truth commissions into laws, policies and programs as well as monitoring measures to ensure their implementation. Both cases also point to the contested role of the state in the design and implementation of transitional justice processes. The political character of transitional justice and the prevalence of powerful land-holding elites partly explains the traditional reliance on corrective justice, as opposed to addressing issues of distributive justice that are often opposed by these actors.

In Colombia, as in Guatemala and South Africa, historical conflicts over land have played a key role in fuelling violence and perpetuating dynamics of discrimination against rural

populations and continues to be a challenge to post-conflict stability (Berry, 2017). Because the roots of the conflict are closely related to social inequalities embedded in land inequalities, land restitution as a form of reparation carries transformative elements for the victims of forced displacement resulting from unlawful land dispossession. Furthermore, addressing the land question in the transitional justice process represents an opportunity to address long-lasting structural discrimination against women and ethnic minorities who have been disproportionately affected by the conflict and its effects. For example, drawing on the concept of ‘gender justice’, Meertens shows that, while this is not without challenge, land restitution could contribute to alleviate some level of gender discrimination in the countryside through the transformation of paternalistic institutions (Meertens, 2016). While the extent to which a transformative approach to transitional justice could be applied to other forms of discrimination remains under explored in the literature, some of the most recent debates on transformative justice point to the need to adopt an intersectional approach that allows to uncover the multiple dimensions of discrimination and exclusion in transitional justice processes (Rooney and Ní Aoláin, 2018). Furthermore, literature on the Colombian transitional justice process increasingly recognizes the close relation between social inequalities and land distribution issues and their implications for sustainable peace and justice in Colombia (Berry, 2017; Karl, 2017; McKay, 2018).

3.4. Implementing Transformative Justice

The ‘turn to the local’ emerged in transitional justice and peacebuilding literature as a response to critics of top-down peace and justice mechanisms rooted in the liberal peace theory.

It promotes the participation of affected populations and local agency in peacebuilding and transitional justice efforts (Baker and Obradovic-Wochnik, 2016). The challenge to identifying and addressing victims' needs and interests in transitional justice efforts highlights the hierarchy of knowledge and the exclusive character of academia (Gready and Robins, 2014). Despite significant breakthroughs in the literature, transitional justice practice continues to be heavily conditioned by political contexts and elites' interests, with important implications for victims:

[Transitional justice processes] are created by national elites, supported by an international community concerned with an agenda of liberal statebuilding rather than addressing the needs articulated by affected populations, often resulting in institutional approaches defined by a liberal proceduralism that are remote from local context and indigenous understanding. As such, transitional justice mechanisms are the product of an agenda that instrumentalizes the universal values of rights towards an ideological agenda that includes the rule of law, electoral democracy, and free markets (Robins and Wilson, 2015, p. 220).

Transformative justice calls on scholars and practitioners to draw on local and indigenous knowledge in the design and implementation of transitional justice programs to ensure non-repetition and the transformation of discriminative social dynamics. These concerns have been incorporated in transitional justice processes worldwide and yet, we see these patterns of discrimination being reproduced through state institutions and even sometimes by transitional justice initiatives themselves (Rooney and Ní Aoláin, 2018). This suggests that the exercise of identifying causes of a conflict is in itself a political action and entails some form of exclusion. The involvement of victims in transitional justice is often superficial and their real power in the design and implementation of transitional justice measures is very limited. For transitional justice to be transformative, not only must we better understand the meaning of transitional

justice for the beneficiaries but also their broader conceptualization of justice, peace and development. Hence, to move towards a transformative approach, transitional justice research must capture how the concepts of ‘peace’ and ‘justice’ are understood at the ‘margins’ and how resistance to the dominant paradigm is embedded in everyday lives. (Rooney and Ní Aoláin, 2018).

3.4.1 Using the Social Movement Praxis

Social mobilization around land issues in Latin America often draw on broader social justice demands (Capeheart and Milovanovic, 2007). Extractivism has been a predominant feature of Latin American political and economic development since colonial times and has deeply affected, not only environmental sustainability, but also the social spheres and the nature of social movements. The so called ‘socio-environmental movements’ have gained attention in the literature and has become a core element of critical discussions on development in the region (Raftopoulos, 2017). Scholars and practitioners increasingly talk of ‘conflicting models of development’, suggesting that movements organized around land demands reflect a much larger resistance movement against neoliberalism and the subordinate position of Latin America in this globalization project. Using the social movement praxis to examine the way dominant discourses of peace and justice are promoted or challenges in transition period allows to better grasp the international, national and local dynamics and conflicting interests at play beyond the question of natural resources and land use (Evans, 2016). It also helps understanding the roots and

limitations of constructed development discourses and contributes to challenging the invisibility of certain issues and voices in transitional justice processes.

This chapter has reviewed some emerging themes in transitional justice literature and its significant theoretical and practical implications for the fields of peacebuilding and development. These developments in the literature reflect a bigger concern to rethink academic research and its effects on marginalized communities and to shed light on alternative views of peace, justice and development. Practice remains mostly informed by a vision of the state as the guarantor of rights and the literature largely relies on an approach that emphasizes state's responsibility towards victims of conflicts and towards its citizens. This leads to certain forms of violence to be ignored by transitional justice processes with important consequences for peacebuilding and reconciliation. The remaining chapters of the thesis present the findings of the research and reflect on critical issues raised in this chapter to critically examine the challenges and opportunities for transformative justice associated with the land restitution framework established by Law 1448 of 2011.

4. Contested Views of Peace and Justice

The previous chapter demonstrated the political character of transitional justice and the importance of integrating local knowledge in transitional justice research in order to better capture the interests of victims. This chapter addresses the first research objective of my inquiry: critically examining the discrepancies between the IDPs' experiences and perceptions of transitional justice and the state framework for land restitution in Colombia. It reflects on the gaps in dominant state discourses of peace and justice and the implications for victims' recovery in Colombia.

4.1. Transitional Justice and Displacement in Colombia

4.1.1. Land Restitution, Reparation and the Right to Return

Interviews and field observations suggested that, in most cases, return and the restitution of stolen land are impossible or undesirable because of the endurance of the military and social conflict in many rural areas of the country. Interviews with victims and lawyers accompanying land restitution cases suggested that most processes of voluntary return to restituted land that have been carried out so far under Law 1448 failed to respect the right of IDPs to dignity, free will and security set by Law 1448 (Article 28) and in line with international law on the return of forcibly displaced people (Pinheiro Principles, 2005, Section 4). People who have returned to their land often received little or no support from the government and their capacity to reclaim a

sustainable livelihood was deeply affected by the presence of powerful non-state actors that play a central role in rural governance. These include both ‘illegal actors’, dissidents of the FARC, guerrilla groups and other armed actors, as well as ‘legal actors’, mainly national and international companies benefiting from Colombia’s abundance in natural resources. A lawyer who accompanies cases of collective land restitution illustrates these dynamics through an example of a case she has been working on in the department of Chocó, in the Pacific region:

When the war became less intense and with the passing of Law 1448, the community decided to make a systematic return process to the collective land they had had to flee. When all the families had returned to the property and were already working on the land, they were approached by unknown actors who supposedly represented a palm oil company that had bought the property a few years before. These people then began to invade that land saying that they were the owners and started to enter and to physically remove people from the land. - Isabela ⁴

Far from being an isolated case in Colombia, this example shows that the reconfiguration of the countryside that resulted from the prolonged conflict and the inability of the state to address enduring urban-rural divide perpetuates the situation of vulnerability of IDPs seeking to return to their land. This has resulted in the failure of the transitional justice process to address victims’ needs and prevented the realization of IDPs’ right to reparation as well as their right to development, which are arguably indissociable in highly unequal post-conflict societies (Firchow, 2013).

Furthermore, as previously mentioned, Law 1448, in line with international principles, recognizes that restitution and return are not always feasible and offers two alternatives to IDPs:

⁴ All names are pseudonyms. Interview excerpts were translated by the author. Refer to Annex 5 for detailed list of participants.

relocation or cash compensation. Interviews and field observations suggest that, even in the case where people chose to stay in Bogota where state presence is assumed to be stronger, patterns of discrimination and structural violence, mixed with the complexity of the bureaucratic apparatus that victims have to navigate, prevent most IDPs to overcome their situation of victimhood. An IDP resettled in Bogota who is currently undergoing a land restitution process and wished to return to the countryside shares his experience:

I know they are giving groceries to the displaced who register, and they also give them between 5 and 7 million pesos as a reparation but I think that victims end up spending more trying to get reparation and humanitarian aid than what they receive. Because every time, you go there, you have to wait in line, miss a day of work and most of the time, you get nothing. You have to submit all the documentation that ensures that I was the owner of the property. I submitted all the documents they required, my lawyer quit because he received threats, and still I am waiting and nothing. They don't call me back. The government has assigned me three lawyers in total. They tell me I have to submit more documents and then I don't hear from them. And if I get my own lawyer, he will take half of the value of my land and this is not fair. - Alfonso

Similar barriers were identified by communities who had relocated in a rural area close to Pereira. An NGO worker in the department of Risaralda talks of the failure of collective relocation programs for indigenous communities in the region:

There is a grave situation in the region regarding voluntary returns and relocation. For example, we are working with an indigenous community who has been unable to return to their *resguardo*⁵, and the government gave them another land. So, where

⁵ Indigenous *resguardos* are institutions of legal and sociopolitical nature that are inalienable, imprescriptible and indefeasible as stated by articles 63 and 329 of the Colombian Constitution (1991). According to article 21 of decree 2164 of 1995 *resguardos* are constituted of one or more indigenous communities for which a collective property title enables the realization of their constitutional right to autonomous political and legal governance on their territory.

they were before, they were close to the river, they had crops, they could fish. Where they are now, it is not the same and they are unable to sustain the community. There are children and indigenous people who are dying of hunger here because the land they gave them does not produce enough. - Nathalia

The limitations of both individual and collective return and restitution programs are partly explained by the fact that the Law recognizes displacement as a form of violence, but fails to integrate related forms of vulnerability that result from protracted displacement. Rural communities have a more complex relation with the concept of 'home' than what is outlined in the Law, which relies mostly on a material understanding of land. Return and land restitution programs need to take these concerns into account for transitional justice to address the root causes of the conflict and produce meaningful societal transformations.

4.1.2. Land Restitution and the Guarantee of Non-Repetition

The most effective land restitution programs are independent but complimentary to other reparation principles (Williams 2007). While Law 1448 makes a distinction between the two, land and property restitution also falls under the five principles of 'integral reparation', along with indemnization, mechanisms of satisfaction, rehabilitation and the guarantee of non-repetition. According to most interviewees, the relatively blurred distinction between reparation and land restitution in the law has resulted in the state overlooking some forms of non-material reparation in the context of the transitional justice process. Indemnization, which is a sum of money corresponding to the harm suffered that contributes to overcoming the state of vulnerability of the victim and his/her family (Article 132), has become the favoured mode of

reparation while other elements like land restitution and comprehensive reintegration programs, are being set aside. While most respondents agree that the full realization of land restitution is not possible without the implementation of a comprehensive reparation framework, special attention was put on the guarantee of non-repetition during the interviews.

Land restitution, the way it is happening now in Colombia, relocates and returns people in places where the conditions that enabled forced displacement are still present. And people just end up in the city again. If the government doesn't see land restitution as a comprehensive concept, it will not work. Land restitution goes hand in hand with a series of measures and conditions that precisely prevent the return to the situation of vulnerability that made dispossession viable. Because if you just go back where they displaced you, they will just displace you again. – Manuel

Thinking of land restitution as a 'comprehensive concept', Manuel highlighted the importance of examining the land restitution framework, as well as the transitional justice process in general, within the broader political context in which it is being implemented. As a land restitution lawyer, he is well aware of the rural grievances that prevent the successful implementation of the land restitution framework and stresses the danger of return in areas in which the presence of armed groups prevails. As a displaced person himself, Manuel emphasizes the importance of the principle of non-repetition for returning IDPs and stresses the lack of transformation of the conditions that led to violence and to forced displacement.

Such narratives point to some of the limitations of the land restitution framework in Colombia. In addition to the limited achievements of Law 1448 in supporting processes of durable return and restitution, there seems to be an ongoing debate within the society around what land restitution should entail to be 'integral'. Drawing links between land restitution and

the principle of non-repetition sheds light on the broader rural reform that is needed to ensure that violence and land dispossession can't occur again. Interviews and observations suggested that the principles of non-repetition in itself is understood within the parameters of transitional justice and overlooks key elements of peace and justice as understood by the victims' community. The next section looks at some of the main gaps of the law in terms of collective and non-material elements of land restitution in order to demonstrate that conflicting views of justice can result in some forms of violence being perpetrated by transitional justice mechanisms.

4.2. Non-Material Collective Elements of Integral Reparation

We have lost our cultural roots. Now, you see young people who come from families that were displaced between the 60s and 80s and do not want to return to the countryside. They lost their agricultural vocation, their cultural connection with the countryside. Indigenous people, peasant and people from all these places in Colombia where there has been large-scale displacement which is almost the whole country. The relation to the collective, the relation to the land, and the millenary customs are being lost. And the laws and norms we have in this country do not see that. - Rodrigo

Narratives like this were recurrent in interviews with victims and activists and pointed to a protracted situation of displacement and violence that has had tremendous effects on the social configuration of the country but remains largely untouched by transitional justice mechanisms. The main area of discrepancies between the content of the state transitional justice framework and the discourses of social movements related to non-material and collective aspects of land restitution, reparation and return. Interviews suggested that one of the main reasons for the failure of these programs was the lack of recognition of collective forms of harm suffered by

displaced communities. While the transitional justice law recognizes that integral reparation entails “individual, collective, material, moral and symbolic dimensions” (Article 25), interviews suggested that there were some significant discrepancies in the ways these concepts are understood by the state and among victims. This is particularly relevant in the many cases in which indigenous, Afro-Colombian and other ethnic communities are undergoing a collective land restitution process drawing from both their right to reparation embedded in Law 1448 and their constitutional right to collective territories. These communities are often incapable of returning and rebuilding sustainable livelihoods because the principles of land restitution and return set by the law are not in line with their cultural and spiritual practices and beliefs. For example, a representative of the Nasa community from the Cauca department explains:

For Nasa communities, integral reparation is not only about the land as a physical asset, it goes much further. It's our story, it's our memory, it hosts our spirituality, it is the cosmos. For us, the land is the Mother Earth. You need to achieve that balance to say that the community is being repaired. [...] For us, integral reparation is also from the community. If a person is displaced, it creates an imbalance not only for that person, but to the entire community. We are collective subjects. That means that the individual harm is suffered by the whole community and that the suffering of the land is suffered by every member of the community. - Santiago

Furthermore, a central criticism of the law, reported mainly by peasant-farmers (*campesinos*), but also by respondents from different backgrounds, was the failure of the law and reparation programs to recognize peasants as a distinct cultural group subject to a set of laws protecting them and their territory, as it is the case for indigenous and Afro-Colombian communities. While this is an issue that arguably goes much beyond the conflict, the limited opportunities for political participation of this group in the design and implementation of the

transitional justice process has had important socio, economic and political implications for peasant-farmers in the post-conflict period. An IDP and former agrarian leader explains:

It is important to understand that for the peasant, the relationship with the land is not only material. Like for indigenous and Afro-Colombians, the land has a symbolic meaning, it comes from a different understanding of the world, but there is a relationship that also goes beyond the purely material. So integral reparation should include a recognition of the peasant as a collective subject and recognize that it implies a relation to land beyond the material, that relates to questions of identity and life project. The land restitution law does not recognize the peasant's expertise and is more about supporting agribusinesses. So, for me, it does not take into account all the things that a victim need to be integrally repaired. - Camilo

Interviews with displaced *campesinos* like Camilo revealed the centrality of land in the *campesina* culture. Interviews suggested that, while it differs from Indigenous and Afro-Colombian culture in its relation to race and ethnicity, the *campesina* culture is rooted in a close relation with land and nature and therefore is deeply affected by the implementation of transitional justice mechanisms, especially the land restitution framework. Most importantly, interviews confirmed that, as it is the case for indigenous and Afro-Colombian communities, the relation of *campesinos* with the land is defined by both material and non-material elements that need to be understood collectively. Similarly, the harm suffered from being displaced is complex and has consequences for the whole community, something that remains largely absent from most reparation programs.

The failure of Law 1448 to recognize peasant-farmers as distinct collective subjects is significant because it has tremendous impacts on the way land restitution and return programs are implemented in peasants' collective territories. Historically, peasants have not always had

formal titles in Colombia and while there exist mechanisms to address the lack of formal land titles in the law, the failure to recognize the distinct *campesina* culture rooted in a close relation to land arguably prevents the success of collective return and land restitution initiatives. Furthermore, as will be discussed in the next chapter, the question of land restitution for peasant communities has very important consequences for durable peace, but also for longer-term issues related to the development of the country and its position within the global neoliberal project. The failure of reparation programs to recognize non-material forms of harms suffered by peasants is translated into ‘incomplete’ land restitution programs that return communities to abusive and exploitative environments in which they can rarely reclaim their role in the country’s agricultural production.

4.3. Transitional Justice and Displacement: Redress or Perpetuation of Violence?

We have seen so far that there are significant discrepancies between what victims want and expect from the transitional justice process and how it is framed and delivered by the state. This section shows that these inconsistencies not only prevent the realization of victims’ rights, but actually translate into a transitional justice process that displays evidences of structural violence in itself. Many IDPs interviewed for my research talked of dynamics of ‘revictimization’ that occurs during the pursuit of land restitution processes. I suggest that the obstacles faced by victims when engaging with transitional justice mechanism can be partially explained by the tendency of transitional justice to focus on violations of gross human rights violations over issues related to socio-economic and cultural rights (Sharp, 2014). For example,

excerpts of interviews presented in this chapter have pointed to dynamics of poverty, inequalities and structural discrimination that prevent victims from receiving different elements of integral reparation, including land restitution. The failure of transitional justice processes to address a broader set of issues result in the perpetuation of some of the same grievances that have fuelled the conflict and will likely present a significant challenge to durable peace in Colombia.

However, one of the most significant implications of these limitations for the realization of transformative justice in Colombia is that the transitional justice process arguably sustains patterns of discrimination that have effects on issues much broader than transitional justice. Interviews and field observations suggest that issues of land concentration that are denounced by social movements for land restitution are being reproduced through the implementation of Law 1448. While this might not have concrete impacts on the lives of the victims in the short term, it is very significant in that it prevents sustainable peace and justice and restrains the prospect for a durable solution for rural displaced populations. A lawyer who specializes in land disputes explains a key pitfall of Law 1448:

In the best case scenario, you get your land back. But you stay immersed in a rural environment that doesn't even allows you to get your product to the market. After two years of restitution, people can sell the property. And who do you think they sell it to? Well, to the large landowners who benefited from the conflict. This is why, until the issue of rural development is resolved, land restitution is doomed to failure and this is going to contribute to land concentration. - Fernanda

Fernanda's point is crucial in that it emphasizes that, in addition to not responding to the needs and expectations of victims, the land restitution framework also carries elements that

perpetuates land concentration in Colombia. Furthermore, Fernanda stresses that the land concentration that results from inadequate transitional justice practices serves the interests of the companies operating in areas where there has been forced displacement over the interests of the victims. The highly unequal power relations that result from such practices has been mentioned in several interviews with IDPs and lawyers as one of the main barriers preventing safe and dignified return for the displaced population in Colombia.

Nevertheless, interviews with lawyers and professionals suggested that the establishment of Law 1448 had game-changing effects for land restitution practice in Colombia. In addition to being a significant development in the judicial system for land dispute in Colombia, the law is seen as a significant platform for mobilization around land issues. Many individuals and communities who initiated processes of land restitution before 2011 could now frame their claim within Law 1448, which according to most interviews, had a more ‘humanizing approach’ to victimhood than previous legislation for IDPs and promised to significantly reduced the duration of land restitution processes. This more optimistic approach to transitional justice practice also points to the very restricted space for mobilization around land issues in Colombia. With the election of a right-wing government led by Iván Duque in the summer of 2018, interviewees also unanimously shared concerns that the actions of the new government might have devastating effects on Law 1448, the peace agreement and on the implementation of social programs in general. Law 1448 was established in 2011 for a period of ten years, and it is still uncertain what would happen to current and future land restitution cases if the law ended. Nevertheless, an important number of people I interviewed in Bogota believe

that the removal of the main institutional channel for land mobilization could have devastating consequences for peace in Colombia.

This chapter has demonstrated that there exist significant discrepancies between the way justice is conceived in state documents and within the population of victims. This is particularly evident when looking at non-material and collective conceptions of justice. The failure of state-initiated peace and justice efforts to address victims' needs reveals the need to pay more attention to the alternative conceptions of justice in which local resistance is embedded. Building on that idea, the next chapter illustrates how these discrepancies have shaped the discourses and strategies of social movements organized around demands of land restitution in Colombia.

5. Social Mobilization for Land Restitution in Colombia

This chapter reflects on how the main areas of tensions in transitional justice discourse and practice in Colombia discussed in the chapter section are translated into a language of mobilization for social movements organized around demands for victims' right to land restitution and reparations. It presents the main findings related to the second research objective: to critically examining the strategies employed by social movements for land restitution in Bogota and the effects of urban mobilization on the representation of marginalized communities. After presenting four core demands around which social mobilization for land restitution is organized, I draw on an example, detailed in section 5.2, to illustrate these demands and reflect on how urban mobilization for land restitution in Bogota represents marginalized communities and their interests in rural areas whose opportunity for mobilization is restricted.

5.1. Four Central Demands of Social Movements for Land Restitution in Bogota

5.1.1. Transitional Justice and the State: Guarantor of Rights or Perpetrator?

The double responsibility of the state in the transitional justice process, to deliver reparation programs and to address wider development issues (Uprimny, 2009, Firchow, 2013) appears as a key issue in the social movements organized around demands for land restitution in Bogota. In most interviews with IDPs and civil society organizations working with them, discussions of the meaning of 'integral reparation' suggested that it should entail elements of

both corrective and distributive justice. This finding, in turn, was closely related to the role of the state in the provision of both reparation programs for the victims and social services that target poverty and socioeconomic injustices. The testimony of a displaced Afro-Colombian social leader illustrates the multiple dimensions of the harm associated with being a displaced person in Bogota:

The daily life of a displaced person in Bogotá is about *rebuscarse*. This is a word we use here to say “do whatever it takes to find sustenance, to survive in this city.” So the victims really live by selling things in the streets, to just look for ways to find a little bit of money. Because Bogotá is a capitalist city and Colombia is a neoliberal capitalist country so you need to have money to live in Bogotá. Here, going somewhere means having the resources for you to take a bus. If you start to be sick, you have to go to the market and buy a lemon. Where I come from, these things don’t have an economic value, they have a community value. So, the daily life of a victim is a day full of hopelessness, lack of employment, and anger, of pain, because overall, the state has left us alone. - Maria Paz

Here, we see that the situation of protracted displacement entails multiple socio-economic and cultural dimensions that can’t be isolated from transitional justice efforts. Since most displaced people moved from rural areas to urban centres, the psychological and cultural harm of the social disarticulation that resulted from massive processes of displacement should be addressed by transitional justice, in addition to the material loss suffered during the conflict. The economic issues mentioned by Maria Paz can't be strictly understood in material term; the inability of the IDPs to secure a livelihood reflects broader patterns of social exclusion and discrimination and could not be simply addressed by giving them an amount of money under the form of humanitarian aid, which has been a dominant practice in past transitional justice processes in

Colombia. Law 1448 does partially address such concerns, notably through the principle of ‘rehabilitation’, one of the five principles of integral reparation, which guarantees a “set of strategies, plans, programs and actions of a juridical, medical, psychological and social nature, aimed at restoring the physical and psychosocial conditions of the victims” (Article 135). Although the focus of the principle of rehabilitation remains largely rooted in corrective justice principles, as suggested by the use of ‘restoring’ the conditions of the victims, the law makes further provisions regarding the right of victims to free social programs to secure their access to health, education and housing, which are meant to be ‘complementary’ and ‘supplementary’ to other means of reparation (Article 25).

The main point of tension thus seems to be in the actual implementation of these measures of assistance. For example, while the law guarantees the right of the victims to psychosocial assistance, most IDPs interviewed talked of the challenges they faced in accessing these programs. Similarly, several visits to various assistance centres of Bogota revealed that limited resources prevented them from implementing various principles of law. The coordinator of one of these centres in the south of Bogota explained how she was unable to apply the differential focus because most victims who visited the centre were either senior, women with children or ethnic minorities. Another explained how the centre had to attend two highly populated districts of Bogota and had to turn away victims who had travelled for hours to receive assistance.

In Colombia, the role of the state in the transitional justice process is further complicated by its participation in the conflict and thus its ambiguous relation to any reparations. Interviews have suggested the role, at least indirect, of the state in the perpetration of violence, both in terms

of military or physical violence and socio-economic violence. I identified two dominant narratives in the interviews regarding the state's role in the conflict. In the first one, interviewees pointed to the complicity of the state in violent processes of displacement and land dispossession that have occurred during the conflict. According to this view, the state, through discriminative legislation, has facilitated the establishment of a neoliberal economy based on the extraction of natural resources. The rapid expansion of the extractive industry and the state's neglect to simultaneously protect the rights of its citizens resulted in vastly unequal relations between powerful economic actors and rural communities and facilitated unlawful dispossession. In the second narrative, there is a more direct implication of the state in the conflict, mainly through the support of paramilitary groups who carried out the physical repression of social movements around land rights. Nonetheless, both narratives reflect a common conception of the conflict in which the state's narrative is challenged. Instead of portraying a military conflict that is largely based on the fight against narco trafficking and terrorism, interviews with victims of the conflict promote a view of the conflict that emphasizes the direct role of the state in reproducing the rural inequalities it aims to address in Law 1448 and in the Peace Agreement. Finally, it is worth noting that interviews with IDPs and civil society actors unanimously denounced the endurance of these forms of state violence after the passing of Law 1448 and even the signing of the peace agreement with the FARC in 2016. They also denounce the enduring presence of groups that have ties with old paramilitary structures in various regions, despite the official demobilization of the AUC in 2006, confirming a similar debate in the literature on paramilitarism in Colombia (Rochlin, 2012; Hristov, 2013). All of this points to a tendency in Colombia by which the political

elite focuses on demobilization and positive peace over the transformation of the grievances that triggered armed violence.

5.1.2. Transitional Justice and Violent Economic Actors

Domestic conflicts are embedded in global dynamics and involve a wide range of state and non-state actors whose political and economic interests interact to create complex dynamics of violence at the local level (Meertens, 2015). The debate in the literature on the role of economic actors in conflicts and the need to hold them accountable in transitional justice processes takes all its meaning when looking at the Colombian case. Most respondents draw a direct relation between the expansion of extractive projects, including industrial agriculture and extensive cattle-raising, and violent patterns of land dispossession and the presence of armed groups in key regions. The nature and causes of displacement are highly contested and, while the dominant state narrative portrays displacement as a consequence of armed conflict, social mobilization organized around victims' rights frames displacement as one of the main objectives of the conflict:

We are not talking about a peasant being arbitrarily removed from his land. There are many cases in certain regions, like in the Catatumbo or the Montes de María, where we have found agro-industrial projects on lands that were deprived to the peasants. And in that process of dispossession, we see that it was initially violent but, then, it appeared to be a legal process. The dispossessed lands had been sold to the company who now owns it. That is why the law uses the concept of 'good faith'. This is to say: why did you think that land was so cheap? Did you not know there were paramilitaries there? - Fernanda

We see here that there is a strong link between forced displacement, land dispossession and the broader project of neoliberal development in Colombia, which has prevailed regardless of the state's numerous attempts to make peace with the multiple actors involved in these processes. Most importantly, it points to dynamics of legalization of land dispossession in which armed actors who are traditionally seen as the main perpetrators of violence have a direct connection with economic actors. Thus, the role of what Mani calls 'corrupt war economies' in the conflict need to be addressed in the transition period in order to safeguard the principles of truth and justice that are core concepts of transitional justice (Mani, 2008).

Furthermore, with regard to land restitution, it seems evident that, given the political and economic interests over these lands, broader rural and agrarian reforms are needed to ensure the sustainability of these programs. For example, Alfonso shared his concern regarding the restitution of his land because he has learned that there was a large-scale highway construction project that runs through the land he is claiming. He believes that the dispossession of his land was not a coincidence and pointed out: "One of my neighbours had five hundred hectares of land and was a local politician known to be the head of a regional paramilitary organization. Why did he have such a big property there if people were being displaced? I don't want to go back there. How can I know he wasn't involved in the stealing my property?" Not addressing the role of the corporate sector in the conflict through transitional justice mechanisms prevents both the realization of the IDPs right to return and land restitution and limits the broader pursuit of social justice.

5.1.3. Development for whom? Transitional Justice and Agrarian Reform

Given the historical roots of land dispossession and the significant reconfiguration of the countryside that resulted from the conflict, many respondents saw the implementation of the land restitution framework as fundamentally dependent on the realization of comprehensive agrarian and land tenure reforms. Interviewees suggested that the inefficiency of land restitution and return programs, as well as the additional harm it causes to victims, could be partially explained by the fundamental contradictions that exist between the transitional justice framework and the economic and political context in which they are being implemented. Victims and activists defending victims' rights to land restitution point to the commitment of the state to market-driven development at the expense of human rights and have developed instead their own conception of development that is based on notions of social justice and multiculturalism. A member of the National Indigenous Organization of Colombia (*Organización Nacional Indígena de Colombia*, ONIC) explains the vision of his community:

Indigenous people have a de-structured vision of what development is. They have an idea of development that is more cyclical, supported by the idea of *Buen Vivir*. The idea of being in harmony with the environment, cultivating the land, preserving its culture in the territory. In this view, we take only what we need from the land. On the other hand, the development model that is being developed in Colombia is a model that has a strong emphasis on the primary sector of the economy and uses the idea of food production to justify agroindustries and large-scale cattle-raising. In Colombia, there is more land for cows than for victims of the conflict. - Juan José

The distinction made by Juan José is crucial to understanding the ideological foundation behind the state-initiated transitional justice process. The idea of the state using 'development' as a

justification for the expansion of extractivism and agro-industry and the establishment of a market-oriented rural development model is particularly important for grasping the motivations of the state in the transitional justice process. A closer look at Colombia's trajectory of development allows us to uncover dynamics of structural violence in which the state uses the transitional justice process as a mechanism to advance its neoliberal development agenda.

Furthermore, interviewees suggested that the use of the concept of 'development' has repercussions beyond victims' reparation, suggesting that land restitution constitutes much more than a transitional justice measure for rural communities. Social movements organized around demands for land restitution use a similar language of resistance as agrarian and socio-environmental movements in Latin America, that also have a strong focus on human rights and social justice. In the previous excerpt, the respondent uses the concept of *Buen Vivir*, which is closely related to the ongoing debate on development models in the region, especially with regard to the expansion of aggressive forms of extractivism. While *Buen Vivir* can be translated to "living well", it also carries elements of social justice, environmental sustainability and multiculturalism that are rooted in indigenous epistemologies rather than Western conceptions of development (Raftopoulos, 2017). Similarly, the language of the social mobilization for victims' rights also largely draws from discourses of peasant agriculture and food sovereignty that have been central elements in agrarian movements and peasants' mobilization in Latin America.

We need a peasant economy or are we will end up with only mining exploitation, palm plantations, and sugarcane. What about the subsistence? Who produces potatoes, cassavas, corn? This is what the development model tries to achieve: to concentrate food production in a few multinationals that would control everything that has to do with food production and turn us into a dependent country. Colombia

imports around 14 million barrels of food per year when we were previously self-sufficient in that area. We have to decide if we are going to be dependent on other countries again. - Felipe

5.1.4. *Tierra vs. Territorio*: Non-Material Elements of Land Restitution and Comprehensive Rural Reforms

In addition to seeking the restitution of land and property to victims of dispossession, social mobilization around land restitution issues promotes an alternative understanding of what it entails, which differs from the state's narrative in its conception of 'land'. Afro-Colombians, Indigenous and peasants share a conception of the land and the territory that challenges the idea of land as an asset that can be simply physically restituted. Interviewees suggested that the successful implementation of land restitution initiatives inevitably imply significant rural reforms to ensure that victims will be able to return safely and in dignity as well as to retake an agrarian vocation. A lawyer who has worked closely with returning peasants says:

In order for the peasants to return and cultivate the land, we need a real presence of the state in the countryside. Because as long as the state does not resolve the basic conditions of peasants, like infrastructure, education, access to work, access to markets, it is impossible for them to return and stay. Land restitution is useless if a peasant from Putumayo who sells cassava or banana, but who has to travel six hours to go to the closest municipality to sell his products. Or if he has to pay an intermediary for a very low price to take the product and go sell it. In both cases, the work of the peasant is lost and the money does not stay in his hands. - Rafael

Drawing on the discussion from chapter four, this excerpt contributes to reinforcing the argument that land restitution must be understood beyond its material dimension. Like Rafael, respondents

often emphasized this important distinction, which they often framed as ‘land’ (*tierra*) as a physical asset as opposed to ‘territory’ (*territorio*), which entails all elements necessary to the realization of rural populations’ right to development as distributive justice. This discussion contributes to strengthening Firchow’s argument by which a minimum level of development should be provided to the community for reparation to be more effective (Firchow, 2013). The delivery of land restitution programs must then be accompanied by rural reform efforts that take into consideration the non-material collective elements of reparation discussed in chapter four.

Issues related to the recovering of the *territorio* in discourses of reparations often pointed to the problematic understanding of the conflict that prevails in dominant state narratives of war and peace. Perceiving the conflict as predominantly rural and based on counter-insurgency strategies has contributed to policies and programs that overlook the endurance of other forms of structural violence and maintains the paternalistic character of the state in the transitional justice process. These misconceptions sustain the gaps between urban and rural areas in peacebuilding efforts and have contributed to transitional justice measures that are largely unresponsive to the need of remote communities. The next section reflects on how the four central demands of social movements for land restitution resonate in the discourses of resistance of a small rural community that is undergoing a land restitution process.

5.2. Urban Mobilization, Rural Grievances: A Perspective from the Countryside

Social mobilization around issues of land and other forms of social inequalities remains very dangerous in Colombia, even after the signing of the peace agreement in 2016. Interviews

with victims and activists emphasized the high instances of threats and assassinations of social leaders, unionists, human rights defenders, as well as professionals like lawyers and teachers, by post-demobilization paramilitary groups in most regions of Colombia. At best, the state has ignored the issue and denied claims that threats and assassinations were conducted systematically. But interviews suggest an even more direct involvement of the state in social repression and violence against the Left. Nonetheless, rural communities and social organizations working in war-affected regions generally agree on one point: “Peace has stayed in Bogota”. In this context, we are witnessing the rise of social mobilization in urban centres like Bogota around issues affecting mainly the countryside and we see that these movements maintain strong links with rural communities.

The case of this Afro Colombian community in the North of Colombia illustrates the complexity of land restitution in practice and the complex web of interests that have fuelled the conflict in Colombia and continue to prevent nation-wide peacebuilding. This example highlights key tensions in the land resolution framework and can help understanding some of the limitations of Law 1448 in triggering long-term transformations.

5.2.1. The Afro-Colombian Community, their Territory and the Conflict

The community is situated in the region of Urabá in the North of the department of Antioquia where I travelled during my fieldwork. It is composed of around 1500 inhabitants, most of Afro-Colombian descent. The vast majority of the community are IDPs and most are recognized as victims of the conflict by the state. The community relies mainly on the Leon

River, one of the principal access in the sea of the region, for subsistence, fishing and agriculture. The land and the river are crucial elements to the community, both economically, socially culturally. In 2001, the community initiated its struggle to retrieve about 10,000 hectares of ancestral land they were deprived of during the conflict. As of today, the community has not been able to secure its collective title over the land and most members of the community are also still waiting for their individual reparation package.

The region of Urabá was one of the most violent during the armed conflict. Being a strategic corridor for both legal and illegal economic activities, Urabá was deeply affected by the presence of guerrilla groups, right-wing paramilitaries, as well as state forces. Furthermore, from the second half of the 20th century, the region attracted national and multinational corporations interested in the richness of the region's soil, which is one of the most productive of the country. Most recently, the region became known as the banana-growing region (*Eje Bananero*) and physical and socio-economic landscape of Urabá was soon redefined by the establishment of large-scale plantation destined to export (Gaviria and Muñoz, 2007). The presence of multiple actors with conflicting political and economic interests was translated into high levels of violence, mass displacement and the severe repression of social mobilization. These violent dynamics culminated in an intense period of violence in the 1990s that caused even more displacement and multiple massacres attributed to various armed actors and targeted mainly social leaders and unionists of the banana industry (National Center for Historical Memory, 2016). According to community leaders and the main lawyer working on the case, the stability of the region continues to be endangered by the enduring presence of violent non-state actors, most

of which retain close ties with legal and illegal actors involved in the extraction of the region's natural resources.

5.2.1.1. The Community, Law 1448 and the Post-Conflict

Before the passing of Law 1448, the case draws its legal support from law 70 of 1993, the main legal reference for Afro-Colombian communities, which gives them collective rights to land and ensure political participation. The transitional justice process and the signing of the peace agreement redefined the configuration of the conflict and provided new legal avenues for the community. Most importantly, the emerging consensus was that land grabs were a feature of the conflict that had disastrous effects for displaced communities, leading to the creation of new legal mechanisms set in Law 1448 that, in turn, allowed the community to frame their claim within the transitional justice context and gain visibility. In addition to claiming the land as an Afro-Colombian community, they could now also draw on their status as victims of the conflict.

The land restitution process was further complicated by the more recent interests expressed by a Colombian company to develop an infrastructure project on the land that is being claimed. According to informal conversations with persons in position of authority, the community has received the legal assistance of NGOs in Bogota and Medellin, which have contributed to raising the visibility of the case at the regional and national levels. While the increased visibility of the community and its ties with urban-based organizations has contributed to some developments in the land restitution process, the geopolitical significance of the land claimed by the community makes the situation even more complex. The land claimed by the community is a central pillar of

Apartado's regional development plan and the resistance of the community to the development of a large-scale infrastructure project has raised criticism from different sectors who denounce the role of the community in obstructing the development of the region.

5.2.2. The Right to Land Restitution in Practice

This case of Afro-Colombian struggle illustrates the complex socio-political context in which the law is being implemented. A number of community meetings concluded that there was a lack of political will to enforce Law 1448, which resulted in multiple violations of the collective rights of the community, as an ethnic minority and as collective subject of transitional justice, as well as the individuals' right to reparation. What we see in this community is that individual and collective rights to reparation are being overlooked by both the state and the economic actors seeking control over the land. Despite the provisions of Law 1448, which should supplement the constitutional and ethnic rights of the community, most people I interviewed talked of how they had been waiting for years just to receive cash compensation. And those who had received compensation were unable to access the other elements of integral reparation because the claiming process was very complex and because processing times were ridiculously lengthy.

One of the main issues is that, given ongoing violence in the region, the community has very few resources for mobilization outside of the transitional justice process. According to interviews conducted both in Bogota and in the community, the state generally fails to protect the rights of rural communities, which in turn are left alone to defend their rights in the face of

powerful companies who much more legal and financial resources. But in addition to demonstrating how irregular administrative processes prevent the implementation of the law, the case shows that there are actors whose role it is to suppress movements that resist these powerful actors. Interviews conducted within the community revealed that since 2001, the community has lost a number of leaders, which, in addition to the direct harm caused to individuals, deeply affected the community's capacity to organize. Even after the passing of Law 1448 and the more recent peace agreement, members of the community shared their concern regarding the security situation. Carlos, a community leader and a victim of forced displacement said that the community was fighting a “monster that is strategic and has a lot of resources”. His testimony illustrates how this threat has framed most aspects of the community's resistance movement.

We are still very afraid of that issue. If there is a meeting in and we have to go until the town, and I go and I have not returned at 6 of 7 in the evening, my family calls me to find out where I am because they are afraid. Also, with fellow leaders, we are worried, and we call each other often. Here in the community, we have many leaders and we don't identify only one because it is too easy for them to come and kill that person. But if one of us is not where he or she is supposed to be, we get really afraid and we have to make sure that person is ok. So, we realize that we are just a small fishing community fighting against giants, but at the same time, we must have some power because we are still here. - Carlos

The enduring threat of violence in the region thus limits the platform for mobilization around the issue of land restitution.

Simultaneously, contradicting national laws and policies have contributed to the redefinition of the nature of the territory. We see the discourse of ‘development’ being used to justify the implementation of new projects on the land and this has significant impacts on the

land restitution process. In that particular community, the infrastructural project currently under discussion entails a significant reconfiguration of the territory that would have important impacts on the community and its livelihood. Interviews conducted in the community revealed the disastrous environmental effects of the rapid expansion of the banana industry in the region and fishermen point out how these types of large-scale development projects have deeply affected the fishing activities of the community. The community fears that the implementation of this project will contribute to the degradation of the territory and greatly limit the fishing space available to the community.

Finally, interviews and observations conducted in the community revealed how the full realization of the land restitution framework is dependent on the realization of other rights of ethnic communities in Colombia. For Afro-Colombians, Law 70 of 1993 establishes a series of collective ethnic rights as well as mechanisms that promote multiculturalism. The right to prior consultation (*consulta previa*) and to collective territory are the main legal foundations for the pursuit of the case, in addition to the provisions made by Law 1448 regarding the differential focus for ethnic minorities. What we see in the community, and this is increasingly common in Colombia, is that state and non-state actors have developed strategies to bypass these requirements. For example, representatives of the company have tried to evade the requirements of *consulta previa* in ways that are legal in appearance but don't guarantee that measures would be taken to secure the wellbeing of the community after the implementation of the project. The unequal power relation between the company and the community is particularly alarming, knowing that the establishment of the pending project would most likely prevent the restitution of that section of the land, which would then be acquired by the company.

5.2.3. Displaced on your Own Land: the Multidimensional Harm of Forced

Displacement

Me and my dad lived on the island that you see over there. We arrived there in 2001 and we had piece of land where we planted banana, cassavas, fruits. Then, in 2006 we decided to join the fight of this community for ancestral land and we started to fight for what is ours. In 2007, the government told us that we can no longer enter the island because it is now a water reserve and therefore can't be used by the community. So, we came here and they gave us a house but what about our farm and our land on the island? It is a part of our culture that is there. Look, I looked to fish with my father and to cultivate the land. Today, my son is 8 years old and he doesn't know any of that. - Mariana

Such narratives were recurrent in interviews and informal conversations with members of the community.

While a smaller portion of the community came from other urban and rural areas of the country, the majority had been displaced within the region of Urabá and often came from the same municipality or neighbouring ones. Therefore, it seemed to be the cultural and social disarticulation that resulted from violent processes of land dispossession and the expulsion of entire communities, and not the actual physical displacement, that most affected the situation of vulnerability. The community still lives on a small portion the land that is being claimed and, therefore, 'return' in that case does not entail the physical repatriation of the community but rather the restitution of their land as well as the measures of rehabilitation that address the multidimensional harm that results from being uprooted.

The case also illustrates the tensions that exist between individual and collective reparation programs in practice. Every member of the community is entitled to the restitution of

the collective land as part of an Afro-Colombian community, but most members are also pursuing their own individual reparation claims. Interviews and informal conversations pointed to the failure of the state to secure both the individual and the collective rights and this has profound effects for the community as a whole. As mentioned, before, only a few members had been able to receive cash compensation, which is often perceived as humanitarian assistance by victims of the conflict. The full realization of individual reparation programs and the implementation of collective social programs rooted in distributive justice principles are mutually reinforcing and integral reparation needs to include elements of both (Firchow, 2013). The restitution of the collective land by itself can't undo the decades of violence that have resulted in the reconfiguration of the whole region and nor will it resolve the multiple individual and collective forms of harm that have emerged from protracted displacement.

In conclusion, this chapter has presented four core demands of social movements organized around issues of land restitution in Colombia. Examining the discourses and strategies of these movements reveals grievances that go much beyond the conflict and yet are inherently tied to it. The success of the transitional justice process and the peace process fundamentally depend on how issues related to land inequalities are addressing in the transition period, which will be determinant for the prospect of justice and lasting peace as well as for the country's role in the global neoliberal project. The case study discussed in this section reveals the multiple challenges that limit the implementation of Law 1448 in practice. It helps understanding how demands of victims in remote areas are largely ignored by mainstream discourses of peace and justice in Colombia that focuses on material reparation and ignores other effects of the conflict on affected communities. Sadly, it is far from being isolated in Colombia and we see similar

patterns of irregular acquisition of land mixed with violence social repression becoming the norm in many regions of the country.

6. Implementing Transformative Justice in Colombia: Opportunities and Challenges

In this final chapter, I juxtapose the four elements of transformative justice proposed by Lambourne with my own findings to critically examine the opportunities and challenges of transformative justice in Colombia. Drawing on victims' experience and testimonies explored in chapter four and the central demands of social movements organized around land restitution demands discussed in chapter five, I reflect on the transformative potential of the land restitution framework established by Law 1448 of 2011 and its capacity to address historical inequalities rooted in land conflicts in Colombia. I also wish to draw particular attention on certain transitional justice mechanisms that were introduced by the peace agreement of 2016 and that could contribute to address some of the limitations of Law 1448 and facilitate the implementation of the land restitution framework. My interviews emphasized the importance of truth seeking and accountability for perpetrators in the process of peacebuilding and recovery. With the establishment of the Commission for Clarification of Truth, Coexistence, and Non-Repetition (*Comisión Para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, CEV*) and the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz, JEP), the 2016 peace agreement between the Colombian government and the FARC undeniably represents a milestone for transitional justice practice in Colombia.

6.1. Legal Justice and Accountability

While arguing for a more transformative approach to transitional justice, critical transitional justice literature recognizes that holding the perpetrators of violence accountable for the crimes committed is the basis of durable peace and is fundamental for the full realization of victims' rights (Mani, 2008; Lambourne, 2009). Interviews conducted among victims and activists in Bogota and Urabá for my research all suggested that accountability and matters of retributive justice were central elements of the transitional justice and the peace process and were indissociable from the five elements of integral reparation (see section 1.3.3). While Law 1448 makes provisions regarding the pursuit of justice and point to the responsibility of the state to identify perpetrators and hold them accountable for the harm caused (Article 24), the establishment of the JEP through the peace agreement of 2016 is certainly among the main achievements for the pursuit of accountability in Colombia. The JEP is the main institution mandated to “administer justice and investigate, clarify, prosecute and punish serious human rights violations and serious infringements of international humanitarian law” (Article 5.1). It was established by chapter five of the 2016 peace agreement as part of the Integrated System of Truth, Justice, Reparation and Non-Repetition (Sistema Integral de Verdad, Justicia, Reparación y No Repetición).

6.1.1. War Economies, Accountability and the 2016 Peace Agreement

A key debate in the literature on transformative justice looks at the potential of transitional justice mechanisms to account for violations related to ‘corrupt war economies’ (Mani, 2008). The traditional focus of transitional justice related to exceptional gross

violations of human rights has contributed to what Carranza calls “mutually reinforced impunity” in which some forms of crimes committed by economic actors are overlooked. This oversight, in turn, translates into widespread impunity for key players in the conflict (Carranza, 2008).

These concerns were made apparent in my interviews and field observations. For example, the case of the Afro-Colombian community reveals the centrality of natural resources in violent processes of dispossession that have characterized the Colombian conflict. The political and economic interests that developed in Urabá deeply affected the struggle of the community both directly, through the physical repression of social mobilization for social justice, and indirectly, by contributing to the reconfiguration of social structures in a way that sustained the isolation of the community and prevented the full exercise of their ethnic and constitutional rights. With only two years of existence, the JEP has made significant advances in registering victims and initiating investigations of FARC leaders and members of the Colombian armed forces. It is important to mention that the mandate of the JEP is largely framed within the discourse of human rights and addresses mainly violations of civil and political rights committed by FARC members during the conflict.

There is increasing domestic and international pressure for the JEP and other transitional justice mechanisms to address the role of violent economic actors, notably extractive companies who have engaged in violent processes of land dispossession, during the conflict. Among recent developments, the *Fundación Ideas para la Paz* (FIP), with a group of forty-two NGOs and social organizations, have created fifty-six reports detailing the role of eighty-one companies in departments with high numbers of land restitution processes (El Espectador, 2018).⁶ The reports

⁶ Most companies listed are from the oil and gas sector, followed by export-oriented palm oil cultivation, mining and agro-industrial activities. A full list of the reports is available Online at <http://www.ideaspaz.org/especiales/empresas-paz/>

have emphasized the relations between aggressive economic activities in strategic regions of the country and widespread violations of human rights. Most importantly, they reaffirm that the accumulation of rural land was a key objective of the conflict and highlight the complicity of paramilitary groups in that process (FIP, 2019). Similarly, Colombian-based organizations like ILSA, Dejusticia and MOVICE have made significant contributions in producing valuable knowledge on the complex relation between land conflicts and the war and strongly argue that these issues should be addressed in the transitional justice process to ensure non-repetition.⁷ The establishment of Law 1448 and the signing of the 2016 Peace agreement have, at the very least, contributed to triggering key debates in the Colombian society and has served as a platform for mobilization around long-lasting grievances related to land inequalities. The presence of the FARC, that is originally a peasant-based organization, at the negotiating table also contributed to bring visibility to these issues, which has brought hope that the JEP and the Truth Commission could have the potential to reinforce the prospect of accountability in the postaccord era by broadening the set of actors and issues that are examined to better capture the role of natural resource extraction in the conflict.

Despite growing pressure from civil society demanding justice for unlawful land dispossession that occurred during the conflict, powerful sectors of the state that support the recently elected government continue to oppose any attempt to expand the mandate of the JEP, preventing its contribution to address corporate complicity in the conflict (Uprimny, 2017). Many interviewees pointed to similar patterns of impunity that took place under Law 975 of

⁷ See for example Plazas, L. And Bautista, A. J. (2017). *Tensiones entre la Política Extractivista y la Restitución de Tierras y los Derechos Territoriales*. Bogota: MOVICE; Sanchez, N. C. (2017). *Tierra en Transición. Justicia Transicional, Restitución de Tierras y Política Agrarian en Colombia*. Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia.

2005, that regulated the process of demobilization of the AUC, suggesting the continuity of these issues in transitional justice practice in Colombia. Interestingly, this narrative was even present in interviews with more conservative government officials, who generally did not question the integrity of the state in the conflict and the perpetuation of paramilitarism in some regions of the country. The literature analyzed and the interviews I conducted suggested that, among other limitations, Law 975 failed to address the role of the state in the war, contributing to widespread impunity among ex-paramilitary leaders and overlooked the role of economic interests in the conflict (Garcia-Godos and O. Lid, 2010).

While it is worth pointing out that there have been significant developments with the passing of Law 1448 and the signing of the peace agreement in terms of the way justice and peace are conceptualized, a number of elements of Law 975 have carried on and the risk of impunity remains high. In fact, core elements of Law 975 like the five principles of integral reparation were simply transferred to Law 1448 without any change. Following that trend, the JEP has adopted a restorative justice approach, which promotes reconciliation between victims and perpetrators as a strategy of peacebuilding, a similar strategy than the one upon which accountability mechanisms proposed by Law 975 are based (Peace Agreement, 2016, Article 5.1.2.). This approach to transitional justice has important effects on the way the ‘transition’ is perceived in state institutions and is likely to constrain the issues and actors targeted by the JEP. The marked emphasis on reconciliation, combined with the narrow understanding of the set of actors involved in the perpetuation of violence, risks obscuring the role of the state before and after the ‘transition’ and prevent transitional justice from identifying and addressing the conditions that made these violations possible (Uprimny and Saffon, 2007). While Law 1448

offers a slightly more flexible definition of a victim, the establishment of the two major transitional justice mechanisms, the JEP and the Truth Commission, through the peace agreement can lead to a narrower set of violations and actors being addressed by formal transitional justice mechanisms.

6.2 Psychosocial Justice and Truth Seeking

Interviewees have overwhelmingly emphasized the close relation between land conflicts and forced displacement in Colombia, pointing to the importance of including non-traditionally addressed issues, like land dispossession, in the truth-seeking process. Because of their focus on the victims' narratives, truth commissions are often seen as one of the transitional justice mechanisms with the best prospects for producing societal transformations in post-conflict societies (Selim and Murithi, 2012; Duthie, 2014). While the real effects of truth commissions on transformative justice practice remains contested, my interviews suggest that truth-seeking is key in exposing historical grievances and triggering social debates around these issues. While Law 1448 makes special provisions for the right of the victim to truth-seeking, the most important development in that area is arguably the establishment of the Truth Commission through the peace agreement of 2016. While it remains too early to examine the outcomes of the Commission, recent debates on the potential of the Commission to help to expose historical dynamics of land dispossession has significant implications for the issues discussed in my research.

6.2.1. The Colombian Truth Commission and Land Dispossession

Interviews with lawyers who specialize in land disputes have suggested that the Truth Commission represents a unique opportunity to address issues that were not addressed through Law 1448, notably the motivations behind violent processes of displacement and land dispossession. While the corporate sector has actively opposed participation in JEP's processes and has aligned with powerful sectors of the state to protect its economic interests in the post-conflict period, fewer efforts were made to restraint of the Truth Commission's mandate. According to my interviews in Colombia, this can be explained by the fact that truth-seeking is often seen as a less punitive process and thus its effects are not perceived as direct threats by companies. However, Olasolo and Ramirez argue that the implications of truth-seeking for victims' recovery should not be underestimated, and that the JEP and the Commission have an equally crucial role in the promotion of peace and justice in Colombia (Olasolo and Ramirez, 2017). Similarly, the interview with Manuel, the lawyer involved in the land restitution case I have detailed in section 5.2, strongly believes that the creation of the Truth Commission will shed light on some forms of violence that are not addressed by Law 1448. In his view, the Truth Commission could notably help to uncover new narratives of land dispossession and contribute to identifying the obscure interests behind forced displacement in the region.

People interviewed for my study emphasized that resolving land conflicts in Colombia entailed addressing issues of distributive justice in addition to the provision of assistance and reparation to victims of the conflict in the transition period. They also confirmed the false dichotomy between civil and political rights (CPR) and economic, social and cultural rights

(ESCR) in transitional justice discourse and practice, particularly regarding land restitution initiatives, and highlighted the implications for victims' recovery. This confirms the growing consensus in the literature that issues of land inequalities in Colombia are closely related to patterns of structural violence, inequalities and poverty that have been identified as root causes of the conflict (Berry, 2017, McKay, 2018). While the transitional justice process and the peace agreement both make significant provisions in terms of addressing structural inequalities related to land, my research suggests that these mechanisms also carry elements of discrimination that perpetuate these inequalities. For example, a truth commission that does not recognize the collective nature of the relationship of indigenous communities to land or that ignores the distinct *campesina* culture risks undermining these groups during the testimony-collecting process and to make recommendations that don't fit their views of justice. It is imperative for the Truth Commission to take into account the principles of Law 1448, while also recognizing its pitfalls.

One of the main outcomes of my research is to affirm the growing consensus in the literature on the Colombian conflict that points to the central role of economic actors, particularly national and multinational companies involved in the extraction of natural resources, in the conflict (Richani, 2005; Lavaux, 2006; McNeish, 2017). While truth commissions are often seen as the main instrument to address these types of issues because they often have a broader scope than courts or reparation programs, critics point to their inability to produce meaningful recommendations as well as mechanisms that ensure their implementation (Selim and Murithi, 2011). Interviews and field observations revealed the lack of autonomy of transitional justice mechanisms and institutions. Mixed with the manifest lack of willingness of the government to challenge the status quo, a very hostile environment for the newly established

truth commission has been created. The unfavourable political environment limits the capacity of the Truth Commission to make recommendations that challenge the interests of the dominant sector of the state and makes it particularly difficult to implement them, in a context where even government officials are prone to be targeted by post-demobilization paramilitary groups.

Hence, the JEP and the Truth Commission inherently reinforce each other's mandate and present promising avenues for peacebuilding and transitional justice in Colombia. However, these mechanisms are elements of the peace agreement and therefore indirectly promote a certain view of the conflict that reinforces a narrative in which the FARC was the main perpetrators of violence. As previously discussed, other actors have been directly and indirectly involved in processes of forced displacement land dispossession and it is crucial that these institutions widen their understanding of violence to address the multidimensional character of the war. Selecting who speaks about what is in itself a political exercise that entails silencing some voices and therefore can contribute to perpetuating the grievances transitional justice seeks to address (Friedman, 2018).

6.3 Socioeconomic Justice, Reparation and Displacement

In Lambourne's view, socioeconomic justice can contribute to transformative justice by putting the emphasis on "various elements of justice that relate to financial or other material compensation, restitution or reparation for past violations or crimes (historical justice) and distributive or socioeconomic justice in the future (prospective justice)" (Lambourne, 2009, p. 41). Interviews and field observations have suggested that there is an emphasis on material

reparation in mainstream transitional justice practice in Colombia, despite the victims' understanding that integral reparation entails elements of both historical and prospective justice.

Conducting the research in Bogota, a rapidly growing city that deals with high levels of poverty and inequality, allowed me to observe the tensions that exist between reparation programs and social programs in discourse and practice. As my research shows, return, in most cases, is impossible or undesirable because of the endurance of the military and social conflict in many regions of the country. Therefore, millions of IDPs will most likely stay in Bogota and other urban centres of Colombia that face similar challenges in hosting displaced populations while dealing with their own development challenges. A big part of the peacebuilding project thus entails the rehabilitation of victims and the restoration of the damaged state-citizen bond, regardless of their decision to stay in Bogota, relocate or return.

Interviews have revealed that for most victims of the conflict living in Bogota poverty and the inability to access government services was an important determinant of their ability to overcome their situation of vulnerability. Furthermore, my research has contributed to demonstrating how services that are provided to the victims, both through transitional justice mechanisms and through social services, didn't take into account the different world views of different groups of victims. Among other examples mentioned during interviews, it was clear that indigenous, Afro-Colombian and peasant IDPs were particularly adversely affected by these issues. For instance, a few interviewees referred to the housing programs for vulnerable populations that granted very small apartments that did not respect the worldview and the livelihood of victims and limited their capacity to preserve their culture while displaced, which, for many, entailed decades of their lives. Another important issue that resulted from the failure of

the state to harmonize development and reparation programs is the conflicts that emerge within families of IDPs in the process of reparation. For example, many IDPs who have been displaced for decades are prevented from returning to the countryside because their children have grown up in the city and do not want to leave. Similarly, respondents talked about some forms of less visible gender-based discrimination embedded in the implementation of the reparation framework such as family gender conflicts that arise in the distribution of resources obtained through reparation programs and other transitional justice mechanisms. In these cases, women often become more dependent on state programs instead of being empowered by reparation.

Critical transformative scholars increasingly agree that the realization of transformative justice entails drawing on local knowledge in order to promote agency among victims (Rooney and Ní Aoláin, 2018). As suggested by Weber in her research on the Colombia transitional justice process, using the concept of citizenship in the design and implementation of reparation programs has the potential to shift the focus from material reparations to more empowering forms of reparation (Weber, 2018). Interviews conducted in the rural Afro-Colombian community suggested that, while Law 1448 opened new avenues for mobilization around the issue of land, we see that in order to pursue the process, the community also had to reframe the claim and draw on their status as victims in order to gain visibility. The case also shows how the delays in the provision of individual compensation for victims prevented them from overcoming their situation of vulnerability even if the land was to be restituted. Most members of the community were relatively poor and while the restitution of the land represented an important element of collective reparation for the community, interviews revealed that people were more

concerned about receiving the monetary compensation that would allow them to repair their broken houses or buying an oven to be able to make a living selling cookies.

In interviews conducted in Bogota, I noted how the double responsibility of the state in transition periods created frustrations among the victim population. Because Bogota hosts such a large number of IDPs, while also dealing with high levels of poverty, tensions emerge between the duty of the state to provide reparation to the victims of the conflict and to deliver social programs to the population in need (Uprimny, 2009). IDPs interviewed for my research expressed their frustrations towards the state because they believe it “repaired them with their constitutional rights” (Interview with Maria Paz). Some of this IDPs, for example, had received a housing unit or a free affiliation to a health care plan as a form of reparation, although these programs were actually social programs implemented by the city of Bogota for all residents. However, my research supports Pérez-Murcia’s argument that the arrival of IDPs in a community can trigger the development of social programs and thus benefit the non-victim population (Pérez-Murcia, 2016). In Colombia, municipalities generally handle most of the tasks related to designing and implementing assistance programs for victims of the conflict. Interviews with civil society actors who were previously working with the government shared how funds were allocated to municipalities based on the size of their victim population and therefore, cities like Bogota could find the resources to implement large-scale programs that could benefit both victims and non-victims poor households. Interviews and observations conducted in small towns near Bogota all pointed to the inability to implement both types of programs due to limited resources. In these cases, programs were generally limited to symbolic reparation, the construction of a monument for example, and the provision of humanitarian aid.

6.4 Political Justice, Democracy and Governance

According to Lambourne, political justice is a process that “involves transforming both institutions and relationships to eliminate corruption and promote a sense of fair representation and participation of the general population” (Lambourne, 2009, p. 45). Following that definition, two pillars of the 2016 peace agreement have been the promotion of an Integral Rural Reform (Chapter 1) as well as the development of a significant victim-centred institutional apparatus to deal with issues of truth, justice and reparation (Chapter 5). These additional mechanisms for peace and justice were meant to complement the comprehensive institutional framework established by Law 1448 to implement transitional justice mechanisms, notably the ambitious land restitution framework.

6.4.1. Transitional Justice and Structural Violence

While there is a growing debate in critical transitional justice literature on the potential of land restitution initiatives to promote the transformation of structural discrimination dynamics, interviews and field observations contributed to reinforcing the argument that transitional justice mechanisms themselves carry elements that contribute to perpetuating violent patterns of land dispossession and accumulation that disproportionately affect rural populations. For example, in the case of Colombia, Article 99 of Law 1448, which makes special provisions for processes of restitution that take place on land where there are “productive agroindustrial projects”, is often referred to in interviews with lawyers as the main evidence that corporate interests overshadow

human rights in transitional justice practice in Colombia. Another limitation of the law highlighted in interviews with lawyers was Article 101 of the law that states that people can sell the land restituted after two years after restitution. According most interviewees with legal backgrounds, this has contributed to further land concentration because the law doesn't contemplate the multidimensional conflict that prevails in zones where land is being restituted. As discussed in chapter four, the conditions in the countryside prevent returning IDPs from securing an economically viable livelihood and the enduring presence of armed actors have sustained dynamics of forced displacement even after 2016.⁸ In these conditions, rural communities often choose, or are forced to, sell the land, which is then acquire by large landowners controlling that particular region.

Finally, most lawyers activists I interviewed pointed to the failure of the law to capture the multiple sets of actors that perpetuate violence in Colombia and to design mechanisms that aim to transform the conditions that enabled the violations. After the demobilization in 2006 of the AUC, the largest paramilitary organization of Colombia, paramilitary structures were reorganized into a more localized and fragmented form of mobilization that display close ties with various state and economic actors (Hristov, 2013). Despite pressure from civil society, the crimes committed by these post-demobilization paramilitary groups, also known as BACRIM (*Bandas Criminales*), are perceived as ordinary crimes by the state and therefore are not addressed by transitional justice mechanisms. The result is widespread impunity for gross violations of victims' rights, a dynamic that is sustained even after the peace agreement, as

⁸ The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimates that over 18,000 people were displaced in 2017 and more than 33,000 in 2018. Retrieved from https://reliefweb.int/sites/reliefweb.int/files/resources/boletin_humanitario_nuevoformato_vf.pdf

demonstrated by the hundreds of social leaders and land activists who have been threatened or assassinated by these groups since 2016 (Indepaz, 2019).

6.4.2. Transitional Justice and Development: Complementary or Conflicting Concepts?

Concerns regarding the government's ability and will to implement transitional justice programs were overwhelmingly present in almost all the interviews I conducted. This consensus was seen as crucial in affecting the three other forms of justice discussed in this section. To be sure, while interviews emphasized concerns related to the recently elected government which is more clearly against land restitution and related efforts, a number of respondents pointed out that there has been a continued tendency of the state to ignore issues of distributive justice and sometimes encourage structural forms of violence rooted in land inequalities. Even the last government, that was recognized by the international community for reaching both the establishment of Law 1448 and the signing of the peace agreement with the FARC supported these patterns of discrimination through legislation that facilitated the consolidation of a market-driven national development model.

A recent comprehensive study in the legislative environment of land restitution in Colombia reveals the existence of fundamental contradictions between the land restitution framework and the legislation regulating extractive industries. Through the review of hundreds of cases, the authors show that the rights of claimants rarely prevail in land restitution courts (Plazas and Bautista, 2017). Notably, the Projects of National and Strategic Interest (*Proyectos*

de Interés Nacional y Estratégico, PINES) and the Zones of Rural Development, Economic and Social interest (*zona de interés de desarrollo rural, económico y social* , *ZIDRES*), that were adopted in 2013 and 2016 by President Santos, have contributed to facilitating the expansion of extraction and civil society extractivism under the discourse of ‘national development’.

A number of critical transitional justice scholars have advanced the argument that transitional justice could achieve more meaningful transformation if it allies itself with the field of development (Duthie, 2014; Selim and Murithi, 2011). This view has gained popularity since it allows for a widening of the effect of transitional processes while also maintaining its traditional focus on punitive and corrective forms of justice. Literature suggests that for land restitution programs to have transformative effects and address discriminatory institutions, they need to be coherent with other reparation programs and be “designed to complement broader, development-related efforts to end or pre-empt conflicts over land and property” (Williams, 2007, p. 48).

However, my research suggests that the very problem of the land restitution framework was that it was embedded in the dominant development approach, one which is highly repressive in relation to small-scale agriculture, the preservation of the environment, and the rights of rural communities. As such, social mobilization organized around demands for IDPs’ right to land restitution is organized around discourses challenging that dominant development model in Colombia. A close examination of the new government’s development plan (Plan de Desarrollo National 2018-2022) reveals the very weak commitment of the state to pursue land restitution as well as social programs for victims in general. Instead, it proposes market-driven approach to rural development that promotes foreign investment and relies on the militarization of the

countryside. Furthermore, the Colombian state is now undergoing a process that will reform Law 160 of 1994 the main agrarian law in Colombia, and experts are extremely critical of the power that is given to extractive companies in the proposed legislation.

Finally, beyond preventing the implementation of Law 1448 through the design of a development model that inherently contradicts the principles of reparations, it was suggested by victims and activists that the discourse of development is being used to justify the restriction of human rights. In 2018, the Constitutional Court announced that it would no longer be possible for popular consultation to prevent the activities of mining and extractive companies, adding that “the state is the owner of the resources of the soil and the subsoil of the nation, which transcends regional and municipal interests” (El Espectador, 2018).

Interviews conducted in Urabá revealed that the discourse of development is central to most processes of restraining ethnic, individual and collective rights of rural communities. While these dynamics are too often overlooked in the study of the transitional justice in Colombia, the research has shown that it is impossible to separate the implementation of the land restitution framework and of reparation programs from the broader context in which it is being implemented. A closer examination of the inherent contradictions that exist between the transitional justice process and the state’s approach to national development reveals the immense challenges for transformative justice in Colombia and inform the debates on violent patterns of land dispossession in Latin America.

7. Conclusions and Considerations for Future Research

7.1. Conclusions

While there has been a marked expansion of the literature on transformative justice in the last decade, the idea that transitional justice can achieve more than what it was originally designed to accomplish is not entirely new. Scholars like Lambourne, Mani and Duthie have emphasized how expanding the mandate of transitional justice to better respond to victims' needs required drawing from other well-established fields like peacebuilding and development to address some of the limitations of transitional justice. The notion of non-repetition that is inherent to transitional justice theory and practice also entails some form of transformations so as to prevent violence from occurring again.

While land restitution as a mechanism of transformative justice is gaining popularity in practice and in the scholarly literature, the case of Colombia confirms that it cannot alone alleviate all forms of grievances that have made violent processes of land dispossession possible (Meertens, 2016; Evans, 2016). Nevertheless, the establishment of a land restitution framework is in itself is an unprecedented accomplishment in Colombia, both because of the institutional framework it has created and the more indirect effects it has had in triggering social debates and rallying multiple sectors of the society around questions of land disputes in the conflict. Furthermore, the signing of the peace agreement also established the Integrated System of Truth, Justice, Reparation and Non-Repetition, a comprehensive set of transitional justice measures that have triggered new debates on the prospect of transformative justice in Colombia. The JEP and

the Truth Commission undeniably represent promising opportunities to address some of the limitations of Law 1448 identified in chapter four, notably by uncovering violent patterns of land dispossession, and, most importantly, the actors involved in these processes and their motives.

Nevertheless, my research also demonstrates that one of the main limitations of these mechanisms is their lack of independence from the state and the resulting incorporation to the broader political projects that inherently conflict with their mandates. Using the social movement praxis allowed me to examine how different forms of resistance emerge in the capital, Bogota, in line with the interests of rural communities whose capacity to mobilize is limited. In the context of violent social repression, social mobilization around demands for land restitution in Bogota has played a crucial role in challenging the dominant paradigm and promote alternative views of peace and justice. It has also allowed me to draw on victims' knowledge and experience, which helped to illuminate some of the limitations of mainstream transitional justice practice and to better capture the gaps of the land restitution framework and the implications for the process of recovery of IDPs in the post-conflict period.

The narratives of victims, activists and professionals working on issues related to land restitution all have something in common. Through discussions about the transitional justice process, they emphasized key challenges of rural development in Colombia, most of which have implications that go much beyond the transitional justice process or the peace process with the FARC. In fact, the four demands by the social movements, discussed in chapter five, suggest that mobilization for land restitution in Colombia sees land restitution not only as a form of reparation that is essential to peacebuilding but also as a key determinant of the country's development trajectory in the near future. Interviewees often framed their understanding of land

restitution within narratives of social justice, food sovereignty as well as socio-environmental conflicts, suggesting that the outcomes of the transitional justice process, especially with regards to addressing enduring inequalities rooted in the highly unequal land distribution, will deeply affect the lives of rural populations as victims of the conflict, but also their role in the global neoliberal project.

This has important implications for scholarship on transformative justice. First, my research shows that the shift to a more transformative approach to transitional justice must come with a wider set of actors facing justice and for a larger set of crimes. Notably, my research has emphasized the need to target the extractive sector in transitional justice practice and to actively attempt to uncover the links between natural resource extraction and violence. The case of Colombia highlights the need to design and implement transitional justice mechanisms that recognize the multiple forms of harms suffered by victims of displacement and land dispossession and to incorporate violations of ESCR. Increasingly, transitional justice processes around the world adopt such mandates, but there are significant challenges to transforming their findings into policies that can have real impact, especially in fragile political transitions. Similarly, courts and other accountability mechanisms can play a role in that process, notably widening their scope to include violations of economic, social and cultural rights in addition to the violations of civil and political rights they traditionally address.

My research also emphasizes the problematic assumption in the literature that transitional justice and development are complementary concepts. The case of Colombia shows that the development paradigm promoted by the state, and especially by the recently elected government, clearly contradicts some key objectives of transitional justice. Interviews suggested that state

initiatives that are presented as development have directly contributed to processes of victimization in the context of the armed conflict. Furthermore, my research highlights how transitional justice mechanisms can contribute to the reproduction of discriminative dynamics, especially with regards to reparation for the internally displaced population and land restitution. Despite a marked commitment to include rural populations, the Colombian transitional justice process has facilitated land concentration and the establishment of a market-driven model of development relying largely on the extraction of natural resources.

7.2. Transformative Justice: Considerations for Future Research

7.2.1. Transitional Justice and the State

Transformative justice as a concept is based on the critique that transitional justice processes are political and designed and implemented by elites who are sometimes the same political actors that have been perpetrators of violence (Gready and Robins, 2015). While the fundamentals of that theory have been researched and demonstrated, transitional justice practice continues to put a lot of responsibility on the state through its emphasis on truth commissions, legal reform/corrective justice, reparation measures and courts. Despite agreement about its role in both the military and the social conflict, the state was central to most conversations on the transitional justice process and the peace process in interviews and informal conversations I conducted in Colombia. Institutions for peace and justice in Colombia were set up by either Law 1448 or the peace agreement, and they enjoy very limited independence from the state. What is

the chance, then, of the Truth Commission initiating an extensive process to uncover the role of the state in violent patterns of dispossession and displacement? What is the prospect of transformative land restitution in a context where the institution processing the claim is largely influenced by state actors who benefited from the expansion of profitable economic activities on these lands?

The concept of ‘integral reparation’, as defined by Law 1448, remains very much influenced by the assumption of international law that full restitution, or the return to the situation before the occurrence of the harm, is achievable and it is the duty of the state to guarantee it. In Colombia, the enduring violence and the low levels of development prevent most IDPs from returning, let alone recuperating the land that was stolen during the conflict. Furthermore, my interviews have shown that for most IDPs their situations prior to displacement entailed some forms of exploitation and structural violence. Ironically, while pointing to the responsibility of the state in the transitional justice process, an overwhelming majority of respondents also talked about a lack of trust in the state, including state institutions created to deliver integral reparation. Interviews even referred to the state as a perpetrator of violence in the sense that (1) it allowed for violations to occur; and (2) it failed to implement reparation measures, which contributed to revictimize the victims.

More research is needed on the transformative potential of local and indigenous justice and peace measures in post-conflict settings, and on their interactions with mainstream transitional justice processes and other state initiatives. For instance, alternative transitional justice measures have proven relatively successful in contributing to reconciliation in countries like Rwanda and Sierra Leone (Selim and Murithi, 2011). In Colombia, Weildler Guerra Curvelo,

a Colombian scholar from the Wayuu indigenous community talks of the multiple ways in which the Wayuu's conceptions of conflict and peace could be very relevant in addressing issues of peace and reconciliation and in contributing transformative elements for social relations in the post-conflict era (Curvelo, 2017). Decolonizing discourses of war and peace in Colombia will allow for new visions of conflict resolution to emerge and enable peace and justice initiatives outside of the sphere of the state.

7.2.2. Rethinking Return in Protracted Displacement Contexts

As demonstrated in chapter four, return is generally not seen as a possible solution for the millions of IDPs in Colombia. My interviews suggest that efforts at land restitution and return, in the current context, have contributed to their revictimization. According to respondents, this occurs mainly in two ways. In the first scenario, IDPs, upon return, are faced with the reality that their place of origin is no longer viable and become displaced again, often worse off than before return since they may have lost material or social capital they had gained in the city. In the second scenario, IDPs return to their land but are unable to recuperate their livelihoods due to the social and environmental reconfiguration of the countryside; their interests are subordinate to the activities of big agroindustrial or extractive companies.

These findings raise important questions regarding the role of transitional justice in contributing to the resolution of big scale long-lasting displacement crisis. What does return entail for communities whose land has been 'bought' by companies or acquired by the government under the justification of national development? And, how can transitional justice

address the limitations associated with protracted displacement contexts like the presence of secondary occupants in or the intergenerational conflicts that emerge within displaced rural households living in urban centres?

As illustrated by the narratives of informants in the interviews I conducted in Bogota and in the countryside, the displacement situation in Colombian reveals different meanings of ‘return’ and ‘repatriation’. Four of the IDPs I interviewed had also lived abroad where they received the status of refugee. After returning to Colombia, they were unable or unwilling to go back to the area where they had been displaced and settled in Bogota. Decades have passed since they were displaced and the security situation in these region remains a concern. Integral reparation for them had a different meaning and mostly involved elements of distributive justice as well as of symbolic recognition by the state of the harm caused. This situation point to the losses suffered from protracted isolation from home, including discrimination, uncertain immigration status, and intergenerational harm (Laing, 2018). Despite the magnitude of the displacement crisis in Colombian, the right to return was not a very salient preoccupation among those I interviewed. In fact, I was actually the one bringing it up most of the time. Instead what IDPs and their movements seemed to insist on was the importance of land restitution within the broader debate on Colombia’s, and Latin America’s, development trajectory and the exploitative subordination of rural communities to the process of globalization.

My research highlights the need to conduct further research on durable solutions for protracted displacement situation in cases when return is impossible or undesirable under existing conditions. It is absolutely necessary to develop research methods that promote the participation of victims in all stages of the design and implementation of durable solutions and

the knowledge and experiences of the displaced should be at the centre of any reparation or repatriation framework. The UNHCR's dominant approach that favours return can no longer be the preferred solution. We need a new paradigm in which the state occupied a less central role in repatriation programs. The case of Colombia shows how multiple conflicting interests interact to sustain dynamics of exclusion and discrimination, in such a way that makes displacement irreversible.

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Appendices

Appendix A: Interview Questions - English

1. What is your personal and professional implication with the issue of displacement and land restitution?
2. What are, in your opinion, the main challenges to return for victims of forced displacement in Colombia?
3. What does 'integral reparation' entail for displaced people who have been dispossessed?
4. What do you think is the significance of land restitution in the reparation scheme?
5. What do you think are the main achievements and challenges for land restitution in Colombia?
6. How have Law 1448 and the signing of the peace agreement affected the daily lives of displaced people?
7. Do you think the interests of displaced people are represented in these documents?
8. In the current context, what do you think is the most desirable long-term solution for displaced people living in Bogota?
9. Is there anything you would like to mention that was covered during the interview?

Appendix B: Interview Questions - Spanish

1. ¿Cuál su implicación personal y profesional con el tema del desplazamiento en Colombia?
2. ¿En su opinión, cuales son los desafíos al retorno para los desplazados?
3. ¿Qué significa para usted la ‘reparación integral’ para los desplazados que han sido despojado?
4. ¿Qué es la importancia de la restitución de tierras en la reparación integral?
5. ¿Me puede comentar sobre los avances y desafíos de la restitución de tierras en Colombia?
6. La Ley 1448 y el acuerdo de Paz cambiaron la vida diaria de los desplazados?
7. ¿En su opinión los intereses de los desplazados están representados en estos documentos?
8. ¿Cuál es, en su opinión, la solución más durable para los desplazados en el presente contexto?
9. ¿Quiere decir algo aparte de lo que he preguntado?

Appendix C: Participants' Information

Interviews				
Name	Gender	Place of Origin	Place of Interview	Information
Maria Paz	Woman	Cali, Cauca	Bogota	Social Leader in Bosa in the Afro Colombian community in Bogota, Victim of forced displacement
Isabela	Woman	Bogota	Bogota	Lawyer, specialized in land issues
Alfonso	Man	Rio Negro, Santander	Tenjo, Cundinamarca	Victim of forced displacement, currently involved in a land restitution process for a land he lost during the conflict, has lived in Ecuador and Costa Rica as a refugee
Emilio	Man	Bucaramanga, Santander	Over the phone	Victim of forced displacement, currently involved in a land restitution process for a land he lost during the conflict
Valentina	Woman	Cundinamarca	Tenjo, Cundinamarca	Victim of forced displacement, representative of the displaced population of Tenjo at the Women's Council of Tenjo
Johana	Woman	Turbo, Antioquia	Apartado, Antioquia	Victim of forced displacement, member of the Consejo Comunitario de Puerto Girón
Carlos	Man	Cali, Cauca	Apartado, Antioquia	Victim of forced displacement, member of the Consejo Comunitario de Puerto Girón, social leader
Daniel	Man	Unknown	Apartado, Antioquia	Victim of forced displacement, member of the Consejo Comunitario de Puerto Girón
Mariana	Woman	Apartado, Antioquia	Apartado, Antioquia	Victim of forced displacement, member of the Consejo Comunitario de Puerto Girón, social leader
Sofia	Woman	Bogota	Bogota	Works for the <i>Unidad de Víctimas</i> as a service officer, previously worked with NGOs that offers services to victims of displacement in Bogota
Paula	Woman	Bogota	Bogota	Works for the <i>Unidad de restitucion de tierras</i> as a service officer, lawyer specialized in human rights
Cristian	Man	Bogota	Bogota	Works for the <i>Unidad de Víctimas</i> as a service officer
Leidy	Woman	Bogota	Bogota	Coordinator of the <i>Unidad de Víctimas</i> ' office in Ciudad Bolivar in Bogota

David	Man	Bogota	Tenjo, Cundinamarca	Coordinator of the Victim's program in Tenjo Previously worked with victims, accompanying land restitution processes
Felipe	Man	Cali, Cauca	Bogota	Historian, member of MOVICE, a national movement for the rights of the victims, human rights activist, Member of the Patriotic Union of Colombia, Victim of forced displacement
Rodrigo	Man	Cúcuta, Norte de Santander	Bogota	Member of ANDAS, a national NGOs for social justice and the rights of the victims, Victim of forced displacement
Rafael	Man	Barranquilla, Atlántico	Bogota	Lawyer specialized in land restitution cases, involved in the case La Europa, a famous case of land restitution in Colombia, victim of forced displacement
Fernanda	Woman	Bogota	Bogota	Lawyer and researcher specialized in land issues
Camilo	Man	Cesar	Bogota	Former agrarian leader and activist, member of CCJ, a national NGO that promotes international law and human rights, researcher specialized in agrarian movements, former agrarian leader, victim of forced displacement, lived in Europe as a refugee
Natalia	Woman	Pereira, Risaralda	Over the phone	Works with Taller de vida, a national NGO that works with victims, the participant worked with returned population from Bogota
Esteban	Man	Huila	Bogota	Philosopher researcher from the University of Cauca, co-author of <i>Tensiones entre la Política extractivista y la Restitución de Tierras y los Derechos Territoriales</i> , Member of MOVICE, currently completing a Masters' degree in a French University, victim of the conflict from having a family member who was recognized as direct victim of the conflict
Juan José	Man	Unknown	Bogota	Member of ONIC, a national NGO for the rights of indigenous people, lawyer specialized in land restitution, victim of forced displacement
Santiago	Man	Cauca	Bogota	Formerly member of the directory council of his <i>resguardo</i> , student in Law in Bogota
Manuel	Man	Cúcuta, Norte de Santander	Bogota	Lawyer specialized in socio-environmental Law, director of ILSA, a Bogota-based NGO for social justice and the rights of the victims, victim of forced displacement
Diana	Woman	Bogota	Bogota	Works with CINEP, a national NGO for education and peacebuilding

Appendix D: Verbal Consent - English

Date:

Study Name: Close to Peace but Far from Home: Forced Displacement and Land Restitution in Post-Accord Colombia

Researcher: Laura Primeau

MA Student, Development Studies, York University, Principal Investigator

Department of Social Science: 776 South Ross Building, York University, 4700 Keele Street, Toronto, Ontario, Canada, M3J 1P3

Purpose of the Research: Study the significance of land in the peace process to understand the challenges to peace and contribute to the advancement of the peace process in Colombia. The research is based on interviews and the findings will be reported in a written thesis.

What You Will Be Asked to do in the Research: You will be asked to answer ten to fifteen questions. The interview will take between thirty minutes and two hours. If you are participating in a focus group, it will take between two and three hours.

Risks and Discomforts: Some questions address topics related to the conflict and might cause some discomfort.

Benefits of the Research and Benefits to You: The study will contribute to expand the discussion on important topics for the development of peace in Colombia. By participating in this research, you can contribute to the knowledge on people's perspective on the peace process and also learn from other people's experiences.

Voluntary Participation and Withdrawal: Your participation in the study is completely voluntary and you may choose to stop participating at any time. Your decision not to volunteer, to stop participating, or to refuse to answer particular questions will not influence the nature of the ongoing relationship you may have with the researchers or study staff, or the nature of your relationship with York University either now, or in the future.

In the event you withdraw from the study, all associated data collected will be immediately destroyed wherever possible. Should you wish to withdraw after the study, you will have the option to also withdraw your data up until the analysis is complete.

Confidentiality: the information collected in the interviews and focus group will remain confidential for the whole duration of the study. Unless you choose otherwise, all information you supply during the

research will be held in confidence and unless you specifically indicate your consent, your name will not appear in any report or publication of the research. The information collecting during interviews will be recorded for the purpose of the research. Your data will be safely stored in an encrypted device accessible only to the researcher and a copy of the data will be encrypted and stored in a password protected computer and only the researcher will have access to this information. All information will be destroyed after the research is completed, no later than August 2023. Confidentiality will be provided to the fullest extent possible by law.

Questions About the Research? If you have questions about the research in general or about your role in the study, you may contact the Department of Social Science, 776 South Ross Building, York University, 4700 Keele Street, Toronto, Ontario, Canada, M3J 1P3, phone 416-736-5054.

This research has received ethics review and approval by the Delegated Ethics Review Committee, which is delegated authority to review research ethics protocols by the Human Participants Review Sub-Committee, York University's Ethics Review Board, and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about this process, or about your rights as a participant in the study, please contact the Sr. Manager & Policy Advisor for the Office of Research Ethics, 5th Floor, Kaneff Tower, York University (phone 416-736-5914 or e-mail ore@yorku.ca).

Legal Rights and Signatures:

I consent to participate in "Close to peace but far from home: displacement and land restitution in post-accord Colombia" conducted by Laura Primeau. I have understood the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent.

I consent to the audio-recording of my interview(s)

Appendix E: Verbal Consent - Spanish

Nombre del Estudio: Desplazamiento Forzado y Restitución de Tierras en Colombia en la era del Post-Acuerdo

Investigadora: Laura Primeau, Estudiante de Maestría II,

Departamento de Ciencias Sociales, dirección: 776 South Ross Building, York University, 4700 Keele Street, Toronto, Ontario, Canada, M3J 1P3

Objetivo de la investigación: Estudiar las perspectivas sobre el retorno y la restitución de tierras para las víctimas de desplazamiento forzado en Colombia, entender los desafíos a la paz y contribuir al avance del proceso de paz en Colombia. Los resultados finales de esta investigación serán presentados en un documento escrito o tesis.

Que se le pedirá en esta investigación: se le pedirá que conteste entre diez y quince preguntas sobre el tema investigado. La entrevista tomara entre una y dos horas.

Riesgo y beneficios: Unas de las preguntas le piden hablar sobre situaciones en las que usted fue testigo o víctima de discriminación, lo cual puede ser revictimizante. Su participación en el estudio es completamente voluntario y usted puede detener la entrevista en cualquier momento sin influenciar la naturaleza de su relación con la investigadora o la Universidad de York, ni en el presente ni en el futuro.

La investigación espera crear espacios para discutir y reflexionar sobre temas y dinámicas que son relevantes para la sociedad Colombiana y el avance de la paz. Al participar en la investigación, usted contribuirá a mejorar la sociedad a la cual pertenece al abordar un problema que tiene un impacto negativo sobre la vida de muchas personas. Usted podría ser un agente activo en la construcción de conocimiento y de desarrollo social.

Confidencialidad: Toda la información que comparta durante la investigación será confidencial y a menos que usted específicamente de su consentimiento, su nombre no va aparecer en ningún reporte. Las grabaciones de las entrevistas serán guardados en un archivo encriptado el cual será asegurado con una clave y será borrada en agosto de 2021. Se proveerá confidencialidad hasta donde la ley lo permita. En caso de que usted se retire de la investigación, toda la información asociada con usted será destruida inmediatamente.

¿Preguntas acerca de la investigación? Si tiene preguntas acerca de la investigación en general o en su rol en el estudio, siéntase libre de contactar mi departamento académico: Departamento de ciencias sociales, 776 South Ross Building, York University, 4700 Keele Street, Toronto, Ontario, Canada, M3J 1P3, teléfono 416-736-5054. Esta investigación ha sido revisada por el sub-Comité para la Revisión de Participante Humanos de la Universidad de York y está acorde con los estándares del Consejo Canadiense para las Guías Éticas de Investigación. Si tiene alguna pregunta sobre este proceso o sobre sus derechos como participante, por favor contacte al Director y Asesor de Políticas de la Oficina de Ética de Investigación (correo electrónico: ore@yorku.ca, teléfono: 416-736-5914).

Derechos legales:

Acepto participar en la investigación **Desplazamiento Forzado y Restitución de Tierras en Colombia en la era del Post-Acuerdo**, adelantado por **Laura Primeau**. Entiendo la naturaleza de este proyecto y deseo participar. Al dar de mi consentimiento, no estoy renunciando a ninguno de mis derechos legales. Doy mi consentimiento para la grabación de mi entrevista.