

## DIGNITY TAKINGS AND DIGNITY RESTORATION: A CASE STUDY OF THE COLOMBIAN LAND RESTITUTION PROGRAM

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Colombia has experienced massive forced displacement because of the socio-political violence associated with an internal armed conflict that began more than fifty years ago. According to the available official figures, in the past twenty-five years 7,037,962<sup>1</sup> people have been displaced, fleeing violence. As a result, Colombia is the country with the highest number of internally displaced persons (hereinafter IDPs) in the world.<sup>2</sup> Consequently, there is a widespread problem of land dispossession. According to estimations, 94% of the displaced families that owned land and 92% that owned livestock were dispossessed of those resources or forced to abandon them.<sup>3</sup>

For the past ten years, the Colombian state has adopted several policy measures with the aim of achieving peace and transitioning to democracy. Those measures include programs of demobilization and reintegration for illegal armed actors, and mechanisms for fulfilling justice, truth, and reparation for victims.<sup>4</sup> Additionally, after intense negotiation and political tensions, the state is implementing the peace accord signed between the government and FARC, the oldest and most important guerrilla group in the country.

As part of these policy measures, the Colombian Land Restitution Program (hereinafter LRP), created by the Victims' Law of 2011, aims to

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1. *Registro Único de Víctimas*, UNIDAD VÍCTIMAS.GOV.CO, <http://rni.unidadvictimas.gov.co/RUV> [https://perma.cc/BX6U-HYCF] (showing the number of victims included in the national registry of victims of the Victims Unit).

2. UN HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2015 (2016), <http://www.unhcr.org/576408cd7.pdf> [https://perma.cc/M5V7-67WQ].

3. *11th Report: Quantification and Valuation of Abandoned Lands and Territories in Colombia*, MONITORING COMM'N OF PUB. POLICIES ON DISPLACEMENT (Jan. 19, 2009), [http://www.codhes.org/index.php?option=com\\_seg&templateStyle=9](http://www.codhes.org/index.php?option=com_seg&templateStyle=9) [https://perma.cc/S99M-8JUA] [hereinafter MONITORING COMM'N].

4. *Transitional Justice Mechanisms in Colombia*, INT'L CTR. FOR TRANSITIONAL JUSTICE, [https://www.ictj.org/sites/default/files/subsites/colombia-timeline/index\\_eng.html](https://www.ictj.org/sites/default/files/subsites/colombia-timeline/index_eng.html) [https://perma.cc/6NQ6-38MV].



restitute the abandoned or dispossessed lands to millions of IDPs who were forced to abandon their possessions as they fled the violence of the internal armed conflict. At the same time, the program aims to contribute to transforming deep inequalities associated with massive forced displacement. Hence, the LRP fits well within the definition of a transitional mechanism of reparation with a transformative perspective.

In this paper, I use the phenomena of forced displacement and land dispossession in the context of the Colombian internal armed conflict to test the socio-legal concept of dignity takings. Additionally, the paper draws connections between dignity restoration and transformative reparations. I argue that, in certain cases, the massive land dispossession in Colombia is a clear case of dignity takings because dehumanization occurs, but in other instances there is land loss with no dehumanization or infantilization. Furthermore, I suggest that the concept of dignity restoration can play a significant role in transitional contexts beyond those defined as dignity takings,<sup>5</sup> particularly if dignity restoration is considered a remedy for massive human rights violations.

This paper has three sections. The first one addresses the question of whether land dispossession in Colombia is a form of dignity takings. To argue the complexities of involuntary property loss in the country, I describe the context in which forced displacement has taken place, and then I break down various modalities of land dispossession. The second section sets forth the main characteristics of the LRP as well as some of its initial results. The third section puts into dialogue the conceptual framework informing the Colombian LRP—transformative reparations—and dignity restoration. To do so, I describe the meaning and scope of transformative reparations in the context of the LRP and explore its continuities and discontinuities with the concept of dignity restoration.

This case study relies on two main methods. First, I conducted a content analysis of judicial rulings issued as part of the program between the beginnings of its implementation in 2012 and June 2014. The total number of decisions for this period is 604 rulings. I worked with a random sample of eighty-four rulings, which yields results with a 95% confidence level and a confidence interval of ten. These decisions shed light on the shape transformative restitution is taking in the implementation of the LRP in Colombia. This is useful in understanding the differences between transformative reparation and dignity restoration. Second, fourteen semi-

5. Carol Rose, *Racially Restrictive Covenants—Were They Dignity Takings?*, 41 LAW & SOC. INQUIRY 939 (2016).



structured interviews (seven with experts in the field of land restitution in Colombia, four with land restitution judges, and three with officers working in coordination with the judges) provide more complex narratives about transformative restitution, and align well with the findings of my content analysis.

## I. USING DIGNITY TAKINGS TO UNDERSTAND THE PUZZLE OF LAND DISPOSSESSION IN COLOMBIA

### *A. Political Violence and Forced Displacement*

Colombia is in the midst of the process of ending its fifty-two year-old internal armed conflict, which is the longest armed conflict in the Western Hemisphere.<sup>6</sup> With a variety of actors implicated—including left wing guerrilla groups, right wing paramilitary groups, and security forces<sup>7</sup>—this conflict has profoundly affected both institutions and civilian populations alike.

The political violence associated with the armed conflict and its effects have deepened the weaknesses of state institutions. Illegal armed actors have captured institutions in a number of regions of the country<sup>8</sup> by using acts of corruption or intimidation, as well as complex mechanisms of cooptation.<sup>9</sup> Additionally, the presence of armed actors has exacerbated the absence of the state institutions in several areas of the country. As a result, the conflict has increased the distance between state institutions and communities, especially in rural areas, as well as societal distrust of the state.<sup>10</sup>

The presence of armed actors has deeply affected civilian populations, particularly in the rural regions. Civilians have suffered the consequences of the competition among guerrillas and paramilitary groups for control over several areas of the country. Confrontations and competition have been particularly intense over territories that are key for economic motives, such as control of extractive industry, natural resources, and drug trafficking.<sup>11</sup>

6. Kimberly Theidon, *Reconstructing Masculinities: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia*, 31 HUM. RTS. Q. 1, 6 (2009).

7. Rodrigo Uprimny & María Paula Saffon, *Usos y Abusos de la Justicia Transicional en Colombia*, 4 ANUARIO DE DERECHOS HUMANOS 166 (2008).

8. See generally MAURICIO GARCÍA VILLEGAS & JAVIER REVELO, *ESTADO ALTERADO* (2010).

9. See generally LUIS JORGE GARAY SALAMANCA ET AL., *LA CAPTURA Y RECONFIGURACIÓN RECONFIGURACIÓN COOPTADA DEL ESTADO EN COLOMBIA* (2008).

10. GARCÍA & REVELO, *supra* note 8.

11. Yamile Salinas Abdala, *Colombian Legislation and the Seizure of Lands and Territories, in DISTRIBUTIVE JUSTICE IN TRANSITIONS* (Morten Bergsmo et al. eds., 2010), [https://www.fichl.org/fileadmin/fichl/documents/FICHL\\_6\\_web.pdf](https://www.fichl.org/fileadmin/fichl/documents/FICHL_6_web.pdf) [<https://perma.cc/TS83-4CH8>].

Additionally, parties to the conflict have developed evolving and distinctive repertoires of violence. For example, while FARC is intent on fighting and has frequently kidnapped both military members and civilians, paramilitaries are more likely to commit massacres and mutilations.<sup>12</sup> Despite differences, illegal armed groups have also converged on manifestations of violence, such as imposing diverse forms of control over communities, extortion,<sup>13</sup> and forcible recruitment. Guerrillas and paramilitary groups are also “deeply embedded in the narcoeconomy.”<sup>14</sup> As a result, Colombia faces widespread human rights violations, including mass killings, forced displacement, sexual violence, and kidnappings, among others.<sup>15</sup>

The scale of the phenomenon of forced displacement in Colombia is one of the largest around the world.<sup>16</sup> According to the available official numbers, in the past twenty-five years, 7,037,962<sup>17</sup> people have been displaced in the context of the armed conflict, which represents almost 15% of the total population. At least 1116 municipalities—97% of the national territory—have reported people fleeing violence.<sup>18</sup> These figures also reveal that forced displacement has been a prevalent phenomenon in this country.

Looking at the composition of the IDPs, it seems clear that forced displacement has disproportionately affected groups and communities facing economic, social, or cultural exclusion. Approximately 85% of IDPs used to live in rural areas.<sup>19</sup> These areas in Colombia are more vulnerable than urban areas, as poverty in rural areas has been rising when compared to poverty in urban areas.<sup>20</sup> Hand-in-hand with the lack of access to land ownership, subsistence farmers suffer limited access to basic goods and

12. Francisco Gutiérrez Sanín, *Telling the Difference: Guerrillas and Paramilitaries in the Colombian War*, 36 POL. & SOC'Y 3, 5 (2008).

13. Donny Meertens, *Facing Destruction, Rebuilding Life: Gender and the Internally Displaced in Colombia*, 28 LATIN AM. PERSP. 132, 133 (2001).

14. Gutiérrez Sanín, *supra* note 12, at 28.

15. Diana Esther Guzmán et al., *Colombia, in LAS VÍCTIMAS Y LA JUSTICIA TRANSICIONAL: ESTÁN CUMPLIENDO LOS ESTADOS LATINO AMERICANOS CON LOS ESTÁNDARES INTERNACIONALES?* (Fundación para el Debido Proceso Legal ed., 2010).

16. Adrian Edwards, *Global Displacement Hits Record High*, UN HIGH COMM'R FOR REFUGEES (June 20, 2016), <http://www.unhcr.org/en-us/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html> [<https://perma.cc/DC5R-YDGN>].

17. *Registro Único de Víctimas*, *supra* note 1.

18. See generally CENTRO NACIONAL DE MEMORIA HISTÓRICA, ¡BASTA YA! COLOMBIA: MEMORIAS DE GUERRA Y DIGNIDAD (2012).

19. MONITORING COMM'N, *supra* note 3.

20. UN DEV. PROGRAMME, COLOMBIA RURAL: RAZONES PARA LA ESPERANZA 23 (2011), [http://hdr.undp.org/sites/default/files/nhdr\\_colombia\\_2011\\_es\\_resumen\\_low.pdf](http://hdr.undp.org/sites/default/files/nhdr_colombia_2011_es_resumen_low.pdf) [<https://perma.cc/NEH3-WKRJ>].

services.<sup>21</sup> As a result, subsistence farmers are some of the most vulnerable groups of people in the country. Likewise, 51% of IDPs are women, who face several forms of social and cultural exclusion and gender discrimination.<sup>22</sup>

Consequently, there is a widespread problem of land dispossession. Ninety-four percent of the displaced families that owned land and 92.4% that owned livestock were dispossessed of those resources or forced to abandon them.<sup>23</sup> Land dispossession has affected over 385,000 families, with an average of 14.3 hectares lost per family.<sup>24</sup> This suggests that land dispossession mainly targeted small landholders.<sup>25</sup> Although a good estimate of IDPs in Colombia exists, the dimension of abandoned and dispossessed lands is still uncertain. While the Monitoring Commission of Public Policies on Forced Displacement estimates six million abandoned and dispossessed hectares of land, and Amnesty International estimates eight million, some academic studies have pointed out that no more than two million hectares have been either abandoned or dispossessed.<sup>26</sup> For example, Ibanez, Moya, and Velasquez estimate around 1.2 million dispossessed hectares.<sup>27</sup> These discrepancies have undermined the possibility of establishing clear indicators to measure the success of the land restitution policy. However, even the most conservative estimations suggest that land abandonment and dispossession have been quantitatively significant in the country.

A wide range of factors explains the phenomenon of massive land dispossession in Colombia. Factors include strategic interests in crucial areas of the country—for economic or military reasons—and structural conditions that facilitated the involuntary property loss, among others. These conditions encompass, for example, diverse criteria of vulnerability and a culture of informality. In Colombia, informality of land tenure has been a

21. *Id.* at 18.

22. Corte Constitucional [C.C.] [Constitutional Court], Auto 092/2008 (Colom.).\*

23. MONITORING COMM'N, *supra* note 3.

24. *Id.*

25. CENTRO NACIONAL DE MEMORIA HISTÓRICA, LA TIERRA EN DISPUTA: MEMORIAS DEL DESPOJO Y RESISTENCIAS CAMPESINAS EN LA COSTA CARIBE (1960–2010) (2010), [https://www.centrodememoriahistorica.gov.co/descargas/informes2010/tierra\\_conflicto/la\\_tierra\\_en\\_%20disputa.pdf](https://www.centrodememoriahistorica.gov.co/descargas/informes2010/tierra_conflicto/la_tierra_en_%20disputa.pdf) [<https://perma.cc/TL7F-X87K>].

26. ROCIO DEL PILAR PEÑA HUERTAS ET AL., RESTITUCIÓN DE TIERRAS 4 AÑOS DESPUÉS: OBSERVATORIO DE RESTITUCIÓN Y REGULACIÓN DE DERECHOS DE PROPIEDAD AGRARIA (2016), <http://www.observatorioidetierras.org/wp-content/uploads/2014/01/Restitución-de-tierras-4-años-después.pdf> [<https://perma.cc/35E8-3L2Y>].

27. ANA MARÍA IBAÑEZ ET AL., UNIVERSIDAD DE LOS ANDES, HACIA UNA POLÍTICA PROACTIVA PARA LA POBLACIÓN DESPLAZADA (2006), [http://www.acnur.org/t3/uploads/media/COI\\_1401.pdf](http://www.acnur.org/t3/uploads/media/COI_1401.pdf) [<https://perma.cc/LAU9-7CW3>].



constant over the past decades, particularly when it comes to subsistence farmers.<sup>28</sup> It is estimated that only 31% of the households that have been displaced had formal property titles.<sup>29</sup> Most of the landholders, even landowners, do not have legal documents to prove their title to the plot of land.<sup>30</sup> This informality facilitated land dispossession.

### *B. The Land Issue in the Colombian Internal Armed Conflict*

The relationships between armed conflict and the land issue have been complex and dynamic. Inequality in land distribution is a key element in understanding such complexity. Landholding concentration in Colombia historically has been a strong trend,<sup>31</sup> which has deepened social inequalities and engendered social discontent.<sup>32</sup> During the period known as La Violencia (1948–1953), before the beginning of the current armed conflict, extreme land distribution inequality and acute poverty in rural areas plunged the country into an agrarian crisis, which sparked social struggles over access to land ownership.<sup>33</sup> Currently, the country has a Gini coefficient of 0.86, one of the highest in the region and the world.<sup>34</sup> According to the United Nations Development Program report, 1.15% of landowners own 52.2% of all cultivable land.<sup>35</sup>

This land ownership concentration has been more acute for excluded and discriminated-against populations. For example, women's access to land has been historically restricted because of legal and cultural factors. Although Colombia has very little official information about land distribution, the available official figures show that landholders are primarily men.<sup>36</sup> In most cases, even when women have rights over a plot of land,

28. MISIÓN PARA LA TRANSFORMACIÓN DEL CAMPO, EL CAMPO COLOMBIANO: UN CAMINO HACIA EL BIENESTAR Y LA PAZ, ESTRATEGIA DE DERECHOS SOCIALES PARA LA INCLUSIÓN SOCIAL DE LA POBLACIÓN RURAL (2015).

29. Ana Marla Ibañez & Juan Carlos Muñoz, *The Persistence of Land Concentration in Colombia: What Happened Between 2000 and 2010?*, in *DISTRIBUTIVE JUSTICE IN TRANSITIONS*, *supra* note 11, at 279, 292.

30. MISIÓN PARA LA TRANSFORMACIÓN DEL CAMPO, 2015, *supra* note 28.

31. YAMILE SALINAS ABDALA & JUAN MANUEL ZARAMA SANTACRUZ, CENTRO NACIONAL DE MEMORIA HISTÓRICA, JUSTICIA Y PAZ: TIERRAS Y TERRITORIOS EN LAS VERSIONES DE LOS PARAMILITARES (2012).

32. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 25.

33. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 18.

34. Ibañez & Muñoz, *supra* note 29, at 279.

35. UN DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT (2014).

36. Donny Meertens & Margarita Zambrano, *Citizenship Deferred: The Politics of Victimhood, Land Restitution and Gender Justice in the Colombian (Post?) Conflict*, 4 INT'L J. TRANSITIONAL JUST. 189, 198 (2010).

they are not included in the official documentation. As a result, they face additional problems for proving their relationship with the land. Due to this, women face a higher risk of land dispossession as well as potential barriers for accessing land restitution.<sup>37</sup>

Although the Colombian state has attempted to counteract land ownership concentration in different periods, agrarian reform initiatives have systematically failed. Several efforts to redistribute land have taken place in the country since the beginning of the twentieth century.<sup>38</sup> For example, in 1936, a legal reform passed with the aim of facilitating access to land ownership for peasants who had worked the land for five years. However, this reform was unsuccessful because landowners expelled peasants and used this reform to claim formal title over state-owned lands.<sup>39</sup> After other failed attempts, in 1988, the government made a final effort towards land redistribution by passing a law that simplified land transactions, and granted land to subsistence farmers and demobilized combatants. Once again, the law did not achieve massive access to land for peasants and did not affect the overall land distribution.<sup>40</sup>

The disparate concentration of land ownership has played a powerful and dynamic role in the internal armed conflict. First, it was one of the many root causes of the conflict,<sup>41</sup> and, more concretely, a driving factor in the emergence of guerrilla groups. Agrarian struggles and conflicts over lands were directly linked with the origins of liberal guerrillas, communist self-defense groups, and FARC's political platform.<sup>42</sup> Then, during the 1980s, the land issue lost its initial meaning as an aim of social justice and became a strategic mechanism for the armed actors to acquire political and economic power. Landholding turned into a key asset for both guerrilla and paramilitary groups, which benefited from illicit crop growing, drug trafficking, and taxing the land in exchange for protecting it. Land concentration increased while civilians kept fleeing violence.<sup>43</sup>

Although land inequality is the result of long social and economic processes that evolved even before the emergence of the current internal

37. Corte Constitucional [C.C.] [Constitutional Court] Auto 092/2008 (Colom.).

38. David Attanasio & Nelson Camilo Sánchez, *Return Within the Bounds of the Pinheiro Principles: The Colombian Land Restitution Experience*, 11 WASH. U. GLOB. STUD. L. REV. 1, 15 (2012).

39. Absalón Machado, *Propuesta de elementos para una política de tierras en medio del conflicto*, in 2 DESPLAZAMIENTO FORZADO ¿HASTA CUANDO UN ESTADO DE COSAS INCONSTITUCIONAL? 13 (César Giraldo Giraldo ed., 2008).

40. Attanasio & Sánchez, *supra* note 38, at 15.

41. Meertens & Zambrano, *supra* note 36, at 191.

42. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 18.

43. Meertens & Zambrano, *supra* note 36, at 193.

armed conflict, this conflict has exacerbated land ownership concentration. This concentration of land in the hands of few—either landlords or armed actors—is a source of social injustice, which in turn can engender new forms of social conflict. Moreover, land ownership concentration has been the backdrop of forced displacement and a driving factor of land dispossession.

### *C. Forced Displacement and Land Dispossession: A Typology*

Displacement and land dispossession have been long and complex processes. Illegal armed groups have used a variety of strategies to remove people from their lands over the past five decades,<sup>44</sup> producing several waves of land abandonment and dispossession. As a result, one person could have been the victim of numerous dispossessions and one plot of land could have been dispossessed several times.

Aiming to disentangle the complexities of these processes, in this section of the paper I set forth a typology of displacement according to its consequences for landholding, which can be grouped into two main categories: land abandonment and dispossession.<sup>45</sup> Land abandonment tends to occur as a consequence of acts of violence or the deterioration of security or economic conditions in a territory. It usually does not entail the deprivation of legal rights to the plot of land, although it limits the economic use of the property.

Conversely, land dispossession involves concrete actions to take property from its original tenants or owners.<sup>46</sup> Land dispossession is a process in which diverse actors—legal or illegal—intervene in a sequence of diverse actions over a long period of time.<sup>47</sup> In Colombia, the strategies to dispossess people of their land rights range from legal to illegal mechanisms. These mechanisms include fictitious purchases, purchases for less than fair market value, intimidation, direct threats, and combinations thereof.<sup>48</sup>

Following Francisco Gutierrez's proposal, it is possible to identify at least three forms of land abandonment.<sup>49</sup> First, *abandonment due to con-*

44. Nicole Summers, *Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict?*, 25 HARV. HUM. RTS. J. 219, 219 (2012).

45. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 25.

46. L. 1448, junio 10, 2011, DIARIO OFICIAL [D.O.] art. 74 (Colom.).\*

47. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 25.

48. *Id.* at 73.

49. Francisco Gutierrez Sanin, *Propiedad, Seguridad y Despojo: El Caso Paramilitar*, 16 ESTUDIOS SOCIO-JURIDICOS 43, 43–47 (2014).\* Although Gutierrez's typology is based on paramilitary strategies and actions, I use it here for two reasons. *Id.*\* First, this typology captures a number of com-

*frontation* occurs when subsistence farmers flee because of the prohibitive costs derived from the confrontation between armed actors. Second, *impairment abandonment* arises when people decide to move because the armed actors' territorial control deteriorates the living conditions in the region. Third, *economic abandonment* takes place when a macro-productive project negatively affects subsistence farmers' economic conditions and causes them to flee the region. In this case, unlike the two first categories, political violence can be absent.

Land dispossession can be grouped into three categories.<sup>50</sup> *Strategic dispossession* aims to empty the territory. The reasons behind this massive expulsion of families and communities are diverse, including control over illicit crop growing and other illicit activities, as well as vengeance for collaboration with other armed actors. *Patronage dispossession* is intended to acquire properties to distribute them among armed groups' friends and bases of social support. Local politicians and officials participated in this type of dispossession by using legal mechanisms to legitimize land takings. *Opportunistic dispossession* refers to land concentration in the hands of armed groups' leaders, with the aim of enhancing their economic and political power. This type of dispossession was less massive and more targeted than the previous categories.<sup>51</sup>

Although some forms of land abandonment and dispossession can fall outside of this typology, it is useful for analytical purposes. Moreover, this typology captures at least two relevant elements to analyze whether involuntary property loss in the context of the Colombian internal armed conflict fits within the concept of dignity takings. First, forced displacement as well as land abandonment and dispossession are complex processes in which different actors intervene, usually with different motivations and interests. Second, a variety of mechanisms and strategies have led to land dispossession, which suggests that the property loss could have had different effects on those who suffered it.

#### D. Land Dispossession and Dignity Takings

A dignity taking "occurs when a state directly or indirectly destroys or confiscates property rights from owners or occupiers and the intentional or

plexities of the land abandonment and dispossession in Colombia. Second, as I further develop later in this paper, paramilitaries have been more prone to using land dispossession strategies than guerrilla groups. *Id.\**

50. *Id.\**

51. *Id.\**



unintentional outcome is dehumanization or infantilization.”<sup>52</sup> Therefore, this concept describes a wrongful confiscation of property that also involves a radical dignity deprivation. In this context, dignity means that “people have *equal worth*, which gives them the right to live as *autonomous* beings.”<sup>53</sup> Although different forms of dignity deprivation exist, dehumanization, infantilization, and community destruction amount to dignity’s radical denial.

In order to assess the extent to which land dispossession and abandonment in Colombia fall into the concept of dignity takings, four elements must be analyzed.<sup>54</sup> The Colombian case easily meets two of them: (1) the existence of property destruction or confiscation, and (2) the fact that these forms of involuntary property loss affected owners and occupiers. Regarding the first requirement, forced displacement in Colombia has created a case of massive involuntary property loss in which at least 1.2 million hectares were taken from their lawful holders without any legal right.<sup>55</sup> Illegal armed actors and their allies seized lands in different regions of the country, deepening inequality in land distribution. Victims were not compensated fairly for their property loss. Regarding the second requirement, the majority of the victims of land dispossession were either owners or long-term tenants.<sup>56</sup>

The third element to consider is whether the state directly or indirectly perpetrated the involuntary property loss. In Colombia, different actors—particularly illegal armed groups—have been the main perpetrators of both forced displacement and land dispossession.<sup>57</sup> However, the Colombian state has directly participated in specific forms of property takings. In cases of patronage dispossession, for instance, armed actors colluded with officials and state institutions to take property rights from their owners.<sup>58</sup> Additionally, the state has arguably indirectly participated in some forms of land abandonment and dispossession, particularly in those cases where the state failed to prevent forced displacement. Cases of confrontational and eco-

52. Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 LAW & SOC. INQUIRY 796, 817 (2016) [hereinafter Atuahene, *Dignity Takings and Dignity Restoration*]; see also Bernadette Atuahene, *Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 ANN. REV. L. & SOC. SCI. 171, 178 (2016).

53. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 52, at 800–01.

54. BERNADETTE ATUAHENE, WE WANT WHAT’S OURS: LEARNING FROM SOUTH AFRICA’S LAND RESTITUTION PROGRAM (2014).

55. According to the most conservative estimations previously cited.

56. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 25.

57. *See id.*

58. Gutierrez, *supra* note 49.\*

conomic abandonment exemplify forms of state inaction that led to involuntary property loss. The lack of effective action preventing displacement—even when the state did not take part either in the confrontations or in the deterioration of economic conditions in the region—contributed to the conditions for displacement.

Some cases of land dispossession in Colombia can be considered the result of direct “state” property destruction or confiscation, even though the state was not involved in the dispossession process. Although apparently counterintuitive, this is possible because illegal armed actors became “de facto” states in a number of regions throughout the country during some periods of the conflict.<sup>59</sup> A body of research points out that armed groups with significant control over a territory have offered services such as justice and security, behaving as proto-states.<sup>60</sup> This has been possible, among other factors, because the state institutions have been absent in a number of areas throughout the Colombian territory.<sup>61</sup> In these cases, the requirement is also fulfilled.<sup>62</sup>

The fourth element requires establishing whether the intentional or unintentional outcome of the involuntary property loss is dehumanization, infantilization, or community destruction. While dehumanization is “the failure to recognize an individual’s or group’s humanity,” infantilization is defined as “the restriction of an individual’s or group’s autonomy based on the failure to recognize and respect their full capacity to reason.”<sup>63</sup> Empirical interrogation is needed to establish the extent to which some of these three extreme manifestations of dignity denial have occurred in Colombia. The research strategy here combines two complementary approaches: a top down perspective to determine whether the dispossessing party’s intent has been to dehumanize or infantilize owners or occupiers, and a bottom up perspective to assess the impact of the involuntary property loss on dispossessed parties.<sup>64</sup>

From a top down perspective, studies on the relationships between armed conflict and land issue in Colombia underscore that although para-

59. Darío I. Restrepo, *Luchas por el Control Territorial en Colombia*, 3 *ECONOMÍA, SOCIEDAD Y TERRITORIO* 517, 530 (2002).

60. Carlos Miguel Ortiz, *Actores Armados, Territorios y Poblaciones*, *ANÁLISIS POLÍTICO*, Enero/Abril 2001, at 67\*; Restrepo, *supra* note 59.

61. MAURICIO GARCÍA VILLEGAS ET AL., *LOS ESTADOS DEL PAÍS, INSTITUCIONES MUNICIPALES Y REALIDADES LOCALES* (2011), [http://www.dejusticia.org/files/r2\\_actividades\\_recursos/fi\\_name\\_recurso.246.pdf](http://www.dejusticia.org/files/r2_actividades_recursos/fi_name_recurso.246.pdf), [<https://perma.cc/B9MM-BSPM>].

62. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 52, at 797.

63. *Id.* at 801.

64. *Id.* at 811–12.



military and guerrilla groups are important dispossessing parties, their level of involvement in land dispossession differs.<sup>65</sup> While “direct land taking has clearly been a strategy deployed by paramilitary groups and drug traffickers, guerrillas have used it to a lesser degree.”<sup>66</sup> In fact, the periods of paramilitary expansion and consolidation coincide with those in which the land abandonment and dispossession were more acute.<sup>67</sup>

Looking at the motivations of these dispossessing agents, empirical evidence to support their intention of either dehumanizing or infantilizing is insufficient. Dispossessing agents’ motivations have varied significantly across armed groups, regions of control, and time. However, motivations seem to be mainly strategic. For example, a systematic analysis of paramilitary confessions during judicial processes reveals that they deployed different land taking strategies aimed at: controlling key areas for drug trafficking or economic exploitation, appropriating natural resources, enriching themselves or third parties (politicians or businessmen who colluded with paramilitary groups),<sup>68</sup> implementing productive projects as a cover for money laundering, and recovering lands that the state awarded to subsistence farmers.<sup>69</sup> Therefore, military consolidation, economic power, and political considerations are some of the most powerful elements driving land dispossession in Colombia. According to this analysis, dehumanization or infantilization did not play a significant role in the set of dispossessing parties’ motivations.

From a bottom up perspective, diverse secondary sources show that victims of forced displacement in Colombia have suffered different forms of dignity deprivation.<sup>70</sup> Building on other studies testing the concepts of dignity takings and dignity restoration, in this paper I analyze the various forms and levels of dignity deprivation taking three axes into consideration: the specific meanings attached to the lost property, the ways in which the property taking took place, and the living conditions of the victims after the involuntary property loss.

First, although important in people’s lives, property acquires a wide spectrum of meanings. While for some people landownership is a means to enhance social status, ensure economic stability, or gain power, for others it is a fundamental part of their subsistence. Moreover, for some people land

65. See SALINAS & ZARAMA, *supra* note 31.

66. *Id.*

67. *Id.*

68. *Id.* at 65.

69. *Id.* at 172.

70. See *id.*

ownership is deeply connected with their identities and traditional livelihoods. Therefore, the level of harm that dispossessed parties suffer varies according to the specific meaning people attach to the lost land. The Center of Historical Memory has documented that beyond its material meaning, as a means for subsistence, land is a constitutive element of subsistence farmers' individual and collective identity.<sup>71</sup> As a result, subsistence farmers suffer material and emotional harms when they are forced to abandon their lands. Peasants' accounts suggest that these emotional harms reach the point of degradation—a form of dignity deprivation—in a context of growing inequality:

A subsistence farmer without land is nothing. Then, I would rather die in the countryside, working the land, my land. Although rumors are that those people (paramilitary groups) are back in the region, I have to go back there some day.<sup>72</sup>

Second, the level of dignity deprivation also varies according to the property taking mechanism, because some of those mechanisms severely degrade victims' dignity. For instance, brutal forms of violence—such as massacres, selective killings, and sexual violence—drove forced displacement<sup>73</sup> and facilitated land dispossession in the context of the Colombian internal armed conflict:

When I got near the door I saw some men . . . “Look, ma’am, let us speak with your husband, but take your kids and wait for us over there because we have to talk with him” . . . When I heard the shots I said, “Ay mami, what happened?” and I dropped the girl and I jumped on one of the men, to disarm him and to give it to him, because there he was killing my own husband, and I wasn’t going to let them. But he fought back and gave me a kick . . . I was lying there until they took me to the clinic, where I regained consciousness. (Olivia, 27 year-old widow [she was expecting her fifth child when her husband was killed in a massacre], 1994).<sup>74</sup>

These forms of violence generate a variety of emotional and moral harms. According to the Center of Historical Memory, violence against victims has degraded the dignity of people and communities, and has undermined the systems of ideas, beliefs, and values that support identities.<sup>75</sup>

71. *Id.* at 48.

72. Daniel Alvarez Ospina, *Campeños Desplazados en Colombia “Invisibles” Parte 1/3*, YOUTUBE (Mar. 6, 2008), <https://www.youtube.com/watch?v=eaADfhAGcC8>, [https://perma.cc/3WK3-TWUF] (subsistence farmer victim of forced displacement).

73. Lisa Laplante, Kimberly Theidon, *Transitional Justice in Times of Conflict: Colombia’s Ley de Justicia y Paz*, 28 MICH. J. INT’L L. 50, 56 (2006)

74. Meertens, *supra* note 13, at 138.

75. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 25, at 268.

Victims who most report feeling humiliated are those who either have been stigmatized or held accountable for the violence they suffered. For example, armed actors have justified targeting social leaders arguing that they are part of guerrilla groups.<sup>76</sup> Acts of violence coupled with attacks against the victims' good name and their dignity have been part of some strategies to empty territories.

Third, evidence of dignity deprivation also emerges when looking at the consequences of forced displacement and land dispossession for IDPs in Colombia. Consistent empirical information demonstrates that IDPs have suffered uprooting, stigmatization, as well as a variety of material, emotional, and moral harms.<sup>77</sup> During the first stages of the process of forced displacement, IDPs face distress associated with the expulsion. As the process continues, although significant variation exists depending on the specific conditions of the displacement, IDPs tend to experience inhuman living conditions in host cities. In some cases, for example, they have been forced to live on the streets:

When I was sleeping in an alley here in the city, huddled with my children, the police came by along with some men they had taken prisoner, and they saw me in the alley during a torrential storm, and they asked what I was doing there, and I told them, "I am waiting for some more rain so I can jump off the bridge, into the water with my kids and everything." I didn't know what else to do; I was like a boat with no harbor.<sup>78</sup>

Although the experience of this woman is not generalizable, it captures some of the despair and sense of hopelessness most IDPs have experienced. These feelings are accentuated when further complications to rebuild life projects surface: "We had to start from nothing, starting to work on such minimal things. I mean, when we arrived we didn't know what to do, and my mother just cried and got desperate because she saw no way out of the situation. . . ."<sup>79</sup> Moreover, poverty and lack of access to basic services are more prevalent among victims of forced displacement when compared to the general population.<sup>80</sup> Processes of forced displacement and land dispossession have deepened inequality and fostered the conditions for IDPs to feel degraded and humiliated.

76. *Id.* at 270.

77. Meertens, *supra* note 13, at 133, 296.

78. *Id.* at 139–40 (testimony of a woman victim of forced displacement).

79. *Id.* at 143 (testimony of a woman victim of forced displacement).

80. Corte Constitucional [C.C.] [Constitutional Court] Sentencia T-025/04 (Colom.), <http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm> [<https://perma.cc/KU6Y-K7MB>].

Some traditionally discriminated-against populations have suffered even more extreme forms of dignity deprivation. For example, involuntary property loss in cases of indigenous and Afro-descendant populations has arguably reached the level of community destruction. The meaning that these communities attach to their territories is fundamental in understanding the level of dignity deprivation that they have suffered. “Ancestral territories constitute the foundations of the existence of indigenous and afro-Colombian populations as collective subjects.”<sup>81</sup> According to an indigenous leader, “[the energetic centers along our territory] are places for our ancestral spirits to get refuge, where our ancestors have kept that great wealth as a legacy for our children.”<sup>82</sup>

Land dispossession and the damage that war has inflicted on ancestral territories affect basic conditions for these communities’ existence. For instance, alterations of the territory inhibit ancestral practices, restrict the transmission of knowledge, disrupt socialization processes, and deteriorate productive systems.<sup>83</sup> Therefore, land dispossession has both put at risk the existence of these communities, and created deep individual and collective harms. Empirical studies have reported that the armed actors’ repertoires of violence have contributed to the cultural extermination of indigenous and Afro-Colombian communities throughout the country.<sup>84</sup>

Another interesting case to consider is the land dispossession suffered by women. Women face higher risks of being victims of involuntary property loss in the context of the internal armed conflict due to the historical exclusion they have suffered in access to land ownership.<sup>85</sup> This exclusion is the result of a cultural and political process that subjected women to a regime in which they were considered people with less capacity to reason. Thus, historical infantilization could have increased the risk of land deprivation for women.

In sum, although the top down strategy did not reveal that the dispossessing parties have aimed to dehumanize or infantilize communities, IDPs have suffered different forms and levels of dignity deprivation. By analyzing the proposed three axes—meanings attached to the property, mechanisms leading to involuntary property loss, and the effects of the land dispossession—different levels of dignity deprivation emerge, ranging from humiliation to community destruction.

81. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 25, at 279.

82. *Id.* (testimony of an indigenous person in Bojayá).

83. *Id.* at 279.

84. *Id.* at 278.

85. Corte Constitucional [C.C.] [Constitutional Court] Auto 092/2008 (Colom.).

This analysis of the Colombian case raises some conceptual questions. First, how does one draw clear distinctions between different forms of dignity deprivation? The literature about takings places the radical forms of dignity deprivation—dehumanization, infantilization, and community destruction—as extreme categories in the takings spectrum. Although defining them as extreme categories is useful to draw connections, it is not enough to clarify when the differences between categories depend upon either the level of dignity deprivation or substantive aspects. For example, humiliation, degradation, and radical othering can be difficult to distinguish in certain instances. Therefore, more conceptual elements are needed to better define the scope of these categories. Moreover, it is important to clarify the extent to which the measurement of the level of dignity deprivation depends upon the subjective perspective of the victims, and the extent to which indicators should be established.

Second, the Colombian case is one in which dignity deprivation is not the result of an isolated process of involuntary property loss. On the contrary, dignity deprivation is the result of wider processes in which two factors play a central role: widespread violence and structural inequalities. According to the Center for Historical Memory, for example, harms that IDPs have suffered are the result of both property loss or destruction and diverse forms of violence.<sup>86</sup> In the context of widespread violence—such as the Colombian internal armed conflict—an analysis of involuntary property loss without taking into consideration its interactions with political violence obscures significant factors contributing to dignity deprivation. The concept of dignity takings focuses on a single process of property loss,<sup>87</sup> which prevents it from capturing the full range of processes that can break the causality between property loss and dignity deprivation. Additionally, this case study emphasizes the importance of taking into consideration the experiences of populations facing extreme inequalities within the dispossessed parties to better understand the specific effects that property loss has had on their dignity.

## II. COLOMBIAN LAND RESTITUTION PROGRAM

Currently, the Colombian state is attempting to confront the effects of forced displacement and dispossession through a policy of land restitution created by the Victims' Law (Law 1448 of 2011).<sup>88</sup> The program provides

86. CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 25.

87. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 52, at 817.

88. Nadia Margarita Rodríguez, *Land Restitution in Colombia*, GLOB. DIALOGUE (July 31, 2013), <http://isa-global-dialogue.net/land-restitution-in-colombia-2/> [https://perma.cc/NH8Y-UCRN].



an extensive right of restitution to owners, possessors, and other users of land who were dispossessed or were forced to abandon their land since 1991 because of the conflict.<sup>89</sup> This section briefly sets forth key elements of the political process that led to the adoption of the LRP; then, it describes the innovative, limiting, and challenging features of the program; and finally, the section presents some of the results of this policy during its four years of implementation. These elements allow us to better understand what the LRP is and how it works.

### *A. Context of the Program's Adoption*

The Colombian Congress adopted the LRP in a context of growing social concern about the effects of the internal armed conflict on the civil population. Although forced displacement began with the internal armed conflict more than fifty years ago, it was not a political issue before the 1990s.<sup>90</sup> The first legal reform that aimed to confront the effects of forced displacement was passed in 1997 (Law 387). This Law entitled IDPs with rights—mainly humanitarian aid and socioeconomic stabilization—and established that the Government would support returning abandoned lands,<sup>91</sup> but it did not create a land restitution mechanism. Although this law set up a stable legal framework for IDPs' protection, its implementation faced several flaws.<sup>92</sup>

In spite of this first attempt to address the precarious conditions of IDPs in the country, their situation continued deteriorating. In response, the Constitutional Court declared an Unconstitutional State of Affairs in 2004.<sup>93</sup> According to the Court, IDPs' human rights were being disregarded in such a systematic and massive fashion that structural remedies were needed. Thereby, the Court ordered the Colombian government to improve the State's institutional capacity for dealing with internal forced displacement by designing, implementing, and evaluating an integral public poli-

89. L. 1448, junio 10, 2011, Diario Oficial [D.O.] art. 75 (Colom.).\*

90. CÉSAR RODRÍGUEZ GARAVITO & DIANA RODRÍGUEZ FRANCO, *CORTES Y CAMBIO SOCIAL: CÓMO LA CORTE CONSTITUCIONAL TRANSFORMÓ EL DESPLAZAMIENTO FORZADO EN COLOMBIA* (2010).

91. L. 387, julio 18, 1997, Diario Oficial [D.O.] art 16 (Colom.).\*

92. Manuel José Cepeda Espinosa, *The Constitutional Protection of IDPs in Colombia*, in *JUDICIAL PROTECTION OF INTERNALLY DISPLACED PERSONS: THE COLOMBIAN EXPERIENCE* 1, 2–6 (Rodolfo Arango Rivadeneira ed., 2009).

93. RODRÍGUEZ & RODRÍGUEZ, *supra* note 90.

cy.<sup>94</sup> This decision initiated a Court-supervised process to closely monitor the development of the forced displacement public policy.<sup>95</sup>

Both the Constitutional Court's ruling and its follow-up process transformed the official discourse on forced displacement. Since then, IDPs have been considered victims of the conflict and forced displacement has been approached from a human rights perspective. Moreover, this process has contributed to strengthen civil society organizations and networks working with forced displaced populations, which also contributed to increasing the public debate about forced displacement.<sup>96</sup>

Ever since, the public discussion about how to deal with the situation of IDPs in particular and with the victims of the internal armed conflict in general has expanded considerably. Between 2002 and 2005, in the context of the demobilization process of paramilitary groups, diverse sectors of society and many civil society organizations converged upon a common goal: demanding the adoption of a legal framework guaranteeing victims' rights. After an intense process of legal mobilization, the Congress passed the so-called Justice and Peace Law (Law 975 of 2005).<sup>97</sup> This law is a transitional justice mechanism through which the State recognized the victims' rights to justice, truth, and reparation, and regulated the demobilization and reintegration process.<sup>98</sup> Although this law did not have a particular focus on forced displacement, it ordered the creation of a property restitution program.<sup>99</sup> However, that program did not complete the design stage.

In this context of growing legal mobilization and legal reforms in favor of victims' rights, in June 2011, the Colombian Congress passed the Victims' Law (Law 1448 of 2011). Although the Government introduced the draft legislation, its final version is the result of an intense democratic debate in which social participation was an essential element. For example, some of the articles of the Victims' Law are the result of the victims' participation in public hearings that took place throughout the national territory a couple of years before, as part of a previous attempt to pass a law in favor of the victims. Furthermore, the victims' movement conducted intense lobbying, advocating for both the inclusion of international human

94. Corte Constitucional [C.C.] [Constitutional Court] Sentencia T-025/04 (Colom.), <http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm> [<https://perma.cc/KU6Y-K7MB>].

95. Attanasio & Sánchez, *supra* note 38, at 21.

96. RODRÍGUEZ & RODRÍGUEZ, *supra* note 90.

97. See generally NATHALIA CAROLINA SANDOVAL ROJAS, MOVILIZARSE ANTE LA CORTE: TRAYECTORIAS Y EFECTOS DE TRES EPISODIOS DE MOVILIZACIÓN LEGAL CONSTITUCIONAL DE FEMINISTAS, INDÍGENAS Y VÍCTIMAS DE CRÍMENES DE ESTADO EN COLOMBIA (2015)

98. Attanasio & Sánchez, *supra* note 38, at 21–22.

99. L. 975, julio 25, 2005, Diario Oficial [D.O.] art 44, 46, 49 (Colom.).\*

rights standards in the Victims' Law and the adoption of measures facilitating the procedures for the victims.

As a result, the language of the Victims' Law reflects many aspirations for justice fostered by the victims' social movement. For example, the central purpose of the law is "to enforce the enjoyment of the victims' rights to truth, justice, and reparation with non-repetition guarantees, so that their status as victims is recognized and dignified through the realization of their constitutional rights."<sup>100</sup> Three main ideas stand out in this article: effective enjoyment of rights, recognition, and human dignity. They reflect powerful ideas of justice that go beyond compensating the harms inflicted upon the victims. Furthermore, the law aims to achieve meaningful social changes in favor of the victims of the internal armed conflict, such as social inclusion and equality.

### *B. Institutional and Legal Main Features of the Program*

The LRP is innovative and ambitious concerning its aims, scope, and institutional design. First, the program is inspired by an ambitious normative and conceptual approach. The program explicitly seeks to redress the land dispossession caused by the internal armed conflict and at the same time to contribute to the transformation of deep inequalities associated with massive forced displacement. Additionally, it follows the Pinheiro Principles' normative standards.<sup>101</sup> These Principles, adopted in 2005 by the UN Sub-Commission on Human Rights, define the rights of refugees and IDPs to return to their homes and to recover property,<sup>102</sup> and contains a demanding set of principles governing the right to restitution.

Second, the scope of the LRP is ambitious regarding both the number of victims covered and the benefits granted. The Victims' Law grants owners, possessors, and other land users, who were either dispossessed or forced to abandon their land between 1991 and 2021, a right to restitution.<sup>103</sup> By covering dispossession caused by legal mechanisms or violent actions, as well as forced abandonment,<sup>104</sup> the program aims to include the diverse forms that displacement has taken in the context of the armed conflict. Its thirty-year period does not cover the entire internal armed conflict; therefore thousands of victims will be excluded from the land restitution procedures. Nevertheless, since it includes an extended period of intensive

100. L. 1448, junio 10, 2011, Diario Oficial [D.O.] art. 1 (Colom.).\*

101. Attanasio & Sánchez, *supra* note 38.

102. *Id.* at 3.

103. L. 1448, junio 10, 2011, Diario Oficial [D.O.] art. 75 (Colom.).\*

104. *Id.* art. 74.\*



forced displacement and since the internal armed conflict is still ongoing, the universe of potential beneficiaries is enormous and growing. Although it is still uncertain, the number of claimants could be larger than four million people.

In addition, the LRP includes an extensive set of measures in favor of the victims of forced displacement. For example, the law establishes both material and judicial land restitution, which allows the physical return to the lands, as well as the legal title to the plot of land.<sup>105</sup> Victims should be granted with legal title, even when they did not have it before the dispossession or forced abandonment.<sup>106</sup> Thereby, possessors and other users of the land can become owners. In those cases where return is not possible, victims are entitled to an equivalent plot of land with similar characteristics. The Victims' Law establishes that return is not possible when: (1) the original land is located in an area at risk of natural disaster; (2) the plot of land has been returned to another victim as part of this program; (3) the return represents a risk to the life or personal integrity of the victim; or (4) the plot of land has been partially or totally destroyed.<sup>107</sup> When compensation with a similar plot of land is also impossible, the victims are entitled to monetary compensation. Additionally, the land restitution judges can order preferential access to state subsidy programs.<sup>108</sup>

Third, the program has created a robust institutional structure to deal with the land restitution's complexities.<sup>109</sup> It establishes a special process with three main stages. The first is an administrative stage. After the victim fills out a petition for the inclusion of her property rights into the Registry of Dispossessed Lands, the Special Administrative Unit for the Management of Dispossessed Lands (Administrative Unit) investigates and decides whether to submit the case to the judges.<sup>110</sup> Nevertheless, the process of submission to the judges requires prior verification by the army of security conditions in the area where the claimed land is located. If the area does not face current security risks, micro- and macro-targeted classification is declared, which means that restitution in those areas can proceed.

The second stage has a judicial nature. Although the cases are legally complex, because they involve property law, family law, and even agrarian law claims, the land restitution judges have to decide each case in no more

105. *Id.* art. 75.\*

106. *Id.* art. 74.\*

107. *Id.* art. 72.\*

108. *Id.* art. 123.\*

109. Summers, *supra* note 44, at 226.

110. L. 1448, junio 10, 2011, Diario Oficial [D.O.] art. 76, 82.\*

than four months.<sup>111</sup> Deciding a case implies resolving all land title claims to a particular property. A tribunal decides those cases with an opposing party to the victim's claims.<sup>112</sup> In these cases, the justices have to evaluate both parties' claims to determine if the opposing party is a good faith owner, possessor, or occupant. In cases in which good faith is proven, the opposing party loses the land and receives compensation for it.

In the third stage, judicial and administrative bodies are called to implement the rulings. Different state institutions have to comply with the issued judicial remedies that fall under the scope of their functions. For example, the INCODER (Colombian Institute for Rural Development) has to comply with the orders related to the adjudication of state-owned lands.

This institutional design aims to deal with some contextual features. Although an administrative procedure could have facilitated the restitution, judicial intervention seeks to reduce risks of corruption and co-optation. In a country with significant institutional weaknesses and a long history of state institutions' co-optation by armed actors or economic powers,<sup>113</sup> judges represent an additional guarantee for the victims. However, some authors have emphasized the complexities and delays of this model in which different institutions play a role in the restitution process.<sup>114</sup>

In order to facilitate the victims' access to land restitution, the Victims' Law shifted the burden of proof and created legal presumptions. The law presumes illegitimate dispossession and the good faith of the victim.<sup>115</sup> Thus, in cases in which the land has a current owner or possessor who opposes the victim's claim, the opposing party has the burden to prove that she has acquired the property lawfully. Moreover, the burden of proof for victims is fundamentally flexible. They can prove their rights over the land through testimonies, documentary evidence, or other means.

### *C. Land Restitution Program's Implementation: Between Obstacles and Complexities*

My content analysis of the judicial rulings reveals that 96% of the decisions ruled in favor of the victims in the form of restitution or compensation. This result suggests that the judicial rulings are fulfilling the pro-victim spirit of the Victims' Law. As stated before, the land restitution judicial process aims to guarantee the victims' rights. In spite of this nor-

111. *Id.* art. 94 (Colom.).\*

112. *Id.* art. 79 (Colom.).\*

113. GARAY ET. AL., *supra* note 9.\*

114. Summers, *supra* note 44, at 220; Attanasio & Sánchez, *supra* note 38, at 19.

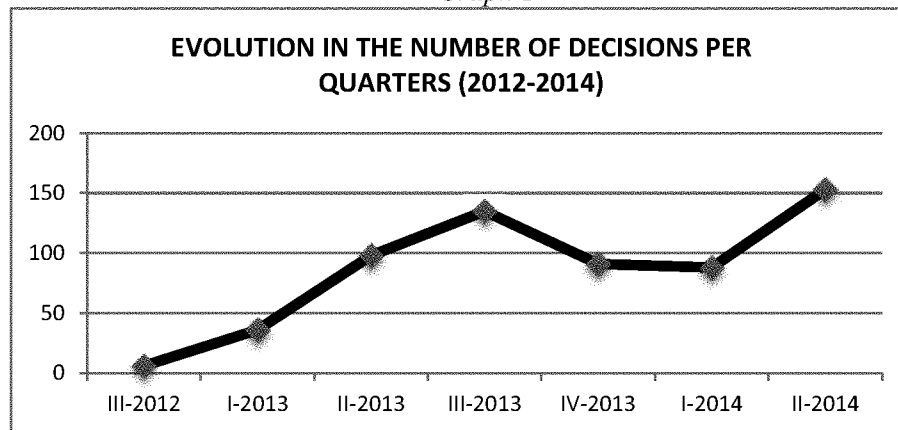
115. L. 1448, junio 10, 2011, Diario Oficial [D.O.] art. 77–78 (Colom.).\*



mative purpose, the program's implementation by the judiciary could have resulted in formalistic decisions based on strict interpretations of Colombian property law. The officials in charge of implementing the law pointed out during the interviews, "we faced the risk of the 'civilization'<sup>116</sup> of the Victim's Law,"<sup>117</sup> referring to the possibility that the judges could interpret the restitution by using property law principles and rules instead of using the flexibility of constitutional law. This high percentage of decisions in favor of the victims shows that more than thirty-nine independent judges spread all over the country with very legalistic backgrounds have converged in the protection of the victims' rights.

However, the program has faced several problems during its implementation. First, the case resolution has been slower than expected. As Graph 1 shows that, during the first months of implementation, the number of decisions was too small. Although the number of judicial rulings increased considerably during 2013 and 2014, the resolution rate seems to be low considering the total number of cases. One study conducted in 2013 suggested that given the time taken for each case at that moment and the rate of decision-making, resolving all the cases could take one hundred years.<sup>118</sup>

*Graph 1*



116. Direct translation from Spanish.

117. Interview with Camila Santamaría, Assistant of the Justice Coordinator, LRP in Colom. (Dec. 17, 2014).\*

118. FRANCISCO GUTIÉRREZ SANÍN, OBSERVATORIO DE RESTITUCIÓN Y REGULACIÓN DE DERECHOS DE PROPIEDAD AGRARIA, UN TRANCÓN FENOMENAL: UN ANÁLISIS DE LAS DEMORAS EN EL PROCESO DE RESTITUCIÓN (2013) [https://www.verdadabierta.com/images/Estudio\\_Observatorio\\_Un\\_trancón\\_fenomenal.pdf](https://www.verdadabierta.com/images/Estudio_Observatorio_Un_trancón_fenomenal.pdf), <https://perma.cc/AU3W-8UPX>.\*

Furthermore, the number of restituted hectares is still reduced. By February 2016, judges had only restituted 180,000 hectares, a small portion of the total two million hectares that have been dispossessed.<sup>119</sup>

Second, the internal armed conflict negatively affects the overall program performance. The requirement of restituting only in zones that the army declares safe has prevented restitution in many departments of the country. Some actors of the LRP consider that many delays in the process are a consequence of this requirement. For example, the justice coordinator of the program pointed out in an interview that:

The Land Restitution Process is restrained by the military. They decide where restitution proceeds. Thus, the restitution process is becoming a one at a time process. These delays attract criticism from the public opinion and favor the interests of the illegal armed actors.<sup>120</sup>

In any case, security issues represent significant obstacles to successful restitution. Claimants and land restitution judges are targets of threats and violence.<sup>121</sup> These risks engender disincentives for victims to participate in the process as well as obstacles to the effective implementation of the policy. Although few judges have resigned because of security risks,<sup>122</sup> interviewed judges agreed that security is a barrier to the process.

Third, coordination failures also create obstacles to restitution. An efficient restitution requires the coordinated action of a number of state institutions. In practice, some relevant institutions are absent from the program, and many others have problems fulfilling their role in the process. For example, the land restitution judges pointed out that the INCODER (translated to English this is the Colombian Institute for Rural Development) does not participate in the judicial proceedings even though it is the institution in charge of the administration of the state-owned lands.<sup>123</sup> Additionally, the land registry office has failed to provide accurate information relevant to

119. PEÑA HUERTAS, *supra* note 26, at 9.\*

120. Interview with Justice Nestor Raúl Correa, Coordinator of the LRP (Dec. 2014).\*

121. AMNESTY INT'L, A LAND TITLE IS NOT ENOUGH: ENSURING SUSTAINABLE LAND RESTITUTION IN COLOMBIA (2014), <https://www.amnesty.org/en/documents/AMR23/031/2014/en/> [<https://perma.cc/9L7E-G3LS>].

122. According to one of the interview judges:

First, a general threat against the land restitution judges came to the office. Then, one specific threat against those participating in xx case came. I was the judge in that case, so the threat was against me . . . I asked a personal security scheme. However, we received a collective security scheme for the three land restitution judges of the department . . . . The situation became increasingly problematic until I had to resign.

Interview with former Land Restitution Judge in Buga, Colom. (Jan. 26, 2015).\*

123. Interview with Land Restitution Judge from Cali, Colom. (Feb. 2015).\*

the judicial processes.<sup>124</sup> Furthermore, interviews with experts in the field suggest that several problems of coordination between the Administrative Unit and the Land Restitution Judges generate delays in the cases.<sup>125</sup>

Fourth, land restitution is still a contentious issue in the country. Some sectors think of the LRP as a historic opportunity to address land issues.<sup>126</sup> Others consider it inconvenient: due to the current rural development model, restitution can legitimize land dispossession instead of correcting it.<sup>127</sup> Moreover, a group of “victims of the Victims’ Law” has emerged. It congregates hundreds of opposing parties who lost the lands they had possessed because of the land restitution judicial rulings. This social movement is comprised of second occupants<sup>128</sup> with different backgrounds, ranging from poor subsistence farmers to landowners of large properties. The economic livelihood of a number of these second occupants depended upon the land they lost because of the restitution judicial rulings.<sup>129</sup> Thus, even if the law is successful in achieving sustainable land restitution, other social problems will remain, and the state will need to deal with them.

### III. MEANING AND SCOPE OF TRANSFORMATIVE RESTITUTION AND ITS PARALLEL WITH DIGNITY RESTORATION

The concept of “reparations with transformative potential” emerged some years ago in the context of the transitional justice literature and it is now part of a number of human rights norms.<sup>130</sup> The basic idea behind this concept is that reparations are an opportunity both to correct past injustices associated with human rights violations and to transform deep inequalities that explain the victimization (such as gender and socioeconomic inequalities). The Inter-American Court of Human Rights has included this concept

124. Interview with Land Restitution Judge from Ibagué, Colom. (Jan. 2015).\*

125. Interview with Sandra Zorio (Jan. 2015); Interview with Corporation Excelence in the Justice (Dec. 2014).\*

126. Interview with Ericka Rodríguez, Attorney at House of the Woman (civil society organization following up the LRP) (Nov. 2014).\*

127. Aura Bolívar, *Restitución de Tierras o la Legitimación del Despojo*, SEMANA (May 6, 2015), <http://www.semana.com/opinion/articulo/aura-patricia-bolivar-jaime-restitucion-de-tierras-la-legitimacion-del-despojo/426585-3> [<https://perma.cc/GVX2-UH3C>].

128. *Segundos ocupantes* in Spanish are people possessing those lands that the victims of land abandonment or dispossession are claiming.

129. PEÑA HUERTAS, *supra* note 26, at 42.

130. Ruth Rubio-Marin & Clara Sandoval, *Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the “Cotton Field” Judgment*, 33 HUM. RTS. Q. 1062, 1091 (2011).



in its recent rulings, considering *transformative reparations* as a better standard to correct structural situations of human rights violations.<sup>131</sup>

#### A. *The Transformative Potential of Reparations*

Under International Human Rights Law, reparations are those measures awarded to victims in order to redress the harms they have suffered as a result of past atrocities. Integral reparations should include a set of measures targeting different types and dimensions of harm, which encompasses the following: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

From the literature on reparations in contexts of massive human rights violations, a group of works has emerged, focusing on the scope and goals of reparations within unequal societies and regarding discriminated-against populations. According to these studies, in addition to redressing harms suffered by victims, reparations could contribute to transform previous inequalities that explain the victimization.<sup>132</sup> Thus, reparations need to go beyond the specific harm and consider the inequalities that gave rise to the violations and that continue violating people's rights. Instead of restoring the victims to their previous conditions, transformative reparations aim to "transform" those conditions.<sup>133</sup> Therefore, reparation measures embodied in this concept should include measures for correcting the harms suffered as well as remedies for the prior socioeconomic vulnerability of the victims.<sup>134</sup>

In previous studies, I have defined transformative reparations as a category that broadens the traditional scope of reparations by building bridges between three different dimensions of justice: corrective, distributive, and justice as recognition. Under this idea, reparations aim to correct the consequences of the harms suffered by the victims of human rights violations,

131. Corte Interamericana de Derechos Humanos [C.I.D.H.] [Inter-American Court of Human Rights] noviembre 16, 2009, Caso González y Otras vs. México (Colom.), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf) [<https://perma.cc/2JW9-TX3W>].

132. See generally THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS (Ruth Rubio-Marin ed., 2009); Rodrigo Uprimny & María Paula Saffon, *Reparaciones Transformadoras, Justicia Distributiva y Profundización Democrática*, in REPARAR EN COLOMBIA: LOS DILEMAS EN CONTEXTOS DE CONFLICTO, POBREZA Y EXCLUSIÓN 31 (Catalina Díaz et al. eds., 2009), <http://www.corteidh.or.cr/tablas/r25595.pdf> [<https://perma.cc/S64W-TAY6>]; Rodrigo Uprimny-Yepes & Diana Esther Guzmán-Rodríguez, *En Búsqueda de un Concepto Transformador y Participativo para las Reparaciones en Contextos Transicionales*, 17 INT'L L.: REVISTA COLOMBIANA DE DERECHO INTERNACIONAL 231, 231 (2010).

133. See generally Rodrigo Uprimny Yepes, *Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice*, 27 NETH. Q. HUM. RTS., 625 (2009).

134. Uprimny & Saffon, *supra* note 7.

and at the same time to transform deep inequalities associated with socio-economic factors and gender representations. Thus, reparations for people living in poverty and marginalization should include measures aimed at improving their economic situation, facilitating better access to basic goods, and achieving greater equality. Reparations for women and LGBT populations—who suffer various forms of gender discrimination—should include measures aimed at empowering (economically and politically), and acknowledging them as equal citizens.

In societies with scarcity of resources and institutional weaknesses, the implementation of this concept can create budgetary dilemmas between fulfilling the right to reparation for victims and the enhancement of socio-economic rights for the entire population.<sup>135</sup> In addition, other tensions emerge in the implementation of transformative reparations, such as those between how to balance different dimensions of justice and their competing goals. Therefore, this concept entails a complex implementation.

#### *B. Transformative Restitution in the Colombian Land Restitution Program*

According to the Victims' Law, land restitution has to be integral, differential, effective and transformative.<sup>136</sup> In order to develop this idea, the judges are able to issue measures in addition to land restitution, such as providing for a joint title for a couple, even if only the man in a family unit was the original landowner holder. Judicial remedies may also include the formalization of titles, which provides formal title to individuals who possessed and occupied the land without having such title.<sup>137</sup>

The systematic content analysis of the judicial decisions issued as part of the program reveals that judges are adopting measures that go beyond both restituting victims and promoting effective return. Eighty-two percent of these cases accompany the legal recognition of the right to restitution with the physical possession of the land. Supplementary guarantees for returning include the legal protection of the land, the actualization of cartographic identification of the land, and mortgages' redemption.

Graph 2 presents the total frequency of the most common substantive measures adopted by judges as part of restitution. In 41% of the cases, the judges order the victims' inclusion in the General System of Social Security or healthcare attention. In 27% of the cases, the judges also include ac-

135. Uprimny, *supra* note 133.

136. L. 1448, junio 10, 2011, Diario Oficial [D.O.] art. 69 (Colom.).\*

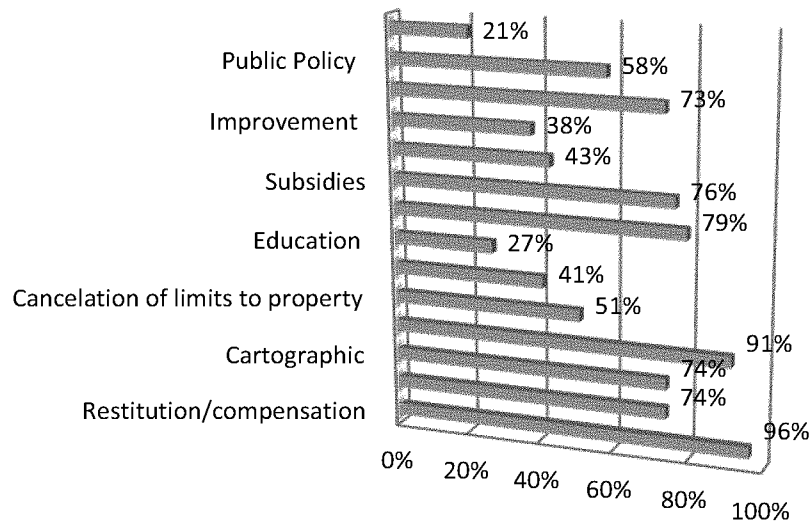
137. *Id.* art. 72.\*



cess to formal education or specific training in agricultural matters. This result is especially relevant considering that 96% of the total cases relate to rural lands.

Graph 2

**Types of redemptions and frequency**



Additionally, most of the cases include debt relief (79%), access to subsidies for housing (76%), and issuance of joint titles to couples regardless of whether they are legally married or are common law spouses (73%). Furthermore, in all the cases in which the claimant was not the owner of the land, a legal title to the land is awarded. Thus, the judicial decisions change victims from mere occupants to landowners.

Although not all the judges explain the reasons behind their specific decisions, in those cases where the court explained the reasons for providing additional remedies, judges reasoned that the Victims' Law defines restitution both as a way to redress the injustice associated with land dispossession and as a mechanism for improving the situation of the victim. In at least 44% of the cases, the judges associate this idea with the concept of transformative restitution.

During the interviews, judges agreed that the Victims' Law aims to achieve a transformative restitution. For example, one of the judges pointed out that "the transformative purpose of the restitution is the central element

of the Land Restitution Program . . . [T]his is the innovative element of the Victims' Law."<sup>138</sup> Some relevant questions emerge: If restitution aims to transform, what does transformation mean? What elements should be transformed? The judicial decisions provide the best source of information for understanding the shape transformation is taking in the context of the LRP.

The remedies issued in the judgments may be grouped into three broad categories, illustrated in Table 1. The first category includes remedies related to the core guarantees of restitution and returning. They incorporate the legal recognition of the right to the land (restitution or compensation), the physical possession, and the legal protection of the property. By allowing the victim to recover the land, these measures correct the basic injustice linked with the land dispossession. Thus, they are associated with an idea of corrective justice.

The second category includes remedies not directly related to the restitution of the land, such as healthcare services, inclusion in training programs, and debt relief. The purpose of these measures seems to be the stabilization and improvement of the socioeconomic conditions of the victim. Furthermore, these remedies emphasize the economic relationships of the victims with the land, and as such, they could contribute to improving victims' living conditions.

These measures can have distributive effects that go beyond the classic idea of restitution as going back to the prior situation. All of them entail the distribution of economic and social benefits among the victims and some of them can be considered as distributive. For example, both debt relief and access to subsidies imply a distribution of economic and social benefits to victims. The measures related to the legal recognition of land ownership contribute to redistributing the property in Colombia. The joint title to couples is a measure that recognizes the role of women in the familial economy. At the same time, it allows the women access to property and redistributes property rights within the families. This measure could have relevant effects on female empowerment and even on women's access to goods and services. Thus, transformative restitution in the context of the Colombian LRP is also associated with an idea of distributive justice.

Third, some remedies are symbolic and some others require structural changes that go beyond the scope of the victims of the particular case. As Table 1 shows, in 58% of the cases, the judges order the creation of public policies. They include orders to mayors to allocate specific sources in their budgets for improving or constructing infrastructure for the physical access

138. Interview with a Land Restitution Judge in Cucuta.\*



to lands, and local programs and policies for fulfilling victims' rights. Additionally, in 21% of the cases, the judges rule for the adoption of symbolic measures in favor of the victims. In all those cases, the judges ordered the Center of Historical Memory to recover information about the phenomenon of violence and land dispossession faced in the region or town of the victim, intending to include such information in their official reports. These measures could be associated with an idea of justice as recognition<sup>139</sup> because they entail the recognition of victims as citizens beyond the particular case and the affirmation of symbolic reconfiguration of identities.

*Table 1*

<b>Corrective</b>	<b>Basic guarantees for restitution</b>	Restitution/compensation	96%
		Material/symbolic restitution	74%
		Cartographic	74%
		Protection	91%
		Cancellation of limits to property	51%
<b>Redistributive</b>	<b>Socioeconomic measures</b>	Health	41%
		Education	27%
		Debts relief	79%
		Subsidies	76%
		Development projects	43%
	<b>Land distribution</b>	Improvement	38%
		Joint title	73%
<b>Recognition</b>	<b>Symbolic and structural measures</b>	Public Policy	58%
		Symbolic measures	21%

Looking at the frequency of remedies, the prevalent perspective of transformation is associated with two complementary distributive dimensions: (i) the socioeconomic stabilization of victims (through debt relief and subsidies); and (ii) the redistribution of property inside the families (through joint titles), as well as the formalization of property for people with possession and occupation rights. Interviews confirm the prevalence of a perspective of transformation associated with distributive justice. For

139. NANCY FRASER, *IUSTITIA INTERRUPTA: REFLEXIONES CRÍTICAS DESDE LA POSICIÓN "POSTSOCIALISTA"* (1997), <http://perio.unlp.edu.ar/catedras/system/files/fraser-iustitia-interrupta-reflexiones-criticas-desde-la-posicion-postsocialista.pdf> [<https://perma.cc/CSV8-8VJT>].\*

example, when I asked the Land Restitution Judge in Buga what transformation means for him, he affirmed:

Transformative restitution entails creating the conditions for the returning, though not to the same previous conditions. In addition, to assure institutional presence in the territory, the restitution should improve the social conditions of the victims, by allowing them the access to productive projects and other measures for them to be self-sustainable.

The prevalence of distributive measures is worth highlighting because both remedies—obtaining joint titles and recognizing land ownership—have been traditionally difficult to achieve in the Colombian context in general,<sup>140</sup> and through judicial processes in particular. In fact, a very legalistic interpretation of the law could have led to the denial of these measures because most of the victims could have faced several limitations to prove their rights to the lands in court. By contrast, both remedies have become routine. Moreover, they could have positive impacts on their beneficiaries. For example, joint title could contribute to empowering women in the context of their families.<sup>141</sup>

This focus on socioeconomic measures could undermine the potential transformation of other deep inequalities suffered by victims. In terms of the transformations of gendered relations, for instance, with the exception of the issuance of joint title, the LRP has promoted few advances. Some of the recurrent forms of exclusions against women are reproduced in the rulings. Only 31% of the decisions describe the specific situation of the women. In most of the cases (eighteen of twenty-six), it is because women are the main claimants. Although in 45% of the cases the judges mention the gender perspective as an approach for analyzing the restituting measures, only in 7% of the cases do judges analyze the case taking into account the specific harms suffered by women. Moreover, in most of the cases where joint title is granted, the judges do not consider the specific relationship of the women with the land. Women's role as landholders is absent within these judicial rulings.

While aiming at fulfilling the normative standard of transformative restitution, these measures can also fit the concept of dignity restoration, defined as “compensation that addresses both the economic harms and the dignity deprivations involved.”<sup>142</sup> This set of judicial remedies goes beyond redressing property loss, encompassing measures that address broader in-

140. Ibañez & Muñoz, *supra* note 29, at 284–86; Salinas, *supra* note 11.

141. Meertens & Zambrano, *supra* note 36, at 197.

142. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 52, at 802.



justices suffered by victims. By so doing, these measures dignify victims. This convergence highlights the relevance of fostering a conversation between these conceptual frameworks.

### *C. Transformative Restitution and Dignity Restoration*

Land restitution is a complicated matter because rectifying past land injustices is frequently divisive. Land restitution involves competing historical claims to land, creating clashes of rights;<sup>143</sup> it can also disrupt the economic order, affecting either peace or stability,<sup>144</sup> or the consolidation of democracy. However, building more democratic societies—particularly after massive human rights violations—requires justice, inclusion, and victims' recognition. Therefore, robust conceptual perspectives need to be implemented to deal with involuntary property loss.

Both transformative restitution and dignity restoration constitute conceptual frameworks providing foundations for more robust remedies to phenomena such as land dispossession in Colombia. Aiming to bring justice to victims, both concepts consider the material dimension of the involuntary property loss, usually associated with economic harm. These concepts also look at the property loss' symbolic dimension, related to the lack of full recognition as equal citizens and dignity deprivation.

However, both concepts differ in terms of the remedies they provide. While transformative restitution aims to transform social injustices, dignity restoration focuses on reaffirming victims' humanity and reestablishing their agency.<sup>145</sup> Therefore, the scope and target of remedies provided under these concepts can also differ. Transforming social inequalities can entail moving beyond a victim-centered perspective while considering broader social outcomes, such as the transformation of cultural representations reproducing gender stereotypes.

Looking at these differences, some room for complementarity emerges. Analyzing the Colombian case from the perspective of transformative restitution, some questions challenging the concept of dignity restoration arise. The concept of transformative restitution underscores the idea that, in highly unequal contexts, restoring victims to their previous conditions en-

143. See generally JAMES L. GIBSON, *OVERCOMING HISTORICAL INJUSTICES: LAND RECONCILIATION IN SOUTH AFRICA* (2009).

144. Arthur J. Ray, *Reclaiming History and Rights: A Comparative Examination of Land Restitution in Australia, Canada, New Zealand, The United States and South Africa I* (Mar. 23, 2013) (unpublished manuscript) (presented at the Conference on "Land Divided: Land and South African Society" at the University of Cape Town, Mar. 2013).

145. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 52, at 819.

tails keeping them under exclusion and discrimination, which is clearly insufficient to both justice and integrating victims into society as citizens in full capacity. Following this rationale, it is possible to hypothesize that, in some cases, victims could have suffered dignity deprivation even before the involuntary property loss, for example, due to the deep inequality in which they were living. In these cases, in absence of dignity to restore, it would be necessary to transform those conditions that denied victims' humanity and prevented them from exercising full agency.

According to this perspective, in order to determine the specific remedies required to dignify victims, more attention to the history and the context in which the involuntary property loss took place is needed. Transcending the specific involuntary property loss, when it occurs in contexts of extreme inequality or violence, is fundamental to capture the wide spectrum of processes contributing to dignity deprivation. This, in turn, is important to tailoring the specific set of remedies needed to create the conditions for the victims to be included into the social machine as an empowered human being.

Such remedies can go beyond those articulated around restitution, redistribution, reparation, and restoration, which are remedies related to the concept of dignity restoration. Although these four dimensions are important for the victims as part of a re-dignification process, they are mainly victim-centered, and pay little attention to broader processes and phenomena like structural inequalities. Sometimes structural inequalities and violence need to be addressed as part of dignity restoration.

Building bridges between other spheres of justice can enhance the remedies to dignity deprivation. For example, distributive justice and justice as recognition can be essential to bringing justice to victims deprived of their dignity in the contexts of inequalities and violence. In fact, justice as recognition could contribute to bringing together remedies for radical dignity deprivation in cases where women and racial minorities are victims of involuntary property loss.

In this dialogue, the dignity restoration framework also raises questions to transformative restitution. Particularly, dignity restoration underlines the procedural dimension of remedies, which is fundamental for victims to reaffirm their humanity and agency. Dignity restoration is a process, not the result of a single intervention. Likewise, transformation is a process in which more attention to the process is essential to enhancing the remedies and its effects on victims' lives.



## IV. CONCLUSIONS

Colombia is the country with the largest population of IDPs in the world.<sup>146</sup> Currently, the country faces the challenge of dealing with a widespread situation of land dispossession. Both forced displacement and land dispossession are long and complex processes in which different actors have participated, with different purposes and through different mechanisms. Illegal armed groups have used a wide spectrum of strategies to remove people from their lands, ranging from legal to illegal.<sup>147</sup>

Empirical evidence in Colombia clearly shows that IDPs have suffered different forms and levels of dignity deprivation.<sup>148</sup> Looking at the meanings attached to the property, mechanisms leading to involuntary property loss, and the effects of the land dispossession, different levels of dignity deprivation emerge, ranging from humiliation to community destruction.

Complexities of the Colombian case raise some questions about the concept of dignity deprivation. For example, this case highlights the importance of clarifying the extent to which the measurement of the level of dignity deprivation depends upon the subjective perspective of the victims, and to what extent indicators should be established. Additionally, the Colombian case is one in which dignity deprivation is not the result of an isolated process of involuntary property loss, but the result of wider processes in which two factors play a central role: widespread violence and structural inequalities. The concept of dignity takings focuses on a single process of property loss,<sup>149</sup> which prevents it from capturing the full range of processes that can break the causality between property loss and dignity deprivation. Therefore, paying more attention to the context, historical processes leading to property loss, and the specific position of the victims in a specific society and community can capture fundamental elements to better understand dignity deprivation.

The Colombian LRP aims to tackle a long and complex process of land dispossession. Its central purpose is to redress the harms suffered by the victims of land dispossession and to transform deep inequalities associated with their victimization.<sup>150</sup> It reflects several aspirations for justice shared by different sectors of civil society. Although ambitious and innovative, the program's implementation has been challenging and even prob-

146. UN HIGH COMMISSIONER FOR REFUGEES, *supra* note 2.

147. *See generally* Summers, *supra* note 44, at 219.

148. *See generally* CENTRO NACIONAL DE MEMORIA HISTÓRICA, *supra* note 18.

149. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 52, at 817.

150. L. 1448, junio 10, 2011, Diario Oficial [D.O.] art. 25, 73 (Colom.).\*

lematic. With deep inequalities in the access to land ownership and other forms of exclusion affecting victims of land dispossession, the LRP is only a promise of partial justice.

The concept of restitution with a transformative potential is taking a specific shape in the context of the Colombian LRP, through reparation measures that go beyond the classic idea of restitution (returning the land). The idea of transformation in the program is associated with three aspects: (1) improvement in the socioeconomic conditions of the subsistence farmers in order to be self-sufficient and economically sustainable; (2) formalization of land ownership; and (3) women's access to legal ownership over land. The distributive dimension of justice informs these measures, and in some cases justice as recognition also shapes transformation in the context of the program. These measures also fit the concept of dignity restoration.

Both transformative restitution and dignity restoration constitute conceptual frameworks providing foundations for more robust remedies to phenomena, such as, land dispossession in Colombia. Although both can lead to similar remedies, understanding differences between these concepts can contribute to enhancing them both. On the one hand, the focus of transformative restitution on the transformation of social injustices can be useful for the concept of dignity restoration in accounting for structural inequalities and widespread violence as triggers of dignity deprivation that go beyond involuntary property loss in certain contexts. On the other hand, understanding dignity restoration as an outcome and a process is a key idea that underlines the importance of procedural justice in policy interventions aiming to fulfill the normative standard of transformative reparations.

The concept of dignity restoration is useful in the Colombian case, even though it is not a clear case of dignity takings. Although only a couple of forms of land dispossession led to dehumanization and community destruction, the dignity restoration framework is useful to enhance the LRP by emphasizing the concept of dignity and the importance of procedural justice. Moreover, remedies associated with dignity restoration are useful to inform reparation efforts in contexts of massive human rights violations.

