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Setting an Agenda for Sustainable Peace

**TRANSITIONAL JUSTICE AND
PREVENTION IN COLOMBIA**

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Cover Image: A young participant in a peace and theater workshop in San Vicente del Caguán, Caquetá, Colombia, wears a T-shirt that reads “Colombia in peace.” (Maria Margarita Rivera/ICTJ)

Setting an Agenda for Sustainable Peace

TRANSITIONAL JUSTICE AND PREVENTION IN COLOMBIA

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About the Research Project

This publication is part of an ICTJ comparative research project examining the contributions of transitional justice to prevention. The project includes country case studies on Colombia, Morocco, Peru, the Philippines, and Sierra Leone, as well as a summary report. All six publications are available on ICTJ's website.

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About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

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“We dedicate much more time and resources [to] resolving crises than preventing them.... We need to adopt a totally new focus.”

—Remarks of the secretary-general to the Security Council open debate on “Maintenance of International Peace and Security: Conflict Prevention and Sustaining Peace,” Jan. 10, 2017

Introduction

After grave and massive violations of human rights, sustainable peace and development are more likely to be achievable if societies seek justice for those violations.¹ This may be particularly true if it can be demonstrated that transitional justice can help to prevent the persistence or recurrence of violations specifically or violence and conflict more broadly. A logic of prevention, however, implies that in order to have a preventive impact, transitional justice must address not just the consequences but also the causes of injustice. This reasoning creates a challenge for the field: overcoming its central focus on violations of civic and political rights and opening up space for discussions about structural factors like inequality, discrimination, and corruption and the violations of economic, social, cultural, and environmental rights that can create grievances that make violence more likely.²

Clara Sandoval has proposed that transitional justice processes can contribute to three types of social change that are necessary for nonrecurrence: ordinary change, which does not interrupt the dominant way of thinking; structural change, which is more complex and deeper, but with society mostly maintaining its dominant ideology; and fundamental societal change, which occurs when several structural changes create the opportunity for new ideologies and values to flourish. These new values must be “respected, supported, adopted, and articulated” by a range of social actors to upend the social, economic, cultural, and political conditions that contributed to human rights violations.³

Given these different types of potential change, the Sustainable Development Goals (SDGs) are useful because they provide a set of goals and targets to which transitional justice may contribute. SDG 16 is especially significant here since its objectives include promoting the rule of law and guaranteeing equal access to justice; developing effective, responsible, and transparent institutions; reducing all forms of violence; diminishing corruption; and ensuring access to information.⁴ Also relevant are SDG 5, on gender equality; SDG 10, on inequality; SDG 4, on equitable and inclusive education; and SDG 3, on health and well-being. While comparative and quantitative studies of transitional justice and prevention are limited and without

1 Working Group on Transitional Justice and SDG16+, *On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations* (International Center for Transitional Justice, 2019).

2 Alexander L. Boraine, “Transitional Justice: A Holistic Interpretation,” *Journal of International Affairs* 6, no. 1 (2006): 17–27. Bronwyn Anne Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30, no. 1 (2008): 95–118. Ruben Carranza, “Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?,” *International Journal of Transitional Justice* 2 (2008): 310–30. Rama Mani, “Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development,” *International Journal of Transitional Justice* 2 (2008): 253–65. Christine Chinkin, Office of the United Nations High Commissioner for Human Rights, “The Protection of Economic, Social and Cultural Rights Post-Conflict” (2009). Dustin N. Sharp, “Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice,” *Fordham International Law Journal* 35, no. 3 (2012): 781–814. Evelyne Schmid and Aoife Nolan, “Do No Harm? Exploring the Scope of Economic and Social Rights in Transitional Justice,” *International Journal of Transitional Justice* 8 (2014): 362–82.

3 Clara Sandoval, “Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition,” in *Justice Mosaics, How Context Shapes Transitional Justice in Fractured Societies*, eds. Roger Duthie and Paul Seils (International Center for Transitional Justice, 2017), 166–201.

4 Working Group on Transitional Justice and SDG16+, *On Solid Ground*.

consensus, they do suggest that transitional justice could have preventive effects in the long term.⁵ Furthermore, the conceptual links between transitional justice and the SDGs shed light on areas where the former can contribute to prevention.

This research takes a practical approach to enriching this discussion, using as a case study formal transitional justice mechanisms that have been created in Colombia by laws passed between 2005 and 2011 and the processes that subsequently unfolded within those frameworks.⁶ Law 975 of 2005, the Peace and Justice Law, created a special judicial mechanism to investigate human rights violations that were committed by demobilized paramilitary members; it also formed a special commission to examine the past and enact a policy of administrative reparations and victim participation. Law 1448 of 2011, the Victims and Land Restitution Law, was established to provide comprehensive reparation to the victims of the conflict, including through housing, higher education, productive projects, and land restitution measures. The transitional justice activities that are examined here, then, were designed and implemented while the armed conflict was ongoing, which makes them particularly challenging to assess from a prevention standpoint. However, the study is able to draw conclusions about the preventive capacity of such efforts.

The study does not cover the transitional justice measures created by the 2016 Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (Peace Agreement)—the Comprehensive System for Truth, Justice, Reparation, and Non-Repetition—which include the Special Jurisdiction for Peace; the Commission for the Clarification of Truth, Coexistence and Non-Repetition; and the Search Unit for Disappeared People. Nonetheless, the measures that are analyzed by the study had an agenda-setting impact on what followed them. Their main influence was on victims' participation. During the course of the peace negotiations between 2012 and 2014, procedures were created to receive civil society proposals related to the items on the agenda (more than 9,300 proposals in total). Proposals could be submitted electronically or through governors and mayors, or during a series of national and territorial forums that were organized between the United Nations and the National University. As of June 2014, the victims of the armed conflict were directly incorporated into the negotiations through five delegations of 12 people each, a phenomenon that irreversibly transformed the peace process.⁷ The Peace Agreement also built on the work of the

5 One study argues that there are civil and institutional factors that contribute positively to prevention. For example, the creation of new constitutions reduces the possibility of a repeat of a civil war. Internal criminal prosecution lowers the risks of recurrence, but only when it is prosecuted at medium and low ranges. Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (United States Institute of Peace Press, 2010); Leigh Payne, Andy Reiter, Chris Mahony, and Laura Bernal-Bermudez, United Nations and World Bank, "Conflict Prevention and Guarantees of Non-Recurrence" (2017). Another study shows that the countries with the highest criminal prosecution rates tend to be less repressive, validating the hypothesis of the deterrent effect of criminal prosecution. In turn, the implementation of truth commissions shows an improvement in human rights practices. Hunjoon Kim and Kathryn Sikkink, "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries," *International Studies Quarterly* 54, no. 4 (2010): 939–63. A third study concludes that transitional justice has greater effects in terms of upholding democracy and strengthening human rights when there is joint criminal prosecution and amnesties or criminal prosecution, amnesties, and truth commissions. Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, "The Justice Balance: When Transitional Justice Improves Human Rights and Democracy," *Human Rights Quarterly* 32, no. 4 (2010): 980–1007. Finally, another study demonstrates that certain measures can extend the duration of peace, depending on how the conflict ends, and only in democratic societies. Scott Gates, Helga Malmin Binningsbo, and Tove Grete Lie, World Bank, "Post-Conflict Justice and Sustainable Peace," Policy Research Working Paper No. 4191 (2007).

6 Several mechanisms of documentation, memorialization, truth-seeking, and truth-telling have been advanced and implemented by civil society organizations such as the Commission of Truth and Memory of Colombian Women created by the Ruta Pacifica De Las Mujeres and the Red Colombiana de Lugares de Memoria (Colombian Network of Places of Memory). This research will only analyze the mechanisms that were created and implemented by the state.

7 Government of Colombia and Farc-EP, Joint Communiqué of June 7, 2014, <https://sueje.edu.co/wp-content/uploads/2020/05/junio-7.pdf> For more information, see Roddy Brett, UNDP, "La Voz de las Víctimas en la Negociación: Sistematización de una Experiencia" (2017).

measures that are studied in this report, which addressed issues such as gender, comprehensive reparation, peasant communities, and ethnic communities.⁸

The research analyzes the ability of transitional justice to contribute to structural transformations in four central areas that are important to prevention:

1. institutional legitimacy, which includes the components of state confidence, victim participation, and the prosecution of third parties that voluntarily contributed to human rights violations;
2. the informality of property;
3. inequity; and
4. gender and ethnic discrimination.

Having considered both Law 975 and Law 1448 with respect to each of these categories, the study then examines their implementation and impact at the regional level, focusing on the regions of Urabá and Montes de María, both of which demonstrated a strong presence of paramilitary groups, strategic value for the armed conflict, above-average rates of violence, and prioritization by the transitional justice mechanisms.

The study finds that while other factors have likely been more important for the decrease in violence during the period that was studied, the transitional justice mechanisms in question have still contributed to prevention in a number of ways:

- They strengthened the institutional response for satisfying the rights of victims and created spaces for participation.
- They added issues to the agenda that previously had not been discussed or had been discussed only tangentially, such as the existence of economic and political networks supporting armed groups, the visibility of victims, the need to address the plundering of land, the complexity of the conflict, and the necessity of comprehensive reparations.
- They contributed to the development of a culture of awareness and respect for human rights by achieving acknowledgment of what happened to victims, giving memory back to their communities, and changing the discourse about paramilitary violence.
- They strengthened leadership within victims' communities and facilitated the reintegration of victims into public life.

⁸ For more information on gender issues, see UN Women, "100 Medidas que Incorporan la Perspectiva de Género en el Acuerdo de Paz entre el Gobierno de Colombia y las Farc-Ep para Terminar el Conflicto y Construir Una Paz Estable y Duradera" (2018). More information on comprehensive reparation is in Chapter 5 of the Peace Agreement, more on peasant communities is in Chapters 1 and 4, and more on ethnic communities is in Chapter 6.

However, for the most part, the transitional justice processes have not done all that they could have to address and promote the structural social changes that are necessary to resolve the underlying violent dynamics, especially in matters of inequity and discrimination, leaving the door open for future violence. Little progress has been made in addressing economic, social, cultural, and environmental rights violations. Gender and ethnic discrimination have been afforded insufficient attention, in some cases even being reinforced when ethnic groups are completely ignored or when they are taken into account but through a colonialist lens. Where progress has been made in areas such as land restitution and participation, it has been limited by a lack of coordination between the national and local levels, a dearth of political will, and an ensuing failure of implementation, which, given the expectations that were generated around the justice processes, has undermined the trust of victims and of society more generally.

Acknowledging that transitional justice cannot guarantee that violence will not persist or recur, the study argues that transitional justice can facilitate conditions that promote the nonrecurrence of past violations and prevent the onset of new violations. In this sense, prevention through transitional justice can only be fulfilled by applying a long-term view, one that centers on the need to study the causes, agents, resources, and structures that permitted the commission of violence. This vision of transitional justice carries some implications. First, it reinforces the idea that magic formulas do not exist, that there is a need to create mechanisms that respond to local priorities and their economic, social, cultural, political, and other dynamics. Second, it calls for the prioritization of mechanisms that include feasible programs, policies, and measures that (a) take a long-term view; (b) are coordinated with other areas like development and other peace-building efforts; (c) help eradicate systems of inequality, exclusion, and discrimination; (d) address all human rights violations, including economic, social, cultural, and environmental abuses; and (e) allow for broad participation.

Although it is possible to initiate transitional justice processes in contexts of ongoing high levels of violence, the study demonstrates that doing so requires a special kind of coordination between justice and security policies, one that depends on a holistic view of security that includes human development and sustainable development. Additionally, the need to respond to the structural problems of inequity and inequality means that transitional justice has to work in coordination with the institutions that are set up to more directly address those problems. At the same time, every transitional justice mechanism is created with the long-term goal of promoting the rights to truth, justice, reparation, and nonrepetition, which requires harmonious and coordinated work and a strategy to comprehensively address the demands and expectations that these rights generate. These interactions have been lacking in the regions of Colombia that are studied here.

This study draws on primary information related to those mechanisms, field trips to the prioritized areas to collect information and testimonies, and 46 in-depth interviews with victims, social leaders, experts, Colombian and international academics, and former public servants (23 women, 3 LGBTQ [lesbian, gay, bisexual, transgender, and queer] people, and 20 men). Secondary information has also been used to complete the report. When referring to violence or victimizing actions, the report adheres to the definitions that are used by the Administrative Unit for the Comprehensive Care and Reparation of Victims (UARIV, according to its initials in Spanish).⁹

⁹ These terms include *terrorist act, threat, crimes against sexual integrity, enforced disappearance, displacement, homicide, personal injuries* (physical and psychological), *antipersonnel mines, dispossession, loss of furniture or property, kidnapping, torture, and recruitment*

Colombian Armed Conflict and Attempts to Resolve Violence

By March 2020, Colombia's Unified Victims' Registry (RUV, according to its initials in Spanish) had recognized at least 9.1 million victims of the country's 50-year armed conflict, although it is estimated that the true number is larger. The nature of the human rights violations that occurred during the armed conflict changed over time, but they included all types, extending beyond the traditional focus on violations such as murders, disappearances, torture, rape, massacres, and massive displacement. There have also been violations of political rights, such as the suppression of voting or civic participation; environmental rights, such as pollution and environmental damage; economic and social rights, such as the impacts on housing, roads, education, health, and telecommunications and the disruption of commerce and private entrepreneurship; and cultural rights, especially regarding Afro and indigenous communities. These abuses have been committed by guerrilla, paramilitary, drug trafficking, and government groups, sometimes individually and other times in alliances.

Armed conflict in Colombia has always been accompanied by various failed attempts at resolving the violence. Since 1902, there have been 10 amnesties and an even greater number of peace negotiations. One of the most important milestones in resolving violence was the proclamation of the Constitution of 1991, which included principles such as the social rule of law and the right to peace.¹⁰ The Constitutional Court, insofar as its mandate is to analyze abstract and concrete human rights violations, has been instrumental in defining the minimum criteria on these subjects. In 1993, it stated the right to peace as a right that "goes beyond the simple absence of conflict" and as "a necessary condition for the effective enjoyment of fundamental rights."¹¹ On a regulatory level, Law 387 of 1997, the first legal recognition of the problem of forced displacement, became the instrument that at the time most resembled a transitional justice mechanism in Colombia. Nonetheless, these two prominent attempts to address the conflict did not have the desired effect. After the mid-1990s, the intensity of the conflict grew, peaking between 1999 and 2002.¹² With 778,772 forced displacements, 83,045 homicides, and 16,745 forced disappearances, 2002 was the most violent year of the Colombian conflict, according to the RUV.¹³

It was not until the mid-2000s that the need for a transitional justice process was seriously discussed. At a regulatory level, this began with Law 975 in 2005, which created the first special judicial mechanism for investigating human rights violations that had occurred in the past, as well as a special commission in charge of overseeing extrajudicial investigations into what happened and enacting a policy of administrative reparations and victim participation. Law 975 was the result of negotiations with the United Self-Defense Forces of Colombia (AUC, according to its initials in Spanish), negotiations that later resulted in the demobilization

(up to 18 years). Although the Constitutional Court recently ordered the inclusion of confinement, the data on the subject are still rudimentary and will not be taken into account here. In this way, it is possible to derive a preliminary conclusion about the transitional justice mechanisms that are studied: They have focused too much on traditional political and civil crimes, and there is insufficient information about the economic, social, cultural, and environmental rights that were violated in the context of the conflict.

¹⁰ The social rule of law seeks to guarantee the general welfare of society. This includes not only the protection of the less favored sectors of the population but also the promotion of culture, the protection of the environment, support for citizen participation, and the assurance of conditions by the state for the welfare of all social layers of the community.

¹¹ Constitutional Court, ruling T-102 of 1993.

¹² Jorge A. Restrepo and David Aponte, *Guerra y violencias en Colombia: herramientas e interpretaciones* (Editorial Pontificia Universidad Javeriana, 2009).

¹³ Data were calculated manually using information from the UARIV's Victims' Registry about victimizing actions that were committed between 1984 and 2019.

and disarming of 34 of its units and over 30,000 paramilitary members. At the Constitutional Court, a sufficient culmination of decisions had been reached by the end of the 2000s to require the state to respond to the conflict's impact on its victims. Thanks to this jurisprudence, the state has been forced to recognize (a) intra-urban displacements; (b) confinement; (c) sexual violence; (d) general violence; (e) threats coming from demobilized armed actors; and (f) deeds that are attributable to the state, criminal gangs, unidentified armed groups, and private security groups.¹⁴

The following decade began with the approval of Law 1448 of 2011, the second most important regulatory milestone in relation to transitional justice in Colombia. This instrument, innovative even 10 years later, generated an ambitious public policy of comprehensive reparation and an intricate institutional structure for directing and implementing it. The third significant advancement in terms of transitional justice happened in 2016, with the signing of the Peace Agreement, which, like Laws 975 of 2005 and 1448 of 2011, triggered a multitude of processes (legal, social, political, etc.). Although the Peace Agreement is not analyzed in this report, it marked a milestone because it incorporates a holistic vision that not only seeks a formal exit from the conflict by means of a guarantee of the rights of truth, justice, reparation, and nonrecurrence, but also strives to mitigate the structural causes of the conflict and its consequences, all following the principle of victim participation. That said, notwithstanding this progress, in 2018 there were still five internal armed conflicts in the country, and 2019 was the most violent year of the last five.¹⁵

To include Colombia prior to the Peace Agreement in a study of the preventive effects of transitional justice presents challenges, given that the conflict and the violence were ongoing. Nevertheless, as John Paul Lederach argued, overcoming a period of conflict or human rights violations is a long-term process that takes at least the same amount of time as the period that is to be overcome.¹⁶ Transitional justice should be seen as part of this long-term process, a set of efforts that can begin before a formal transition and that are carried forward by means of partial advancements.¹⁷ In this way, with over 10 years of implementation of the first formal mechanisms of transitional justice in Colombia, it should already be possible to determine whether they have contributed materially to nonrecurrence and ultimately, prevention.

Categories Analyzed

In the logic of prevention, violence should be analyzed as a symptom of deeper structural factors. After more than five decades, the Colombian armed conflict presents a complex challenge in identifying and studying these factors. This study analyzes the ability of transitional justice to contribute to structural transformations in four central areas. The first is institutional legitimacy, which includes three components: state

14 (a) Constitutional Court, ruling T-268 of 2003. (b) Constitutional Court, monitoring of ruling T-025 of 2004; decision (“auto”) 093 of 2008; ruling T-402 of 2011. (c) Constitutional Court, monitoring of ruling T-025 of 2004; decision (“auto”) 092 of 2008; ruling T-611 of 2007. (d) Constitutional Court, ruling T-821 of 2007. (e) Constitutional Court, ruling T-895 of 2007. (f) State: Constitutional Court, rulings T-630 and T-611 of 2007, ruling T-299 of 2009, and ruling T-318 of 2011; monitoring of ruling T-025 of 2004; decision (“auto”) 218 of 2006. Criminal gangs: Constitutional Court, ruling T-129 of 2012. Unidentified armed groups: Constitutional Court, rulings T-265 of 2010 and T-188 of 2007. Private security groups: Constitutional Court, ruling T-076 of 2011.

15 ICRC, “Cinco conflictos armados en Colombia ¿qué está pasando?” (2018). Office of the United Nations High Commissioner for Human Rights, *Situación de los derechos humanos en Colombia* (A/HRC/43/3/Add.3, February 2020).

16 John Paul Lederach, “Las verdades que conviven”: conference (2019).

17 Roger Duthie and Paul Seils, ICTJ, “Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies” (2017).

confidence, victim participation, and the prosecution of third parties that voluntarily contributed to human rights violations. The second point is related to the informality of property. The third and fourth points deal with the topics of inequality and gender and ethnic discrimination, respectively.

Institutional Legitimacy

The first impact that transitional justice can have on institutional legitimacy is to contribute to reducing institutional weakness. In Colombia, this factor has been pointed out by the Supreme Court and the Constitutional Court as a cause and catalyst of the conflict.¹⁸ The data seem to prove them right: Even though in some cities (such as Bogotá or Medellín) the presence of the state is strong, in rural areas, which make up 99.6 percent of the national territory, the state's presence is weak or nonexistent.¹⁹ Meanwhile, no public entity has a low risk of corruption, meaning that US\$14.2 billion is lost to corruption annually, or almost 5 percent of GDP (gross domestic product).²⁰ In the last 30 years, the impact of informal and illegal economies has been as large as a third of GDP.²¹ All of this led, in 2005, to Colombia's ranking as the 14th most vulnerable state, very close to being considered a failed state.²² Fifteen years after the first formal transitional justice mechanisms were created by Law 975 of 2005, Colombia was the 65th most vulnerable state.²³

The second institutional contribution that transitional justice can make is the strengthening of participatory democracy based on a culture of respect for human rights. In Colombia, the concentration of economic and political power has been highlighted as one of the primary driving forces of the conflict. Even though the Constitution of 1991 includes more than 38 articles referring to the strengthening of participatory democracy, in practice such a system tends to be weak and still emergent.²⁴

18 Supreme Court rulings 34547 against Edwar Cobos Téllez and Uber Enrique Banquez Martínez; 23973 against Ana María Flórez; 26118 against Erick July Morris Tabohada; 26470 against Mauricio Pimiento; 26470-A against Luis Eduardo Vives Lacouture; 26942 against Reginaldo Enrique Montes Álvarez and Juan Manuel López Cabrales; 27195 against Karelli Lara Vence; 29640 against Ricardo Elcure Chacón; 31943 against Jorge Eliécer Anaya Hernández; 27941 against Gonzalo García Angarita; and 32672 against Salvador Arana Sus. Constitutional Court, ruling T-025 of 2004. This was strengthened by the same court in monitoring compliance with said ruling. See decisions (“autos”) 218 of 2006, 266 of 2006, 233 of 2007, 092 of 2008, 077 of 2009, 088 of 2009, 314 of 2009, 383 of 2010, 373 of 2016.

19 State presence is understood not only as the presence of public forces but also as the existence of public administration entities and the guarantee of public and community services. This concept is related to the idea of “infrastructure power” that was presented in 1984 by Michael Mann. In his article “The Autonomous Power of the State,” Mann distinguishes two different types of state power. On the one hand, there is *despotic power*, which is the range of actions that the state elite is empowered to take without routinely consulting civil society groups. On the other hand, there is *infrastructure power*, that is, the capacity of the state to truly penetrate civil society and have its actions implemented logistically throughout its territories. This is not limited to physical infrastructure such as roads, but includes all means, physical or social, by which policies and programs are implemented throughout the territory. Michael Mann, “The Autonomous Power of the State,” *European Journal of Sociology* 25, no. 2 (1984): 185–213. See also Agustín Codazzi Geographical Institute, “Tan solo el 0,3 por ciento de todo el territorio colombiano corresponde a áreas urbanas: IGAC” (2014).

20 Corporación Transparencia por Colombia, *Transparency Index of Public Entities 2015–2016*. Figures are calculated using an exchange rate of 1 Colombian peso = 0.00029 dollar. Procurador General de la Nación, *La corrupción es casi una pandemia que exige respuestas internacionales* (2018).

21 Asociación Nacional de Instituciones Financieras, *Reducción del efectivo y tamaño de la economía subterránea en Colombia: Documento realizado por Anif para la Asociación Bancaria de Colombia* (2017).

22 It was surpassed only by Ivory Coast, the Congo, Sudan, Iraq, Somalia, Sierra Leone, Chad, Yemen, Liberia, Haiti, Afghanistan, Rwanda, and North Korea. B. Amburn, “The Failed States Index 2005,” *Foreign Policy*, October 22, 2009. The annual ranking is prepared by the Fund for Peace and published by *Foreign Policy*.

23 *Fund for Peace*, “Fragile States Index” 2020. The first Fragile States Index of 2005 was a more limited sample of only 76 countries and can be found as “The Failed States Index 2005.”

24 Alejandra Barrios, “A 30 años de la elección de la Asamblea Nacional Constituyente: Diálogo intergeneracional sobre los riesgos de la democracia y la paz” conference Cumbre Por La Democracia — Diálogo intergeneracional sobre los riesgos de la democracia y la paz (December 9, 2020).

The third and final effect that transitional justice can have on institutional legitimacy has to do with the reduction and prosecution of the financial and political support of illegal armed groups, important factors in the prolongation of violence. These groups secure support in two primary ways. The first is by means of coercion of the private and public sectors. The second is tied to voluntary economic and political support. In Colombia, there is sufficient evidence of this relationship, which plays out in two ways: in the confluence of economic interests (of exploitation, production, and distribution) and the presence of armed actors, and through the alliances between economic powers, local elites, and armed groups to promote their interests through the co-opting of institutions.²⁵

Informality of Property

There is a direct relationship between the informality of property in Colombia and the probability of the arrival of violence. Indeed, “the municipalities that have greater rates of informality of land ownership have, in turn, a greater probability to suffer attacks on their populations.”²⁶ The national informality index shows the magnitude of the problem to be around 60 percent.²⁷ This informality has allowed for the plundering of land and for direct or indirect violent acts against the civilian population, as threats, homicides, and attacks on physical or sexual integrity have been used as tools to create displacement, abandonment of land, and eventual plunder. The data concerning land dispossession in Colombia show how massive it was: It is estimated that 6 million hectares were plundered or forcibly abandoned from 1980 to 2010, “primarily affecting informal landowners who lack the economic resources and the bureaucratic and political contacts to defend themselves.”²⁸

This dispossession has prevented the state from augmenting its presence, creating a vicious cycle that blocks the strengthening of institutions and the reduction of inequity. The informality makes it difficult to provide new public services, like schools, and to improve existing ones. There is also a close relationship between informality and the presence of illegal economies. Transitional justice processes can help to break this cycle by contributing to the formalization of property ownership, especially where there has been plunder, as in Colombia. Reparation by means of the restitution of property and institutional reforms is one of the most important tools to support this effort.

Inequality

Colombia is a country of inequity and inequality. According to the World Bank, in 2019 the richest sector of the population received 55.7 percent of the national income, while the poorest group received only 3.9

25 Nelson Camilo Sánchez León et al., *Dejusticia*, “Cuentas Claras: el papel de la Comisión de la Verdad in la develación de la responsabilidad de empresas in el conflicto armado colombiano” (February 13, 2018).

26 Manuel Fernández, “Violencia y derechos de propiedad: el caso de La Violencia en Colombia,” *Ensayos sobre Política Económica* 30, no. 69 (2012): 112–47.

27 Departamento Nacional de Planeación, *El campo colombiano: un camino hacia el bienestar y la paz Informe detallado Tomo I* (2015), 40–49. The Rural Agricultural Planning Unit argues that the national land informality is 54.31 percent. The National Administrative Department of Statistics speaks of between 40 and 50 percent land informality. Regardless of the index that is used, none covers the entire phenomenon, given that in 2019 only 5.6 percent of the rural area had an updated cadaster, and almost 28 percent had no cadastral information. CONPES 3958 of 2019, *Estrategia para la implementación de la política pública de catastro multipropósito*.

28 IPC and Forjando Futuros, *Restitución Colectiva de Tierras en Colombia: Una propuesta para cumplir con éxito la devolución de tierras en los 143 municipios de mayor despojo* (Consejo Latinoamericano de Ciencias Sociales, 2012). A. Reyes Posada, *Guerreros y campesinos: el despojo de la tierra en Colombia* (Norma, 2009).

percent, figures that have varied little in the last 20 years.²⁹ In 2017, the Gini index rose to 0.902, close to absolute concentration. This generates a cyclical relationship in which conflict and inequality nurture and enhance each other. The armed conflict aggravated inequity directly, as its damage included “missing country roads, razed villages, lost crops, eroded lands, abandoned houses and roads, desolate schools, and destroyed hospitals.”³⁰ The conflict also indirectly aggravated inequity, affecting the economic capacity of the areas and groups with the lowest incomes. For example, the damage to the energy and communications systems and the transit and agricultural infrastructure reduced school attendance and health care membership and increased the infant mortality rate.³¹ In turn, the expenses that the state incurred in terms of security implied the reduction of the budget against inequality.³²

Simultaneously, inequity aggravated the conflict. The concentration of property, the lack of health care, education, and labor rights, and the elevated level of vulnerability of a large part of Colombia’s population have acted as fuel for the conflict.³³ The lack of access to education is an example of this dynamic. According to the National Center of Historical Memory (CNMH, according to its initials in Spanish), only 2 percent of the members of paramilitary groups had access to higher education, 10 percent finished high school, and 24 percent completed primary school. Furthermore, 74 percent said that at the time of recruitment, their income was not enough to live on.³⁴ According to a census of over 10,000 ex-combats of the FARC-EP (Revolutionary Armed Forces of Colombia—People’s Army), 11 percent had not gone to school, 57 percent had finished primary school, 21 percent had graduated from high school, and only 3 percent had completed higher education.³⁵

Among the most valuable tools that transitional justice processes have for contributing to a response to structural inequities is the analysis of violations of economic, social, and cultural rights, attempting to address them at the moment that a community is given reparations for individual and collective damage.

Gender and Ethnic Discrimination

This study initially sought to broadly analyze gender-based violence, but there is a large public information gap related to types of violence other than sexual violence. This situation is worrying considering the large number of women victims of the conflict—more than 50 percent of the total victims in several regions. This follows a national trend of discrimination against those who break the stereotypes of hypermasculinity: 87 percent of chores involving preparing and serving food, 74 percent of chores involving cleaning, and 76 percent of chores involving care are performed by women. Conversely, women represent only 19.7 percent

29 Gonzalo Hernández, “El dato de la desigualdad en Colombia,” *El Espectador*, March 5, 2019.

30 Historical Memory Group, CNMH, “Basta Ya! Colombia: Memories of War and Dignity” (2013), 277.

31 Héctor Galindo, Jorge A. Restrepo, and Fabio Sánchez, “Conflicto y pobreza en Colombia: un enfoque institucionalista,” in *Guerra y violencias en Colombia: herramientas e interpretaciones*, eds. Jorge A. Restrepo and David Aponte (Universidad Javeriana, 2009), 315–51.

32 Germán Valencia, “La economía frente al conflicto armado interno colombiano, 1990–2006,” *Perfil de Coyuntura Económica*, no. 8 (2006): 141–74.

33 The CNMH’s 2018 report, based on all of its studies about land as a factor in the armed conflict, reveals that the country’s unresolved agrarian problem has had a direct impact on the armed conflict. CNMH, “Tierras, Balance de la contribución del CNMH al esclarecimiento histórico” (2018).

34 CNMH, “Análisis Cuantitativo del Paramilitarismo en Colombia Hallazgos del Mecanismo no Judicial de Contribución a la Verdad” (2019).

35 Germán Gómez Polo, “Los resultados del primer censo socioeconómico de las FARC,” *El Espectador*, July 6, 2017.

of congressmembers.³⁶ Between 2014 and 2018, more than 6,000 women were murdered by their partner or ex-partner, and 80 percent of the 1,080 femicides committed between January 2018 and February 2019 remained unaddressed.³⁷ In 2017 alone, 109 LGBTQ people were murdered, and only four out of 100 trans women were able to find formal employment.³⁸

Racism is also palpable in Colombia. For 70 years, from 1918 until 1993, the ethnic/racial variable was ignored on censuses, and since 1993 different groups have leveled serious complaints of invisibility.³⁹ Skin color defines life expectancy, which is 11 years less than the median for the Afro-descendant community.⁴⁰ The situation for indigenous groups is also critical: Of 102 groups, 66 are in danger of disappearing.⁴¹ Added to this discrimination, during the conflict, was the use of more and more dehumanizing terms and phrases, such as threatening to “fumigate” others or saying of victims, “They must have done something” to instigate abuses, reinforcing a culture of violence.⁴² The logic of this stigmatization allowed these groups to be placed in a position of inferiority, legitimizing violence against them, which in turn helped reinforce their dehumanization. The impact of the conflict on ethnic groups was of such magnitude that in 2010, the UN Special Rapporteur on the rights of indigenous peoples solicited the intervention of the UN Special Adviser on the Prevention of Genocide.⁴³ The violence against Afro-descendant communities was also aggravated by their being characterized as an “enemy” by illegal armed groups and state security forces.⁴⁴

In general, the factors behind this violence do not stop with the end of the conflict, since there is a continuum of violence in the lives of groups that suffer discrimination. In this context, applying the different perspectives of gender and ethnicity on transitional justice processes helps highlight the disproportionate way in which women, LGBTQ people, and ethnic groups suffer violence, as well as the risks and specific challenges they face in claiming their rights. Transitional justice processes, by emphasizing these perspectives, can help to understand and address the vulnerability, exclusion, and discrimination that have been historically suffered by certain populations because of their particular characteristics, seeking to break the continuum of violence against them.

36 Colombia2020, “¿Una escuela nacional para desaprender el machismo en Colombia?,” *El Espectador*, September 26, 2019.

37 David Ferro, “Las preocupantes cifras de feminicidio en Colombia,” *Conexión Capital*, November 2, 2018. Margarita Sarmiento Osorio and Nicolás Ospino, Heinrich-Böll-Stiftung, “40 años de la CEDAW en Colombia: un balance entre luces y sombras” (2019).

38 Colombia Diversa and Caribe Afirmativo, *La discriminación, una guerra que no termina: informe de derechos humanos de personas lesbianas, gays, bisexuales y trans en Colombia 2017* (AltaVoz Editores, 2018). Juan David Castro, “El panorama laboral para población LGBTQ en Colombia,” *Empleo* (2019).

39 In the last one held in 2018, there could be a 30 percent error in the data regarding Afro communities. Julián Vivas, “El ‘error’ del Dane que borró del mapa a 1,3 millones de afros,” *El Tiempo*, November 25, 2019.

40 César Rodríguez Garavito, Tatiana Alfonso Sierra, and Isabel Cavalier Adarve, *Raza y derechos humanos en Colombia: informe sobre discriminación racial y derechos de la población afrocolombiana* (Ediciones Uniandes, 2008).

41 AFP, “Indígenas denuncian vulneraciones a sus derechos,” *Semana Sostenible*, August 10, 2017.

42 According to María Alejandra Villamizar, director of specials for *Caracol Noticias*, the media allowed this stigmatization and even encouraged it. Commission for the Clarification of Truth, Coexistence and Non-repetition, sixth dialogue for nonrepetition, held on December 5, 2019.

43 United Nations General Assembly, *Report of the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People* (A/HRC/15/37/Add.3, July 2010).

44 United Nations High Commissioner for Human Rights, Colombia Office, *Report of 2007, IV session* (A/HRC/4/48, March 2007), App. 2, para. 11.

Regions Analyzed

A contextual study of transitional justice processes keeps in mind the regional, cultural, social, economic, political, and environmental dynamics. Although some factors apply to the entire country of Colombia, their expressions and effects also vary from region to region. This report therefore prioritizes two regions for studying whether and to what extent the transitional justice mechanisms that were created by Law 975 of 2005 and Law 1448 of 2011 had preventive effects. Four variables were used for selecting the regions: the strong presence of paramilitary groups, the strategic value of the areas for the conflict, indexes of violence greater than the median, and being prioritized by transitional justice mechanisms.

The report will analyze the areas of Urabá (Urabá Antioquia and Bajo Atrato Chocoano) and Montes de María. Both experienced a heavy paramilitary onslaught in the mid-1990s.⁴⁵ Also, both regions contain rich, strategic land. Urabá, “the Promised Land” in the Embera Katío language, is rich in natural resources, biodiversity, and fertile land. Its rain forest conditions, Atrato river mouth, proximity to the Nudo de Paramillo, and location in the northwest corner of South America, bordering Panama and the Atlantic and Pacific Oceans, make it a strategic corridor. Los Montes de María, or “the pantry of the Caribbean,” has great agribusiness and livestock potential and a privileged geographic position that borders the Caribbean Sea.

As far as the indices of violence, both regions account for more than 11 percent of the country’s massacre victims from 1980 to 2012 and of victimizing events recorded by the UARIV. Both are also among the 10 regions with the largest concentration of murders committed by paramilitary groups and among eight regions in terms of the number of massacres that have been committed by these groups.⁴⁶ Since 2003, Montes de María has been a priority in the National Policy of Territorial Consolidation, which implied a strong military intervention. The region also had an early coming together with transitional justice mechanisms and cooperation programs. Urabá started to receive attention as the epicenter of the earliest paramilitary demobilization in 2004, when the Bananero Front relinquished its arms.

This study reaches similar conclusions about both regions. The application of transitional justice mechanisms contributed to the strengthening and empowerment of communities and allowed for the beginning of a discussion about the quality of justice and the advancement of the idea of a minimum level of justice and reparation. It is possible to see a downward trend in human rights violations and a greater sense of security, at least in some subregions. Nevertheless, transitional justice mechanisms do not seem to have provided a response to fundamental factors such as structural discrimination, inequity, support networks, and institutional weakness, limiting its effect in preventing violence. Additionally, the continuation of violence has reduced transitional justice’s area of action.

45 Montes de María witnessed the consolidation of the Heroes of Montes de María Block, while in Urabá the paramilitary forces consolidated two groups: the Émer Cárdenas Block (in San Pedro, San Juan, Necoclí, Arboletes, Mutatá, Unguía, Acandí, and Riosucio) and the Bananero Front (in Turbo, Apartadó, Carepa, Chigorodó, and Carmen del Darién).

46 Database of the CNMH report “Basta Ya!” Information from the observatory of the Presidential Program on Human Rights and International Humanitarian Law processed by the media Verdad Abierta. Verdad Abierta, “La expansión: el nacimiento de las Autodefensas Unidas de Colombia (1997–2002),” August 20, 2008.

Law 975 of 2005

Law 975 of 2005, known as the Peace and Justice Law, was passed in the context of the peace negotiations with paramilitary groups advanced by the government of Álvaro Uribe. Its main goal was to reach a balance between the effective demobilization of these groups and the need to guarantee the rights of victims. The law produced two main institutional reforms. The first was the creation of the National Commission of Reparation and Reconciliation (CNRR, according to its initials in Spanish). This institution had a wide mandate to:

1. Guarantee victims their participation in processes of judicial clarification and the fulfillment of their rights;
2. Release a public report about the reasons for the appearance and evolution of illegal armed groups;
3. Follow up and verify the processes of reincorporation...;
4. Follow up and periodically evaluate the reparation that the present law addresses and give recommendations for its proper implementation;
5. Present, within a term of two years, a report on the process of reparation to victims of outlaw armed groups...;
6. Recommend criteria for the reparations that this law addresses...;
7. Advance national acts of reconciliation.⁴⁷

The mandate included the ability to create plans for collective reparation. In 2011, the CNRR was dissolved with the passing of Law 1448, and its functions were assumed by various entities.

The second reform consisted of the creation of a group of institutions, known as Justice and Peace (Justicia y Paz), dedicated to the criminal prosecution of those who had demobilized. This effort established the High Court Judicial District Justice and Peace Chambers, which would be in charge of issuing rulings, imposing penalties and reparation measures, and tracking their compliance. It also formed the Unit for Justice and Peace within the Office of the National Attorney General, charged with investigating punishable behaviors and their individual or collective damages, and the social, familial, and individual conditions of the accused and his or her previous conduct.⁴⁸ A specialized, exclusive, and permanent group was created within the criminal police to assist the Attorney General's Unit for Justice and Peace.⁴⁹ The law also established the Prosecutor's Judicial Office for Justice and Peace (within the Office of the General Prosecutor), with the functions of promoting participation mechanisms for victims and organizations and representing undetermined victims. Finally, it tasked the Public Defender's Office with assisting victims in exercising their rights and providing legal representation for the demobilized actors who did not have the resources to pay for legal representation.⁵⁰

⁴⁷ Law 975 of 2005, Art. 51.

⁴⁸ *Ibid.*, Arts. 15 and 33.

⁴⁹ *Ibid.*, Art. 33.

⁵⁰ *Ibid.*, Arts. 34 and 35.

The law regulates the handing down of reduced prison sentences, between five and eight years, in return for “the beneficiary’s contribution to the obtaining of national peace, collaboration with justice, reparation to victims and their adequate resocialization.”⁵¹ According to Article 1, the law has three objectives: to facilitate peace processes; to expedite the individual and collective reincorporation of members of illegal armed groups; and to guarantee victims’ rights to truth, justice, and reparation. In order for the benefits of Justice and Peace to apply, the demobilized person, called *postulado* in law, must have been nominated by the national government and must confirm his or her willingness to meet the legal conditions to be eligible.⁵² This principle of willingness applies to the whole process, meaning that a demobilized individual can only be sanctioned by Justice and Peace for crimes that are recognized by that individual. Even though the law focuses on the demobilized individuals of the paramilitary groups, its application is not reduced to them, allowing for the inclusion of other collective or individual demobilizations.

The original version of the law contained a number of complex provisions that limited its impact. A few months after it was passed, several civic organizations asked the Constitutional Court to invalidate or clarify these points. The request resulted in ruling C-370 of 2006, in which the court made some significant modifications to the original law. These include the following:

- Penalties for hiding the truth: According to Articles 17 and 25, those who surrendered to Justice and Peace lacked any incentive to reveal crimes that were unknown to the authorities, given that the penalties would not be affected, even if it was later discovered that they had hidden a crime. The court clarified that if it was discovered that a crime had not been revealed, the benefits that had been granted could be revoked and the subject would be judged by ordinary criminal jurisdiction.
- Periods of investigation: In the first version of the law, prosecutors had only 36 hours to present charges after the accused’s declarations, and only 60 days to “verify” the admitted crimes. The court’s ruling partially invalidated these provisions and established that the state has the obligation to carry out a complete investigation. According to the court, the standard procedures for the investigation of crimes must be completed before an accusation could be made. This modification sought to limit the impact of the principle of willingness.

51 Ibid., Art. 3.

52 Decree 4760 of 2005, Article 3.3, provides that to be included in the list of nominees by the national government, “it will be necessary that the demobilized have previously stated in writing before the High Commissioner for the Peace or to the Minister of Defense, depending on whether they are demobilized collectively or individually, their willingness to be nominated to avail themselves of the procedure and benefits provided by Law 975 of 2005 and declare under the gravity of the oath their commitment to comply with the requirements provided in Articles 10 and 11 of Law 975, as appropriate.”

Law 975 of 2005, Article 10, clarifies that when the demobilization is collective, a demobilized individual can benefit from the law if (a) the organized armed group has demobilized based on an agreement with the government; (b) the individual hands over the goods resulting from illegal activities (later on, the Constitutional Court included the goods from legal activities); (c) the group releases all minors who were forcefully recruited; (d) the group ceases all interference with the free exercise of political rights and public freedoms and any other illegal activity; (e) the group has not organized itself for the purpose of drug trafficking or illicit enrichment; and (f) the group releases all the kidnapped people in its power. Article 11 specifies that when the demobilization is individual, a demobilized individual can benefit from the law if he or she (a) provides information about or collaborates in the dismantling of the group to which he or she belonged; (b) has signed a pledge of commitment with the government; (c) has demobilized and left the weapons in the terms established by the government; (d) ceases all illicit activity; (e) hands over any property resulting from illegal activities (later on, the Constitutional Court included the goods from legal activities); and (f) did not participate in activities related to drug trafficking or illicit enrichment.

- Return of assets: According to Articles 10.2, 11.5, and 17, those surrendering to Justice and Peace had to hand over any assets they had obtained illegally, without mentioning those that were obtained legally. The court sustained that all illegally obtained goods should be relinquished, and it could be stipulated that legally obtained goods also be included.
- Victim participation: The court clarified that the law allows for victim participation at all points in the process.

Law 975 and Institutional Legitimacy

Increased State Confidence

From the beginning, the CNRR's work focused on establishing a close, fluid, and constructive relationship with victims, which was different from what had gone on previously. "For the first time, we didn't feel like it was the state; they were our friends," said one victim and leader.⁵³ In January 2006, a few months after it was formed, the CNRR opened up a participatory process, called social consultation, directed toward defining a model for reparation. It also prioritized awareness and socialization of the law; work with organizations, universities, and regional networks; and the dissemination of pedagogical and information campaigns on local radio and television, allowing it to reach an audience that was usually unaware of discussions that were centered in the country's capital.⁵⁴ Two years after its creation, the CNRR already had five regional offices, and in 2008 it had nine branches.⁵⁵ This allowed it to widen its impact and appropriation of processes on behalf of victims.

At the same time, by means of the National Victims Assistance Network, the CNRR encouraged the cooperation of civil society with state institutions, with the goal of providing recognition and assistance to victims.⁵⁶ This showed that another type of relationship with society was possible, and that state entities and social organizations can work together. One example was the taking of declarations from victims, which was carried out by teams drawn from a mix of people from civil society and public entities. In this case, the CNRR acted as a coordinator and arranged for the presence of the General Prosecutor's Office, the Office of the Ombudsman, the Attorney General's Office, and municipal legal statuses through the Inter-Institutional Squad.⁵⁷

Additionally, the investigative work conducted by the CNRR's Historical Memory Group on some of the phenomena of violence gained the confidence of victims and civil society groups. Support for and recognition of the value of its work was such that when the CNRR dissolved with the passing of Law 1448 in 2011, the group was transformed into the CNMH, keeping its director and a large part of its team. At the time of

53 Interview done in the Montes de María region, September 25, 2019.

54 MAPP-OEA, "Ninth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia" (2007).

55 MAPP-OEA, "Tenth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia" (2008).

56 Ibid.

57 MAPP-OEA, "Ninth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia" (2007).

its dissolution, the CNRR completed twelve reports documenting victims' and communities' testimonies, as well as the impact of violence in the regions, and it left six reports almost finished, including the "Basta Ya!" one.⁵⁸ The reports were seen as recognition of the victims and the communities in relation to the topic each report addressed, but they did not reach a larger audience. However, the group's 2009 report on dispossessed land served as the basis for the chapter on this topic in Law 1448 of 2011, and it continues to be used to understand the different dynamics of land dispossession.⁵⁹

While the CNRR's work was well focused, its impacts were narrow as a result of an insufficient budget, constant short-circuits between the national and local spheres of its work, and the amount of time that was spent on technical discussions in Bogotá.⁶⁰ Moreover, the CNRR was not able to finish its report on the origins and evolution of armed groups as had been ordered in Law 975; such an instrument would have been interesting in terms of creating more public awareness and promoting a culture of respect for human rights. In a way, the CNRR is only remembered by a few victims and experts in Colombia. This is due not only to the above-mentioned difficulties but also to the way in which the CNRR was dismantled when Law 1448 was created.

The Justice and Peace process was the first Colombian attempt to investigate, through a judicial transitional justice mechanism, the international crimes, war crimes, and crimes against humanity that were committed in the context of the conflict. By the end of 2020, it had issued 66 rulings, condemned more than 700 individuals, judged more than 13,600 acts, and accredited more than 75,000 victims.⁶¹ The information that was gathered during this process led to the first ruling against responsible paramilitary members and started to reveal their organizations' networks of accomplices.

In general terms, Justice and Peace represented a substantial step forward as far as recognizing victims of the conflict and building a culture of respect for human rights. The process has allowed for learning about and addressing criminal acts that were committed by the paramilitaries, such as the 10,542 crimes that had been confessed as of June 2009, or the exhuming of 1,997 graves, finding 2,439 cadavers and handing over 571 remains to family members.⁶² Subjects such as the paramilitary groups' role in the violence, the complicity of economic and political third parties, and the visibility of victims have been harder and harder to deny since the publication of Justice and Peace decisions. It is unlikely to be a coincidence that just after its first ruling, in 2010, the discussion intensified about how to address the humanitarian problem and guarantee the rights of victims, and Law 1448 was passed in 2011.

58 "Trujillo: Una tragedia que no cesa" (2008); "El Salado: Esa guerra no era nuestra" (2009); "Recordar y narrar el conflicto. Caja de Herramientas" (2009); "Memorias en tiempo de Guerra" (2009); "Bojayá: La guerra sin límites" (2010); "La tierra en disputa: Memorias del despojo y resistencias campesinas en la costa Caribe (1960-2010)" (2010); "La masacre de Bahía Portete: Mujeres Wayuu en la mira" (2010); "La Rochela: Memorias de un crimen contra la justicia" (2010); "Mujeres que hacen historia. Tierra, cuerpo y política en el Caribe colombiano" (2011); "Desplazamiento forzado en la comuna 13. La huella invisible de la guerra" (2011); "El orden desarmado: la resistencia de la Asociación de Trabajadores Campesinos del Carare" (ATCC) (2011); and "San Carlos. Memorias del éxodo en la guerra" (2011). "Basta Ya!", "Bojayá, la guerra sin límites", "Mujeres y Guerra. Víctimas y resistentes en el Caribe colombiano", "San Carlos: Memorias del éxodo en la guerra", "Silenciar la democracia. Las masacres de Remedios y Segovia 1982 - 1997" and "La masacre de El Tigre: Un silencio que encontró su voz" were later published by the CNMH.

59 CNRR, "El Despojo de Tierras y Territorios: Aproximación conceptual había realizado una aproximación conceptual al despojo" (2009).

60 This factor was mentioned by a former regional director of the CNRR and was also reported by the MAPP-OEA in the 14th report of 2010.

61 These data were calculated manually.

62 Verdad Abierta, "Cuatro años después de la Ley de Justicia y Paz," July 24, 2009.

That being said, during the first few years that the law was in force, the Justice and Peace process was difficult to implement because of conceptual and design problems. It was the work of the Constitutional Court, with the aforementioned ruling C-370 of 2006, and in a greater measure the work of the Supreme Court that enabled different procedural aspects to be clarified. In more than 200 judicial decisions, the Supreme Court resolved, among other things, loopholes in the methods and requirements of indictments, a review of legality, and the extradition of paramilitary commanders. Nonetheless, given that these interpretative decisions were implemented as the process developed, the Justice and Peace magistrates created legal formulas that, on many occasions, produced contradictions inside the judiciary.⁶³

After six years of implementation, the achievements of Justice and Peace were deficient. By June 2012, it still had not been able to ensure the participation of demobilized individuals: Of the slightly more than 5,000 names presented by the government, only 2,800 people were participating. At the same time, human rights organizations and victims continued to be critical, mainly because of insufficient victim participation, the lack of truth in the confessions of the individuals who were nominated, and the inability to permanently dismantle paramilitary structures.

One of the most problematic factors had to do with the lack of comprehensiveness in the criminal investigations, which happened on two levels.⁶⁴ On the one hand, investigations moved forward according to the partial confessions of demobilized individuals and not according to a macro strategy of investigation that would analyze structural factors. This had three consequences. First, progress was made on blood crimes like murders, and not on more complex ones like sexual violence. Second, the subsequent pressure to confess was reduced since the threat of discovering additional criminal acts did not imply these individuals' exclusion from the process. And third, access was limited to information that was relevant to understanding the workings of the criminal organization and its support networks.

On the other hand, the investigation was done one case at a time, which disrupted the examination of the sociopolitical phenomenon of paramilitarism as part of the conflict. In 2013, the general prosecutor declared that "they wanted to address macro-criminality, systematic crimes and human rights violations with structures of investigation and imputation that apply to common crime and individual cases.... Nevertheless, the National Prosecutor's Office did not have the sufficient infrastructure to meet this challenge and the investigations remained under the outlines of individual cases."⁶⁵

These critiques motivated the reform of Law 975 by means of Law 1592 of 2012. The new Justice and Peace included (a) the obligation of investigations to apply a "differential approach," which meant keeping in mind the specifically different ways in which some communities, such as ethnic groups or women, suffer violence, the risks they face, and the challenges that arise to claiming their rights; (b) the need to shed light on patterns of macro criminality in order to overcome "the contexts, causes and reasons" of violence; (c) the possibility of prioritizing cases; and (d) the obligation to use information that was obtained from Justice and Peace in criminal investigations into financial and supporting networks.

63 ICTJ Colombia, internal analysis document (2014).

64 Ibid.

65 NuevoArcoiris, "Balance de Justicia y Paz con el Fiscal General, en La Controversia," YouTube, February 21, 2013, www.youtube.com/watch?v=7_jF-JoXcg, 15:18.

These modifications allowed the Prosecutor's Office to create a more comprehensive investigation strategy. By prioritizing cases, the investigation of macro-criminality patterns, and context analysis, it was able to group nominated individuals and crimes, allowing it to advance from having rulings for 323 crimes between 2010 and 2012 to having judgments for 5,078 crimes between 2013 and 2016.⁶⁶ Nevertheless, by 2016 progress was still moderate. Only 8.2 percent of demobilized individuals and 6.6 percent of crimes that were indicted by the Prosecutor's Office had been subject to judicial decisions, and only 26,778 victims had been recognized out of the 211,013 related to those cases, or 12.7 percent. Furthermore, half of the individuals who were originally nominated by the national government had left the process.⁶⁷

By the same token, the reform of Law 1592 was not successful in reducing the social disconnect with the process. Over the years, especially after the extradition of the most well-known paramilitary leaders, the progress and results of Justice and Peace became more and more irrelevant to the mainstream media and the general public.⁶⁸ This can be observed in the media coverage: Intense at the beginning of the process, it was noticeably reduced over time.⁶⁹ The low level of publicity about the hearings, the difficulty of accessing Justice and Peace's decisions, and the length of the sentences (some were more than 8,000 pages) limited the jurisdiction's contribution to structural social transformations.

Finally, Justice and Peace has had shortcomings when working with victims, reducing their support for the process. Accompanying organizations and victims point to a lack of sensitivity on the part of many Justice and Peace functionaries. Some of the most common deficiencies are the disjunction of efforts, personnel changes, lost documents, rushed damage studies, and lack of preparation of victims and demobilized persons before the hearings.⁷⁰ For a Justice and Peace former judge, the human rights trainings for functionaries that were conducted by various international organizations were a good start but did not achieve enough change to break free from practices and methods that were often revictimizing in nature.⁷¹ The root of the problem seems to have been in the selection of functionaries, since they were not required to have knowledge of human rights or differential approaches.

Participation

Despite its faults, the Peace and Justice Law supported the beginning of a national catharsis over what had happened during the conflict, the reactivation of leadership, and the creation of a path toward victim recognition and participation. "There was a break in the fear, and more space to talk," said one female leader and relative of a victim of forced disappearance.⁷²

66 General Office of the Comptroller of the Nation, "Análisis sobre los resultados y costos de la Ley de Justicia y Paz" (2016).

67 Ibid.

68 During the early morning of May 13, 2008, 14 paramilitary leaders were surprisingly extradited from Colombia to the United States. This gesture was interpreted by the opposition, some members of Congress, human rights organizations, and paramilitary victims as an attempt to silence their confessions in Justice and Peace processes. According to the Inter-American Commission on Human Rights, the extradition prevented the investigation and prosecution of serious crimes in the country, as well as the participation of the victims and their access to reparation. The commission also pointed out that the most mistrust created by this move stemmed from the fact that with the leaders in the United States, it was almost impossible to prove their links with state agents. Inter-American Commission on Human Rights, Annual Report 2009, Ch. 4.

69 Interview with the director of specialized alternative media, done in Bogotá, August 16, 2019.

70 Information recorded by the ICTJ Colombia in different events and meetings held in 2015.

71 Interview with Rubén Darío Pinilla, done in Medellín, September 6, 2019.

72 Interview done in Bogotá, August 15, 2019.

From its conception, the CNRR sought greater victim participation. Decree 4760 of 2005 stipulated that among its delegates there needed to be two representatives of victims' organizations. In addition, the establishment of nine regional branches, the formation of alliances with regional organizations, and the previously mentioned strategies of social consultations, a national victim assistance network, and interinstitutional squads also contributed to a rise in participation. As a consequence, the number of victim complaints that were collected by "social consults and assistance conferences" went beyond initial expectations.⁷³ In some cases, more than 800 people attended per day.⁷⁴

Nevertheless, the CNRR had two shortcomings in regard to participation. The first was a lack of resources, which limited the commission's geographic reach and ability to accompany victims.⁷⁵ The second is more structural and is linked to the lack of participation by the regions in the national discussion, the differences in criteria between the national level and the regional branches, and the usual tensions and frictions among commissioners, creating a limited application of the contextual focus that was necessary for more effective transitional justice measures. In the short term, this generated confusion among the participants about CNRR actions and created delays in their implementation, especially for the collective reparation pilot programs.⁷⁶ In the long term, it made it harder for the CNRR to create structural social transformations.

In the evaluation that the accompanying international organizations carried out about the pilot programs for collective reparation, the most criticized aspects were the lack of coordination between the national and local levels and the lack of participation at the latter. According to the report, the regional offices needed to have greater participation in order to "guarantee greater sustainability and reach in the communities." The implementation of pilot programs mainly at the national level "created extended lengths of time in executing activities and the sensation of a lack of consistency."⁷⁷

The Justice and Peace process, as opposed to the CNRR, was rolled out with a narrower opening for victim participation. This limitation persisted during the first years of implementation, notwithstanding attempts to increase the role of victims, such as the aforementioned ruling C-370 of 2006 or sentence C-209 of 2007, in which the Constitutional Court expressed that victims are not merely interveners in the process, but rather are true procedural subjects. In practice, the level and nature of their participation depended on the disposition of the prosecutor on each case.⁷⁸

But for a few exceptions, during the early years of implementation there were two main moments when victims could participate in Justice and Peace: the deposition hearings and the hearings during the reparation stage.⁷⁹ The deposition hearings initiated the process. Their goal was for the demobilized individual to confess the criminal acts he or she had participated in or had knowledge of during the period of member-

73 Interview with the ex-regional director of the CNRR, done in Medellín, September 6, 2019.

74 MAPP-OEA, "Tenth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia" (2007).

75 Statements by the president of the CNRR, quoted in the CNRR report "La reintegración: logros in medio de rearmes y dificultades no resueltas: II informe de la comisión nacional de reparación y reconciliación" (2010).

76 MAPP-OEA, "Fourteenth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia" (2010).

77 International Organization for Migration, Mission in Colombia, "Del daño a la reparación colectiva: la experiencia de 7 casos emblemáticos" (2012).

78 ICTJ Colombia, internal analysis document (2012).

79 See Law 975 of 2005 and Decrees 4760 of 2005, 2898 of 2006, and 3391 of 2006.

ship in an illegal armed group. The reparation stage hearings were the last before sentencing, and their goal was for the victims to explain the type of reparation they expected.

As the way of advancing legal proceedings changed over time, victim participation also changed, and the process can be divided into two phases: before and after 2010. The transformation was achieved through a process that included the training of prosecutors and magistrates from Justice and Peace, pressure from civil society, and decisions by the Constitutional Court, such as ruling T-049 of 2008, on the publicizing of the process, and ruling T-496 of 2008, on security conditions.

The first phase was marked by processes that were “mechanical and repetitive, with a format designed only for a formal truth,” and distant from victims.⁸⁰ Frequently, the demobilized individuals justified their crimes and called the victims, in a stigmatizing way, facilitators, accomplices, or members of the guerrilla group.⁸¹ This phase exhibited a tendency to undervalue victim participation in the reconstruction of truth and in the assigning of responsibility. “The first Justice and Peace hearings were revictimizing, especially the deposition hearings. It was as if they were sending us to the slaughterhouse,” concluded a victim and leader from Chocó.⁸²

The reparation stage hearing in the case of the Mampuján community (Montes de María) in April 2010, which led to the first Justice and Peace judgment, initiated the second phase. Until this moment, the reparation stage consisted, in practice, of keeping distance between those who had suffered the impact of violence and those who had committed it. The new approach, under the guidance of magistrate Uldi Teresa Jiménez, was based on a more central role for victims and the need to create reparative, restorative spaces for victims and demobilized individuals as well. This led to, for example, the walls being covered with tapestries woven by the victims that told the story of what the community experienced. The audiences were seen as part of a process that included several meetings and discussions with victim leaders and, to a lesser extent, with demobilized individuals, regarding what the audience would be like and what should be expected of it. This preparation included information about the proceedings, psychosocial and financial support, and memorialization.

The reform of Law 1592 of 2012 helped to consolidate a vision of greater victim recognition, especially in the reparation stage hearings. The new spaces allowed for direct interactions between the victims and those standing trial, and for victims to take leadership roles, ask questions, and dispute demobilized individuals’ versions of events, in hopes of reconstructing a joint truth. Six changes facilitated greater victim participation: The layout of the room was modified, creating a friendlier space for dialogue; the way victims and demobilized individuals were addressed was improved; symbolic expressions were encouraged; the order and content of the stages were revised; an effort was made to encourage a more empathetic attitude from magistrates and prosecutors; and a sense of respect emerged for the solemnity of the encounters.⁸³

80 ICTJ, “Estudios sobre reconocimiento de responsabilidad en el proceso de la Ley de Justicia y Paz: Aprendizaje y recomendaciones para el Sistema integral de verdad, justicia, reparación y no repetición” (2019).

81 CNRR, “La reintegración.”

82 Interview with a representative of sexual violence victims in the Municipal Victims’ Participation Table of Medellín, the Regional Victims’ Participation Table of Antioquia, and the National Victims’ Participation Table, done in Medellín, September 3, 2019.

83 ICTJ, “Estudios sobre reconocimiento de responsabilidad en el proceso de la Ley de Justicia y Paz.”

These positive changes notwithstanding, a consistent absence of protection for the victims persisted throughout the two implementation phases of Justice and Peace, which limited their ability to participate and “fearlessly claim their right to truth, justice and reparation.”⁸⁴ The initial hearings lacked security. Access to the rooms where the victims were was not monitored, and people linked to the demobilized individuals would often enter, an issue that the victims had to raise with the Justice and Peace functionaries discreetly, in the interest of their own safety. In October of 2007, the Organization of American States (OAS) Mission in charge of monitoring the implementation of the peace process with the AUC stated that “a constant problem in the deposition hearings was the lack of security for victims.... Various cases of intimidation, threats and deaths have resulted in a manifest absence in deposition hearings.”⁸⁵ Despite the 2008 decision by the Constitutional Court that forced Justice and Peace to “take actions necessary for creating a comprehensive change in the Justice and Peace’s Program for the Protection of Victims and Witnesses,” in 2010 and 2013, the OAS Mission continued to report security problems for victims and their representatives.⁸⁶

Criminal Prosecution of Third Parties

The Peace and Justice Law did not seek to analyze the military, political, and economic power structures that permitted violence to persist. If declarations by demobilized individuals indicated the possible criminal responsibility of third parties, Justice and Peace was authorized only to send the information to the ordinary criminal jurisdiction. From the beginning, this was criticized as one of the main shortcomings of the law.⁸⁷ Despite this formal limitation, Justice and Peace tried to take its competency as far as possible by outlining the reasons and contexts for violence. This approach enabled it to surface evidence of complicity between security forces, politicians, businesses, and third-party financiers that facilitated the commission of human rights violations by paramilitary groups. In this way, Justice and Peace pointed to the existence of the networks of collaborators that permitted paramilitary violence to happen, contributing to the creation of a culture of respect for human rights.⁸⁸

According to Human Rights Watch, by February 2008 information taken from declarations of paramilitary leaders and sent to criminal ordinary jurisdictions allowed them “to open investigations into the vice president, 11 senators, 8 congressmen, 1 ex-congressman, 1 cabinet member, 4 governors, 27 mayors, 1 councilman, 1 representative, 10 ‘political leaders,’ 10 functionaries from the National Attorney General’s Office, 39 members of the army, 52 members of the police, 2 members of the Colombian Intelligence Service (DAS) and 56 civilians.”⁸⁹ In 2016, the Universidad Javeriana presented a list of all the businesses and entrepre-

84 This situation, as reported by the MAPP-OEA in 2007, was mentioned on several occasions by the CNRR. MAPP-OEA, “Ninth Report.”

85 MAPP-OEA, “Tenth Report.”

86 Constitutional Court, ruling T-496 of 2008; MAPP-OEA, “Fourteenth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia” (2010); MAPP-OEA, “Eighteenth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia” (2013).

87 Rodrigo Uprimny Yepes and María Paula Saffon Sanín, *Dejusticia*, “La Ley de ‘justicia y paz’: ¿una garantía de justicia y paz y de no repetición de las atrocidades?” (July 1, 2005).

88 Human Rights Watch, “¿Rompiendo el Control? Obstáculos a la Justicia en las Investigaciones de la Mafia Paramilitar en Colombia” (October 16, 2008).

89 Ibid.

neurs that were mentioned in Justice and Peace rulings as presumed collaborators of paramilitary groups.⁹⁰ At least 39 sentences mention economic groups in this way, with almost 800 mentions of financial third parties. Of these, 60 percent correspond to individual people and 40 percent to legal entities (with both groups especially functioning in the agricultural and commercial sectors). As far as the role of multinational companies, the progress is slow, with fewer than 30 mentions.⁹¹

The limitation of its competency has created difficulties for the Justice and Peace process in terms of addressing the phenomenon of violence comprehensively, hindering the understanding of the nodes of power that facilitated and sustained the conflict. Furthermore, these restraints made it impossible to require the demobilized individuals to give details of times, places, and methods that would allow for the opening of a criminal investigation against third parties for their collaboration. An example is the lack of information about the places where paramilitaries collaborated with third parties: Only 60 out of 1,103 municipalities in Colombia are identifiable.⁹²

As the Inter-American Court of Human Rights highlighted in its ruling in *Vereda la Esperanza vs. Colombia*, this fragmentation of the investigation between Justice and Peace and the ordinary criminal jurisdiction in itself does not violate the state's obligation to investigate human rights violations. This is true as long as the facts are investigated in a holistic way—in other words, as long as the information is sent to the ordinary jurisdiction and leads to investigations there. Nevertheless, in practice these conditions were not met, especially when dealing with financial agents. By March 2018, over 85 percent of the cases involving these agents that had been sent to the ordinary criminal jurisdiction were still in preliminary findings.⁹³

Criminal investigations and sanctions had greater impact when dealing with political agents, even spawning a new term: *parapolitical*. By 2013, this had become a household word in the media and the Supreme Court, which condemned over 60 politicians for having links with paramilitary groups.⁹⁴ Nonetheless, these judicial decisions have had greater repercussions in the media than on a political level, revealing that the same structures remain in place. In 2014, 26 congressmen investigated by the Supreme Court for links with paramilitaries were reelected.⁹⁵

90 The database is available online at <https://kavilando.org/images/stories/documentos/Base-de-datos-Anexo-articulo-Juan-David-Velasco.pdf>.

91 Sabine Michalowski et al., *Dejusticia*, “Entre coacción y colaboración: Verdad judicial, actores económicos y conflicto armado en Colombia” (2018).

92 Ibid.

93 Ibid.

94 The Supreme Court is empowered to directly investigate and sanction some public servants, so-called *aforados*—in other words, congressmen, ministers, the vice president, the attorney general, and ambassadors. “Once the Court began its investigations, the public servants, based on alleged violations of due process, decided to resign their positions and, consequently, intended to extinguish the jurisdiction that gave jurisdiction to the Criminal Cassation Chamber [of the Supreme Court]. In September 2009, the [Supreme] Court clarified that, according to the constitutional mandate of Constitutional Article 235, its jurisdiction remains ‘for punishable conduct that is related to the functions performed,’ highlighting the relationship of the crime with the public function. The Court clarified that this relationship takes place when: the punishable conduct originates from parliamentary activity, is its necessary consequence, or the exercise of the congressman’s own function constitutes a propitious means and opportunity for the execution of the punishable. The foregoing allowed most of the investigations and trials to be resumed by the Court, as appropriate in law.” Corte Suprema de Justicia, Sala de Casación Penal, *Procesos contra aforados Constitucionales—parapolítica: Compilación de autos y sentencias de la Sala de Casación Penal de la Corte Suprema de Justicia, diciembre de 2007 a September de 2010* (International Center for Transitional Justice, 2010).

95 Verdad Abierta, “Reeligen a 26 congresistas investigados por la Corte por parapolítica” (March 2014).

Finally, analysis of the networks of complicity that allowed the conflict to continue has been one of the areas in which the CNRR has made the least progress. The closest the CNRR came to examining the role of third parties was in its report on land dispossession, which, in fewer than 10 pages (out of a total of almost 100), superficially looks at some of the aims and effects of plunder, with statements such as “There is a possible relationship between the development model and the practice of violence.” In fact, according to several official sources, a project to “refound the country” was put into practice around paramilitary groups that makes it impossible to separate violence from the logic of development.⁹⁶

It is not possible to separate the taking over and plunder of land from the agreed upon purpose of “refounding the country” on the part of what is known as the quintuple alliance, that criminal organization dedicated to plundering land from peasants, with different motivations and justifications. For the entrepreneurs that sponsored and financed it, the reasoning was one of security, to ensure, operate and extend their economic activities, free of the obstacles represented by opponents, dissidents, union leaders and different types of activists. For the drug traffickers it was a means of consolidating routes, laundering assets and obtaining social and political power. For the soldiers that made up, collaborated with or joined the groups, it was a way of annihilating the insurgency, consolidating territory, and guaranteeing the reign of an ideology of national security, by means of the elimination or exclusion of any armed or unarmed enemy. For the regional elites with ties to political power and land ownership it was an opportunity to take back land lost in the peasant struggles of the mid-twentieth century and that which they had sold to the State as part of the agrarian reform, using the extortion of armed insurgent groups or the loss of their economic value, or of amassing land and natural resources.⁹⁷

Law 975 and Land Dispossession

Law 975 of 2005 was an attempt to address the shortcomings of Law 387 of 1997. After almost 10 years of that law’s implementation, the Constitutional Court determined that the state’s legal obligations to protect abandoned land were not being met.⁹⁸ That said, Law 975, while incorporating the right of victims to land restitution and establishing the surrender of property as an eligibility requirement for applicants, provided a precarious regulation on the protection of land and restitution. According to the Special Administrative Unit for the Management of Restitution of Dispossessed Lands (URT, according to its initials in Spanish):

Law 975 of 2005 dealt only tangentially with land dispossession and the right of victims to land restitution.... Ruling C-370 of 2006 of the Constitutional Court...somewhat expanded the obligations of the defendants with regard to the right to restitution of the victims. Even so, once the Justice and Peace trials had begun, it was clear to most observers that the design of the procedures made it almost impossible for the Prosecutor’s Office and

96 Corte Suprema de Justicia, Sala de Casación Penal, *Procesos contra aforados Constitucionales—parapolítica*.

97 Superior District Court, Justice and Peace Chamber of Medellín, ruling against Jesús Ignacio Roldán Pérez of December 9, 2014.

98 Constitutional Court, ruling T-025 of 2004.

the victims to verify the existence of stolen assets in the hands of the defendants and to demand their return.⁹⁹

One of the major limitations of the Justice and Peace process in this regard was the application of the principle of willingness, according to which the favorable outcome of a claim for plundering made by a victim was conditioned on the recognition of the fact by the demobilized individual. Unfortunately, “the [demobilized individuals] had a good memory for the dead, but not for the land,” said a former URT official, leading to Justice and Peace refusing restitution in most cases.¹⁰⁰ This is what happened in the case of Guacamayas, in Urabá, in which victims who chose to file their claims within Justice and Peace were denied restitution, and were only reinstated by a Constitutional Court order in 2017.¹⁰¹ The Constitutional Court ruled that the restitution dismissal in the Justice and Peace process violated the rights to reparation and equality of the claimants. To reach that conclusion, the court considered that another group of victims in the same case had obtained restitution through the mechanisms created by Law 1448.

All of this meant that Justice and Peace made limited progress in land restitution. Ten years after the law was passed, only 0.1 percent of the hectares requested by victims had actually been returned.¹⁰² The obstacles notwithstanding, Law 975 managed to place the issue of land dispossession on the national agenda, representing a crucial step in the creation of the land chapter in Law 1448 of 2011. This was mainly the result of the work of the Justice and Peace process and the CNRR and their report on plundering, discussed above, as well as the efforts of the Regional Commissions for the Restitution of Property (CRRB, according to its initials in Spanish).

According to Law 975, the CRRB were in charge of advancing the procedures related to property and tenure claims, and providing guidance to victims and bona fide third parties occupying the lands about the steps they should take in order to have their claims for reparation satisfied or their rights clarified. Although the CRRB did not make much progress on material land restitution per se, by focusing their work on advising victims they were able to help empower them, a decisive factor for subsequent restitution claims.¹⁰³ The lack of progress made by the CRRB regarding land restitution was due to two essential factors. First, they operated only in 12 municipalities and were only required to meet once a month.¹⁰⁴ Second, they had to “operate with regulations and mechanisms formulated that were not always appropriate to the contexts of conflict and generalized violence.”¹⁰⁵

Law 975 and Inequality

Until 2005, access to reparation was limited to victims of forced displacement who were registered in the National System of Comprehensive Care for the Population Displaced by Violence, created by Law 387 of

99 URT, “Memorias de la restitución: lecciones aprendidas y metodologías para restituir tierras y territorios en Colombia” (July 2018), 44.

100 Interview done in Bogotá, August 14, 2019.

101 Constitutional Court, ruling SU-638, 2017.

102 General Office of the Comptroller of the Nation, “Análisis sobre los resultados y costos de la Ley de Justicia y Paz.”

103 MAPP-OEA, “Eighteenth Report.”

104 They operated in Bogotá, Medellín, Sincelejo, Barranquilla, Bucaramanga, Valledupar, Pasto, Cali, Mocoa, Neiva, Quibdó, and Cartagena. Decree 176 of 2008, Art. 3.

105 MAPP-OEA, “Eighteenth Report.”

1997. Its concept of reparation encompassed only return, relocation, compensation, and home improvement.¹⁰⁶ Law 975 brought significant advances in this matter, at least formally and discursively. First, Law 975 broadened the spectrum of victims. According to the law, a person can be recognized as a victim if the individual or his or her family suffered one or more of the crimes established in the Penal Code. Thus, crimes such as homicide, personal injury, kidnapping, enforced disappearance, torture, cruel, inhuman, or degrading treatment, crimes against physical integrity, and theft or usurpation of land, among others, were included. The only exception was the nonrecognition of victims of the state.¹⁰⁷

Second, the law recognized the right to comprehensive reparation. According to Article 8, “the right of victims to reparation includes actions that promote restitution, compensation, rehabilitation, satisfaction, and the guarantees of non-recurrence of the conduct.” The law also included the ideas of collective reparation and individual reparation through administrative channels. Finally, the Constitutional Court ruled in C-370 of 2006 that individuals who wanted to receive the punitive benefits of Law 975 had to contribute to reparation with property that had been gained as a result of both illegal and licit activities. Without denying the criticism that can be made of the application of these regulations, the law laid the foundations for a discursive change about reparations. Subjects that seem evident in Colombia today, such as what is understood by the term *victim* or the necessary comprehensiveness of reparation, were legally recognized only in 2005 in Law 975.

The CNRR was mandated to move forward with collective reparations and to make recommendations regarding individual reparations through administrative channels. In regard to collective reparation, at the time of completing its mandate the CNRR had managed to formulate six pilots.¹⁰⁸ The process included four stages: political dialogues with the communities, generating spaces in which they could express their needs; diagnosis of the damage, carried out by officials at the national level; determination of the necessary minimum subsistence figures for the communities; and the design and writing of the reparation plans. The exercise sought to generate a community-level integration that was necessary to develop the repair process and to rebuild the social fabric that had been damaged by the conflict.¹⁰⁹ After the dissolution of the CNRR, these six pilots become the first six collective reparation programs of the UARIV.

The CNRR’s criteria recommendations for individual reparations through administrative channels led to Decree 1290 of 2008, which created the Individual Reparation Program by Administrative Channel. The decree, however, did not constitute “an ideal advance for the effective enjoyment” of the victims’ rights.¹¹⁰ Although it included the definition of *victim* provided by Law 975, it excluded indirect victims as possible

106 Constitutional Court, ruling T-602 of 2003.

107 This exception generated a strong reaction from many victims and victims’ organizations against the law, which they called the “impunity law,” and the institutions created by it. This opposition implied that they refused to engage with the CNRR and Peace and Justice Law, at least during their first years. The creation of the National Movement of Victims of State Crimes (MOVICE, according to its initials in Spanish) during the legislative debate of the law is an example of this resistance. Within the framework of the second national meeting of victims of crimes against humanity, serious human rights violations, and genocide, in which more than 1,000 delegates, 230 organizations, and 400 regional delegates from 28 departments participated, the movement was born, with the primary objective of objecting to and disobeying Law 975.

108 These took place in Village Libertad, Sucre (Montes de María); the Afro-descendant community of Buenos Aires, Cauca; Village La Gabarra, North of Santander; Village El Salado, Bolívar (Montes de María); The Asociación de Trabajadores Campesinos del Carare, Santander; and La Inspección El Tigre, Putumayo.

109 Organización Internacional para las Migraciones and Agencia de los Estados Unidos para el Desarrollo Internacional, “Del daño a la reparación colectiva: la experiencia de 7 casos emblemáticos” (2012).

110 Constitutional Court, monitoring of ruling T-025 of 2004; decision (“auto”) 008 of 2009.

beneficiaries of the reparation. Furthermore, only the compensation component of the reparation plan had clear implementation mechanisms. This regulatory framework was later repealed by Law 1448 and Decree 4800 of 2011.

For the Justice and Peace process, reparation is its great pending debt. Although some cases took an innovative and transformative approach to reparation, such as the rulings in the cases of Mampuján or Jesús Ignacio Roldán, overall “the Supreme Court distorted the role of Justice and Peace” in this area, said one former Justice and Peace magistrate.¹¹¹ This happened in two ways.

First, a 2011 decision denied Justice and Peace judges’ ability to compel public entities to comply with reparation measures, under the principle of division of powers allowing them only to encourage (“*exhortar*”) their compliance.¹¹² Over the years, the Supreme Court revoked any measure it considered implied “the execution of a series of very specific actions that go beyond the scope of mere encouragement, so its mere modification is not viable.”¹¹³ This included various reparation measures that could have produced structural transformations, such as the order to the Attorney General’s Office to investigate third parties and report the progress of such investigations, as in the case against Jesús Ignacio Roldán, alias “Monoleche.”¹¹⁴ Likewise, although several measures related to guarantees of economic, social, and cultural rights were not revoked, the inability to compel their enforcement limited their contribution to structural transformation.

Second, while the Supreme Court considered that collective reparation by judicial means within the transitional context should have a transformative impact, it nonetheless in 2011 began to analyze the possible types of measures that were decreed in a restrictive way, so as not to confuse them with “the development policies that the State must implement to combat the serious socio-economic problems that overwhelm the country so much in general as well as their particular regions.”¹¹⁵

The last relevant advance made by Law 975 regarding reparations was the obligation of the demobilized individuals to hand over their legal and illegal assets to the Fund for the Reparation of Victims. This obligation has been poorly fulfilled, as recognized by the CNMH: “The revelations about the appropriation of lands and territories...are not related to their delivery for the reparation of the victims.”¹¹⁶ For the CNMH,

In the course of the Justice and Peace process, the [demobilized individuals] have offered more assets than have actually been delivered to the Reparation Fund.... The contribution of the candidates is reduced to the offer to deliver 39 rural lands....

In addition to the low willingness of the candidates to deliver goods, there is the non-identification and chase of the properties of drug traffickers and legal agents who arranged and became part of the paramilitary project. Indeed, none of the “para-politicians” convicted of conspiracy to commit crimes have been required to repair the victims with

111 Interview with Rubén Darío Pinilla, done in Medellín, September 6, 2019.

112 Supreme Court, ruling of April 27, 2011, case 34547.

113 Ibid.

114 Supreme Court, ruling of December 16, 2015, case 45321.

115 Supreme Court, ruling of April 27, 2011, case 34547.

116 CNMH, “Justicia y Paz: tierras y territorios in las versiones de los paramilitares” (2012), 105.

their licit or illicit assets.... Furthermore, they have not even been required to pay the fines imposed in the sentences. The assets of the “drug lords” with whom [the paramilitaries] allied and who actively participated in the land grabbing...have also not integrated the Fund created in Law 975.¹¹⁷

It was only in 2012, through Law 1592, that the obtaining and retaining of punitive benefits was made subject to the complete delivery of goods, including lands that had been usurped.¹¹⁸ Nonetheless, according to a study carried out by the National General Comptroller Office in 2017, only 6 percent of the amount paid in reparation has been covered by assets contributed by demobilized individuals. For the comptroller, “the lack of will of the [demobilized person] in the effective reparation to the victims is evident not only in the type of property and the conditions in which they were handed...but also in the gap between the 612 hectares effectively delivered by the demobilized individuals, in front of the 439,517 hectares of land with a request for restitution.”¹¹⁹

Law 975 and Gender and Ethnic Discrimination

Discrimination Based on Gender

The CNRR sought to formally document cases of sexual violence, adopting various strategies to break the stigma and the culture of silence within the state. It produced an internal manual on women’s rights, provided training on how to document sexual violence, and distributed a form to help systematically document such violence. However, although these were constructive exercises, there is little evidence to suggest that CNRR officials incorporated them into their work taking victims’ complaints. As of December 2010, for example, only 55 cases had been documented.¹²⁰ Considering that 800 victims could be engaged with during a single day of documentation (see the “Participation” section above), there does not seem to have been the will to deal with these issues.

The work of the Justice and Peace process on gender was just as deficient. This was partly due to pressure to move forward with blood crimes (such as homicide, torture, and enforced disappearance), and partly due to entrenched macho beliefs.¹²¹ From the creation of the law, gender was treated superficially. In its first version, it did not even require a gender-specific approach, and when one was included with Law 1592, it was done broadly.¹²² Victims not only had to bear the psychological burden of sexual violence, but they also had to contend with demobilized individuals’ refusal to recognize their responsibility and some prosecutors’ and

117 Ibid., 107–8.

118 See, among others, Articles 19 and 20, Law 1592 of 2012, regarding the suspension of the insurance measure and the conditional suspension of the execution of the sentence imposed by the ordinary jurisdiction.

119 National General Comptroller’s Office, “Análisis sobre los resultados y costos de la ley de Justicia y Paz” (2017).

120 Gonzalo Hernández, “El dato de la desigualdad en Colombia.”

121 Interviews with a former Justice and Peace magistrate, done in Medellín, September 6, 2019; with members of a nongovernmental organization that specialized in psychosocial support to victims, done in Cartagena, September 30, 2019; and with victims, done in Medellín, September 3, 2019.

122 Sexual violence was only discussed in Article 38, regarding victims’ protection, and in Article 39, regarding the exception of publicity of the trial, of Law 1592 of 2012.

judges' insensitivity.¹²³ Likewise, psychosocial care for women was deficient, without even proper preparation before the hearings. This forced them to take leadership roles while dealing with their own pain and without adequate tools to cope with the specific needs of gender, age, type of victimization, and impacts of the violence. This exposed women to greater psychosocial risk while trying to lead and help other victims.¹²⁴ The lack of a gender approach to psychosocial care has also been a constant in the other transitional justice mechanisms that were created by Law 1448.

Over time, the situation of women and the analysis of sexual violence in the Justice and Peace process improved. Law 1592, and the decision of the Constitutional Court on the need to adapt the Program for the Protection of Victims and Witnesses of the Peace and Justice Law because it did not meet the minimum protection requirements for women, both helped in this regard.¹²⁵ Nevertheless, it took 10 years to begin to see judgments that attempted to analyze gender violence in depth. An example is the ruling against Ramiro Vanoy Murillo, also known as "Cuco Vanoy," of the Miner Block of February 2, 2015, which included testimonies of demobilized individuals that recognized and detailed how the Block employed sexual violence in the Bajo Cauca region of Antioquia.¹²⁶

One of the most complete rulings on the subject was given against Rodrigo Alberto Zapata Sierra and others (Pacific Block—Chocó) on January 30, 2017. The sentence concluded that the acts of sexual violence suffered by women from Afro-descendant communities in Chocó were not only due to their status as women but also because they were Afro descendants. For Afro-descendant victims of sexual violence from the region, said one, this ruling gave them legitimacy and voice, something that was "constantly denied during the conflict."¹²⁷ The ruling against leaders of the Guevarist Revolutionary Army (one of the few against members of a guerrilla group) of April 29, 2016, was also a pioneer; it argued that forcing any woman, even one within the group, to undergo an abortion violates her fundamental rights and constitutes a war crime.

LGBTQ people's situation was very precarious during the implementation of Law 975. The biggest problem was the lack of awareness, socialization, and access to information among the community. Added to this was the preexistence of macho taboos and the lack of knowledge about gender approaches and LGBTQ victimization among public officials. As a result, neither the CNRR nor Justice and Peace addressed the issue in depth. In Justice and Peace, only two cases have been found that mention LGBTQ people, and these references are superficial. The first is the ruling against Arnubio Triana Mahecha (Self-defense of Magdalena Medio), which limited itself to reporting that one of the victims of homicide and enforced disappearance was from LGBTQ people. The other one, against Ramiro Vanoy Murillo (Miner Block), mentioned that the armed group's strategy was focused on the extermination of various population groups, including LGBTQ people, but without describing the violence against the community and its special victimization.

123 Interviews with a former Justice and Peace magistrate, done in Medellín, September 6, 2019; with members of a nongovernmental organization that specialized in psychosocial support to victims, done in Cartagena, September 30, 2019; and with victims, done in Medellín, September 3, 2019.

124 Interviews with former a Justice and Peace magistrate, done in Medellín, September 6, 2019, and with members of a nongovernmental organization that specialized in psychosocial support to victims, done in Cartagena, September 30, 2019.

125 Constitutional Court, ruling T-496 of 2008.

126 Other rulings have reviewed the subject: among others, the ruling against Arnubio Triana Mahecha, alias "Botalón," and others of December 16, 2014, and the ruling against Fredy Rendón Herrera and others of May 17, 2018.

127 Interview done in Medellín, September 3, 2019.

Discrimination Based on Ethnicity

In terms of ethnic discrimination, Law 975 managed to reinforce existing structures. Both its conception and implementation illustrate the persistence of a colonizing vision, in which ethnic communities are not treated as equals, as described by an indigenous leader from Montes de María.¹²⁸ The first version of Peace and Justice did not have an ethnic approach. It did not provide for a collective subject to be considered as a victim, and it kept silent on whether the person who suffers a crime can be a member of a collective subject. This provoked “a strong resistance on the part of the indigenous and Afro-descendant-Colombian communities to become part of the process, considering that they were not consulted, and their needs and expectations regarding truth, justice and reparation were made invisible.”¹²⁹ The obligation to apply an ethnic approach that was created by Law 1592 of 2012 was not enough for these communities to feel included. They continue to express strong resistance to participating in the process.¹³⁰

That said, some Justice and Peace rulings did treat ethnic discrimination as a structural factor of violence against these groups. However, this applied mostly to discrimination against indigenous communities rather than Afro-descendant communities. The ruling against Armando Madriaga Picon and Jesús Noraldo Basto León of December 6, 2013, briefly mentions that indigenous groups were “members of social groups that were not tolerated or accepted” and acknowledges that there was “a policy of extermination” against them, but it does not develop the idea. That same day, the most complete ruling was issued regarding violence against indigenous communities. The judgment illustrated how violence and social control were exercised against indigenous reserves in Meta and Vichada and described some of the collective damages they had suffered.¹³¹

Only in the judgment against Rodrigo Alberto Zapata Sierra and others (Pacific Block— Chocó) of January 30, 2017, is there a study regarding violence against Afro-descendant communities in the Colombian Pacific, and even there the analysis is tangential. A description is given of the characteristics of the communities and the structural discrimination against them, pointing to their land as the cause of their victimization. But the decree of reparations makes no attempt to overcome structural discrimination, while the partial vote of one of the three magistrates denied the possibility of double victimization based on gender and ethnicity.

128 Interview done in Sincelejo, October 4, 2019.

129 Libia Rosario Grueso and Juliana Emilia Galindo, *Comunidades negras y procesos de Justicia y Paz en el contexto del estado de cosas inconstitucional* (Deutsche Gesellschaft für Internationale Zusammenarbeit, 2011).

130 Interviews with indigenous and Afro-descendant leaders, done in Medellín, September 6, 2019; in Bogotá, September 11, 2019; in Sincelejo, October 4, 2019; and in the region of Montes de María, October 3 and 5, 2019.

131 In different rulings, Justice and Peace applied the ethnic approach regarding indigenous communities. See the ruling against Darío Enrique Vélez Trujillo and others, August 27, 2014; ruling against Guillermo Pérez Alzate and others, September 29, 2014; ruling against Salvatore Mancuso Gómez, November 20, 2014; ruling against Orlando Villa Zapata and others, February 24, 2015; ruling against Jhon Fredy Rubio Sierra and others, June 13, 2015; ruling against Ferney Alberto Argumedo Torres, July 13, 2015; ruling against Olimpo De Jesús Sánchez Caro and others, December 16, 2016; ruling against José Higinio Arroyo Ojeda and others, April 28, 2016; ruling against Rolando René Garavito Zapata, July 11, 2016; ruling against Randys July Torres Maestre, August 26, 2016; ruling against Atanael Matajudíos Buitrago and others, December 7, 2016; ruling against Rodrigo Alberto Zapata Sierra and others, January 30, 2017; ruling against Eugenio Jose Reyes Regino, March 22, 2017; ruling against Jhon Jairo Hernández Sánchez, September 11, 2017; ruling against Elkin Jorge Castañeda Naranjo and others, May 17, 2018; ruling against Hernán Giraldo Serna and others, December 18, 2018; and ruling against Iván Roberto Duque Gaviria and others, December 19, 2018.

Some Conclusions Regarding Law 975

While demobilization and reincorporation processes likely have some inherently preventive effects, Law 975 was not created with the direct objective of preventing violence. The nonrepetition component of the law was the least emphasized and was not even included in Article 1, which defines its objective. Nonetheless, after almost 15 years of application, some medium-term impacts that promote structural transformations are beginning to become evident. To a large extent, the CNRR was a tool that had great potential for transformation, especially in relation to participation, a culture of respect for human rights, state confidence, inequality, and discrimination. With a narrower mandate, more time, a bigger budget, and greater participation of the regions in the national discussion, it likely would have had strong preventive effects.

In regard to state confidence and participation, the CNRR's impact was limited to the victims who participated in its processes. Beyond its narrow impact, the CNRR helped to reactivate local leadership and to create small and grassroots listening spaces where victims started to feel less alone. Regrettably, the dissolution of the CNRR by Law 1448 of 2011 and the dispersion of its mandate among different institutions, which meant that the information it had gathered was also dispersed, makes it difficult to analyze its contributions to social structural transformation.

In general, the public is more aware of Justice and Peace than of the CNRR. Being a jurisdiction with the capacity to hold demobilized individuals criminally responsible has probably helped Justice and Peace achieve greater recognition, largely because of the common perception that justice is synonymous with criminal justice. A longer period of operation and a narrower mandate than the CNRR was given also seem to have enhanced the impact of Justice and Peace.

Justice and Peace may have contributed to social structural transformations in different ways. The first was to include on the agenda the existence of economic and political support networks for armed groups, although this impact was greater in terms of political than economic support. With that being said, Justice and Peace failed to provide an effective response against those known as spoilers, that is, individuals or groups who resist changes to the status quo, which would stop or reduce violence. The initial fragmentation of the research and the lack of legal tools to pressure demobilized individuals to give a more detailed confession were barriers to any real decrease in the support of economic third parties.

The second possible contribution was to the creation of a culture of respect for human rights. Justice and Peace had the valuable capacity to achieve recognition of what happened, help change the discourse about paramilitary violence, and recognize the victims. Nonetheless, communication problems and a lack of transparency limited this impact. The three main barriers in this regard were not understanding the needs of the media, issuing rulings of up to 8,000 pages, and not having a simple mechanism to access rulings. Intimately connected with the issue of access, Justice and Peace acted as a trigger for the creation of social organizations and movements at both the national and regional levels. The case of the MOVICE (National Movement of Victims of State Crimes) platform is a clear example. Created during the legislative debate of Law 975, in response to what some groups of victims defined as a "law of impunity" for not including victims of the state, one of MOVICE's main objectives was to prepare "documents on Law 975 of 2005" and to object to the law. At present, the platform is composed of more than 200 organizations of victims of forced

disappearance, extrajudicial executions, selective murders, and displaced persons located in more than 15 regions of the country.

Beyond these positive impacts, however, Justice and Peace did little to address structural issues of violence. Besides some exceptions, the superficial attention given to ethnic and gender discrimination is one of the most serious flaws of this mechanism. Its rulings reflect structures that neglect the value of gender and ethnic approaches to nonrepetition and prevention efforts and their potentially transformative impact on inequity. Furthermore, in terms of the participation of victims, Justice and Peace in the beginning not only failed to empower victims, but in many cases it revictimized them. Although the 2012 legal amendment improved the quality of participation, it did not succeed in changing victims' negative perceptions of the process. This, in addition to the limited compliance with reparations, has undermined Justice and Peace's impact on state confidence. Finally, Justice and Peace was deficient in contributing to reducing property informality by studying the phenomenon of dispossession and land restitution. That said, however, including the work of the CRRB and the Memory Group of the CNRR, the three transitional justice mechanisms created by Law 975 placed this problem on the national agenda, and in this way, they served as a prelude to the chapter on land restitution of Law 1448 of 2011.

Law 1448 of 2011

In 2011, Law 1448, known as the Victims and Land Restitution Law, was adopted with the ambitious objective of providing comprehensive reparation to the victims of the conflict. The law sought to go beyond the compensatory approach by including other measures such as decent housing, higher education, the generation of productive projects, and land restitution. It also established symbolic measures such as the establishment of the National Day of Memory and Solidarity with Victims, which has since been celebrated every April 9. The law was presented as an instrument that aspired to “transform the lives” of the victims, which generated a high level of expectations.¹³²

Unlike Law 975, Law 1448 explicitly introduced the notion of a guarantee of the right to nonrepetition and included the duty of prevention. There are 17 references and a chapter dedicated to nonrepetition. Likewise, Articles 149 and 150 speak of the need to promote mechanisms directed at prevention and the obligation to adopt the necessary measures to dismantle the economic and political structures that enabled violence. Nonetheless, the approach that prevailed in the mechanisms was one of crisis prevention. Unlike the long-term understanding of prevention that transitional justice should ideally adopt, crisis prevention is a short-term vision that seeks to respond to only the most urgent needs.¹³³ The very structure of the UARIV demonstrates this approach: Everything related to prevention is dealt with by the Sub-department for Prevention and Emergencies of the Social and Humanitarian Management Department, which is in charge of the most urgent measures—care for and assistance of victims.¹³⁴

That said, the law generated a series of ordinary-level social transformations through the establishment of a complex network of entities in charge of guaranteeing the victims’ right to comprehensive reparation. First, it created the CNMH, which was in charge of the memory work, following on the work of the CNRR. Second, it instituted the National System of Attention and Reparation for Victims (SNARIV, according to its initials in Spanish) as a tool to coordinate the work of public entities in matters of care and reparation for victims. The law also created the UARIV, with a broad mandate that includes coordinating the SNARIV and the public policy on victims between the national and local levels and delivering assistance, humanitarian care, and reparation for victims. The responsibility for coordinating the reparation policy makes the UARIV not only the technical but the political head of the policy.

Finally, the law established the land restitution procedure governed by the principles of prevention and participation, among others. According to the law, there are three stages in the restitution process: admin-

132 See Ana Cristina Portilla Benavides and Cristián Correa, ICTJ, “Estudio sobre la implementación del Programa de Reparación Individual en Colombia” (2015). UARIV, “Entregados \$92 mil millones en indemnizaciones en 100 días” (2018). Gobierno de Colombia, “XIII Informe sobre los avances de la política pública de atención, asistencia y reparación integral a las víctimas del conflicto” (2018).

133 UNDP, “Strengthening the Rule of Law in Crisis-Affected and Fragile Situations Global Programme Annual Report 2012” (2013).

134 UARIV, Resolución 00185 de 2015, Por la cual se adopta el Manual Específico de Funciones y de Competencias Laborales para los empleos de la Planta de Personal.

istrative, under the charge of the URT (created by the law); judicial, under the charge of the land restitution courts (also created by the law); and post-ruling. Restitution is activated by a legally defined triad: There is a victim, the victim had a legal relationship with an abandoned or dispossessed property, and the abandonment or dispossession was caused by the conflict and occurred after January 1, 1991.

Law 1448 and the Legitimacy of Institutions

Increased State Confidence

Broadly speaking, the complexity and ambition of Law 1448, the lack of coordination among state entities, and local entities' difficulties in fully complying with their responsibilities have negatively impacted victims' and society's trust in the law. One of the main exceptions has been the CNMH. To a large extent, this was due to it being the entity with the most limited mandate and having retained the director and team of the Historical Memory Group of the CNRR, thus preserving the trust that had been created since 2005.

Nevertheless, the CNMH also retained some of the CNRR's problems, especially in relation to the centralization of its work and the lack of broad impact. Its reports, like the CNRR's reports, had no reach beyond the narrow section of the public that was normally interested in these issues. The 2013 report "Basta Ya! Colombia: Memories of War and Dignity" achieved broader social recognition than the reports published by the CNRR—including official presentation to President Juan Manuel Santos, who stressed the importance of knowing the truth and what had happened in order to promote a cultural change that fosters tolerance and citizen respect. Nevertheless, the report was criticized by sectors of civil society for giving lukewarm truths.¹³⁵ This lack of impact has made it difficult for society to build new symbols, meaning that in various territories the symbols of the armed groups still govern social relations.¹³⁶

The CNMH also faced difficulties in achieving structural social transformations in relation to state confidence, although progress can be seen in comparison to the CNRR. The most significant advances were the increasing social awareness of what had happened and the creation of a culture of respect for human rights. Its more than 110 reports on memory and the truth of the armed conflict, numerous podcasts, and many national and regional exhibitions, talks, discussions, and events concerning awareness-building explain this impact. That said, there are weaknesses. To start, the CNMH has not been able to coordinate with other entities efficiently, especially the ones that were created by Law 1448. "Beyond some attempts on

135 The 2013 report was the result of the work carried out by the research team of the Historical Memory Group of the CNRR, within the framework of Law 975 of 2005, and was consolidated and published by CNMH. "La guerra nos deshumanizó: Presidente Santos," *El Tiempo*, July 24, 2013. Compaz and Comisión Intereclesial de Justicia y Paz, "El Informe ¡Basta Ya! no refleja a cabalidad la memoria del conflicto," *Punto de Encuentro*, no. 66 (2014): 1–13.

136 Interview with the director of one of the main organizations of relatives of victims of enforced disappearance in Colombia, done in Bogotá, August 15, 2019. These symbols are used to justify or legitimize the violence and are often rooted in structural discrimination based on ideological trends, gender, or cultural or ethnic relevance, among other things. An example is how paramilitary violence has been carried out against a large number of ethnic groups. "Bahía Portete provides the case in which paramilitary violence is expressly exerted on the components and symbols directly associated with the deepest codes of cultural identity and the sense of belonging of an ethnic group and that touch on aspects as diverse as the ways to resolve conflicts, to exercise authority, to mediate with external actors to the community, to bury their dead, to establish gender relations. From there it seeks to destroy their capacity for resistance and even their existence as a people." CNMH, "Regiones y conflicto armado Balance de la contribución del CNMH al esclarecimiento histórico" (2018), 69.

our part, the CNMH never wanted to work with us, neither regionally nor nationally,” said a former official of the URT.¹³⁷ Likewise, some victims have reported that the center did not work with all the victim movements. “The CNMH works for a few and not for all,” said a victim of sexual violence and leader of Urabá.¹³⁸

Law 1448 establishes a complex institutional framework that seeks to guarantee comprehensive reparation based on adequate intersectoral and local coordination. This has been the Achilles’ heel of the law and the main reason why its measures have not been able to go beyond simple welfare policies.¹³⁹ This is largely a consequence of the UARIV’s complex structure and its lack of real power to put pressure on the other SNARIV entities. For several interviewed officials, the state was not created to act in coordination, and in practice several entities with their own goals want to show results, without leading to any true transformation in the territory.¹⁴⁰

The central problem seems to be with the law’s ambition. A design with the complexity of Law 1448 requires a general commitment from all state agencies, which has not been forthcoming. The delay in national entities and many local entities assuming their obligations demonstrates little appropriation of the policy. Likewise, the UARIV has had to assume the double task of putting this complex system into operation and dealing with the lag in the fulfillment of the reparation programs ordered by Decree 1290 of 2008, functions that have exceeded its capacity. This has affected perceptions not only of the UARIV but also of the comprehensive reparation policy.

A critical issue is the lack of coordination with local entities, which was pointed out by the Constitutional Court even before the creation of Law 1448 and has not been overcome by the UARIV.¹⁴¹ The centrality of decision-making and the lack of understanding of local contexts and needs persist. Although formally steps have been taken to overcome these deficiencies, such as the creation of the Supply Management Information System (SIGO, according to its initials in Spanish), in practice, nation–territory coordination continues to be one of the most problematic aspects of Law 1448.¹⁴² For example, as of 2018, more than two thirds of local entities still could not coordinate their work with SIGO. Further, almost all local entities lacked an information-exchange agreement with the UARIV National Information Network, which, according to Article 153 of Law 1448, coordinates the different information systems of the national and local SNARIV entities.¹⁴³

It seems that the strategy that the UARIV adopted to respond to this deficiency was to create more and more planning and monitoring tools that overlap and end up overwhelming the local entities that have to

137 Interview done in Medellín, September 6, 2019. Indirectly, the former director of the URT (in an interview done in Bogotá, August 14, 2019) and a former official of the URT’s office in Urabá (in an interview done through Skype, August 14, 2019) agreed with this statement.

138 Interview done in Medellín, September 6, 2019.

139 Office of the Ombudsman, Office of the General Prosecutor (Procuraduría General de la Nación), Office of the Comptroller General, and National Victims Participation Tables, “Sexto Informe de la Comisión de Seguimiento y Monitoreo a la ley 1448” (August 2019).

140 Interviews done in Bogotá and Medellín between August 6, 2019, and October 5, 2019.

141 Constitutional Court, monitoring of ruling T-025 of 2004; decisions (“autos”) 177 of 2005, 218 of 2006, 266 of 2006, 007 of 2009, 008 of 2009, 314 of 2009, 383 of 2010, and 373 of 2016.

142 This system is “a platform that responds to the characterization of the goods and services offered by SNARIV entities and the identification of the beneficiaries of the institutional offer, through the consolidation and management of the information corresponding to access requests from the victim population, goods and services, targeting and monitoring.” UARIV, “Informe Anual de cumplimiento del Auto 11 de marzo de 2014 avances en la superación del Estado de Cosas Inconstitucional y el Goce Efectivo de Derechos de la Población Víctima de Desplazamiento Forzado Vigencia 2018” (2018).

143 Ibid.

use them.¹⁴⁴ According to the Constitutional Court, the most important coordination problems are (a) the rigidity and lack of impact of the coordination mechanisms, (b) the reporting of information and monitoring between national and local entities, (c) the absence of a scheme that allows for the application of the principles of public policy coordination between the national and local levels, and (d) the lack of coordination between national entities.¹⁴⁵

In addition, the lack of flexibility in public policies prevents them from effectively reaching different populations and regions according to the needs not only of the populations but also of the local entities. “Colombia responds to corporate interests and has no real will to protect the public and to know what the different social, political, cultural, and economic ecosystems are like at both the national and local levels, generating a breeding ground for the conflict,” said one former URT official.¹⁴⁶ This inflexibility has had concrete effects. The former director of the Semana Foundation, for example, referred to the application of the same housing design for the entire country, which led to the construction of houses for victims made of cement and without electricity in regions with temperatures of more than 35 degrees Celsius. A leader from the Mampuján community remembered the delivery of tools that were not suitable for the type of soil in the region, and the construction of 107 houses, even though the community had reported that they would not be inhabited because of the absence of electricity; currently, only 37 are lived in.¹⁴⁷

Given the high expectations that were created by Law 1448, the failure to fulfil many of its promises due to the lack of coordination has generated disappointments in the victim population, undermining the trust that had been built since 2005. The general perception now is that the success of any program, action, or policy depends on political will, which has been particularly worrying with the change of government of 2018. Newly appointed officials are generating profound reforms in the mechanisms created by Law 1448: At the UARIV, for instance, there is a clear intention to lower the profile and decrease the work of the institution, while the new director of the CNMH has a tendency to deny the existence of the armed conflict.¹⁴⁸

All of that being said, Law 1448 led to a breakthrough that is worthy of mention: the RUV. This tool was meant to unify all previous attempts to register armed conflict victims (such as the Single Registry of Displaced Population and the Registry of Victims that used to be administered by the former Presidential Agency for Social Action), as well as to include all victims who for different reasons were not included in those registers. Registration in the RUV constitutes a fundamental right of victims, and requests for recognition as a victim must be examined using the principles of good faith, *pro personae*, geo-referencing or context testing, *in dubio pro victim*, and credibility of the consistent testimony of the victim.¹⁴⁹ Following

144 Apart from the SIGO, the entities must comply with the Unified Report of the Information System, Coordination and Local Monitoring of the Public Policy of Victims of the Internal Armed Conflict, the Single Local Form, the Measurement of Vulnerability Situation, and the Local Action Plan Board. To this must be added the other coordination strategies of the other departments of the UARIV.

145 Constitutional Court, monitoring of ruling T-025 of 2004; decision (“auto”) 373 of 2016.

146 Interview done in Bogotá, August 9, 2019.

147 Interview with Claudia García, done in Bogotá, September 17, 2019.

148 Interviews with international organization officials, LGBTQ leaders, and representatives of accompanying international organizations, done in Bogotá, Cartagena, and Barranquilla, from August 13, 2019, to October 11, 2019. When the new director of the CNMH was appointed, 89 victims’ organizations opposed the action and threatened to withdraw their files; even the director’s fellow historians opposed his appointment. Christine Armario, “Colombia’s Conflict Spills over to Museum of Memory,” *The Christian Science Monitor*, December 25, 2019.

149 Constitutional Court, rulings T-004 of 2014, T-087 of 2014, T-525 of 2013, T-573 of 2015, and T-274 of 2018.

these tenets, the Constitutional Court ordered the application of a broad interpretation of who should be considered a victim and the inclusion in the RUV of events such as intra-urban displacements, confinement of the population, sexual violence against women, widespread violence, threats from demobilized armed actors, the legitimate actions of the state, atypical actions of the state, events that are attributable to criminal gangs, and events that are attributable to unidentified armed groups and to private security groups, among other examples.¹⁵⁰

Although the process of implementing the RUV was complex and difficult, it has created a public, official account of victims that acknowledges their rights and should be used as input for other public policies. The inclusion of a person in the RUV implies, among other benefits, the possibility of affiliation with the Subsidized Health Regime; the prioritization of access to reparation measures, particularly the compensation measure, as well as the applicable state offer for assistance in overcoming the situation of vulnerability, if relevant; sending the information about the criminal acts that were endured so that the Attorney General's Office can carry out the necessary investigations; and in general, access to the assistance and reparation measures provided for in Law 1448.

Participation

Law 1448 made a quantum leap regarding victim participation. In the process that was set up to discuss the content of the law, forums were held in which victims could raise their needs for the first time. Likewise, the law included various mechanisms for direct participation, giving victims a central role in the reparation policy. To this were added policies such as the Group Emotional Recovery Strategy and the approach of community rehabilitation and reconstruction of the social and organizational fabric, "interlocking," both of which support the strengthening of leadership and promote a culture of respect for human rights. The main criticism that can be made of these strategies is that they lack continuity, which limits their impact.

The most relevant mechanisms for direct participation created by law are the Victim Participation Tables (at the municipal, departmental, and national levels) that seek to help victims to influence politics, and the Transitional Justice Committees (at the municipal and departmental levels) that were created to coordinate and design the public policy of victims and include, among others, representatives of the Victims' Tables. The Transitional Justice Committees were created as a forum in which plans, programs, and projects relating to victims are defined, and through which the municipal or departmental administration, in coordination with the SNARIV, fulfills its legal duties as a result of Law 1448. In this sense, the committees are responsible for adopting the victim policy locally and defining the Action Plan for the Care and Reparation of Victims, the document that constitutes the navigation route by which the local administrations must guarantee compliance with Law 1448.

Formally, the committees were created to guarantee victims' active and empowering participation in political debates and to promote their reintegration in public life. However, normative and practical factors have diminished the impact of these mechanisms. Thus, in practice, the capacity of victims to shape the political agenda remains low. First, the number of representatives of the Victims' Tables in the Transitional

150 Constitutional Court, rulings C-781 of 2012, T-092 of 2019, and T-324 of 2020.

Justice Committees is marginal. Out of 13 members, only two (or of 15, only four, where there are ethnic communities) are representatives of the Victims' Tables, and decisions are made by majority. Second, the required frequency of four annual committee meetings is rarely met, making it difficult for victims to monitor policies.¹⁵¹ Third, participation in these spaces is free, and their activity takes place almost entirely during working hours

According to interviews with leaders of the municipal, departmental, and national Victims' Tables, two other problems restrict the impact of the mechanism and the extent to which it contributed to structural transformation in regard to empowering participation.¹⁵² One is the lack of transparency and the mismanagement of information within the Victims' Tables, which gives rise to politicking, and the other is the lack of security of those who participate. In this context, the threats to Victims' Table members are not surprising.¹⁵³ According to the UARIV, "the threats against the leaders of the victims of the conflict, in different areas of the country, are intended to prevent their participation, dialogue and interference with the state, local and national authorities, in which public policy for victims is developed."¹⁵⁴ This concern is well founded: In several parts of the country, the convocation of the Victims' Tables has had to be suspended or their members have been forced to resign.

In terms of land restitution, the law has also sought greater participation; in this regard, lightening the burden of proof has proven to be the innovation with the greatest impact. According to Law 1448, to be restituted, the victim must only demonstrate a legal relationship with the land and that the property was stripped or abandoned, without the need to prove the occupant's bad faith. Whoever occupies the property, on the contrary, is obliged to prove his or her "good faith free of guilt" in order to obtain compensation for the transfer of the property. To indicate good faith, the occupant must demonstrate that he or she acted with honesty, rectitude, and loyalty—that is to say, that his or her ignorance of the possible land dispossession could not have been overcome by normal diligence. In addition, the occupant must demonstrate that his or her diligent behavior was oriented to carrying out all the required and indispensable tasks to verify the regularity of the property situation.

This innovation has been one of the main reasons for the progress that has been made in land restitution. The change in the burden of proof facilitates the work of victims, considering the precariousness of most evidence of dispossession and forced displacement. Thus, the land restitution process has made it possible to equalize real power between the dispossessed and those who occupy their property. This has provoked direct responses from various groups of detractors. Although they have not yet been successful in modifying the process, they must be closely followed in order for this transformation to continue. For example, in 2016, 2018, and 2019, four bills were presented to directly or indirectly change the impact that the burden of proof has had on land restitution.¹⁵⁵ Finally, the need for several legal proceedings to be carried out on

151 Interview with former UARIV official, done through Skype, September 17, 2019.

152 Interviews done in Medellín, September 3, 2019, and San Onofre, October 5, 2019.

153 "Mesa Nacional de Víctimas denunció amenazas against 23 integrantes," *NoticiasRCN*, December 29, 2019.

154 UARIV, "Comunicado Unidad para las Víctimas rechaza asesinatos y amenazas a líderes sociales, periodistas y funcionarios y pide efectivas investigaciones" (July 2018).

155 Draft legislation 148 of 2016, proposed by Senator Antonio Guerra de la Espriella (Democratic Center political party); 157 of 2016, proposed by Senator Nohora Tovar (Democratic Center political party); 131 of 2018, proposed by Senator Fernanda Cabal (Democratic Center political party); and 20 of 2019, proposed by Senator Fernanda Cabal (Democratic Center political party).

the same premises (such as the inspection proceedings on the properties in the evidentiary stage) has also increased victims' engagement with the process of land restitution.

Criminal Prosecution of Third Parties

Although the central goal of Law 1448 is to heal victims, the land restitution process was seen as an opportunity to deepen the study of third parties that were directly or indirectly involved in human rights violations. Ideally, the land process has a dual purpose. On the one hand, it facilitates the clarification of ownership of the property and its restitution, if applicable. On the other hand, it starts identifying those who are responsible for the dispossession and sends the information to the ordinary criminal jurisdiction, thereby helping to determine any criminal responsibility. Nonetheless, in practice, both the sending of information and the subsequent criminal investigation rarely materialize, and the pattern of impunity is maintained. This is reinforced by the fact that neither the dispossession of land in the context of the conflict nor the accumulation of vacant lots is typified in the penal code.¹⁵⁶

In October 2017, of the almost 3,000 cases with land rulings, only 17 percent contained a referral to the criminal jurisdiction for the criminal prosecution of those who were responsible for the dispossession.¹⁵⁷ At the same time, the response is slow in restitution cases in which the opponents are business actors or when the plundered lands are used for projects framed in a development model tied to mining or large projects. By 2016, only 25 companies had been ordered to return land or to suspend mining exploitation or exploration titles through the land restitution process.¹⁵⁸ Of those almost 3,000 cases with a ruling, only 41 mentioned a business actor as an opponent.¹⁵⁹

Law 1448 and Land Dispossession

Law 1448 represented the first time in Colombia that a direct response was crafted to land dispossession, generating an effective mechanism with a focus on victims and with sufficient power to order transformative measures. That said, it created a process where the analysis of the land dispossession was dealt with on a case-by-case basis, decoupling it from the broader analysis of the armed conflict and the need for truth, unlike Law 975 regulations. This disconnection, added to the lack of coordination previously mentioned, limited the preventive impacts that the mechanisms could have regarding one of the main elements identified as a factor that caused and sustained the armed conflict for so many years, insofar as it restricted the understanding of this phenomenon as part of something greater that motivated and enabled it. In this way,

¹⁵⁶ In 2000, through Law 599, a new penal code was sanctioned that included various types of crimes against protected persons and property. However, a specific criminal act for the dispossession of land was not included. The closest criminal acts included in the code are the usurpation of all or part of a property, Article 261; the invasion of land, Article 263; the disturbance of the possession of a property, Article 264; the damage to other people's real property, Article 265; and the fraudulent maneuvers in order to seek alteration in the price of a property, Article 301. As these are common crimes, the analysis of the penal nature of the crime and its punishment does not take into account that the victim or the land is protected by international humanitarian law. Within Title XV of the penal code, regarding crimes against the public administration, some crimes are included that could resemble the accumulation of vacant lots. Thus, Articles 397 and 398 typify embezzlement by appropriation or by use made by a public servant for him- or herself or third parties.

¹⁵⁷ Comisión Colombiana de Juristas, "Radiografía de la restitución de tierras en Colombia" (2019).

¹⁵⁸ Fundación Forjando Futuros, "Infografía: ¿Quiénes se quedaron con la tierra? Compulsas de copias" (2016).

¹⁵⁹ Comisión Colombiana de Juristas, "Radiografía."

greater structural social transformations have occurred in relation to restitution as a tool for property formalization than in relation to the factors that allowed dispossession to happen in the first place. In general, rather than looking for structural causes and consequences, which are fundamental to prevention, the land restitution process treats dispossession as an isolated event.

This criticism notwithstanding, the mechanism has shown interesting advances. By November 30, 2020, 127,571 restitution requests had been filed, covering 115,822 properties and 98,481 claimants. Of these, 23,912 had a lawsuit filed before the courts, and 11,725 cases had rulings. Broadly speaking, the process has led to the normalization of the commerce and economy in the regions where the restitution policy has advanced; an increase in the self-confidence and self-governance of the communities; and improvements in the satisfaction of political, social, economic, and cultural rights.

The process nevertheless has some impediments that reduce its possible preventive impacts. The most controversial is the need for the Public Force to accompany the URT in its work on the ground, regardless of regional security dynamics. The central problem revolves around the requirement's lack of flexibility, denying the possibility of the URT working without accompaniment in regions where conditions are sufficiently secure, or the possibility of the URT forming alliances with indigenous guards that might help, indirectly, to strengthen these communities. As a consequence, in more than 50 percent of cases authorization is denied by the Ministry of Defense.

Unfounded denials at the administrative stage further prevent the land restitution policy from achieving its full potential. By December 2019, the URT had rejected almost 40 percent of the total requests (including those that were not processed) and 65 percent of the processed requests.¹⁶⁰ According to a study carried out by the Colombian Commission of Jurists nongovernmental organization in 2018, the three most common reasons for rejection are these:

1. A decision not to register the application in the Single Registry of Abandoned Lands and Territories. The research shows a 13.6 percent increase in this type of rejection between 2012–2014 and 2015–2017, although it is not clear how the URT applies the criteria of Law 1448 in this regard because the information the URT provides does not include the reasons why the applications have not been registered. Likewise, except for generic data on the location of the properties or the type of legal relationship alleged by the claimants, the URT does not have information regarding the size of the land claimed or the presence of occupants.
2. A decision not to formally start the study of the application. The study reveals that there was a 15.6 percent increase in this type of rejection between 2012–2014 and 2015–2017. Here again there is a paucity of information regarding the reasons for the rejection of applications and potential arbitrariness in the denial of rights before the process is initiated on the basis of mere formal considerations.
3. A withdrawal of already approved cases. With a 10.2 percent increase in this type of rejection between 2012–2014 and 2015–2017, the study questioned not only the lack of information but also the consti-

¹⁶⁰ Nelson Camilo Sánchez León and Angélica Suárez, *Dejusticia*, “¿Cuánto le falta a la restitución de tierras?” (2019).

tutionality of the measure, given that the Constitutional Court in 2016 declared that withdrawal at the judicial stage was not appropriate in the process of land restitution.¹⁶¹

Furthermore, constant threats to land claimants limit victims' access to restitution. "Whoever claims land carves his own grave," said an Urabá leader.¹⁶² From 2011 to March 2015, there were 49 homicides and 367 threats against land claimants, their families, human rights defenders, and public officials.¹⁶³ By June 2016, there were at least 700 reports of threats against claimants.¹⁶⁴ There are also problems with restitution due to difficulties in identifying properties, including outdated and inconsistent cadastral information, discrepancies between institutional information and reality on the ground, and the lack of an inventory of vacant lots.¹⁶⁵ In addition, regulations that prevent restitution in environmentally protected areas also present an obstacle.

Finally, as with the UARIV, there are coordination difficulties, especially in the post-ruling stage, created by the budgetary differences between the transitional and nontransitional entities that are responsible for complying with the restitution policy and the lack of political will. A worrying example is the opposition of some public entities to land restitution processes when mining, large agro-industry, and hydrocarbon projects are involved.¹⁶⁶ Thus, there seem to be competing visions within the state: the transitional one, which revolves around the guarantee of victims' rights, and the traditional one, which is concerned with safeguarding the status quo of property concentration.¹⁶⁷

Law 1448 and Inequality

Unlike Law 975 of 2005, Law 1448 did emphasize reducing inequality through transformative reparation. It sought to make reparation comprehensive and advanced the idea of collective reparation. Nonetheless, the mechanisms that were created by the law have struggled to actually achieve structural social transformations. One of the main factors in this limited impact is the absence of coordination, though a lack of political will may also be to blame. For example, Law 1448 did not include guidelines for measuring social transformation impacts, which restricts the mechanisms' capacity not only to measure their effects but also to adjust their work accordingly.

¹⁶¹ Constitutional Court, ruling T-244 of 2016. Comisión Colombiana de Juristas, "Cumplir metas, negar derechos Balance de la implementación del proceso de restitución de tierras en su fase administrativa 2012–2017" (August 2018).

¹⁶² Interview done in Apartadó, September 4, 2019.

¹⁶³ CINEP, "La política de restitución de tierras. Una oportunidad para acercar al Estado y la sociedad civil in una meta común: la dignidad de las víctimas del despojo y el abandono de tierras" (October 2015).

¹⁶⁴ Redacción Medellín, "A reclamante de tierras asesinado le desmejoraron esquema de seguridad," *El Tiempo*, April 9, 2014.

¹⁶⁵ Aura Patricia Bolívar Jaime, Angie Paola Botero Giraldo, and Laura Gabriela Gutiérrez Baquero, *Dejusticia*, "Restitución de tierras, política de vivienda y proyectos productivos: Ideas para el posacuerdo" (2017), 41.

¹⁶⁶ In approximately 10 percent of cases handled by the Colombian Commission of Jurists, public entities opposed the restitution. These are entities such as the National Hydrocarbons Agency, National Infrastructure Agency, National Mining Agency, Incofer, Banco Agrario, and Ecopetrol. Comisión Colombiana de Juristas, "Radiografía," 44.

¹⁶⁷ This principle of concentration of property is not new. At the beginning of the 20th century, "the preservation of a minimum of peace between the two parties [conservative and liberal] was conditioned to leaving the rural situation intact. In this way, the Colombian bourgeoisie, which could have deemed the modernization of the rural regime convenient, was in fact committed to the long-term preservation of one of the key elements of the country's backwardness." Jorge Orlando Melo, *Colombia hoy* (Presidencia de la República, 1996).

Law 1448 regulates two types of reparation, individual and collective. It establishes that reparation must be comprehensive, suited to the needs of the victims, transformative, effective, and tailored to the special characteristics of the victims. To achieve these goals, in addition to compensation, Law 1448 includes measures of restitution, rehabilitation, satisfaction, and guarantees of nonrepetition. According to a study by Harvard University, the reparation measures established in Law 1448 are the most comprehensive and wide-ranging worldwide.¹⁶⁸ However, after almost 10 years of implementation, there seems to have been no real capacity to fulfill the promise of comprehensiveness.

For the UARIV, a victim is considered to have received comprehensive reparation if only two of the five measures are delivered to him or her. This assessment is based on a concept of comprehensiveness that reduces the transformative scope of reparation. It also shows a disconnection from the view that victims have of reparation as a means of restoring rights, dignity, and citizenship.¹⁶⁹ Still, even using the UARIV's own indicators, the implementation of comprehensive reparation is low. Between 2015 and 2018, the government committed itself to providing comprehensive reparations to 920,000 people, but it only managed to meet 76 percent of this goal.¹⁷⁰ Considering that by July 2019, 8,847,047 people had been recognized as victims by the UARIV, progress in this regard is minimal.

Of the five components of comprehensive reparation, restitution has the greatest capacity to affect inequality. Law 1448 has some provisions in this regard. First, in accordance with Article 123, victims of forced displacement are entitled to preferential access to housing benefit programs. During the first years of the implementation of the law, however, the impacts of this measure were almost nil, and until 2014 there was no official monitoring of the measure. According to a survey carried out in 2015 by the Ombudsman's Office, just over 10 percent of the victims in the Victims' Tables stated that their right to housing restitution was fulfilled, and 12 percent declared that they had requested access but were rejected without being told why. Finally, a good number of those who were interviewed indicated that they did not know how to access this mechanism.¹⁷¹

Since 2015, with the implementation of the Free Housing Program, progress in urban housing for victims has begun to be seen, with the national government meeting the targets it set for the four-year period from 2015 to 2018. This program has led to improvements in the legal security of tenure, housing materials, and access to public services, basic sanitation, schools, and health centers.¹⁷² Nonetheless, it has not been possible to meet victims' demand for housing, and several government programs do not guarantee preferential access for the victim population, generating access barriers. Likewise, progress is greater in urban than in rural housing.¹⁷³ Finally, there are still shortcomings in monitoring compliance with this measure. For example, the National Development Plan for 2018 to 2022 lacks specific housing goals for the displaced population.

168 Kathryn Sikkink, Bridget Marchesi, Peter Dixon, and Federica D'Alessandra, "Reparaciones Integrales en Colombia: Logros y Desafíos: Evaluación Comparativa y Global," Harvard Kennedy School Carr Center for Human Rights Policy (draft of October 24, 2014).

169 Attendees of the focus groups carried out by ICTJ during 2013 in the framework of research: Ana Cristina Portilla Benavides and Cristián Correa, ICTJ, "Estudio sobre la implementación del Programa de Reparación Individual en Colombia" (2015).

170 Office of the Ombudsman et al., "Sexto Informe."

171 Office of the Ombudsman, Office of the General Prosecutor (Procuraduría General de la Nación), Office of the Comptroller General, and National Victims Participation Tables, "Tercer Informe de la Comisión de Seguimiento y Monitoreo a la Ley 1448" (2016).

172 Office of the Ombudsman et al., "Sexto Informe."

173 Ibid.

Another restitution measure regulated by Law 1448 is found in Article 51, according to which higher education institutions must enable victims to access their academic programs. Likewise, the Ministry of Education must ensure that victims benefit from various policies for access to higher education. From 2011 to 2017, victims' access to higher education increased every year, although this does not seem to correlate with the implementation of reparation measures by the Ministry of Education. The operation of the Higher Education Fund for Victims is an example. This mechanism was created in 2013 to finance the enrollment, sustainability, and permanence of victims in higher education programs.¹⁷⁴ Until 2019, its impact was minimal: Only 5 percent of victims who applied were approved. The process to access the fund is tedious and complex and the forms are often poorly completed by officials, creating barriers to access for victims.¹⁷⁵ Thus, the overall progress seems to be more related to measures that have been implemented by universities and to actions that are carried out by the victims independently, although there is no information to corroborate these conclusions.

Finally, restitutive reparation includes income generation, which is designed to recognize the labor and productive capacities of the victims that allow them to have a dignified and sustainable life. Compared to the other two components, this one has seen the lowest levels of implementation. According to the Constitutional Court, there is no clear and effective policy on income generation.¹⁷⁶ This opinion is reaffirmed by the representatives of the Victims' Tables, most of whom have reported that they had not been interviewed by any national entity regarding their capacities or productive vocation.¹⁷⁷ According to them, this is due to a lack of trust, weak state support, and a dearth of awareness and socialization of the measure among victims. Some advances have been made: 2,970,638 victims of forced displacement were trained between 2015 and 2018, for example, and 277,987 victims were given assistance with entrepreneurship in the same period of time. However, problems with the clarity and effectiveness of the policy regarding income generation persist in at least the following areas: scattered programs and duplication among several entities, little clarity on competencies and roles, difficulties with the diffusion of the institutional offer, challenges related to rural areas, the absence of a differential approach, and a lack of monitoring mechanisms.¹⁷⁸

The UARIV's collective reparation measures are an example of how a lack of political will and coordination reduces the impact of a mechanism that is intended to be transformative. In theory, this reparation is focused on psychosocial recovery, the inclusion of victims as full subjects of the law, the reconstruction of the social fabric, the rebuilding of state confidence, and the recovery or strengthening of the rule of law based on the idea of a constitutional state in which the law guarantees the social welfare of all its people.¹⁷⁹ In practice, though, the territorial entities are not part of the planning and implementation of collective reparations, and actions are imposed by the central government in Bogotá that are not necessarily those the communities need or want. This leads to low uptake of the programs by the communities.

174 ICETEX, Higher Education Fund for Victims, <https://portal.icetex.gov.co/Portal/Home/HomeEstudiante/fondos-en-administracion-Listado/poblacion-victima-del-conflicto-armado-en-colombia>.

175 Office of the Ombudsman et al., "Sexto Informe."

176 Constitutional Court, monitoring of ruling T-025 of 2004; decision ("auto") 373 of 2016.

177 Office of the Ombudsman et al., "Sexto Informe."

178 Ibid.

179 Decree 4800 of 2011.

By March 2019, of 669 collective subjects, only six had executed all the measures in their Comprehensive Collective Reparation Plan (the first two complete fulfillments were in May 2018), 133 had at least two reparation measures fulfilled, and 76 percent were only in the early stages of the process. Access to infrastructure goods is the least implemented component of the plans: Of the 57 subjects with two or more measures implemented between 2015 and 2018, only four realized this type of component. Actions regarding the social fabric are also few, having benefited only 325 collective subjects since 2011.¹⁸⁰

Alongside this limited implementation, the UARIV began to apply a change in orientation in 2018. The new approach, the Collective Reparation Model, reformulated the three components of collective reparation, limiting its possible transformative effects.¹⁸¹ According to Article 2.2.7.8.1 of Decree 1084 of 2015, collective reparation has three components: political, symbolic, and material. The new conception of the political component brought some positive reforms, such as deepening the work of strengthening leadership and community processes, which indirectly has preventive effects. However, aspects that are usually requested by victims that are relevant in terms of prevention have been eliminated, such as the idea that collective reparation should focus on guaranteeing access to justice and protection.

Additionally, the reformulated symbolic component of collective reparation is simplistic. In the 2014 version, the cultural and social reconstruction of the communities was sought, as well as their psychological recovery. According to the guide, symbolic measures were “not intended to restore what was lost, but rather seek to contribute to victims being able to represent and resignify their harms and losses. These measures are particular to each community.”¹⁸² The new conception is more abstract and makes no reference to the need for context analysis. According to the new model, symbolic reparation “seeks to contribute to the restoration of the dignity of the victims and to develop actions of public impact aimed at the construction and recovery of historical memory and the restoration of the social and organizational fabric.”¹⁸³

Finally, the most substantial negative change is in the material component of collective reparation. Previously, the reconstruction of infrastructure was sought to improve living conditions. Now, for this type of action to be approved, the connection of the damage to the attributes of the collective must be proven. This interpretation seems far removed from what the Constitutional Court ordered for such reparations, which was to “recover the presence of the State in the affected areas to guarantee peaceful coexistence.”¹⁸⁴

Regarding land restitution, Law 1448 incorporated a series of complementary measures that have the purpose of correcting the situation of vulnerability and social exclusion, namely effective return, collective reparation, health care measures, education, and housing. In this sense, the land restitution judge is currently the most likely actor to issue measures that promote the reduction of inequality. This is in part due to the constant training in constitutional law and human rights for officials and judges of the land jurisdiction, such as that organized by the Escuela Judicial “Rodrigo Lara Bonilla” (the training center of the Administra-

180 Office of the Ombudsman et al., “Sexto Informe.”

181 UARIV, “Modelo de reparación colectiva” (September 2018).

182 UARIV, “Guía práctica de reparación colectiva para los Comités Territoriales de Justicia Transicional” (2014).

183 UARIV, “Modelo de reparación colectiva” (September 2018).

184 Constitutional Court, ruling T-718 of 2017.

tion of Justice in Colombia) for officials and judges of the land jurisdiction since 2012.¹⁸⁵ As the ex-director of URT put it, “The sentences seek that people live well.”¹⁸⁶

The lack of implementation of the measures that are called for in these rulings, however, represents a missed opportunity in terms of structural transformations. Several deficiencies in the post-judgment phase lessen the impact in reducing inequality. For one thing, monitoring is carried out by the land restitution judges themselves, a function that has exceeded the operational capacities of the courts. In addition, neither the URT nor the UARIV has assumed the necessary leadership to guarantee the coordination and implementation of the measures. This means that there are no incentives to fully comply with them. Furthermore, most entities do not have a budget allocated for compliance with the rulings, nor is there an information-sharing system that allows for coordinated work. Finally, in many cases the sentences are not clear as to which entity is in charge of which reparation measure. An example is home improvement or construction measures, some of which are fulfilled by the Ministry of Agriculture, others by the Agrarian Bank, and others, recently, by the Ministry of Housing.

One of the innovations of the land restitution process is the land restitution judges’ authority to order productive projects that must be implemented by the URT. Although compliance is high, according to Fundación Forjando Futuros, one of the organizations with the most capacity to monitor land restitution, the URT limits itself to studying the land, and rather than rehabilitating the soil to make it suitable for cultivation, it chooses to offer productive projects linked to livestock.¹⁸⁷ By 2016, livestock represented 49 percent of the total productive activities delivered by the URT, and in 2018 and 2019 the URT delivered three types of productive projects: “dual purpose livestock, coffee and pig farming.”¹⁸⁸ This preference for livestock farming has two effects that diminish the URT’s preventive impacts. First, it denies the traditional ways of life of the communities that were dispossessed, which revolved, in many cases, around agriculture. Second, the delivery of the same productive project to all families, on top of their lack of connectivity to a market outside the community, generates a downward trend in demand. Thus, families usually end up leasing the land to nearby big cattle breeders. Furthermore, the small workforce that is required for ranching reinforces gender discrimination, relegating women to domestic activities, and reduces incentives for young people to remain in the countryside.¹⁸⁹

Finally, land restitution judges have been reluctant to deal with issues such as the environment and land-use changes following dispossession. The Inter-Ecclesial Justice and Peace Commission reported that environmental damage has not been cited by judges in any of the cases it has litigated or knows of. According

185 Escuela Judicial “Rodrigo Lara Bonilla,” “Programa Restitución y Formalización de Tierras.”

186 Interview with Ricardo Sabogal, done in Bogotá, August 14, 2019.

187 Interview with Ilhan Can, done in Medellín, September 6, 2019. Representatives of the Colombian Commission of Jurists and the Inter-Ecclesial Commission for Justice and Peace, two of the nongovernmental organizations with the greatest number of land restitution disputes, also mentioned this in interviews on August 14 and September 11, 2019. In most of the land dispossession cases, after the dispossession the land was used for extensive cattle ranching. This increased flooding and decreased soil fertility. It also caused deforestation, compaction of the soil, and changes to the capillary system of the soil. All of these modifications affect the productivity of the land, generating a situation in which, unless it is rehabilitated, it can only be used for extensive livestock farming.

188 URT, “Carta del Director General de la Unidad de Restitución de Tierras, Ricardo Sabogal Urrego, in respuesta al Presidente Ejecutivo de Fedegán, Jose Felix Lafaurie del 27 de abril de 2016” (April 2016). URT, “Accountability of 2019 and 2020.” During 2018, “of all the productive projects implemented, 79% correspond to the production lines of livestock and coffee.”

189 Forjando Futuros, “Ganadería y Afectaciones Ambientales” (2020).

to the commission, no clear measures have been taken to recover environmental damage, even when the victims request reparative activities such as reforestation or decontamination.¹⁹⁰

Law 1448 and Gender and Ethnic Discrimination

Discrimination Based on Gender

Unlike Law 975, Law 1448 addressed gender discrimination from its conception. In more than 30 mentions, the law states that the measures, programs, and any other activity developed by its mechanism must take a gender perspective and guarantee specific rights to women and LGBTQ people, such as the right to live free from violence, the right not to be confronted with one's aggressor, and the right to have group-specific protection measures. This was a significant, albeit formal, development. With the exception of the CNMH, however, in practice the mechanisms created by Law 1448 have been deficient in reducing structural gender discrimination and in some cases have even reinforced it, as the Constitutional Court concluded in 2017.¹⁹¹ According to the court, numerous problems still exist: (a) social mistrust of the justice system due to its ineffectiveness in investigation and prosecution; (b) fear of retaliation and lack of protection; (c) incomplete recording of gender violence; (d) disinformation about rights and procedures to enforce those rights; (e) underestimation and distortion of violence against women and LGBTQ people by the authorities; (f) a lack of official systems for the care of victims of sexual violence; (g) a lack of awareness training systems for public officials; (h) widespread impunity; (i) a lack of state presence; and (j) a failure to support women and LGBTQ communities to effectively enjoy social, economic, and social rights.¹⁹²

An example of such deficiencies is the way in which the UARIV used to conduct interviews, as described by a woman leader victim of sexual violence and an LGBTQ leader.¹⁹³ In general, seven-minute interviews were conducted in public places, mostly by men, and without any opening questions, the victim of sexual violence was expected to report what had happened to her or him. Furthermore, once a person managed to communicate that she or he was a victim of sexual violence, in the bulk of cases the interviewer dismissed the statement.

Formally, the UARIV has frameworks to guarantee integral reparation for women victims of sexual violence. However, progress in this regard has been limited. Of the more than 26,000 women victims of sexual violence who were recognized by the UARIV by May 2019, only 10 percent had accessed this strategy. Likewise, only 28 percent had received compensation, 13 percent had participated in the Group Emotional Recovery Strategy, and less than 5 percent had received psychosocial support through the Individual Emotional Recovery Strategy.¹⁹⁴

190 Interview with Diana Muriel, done in Bogotá, September 11, 2019.

191 In ruling T-718 of 2017. CNMH's publications: "La memoria histórica desde la perspectiva de género: Conceptos y herramientas" (2011); "Mujeres y guerra: víctimas y resistentes del Caribe colombiano" (2011); "El Placer: Mujeres, coca y guerra in el Bajo Putumayo" (2012); "Crímenes que no prescriben: La violencia sexual del Bloque Vencedores de Arauca" (2016); "Informe Nacional de Violencia Sexual" and "La Guerra Inscrita in el Cuerpo" (2017); and "Memoria Histórica con víctimas de violencia sexual: aproximación conceptual y metodológica" (2019).

192 Constitutional Court, ruling T-718 of 2017.

193 Interviews done in Medellín, September 3, 2019, and Barranquilla, October 1, 2019.

194 UARIV, "La Unidad avanza in acciones para atender y reparar a las mujeres víctimas de violencia sexual" (May 2019).

Nevertheless, Law 1448 has clearly improved the situation of LGBTQ people more than Law 975 did. Law 1448 helped to break the cultural normalization of violence against LGBTQ people, allowing them to “recognize that they were doing nothing wrong by not complying with patriarchal stereotypes,” as explained by a Montes de María LGBTQ leader.¹⁹⁵ The CNMH, for example, was the first transitional mechanism that sought to highlight violence against LGBTQ people, especially with its report “Annihilating the Difference.”¹⁹⁶ This allowed for the creation of spaces for participation and helped counteract Colombia’s patriarchal and macho culture.

Until 2018, the UARIV worked closely with LGBTQ people. It created a gender department with an LGBTQ component, guaranteed special collective reparation programs for the community (as in the Comuna 8 in Medellín and San Rafael in Antioquia), and developed a special comprehensive reparation strategy focused on LGBTQ people called “Repairing the Right to Be.” By May 2017, of the 2,150 LGBTQ victims who were recognized by the UARIV, 61 percent had been compensated.¹⁹⁷ With the change of government in 2018, however, the UARIV eliminated the gender department, leading to a breakdown of the dialogue processes with LGBTQ people and a lack of clarity as to who the interlocutor is within the UARIV for these issues. This development reinforces the idea that progress in transitional justice in Colombia continues to depend on political will.

With regard to land restitution and women, the former director of the URT acknowledged that while progress has been made, more could have been done in this area.¹⁹⁸ This progress was promoted by Law 1448, which includes some measures suggesting a differential gender approach. These measures have the following goals: to create a special program for women’s access; to have physical locations to meet women; to train officials in gender issues; to generate measures to promote access by women’s organizations or networks; to prioritize the processing of applications made by women; and to prioritize attention to returned displaced women in relation to credit, land allocation, social security, education, training, and family allowances, among other things.¹⁹⁹ Following these guidelines, the URT implemented a series of public policies designed to realize the gender approach, for which it won an honorable mention for promoting gender equality in restitution processes in the UIM awards for Good Local Practices with a Gender Approach from the Ibero-American Network of Municipalities for Gender Equality in 2018, and a special mention for best practice with a gender perspective in the same awards in 2019.²⁰⁰

Nonetheless, according to organizations involved in litigating or monitoring land restitution cases, the application of a gender perspective in these processes is superficial and uncoordinated. With few exceptions, there is no “effective restitution of women’s rights in the face of gender-based victimization or recognition of their role.”²⁰¹ Several barriers to women’s access remain in the land restitution process. Women are generally not considered to be the owners of the restitution claim. Likewise, women are not recognized for their economic ties or their productive contribution to the reclaimed land, and not enough awareness-raising or

195 Interview with Omar Meza, done in Bogotá, October 11, 2019.

196 CNMH, “Aniquilar la diferencia Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano” (2015).

197 UARIV, “Más de dos mil víctimas del conflicto son LGTBI” (May 2017).

198 Interview with Ricardo Sabogal, done in Bogotá, August 14, 2019.

199 Law 1448, Arts. 113, 114, 115, 116, 117, and 118.

200 URT, “Guía para la incorporación e implementación del enfoque diferencial en el proceso de restitución de tierras” (2019); URT, “El Programa de Acceso Especial a Mujeres de la Unidad de Restitución de Tierras recibirá premio en México” (2020).

201 Comisión Colombiana de Juristas, “Radiografía.”

socialization of the law is focused on women.²⁰² Finally, when filing a case with the courts, the URT does not usually request the specific complementary reparation measures for women that are regulated in Articles 114 to 118 of Law 1448, nor does it adequately incorporate “arguments referring to the special condition of women” or make “express reference to some situations that could be relevant” in this regard.²⁰³

Discrimination Based on Ethnicity

Law 975’s neglect of ethnic communities was maintained by Law 1448, although to a lesser extent. The first sign of this was when discussion of the law was not carried out with ethnic participation, despite it being constitutionally mandatory. To remedy this oversight, subsequent debates were held to develop Decrees 4633 (regarding indigenous communities), 4634 (regarding Rhom communities), and 4635 (regarding Afro-descendant communities) of 2012. These decrees are complementary to Law 1448 and help the institutions it created to apply a special approach when working with ethnic communities. Another sign of neglect was the lack of implementation of ethnic reparations. By 2019, of the total number of victims who received two or more reparation measures, only 8 percent were Afro descendants and 3 percent were indigenous.²⁰⁴

Additionally, while the discussion of Decree 4633 with indigenous communities was publicly held in the “Permanent Roundtable of Agreement,” with the Afro-descendant communities it was not transparent, a fact that was condemned by the National Roundtable of Afro-Colombian Organization in 2013.²⁰⁵ In addition, the first report of the National Commission for Monitoring of Law 1448 concluded that the consultations with the Afro-descendant communities that led to Decree 4635 were inconsistent.²⁰⁶ For the Afro leaders who were consulted in the Montes de María region, this lack of participation was a violation of the right to equality between indigenous and Afro-descendant communities, given the greater discrimination against the latter.²⁰⁷

An example of this discrimination is the time limit that Decree 4635 imposed on Afro-descendant communities to register as collective subjects and to register their lands in the Single Registry of Abandoned Lands and Territories, a limit that does not exist in Decree 4633 regarding indigenous communities. Furthermore, the lack of awareness and socialization of Decree 4635 and Law 1448 among the Afro communities caused many of them to miss the opportunity to register as victims. Another example is that the decree does not recognize the possibility of Afro-descendant communities having legal representation in the land restitution process, limiting their access to justice. One of the few exceptions to this more pronounced discrimination against the Afro communities relates to access to the reparation component of decent urban housing, in

202 Iniciativa Multipaís Mujer Rural y Derecho a la Tierra, “Experiencias de evaluación a partir de los criterios de Género de la Global Land Tool Network in cuatro países de América Latina” (June 2016).

203 CINEP, “Enfoque diferencial de género in la restitución de tierras” (August 2015).

204 Office of the Ombudsman et al., “Sexto Informe.”

205 Mesa Nacional de Organizaciones Afrocolombianas, “Crisis Humanitaria Afrocolombiana,” in *Informe Anual CNOA* (2013), 12.

206 Comisión de Seguimiento y Monitoreo al cumplimiento de la Ley 1448 de 2011 (2013–2014). Primer informe al Congreso de la República sobre el cumplimiento de la Ley 1448 de 2011. The indigenous communities had a strong social organization long before the African communities, which were only recognized by the 1991 Constitution and Law 70 of 1993. Probably because of this, the Afro-descendants’ communities came to the discussions divided and with a political agenda that was not as concrete as the indigenous communities’ agenda.

207 Interviews done in Sincelejo, October 4, 2019.

which 6,217 Afro households versus 1,147 indigenous households were compensated. However, in terms of rural living, the figures are reversed, with 559 indigenous households repaired versus 67 Afro households.²⁰⁸

Both Decree 4633 and Decree 4635 have been innovative in several respects, such as their recognition of territorial damage. The problem lies in poor implementation and a lack of political will to break the cycle of discrimination. In this sense, the implementation of the transitional justice mechanisms created by Law 1448 has led to no structural transformations in ethnic matters. The taking of collective ethnic declarations that is necessary to enter the Victims' Registry is an example. The UARIV began this process only in June 2014, almost four years after the decrees came into force, a delay that had a negative impact on the ethnic communities' access to assistance, care, and comprehensive reparation measures.²⁰⁹ The lack of awareness and socialization of the decrees and Law 1448 among ethnic communities is another factor that reinforces barriers to access to their rights, especially those with time limits.

Although the law recognizes the harm done to territory, which is undoubtedly a positive step, in practice this factor is neglected by the necessary authorities. By April 2018, for example, 60 reports on the characterization of territorial impacts were still "under preparation," of which 11 corresponded to territories of African communities, demonstrating a "serious backwardness" and a lack of understanding of the intrinsic value of territory to ethnic communities.²¹⁰

In this context, it is not surprising that progress in ethnic land restitution is minimal. By April 2019, the URT had received 308 claims for the restitution of territorial rights, of which 238 correspond to indigenous communities and 70 to African communities. By that time, 68 cases of ethnic land restitution had been presented to the land restitution jurisdiction, only 16 of which already had a sentence (approximately 12 percent of all ongoing ethnic land restitution processes), two of which were in favor of African communities. By August 2019, 52 claims for ethnic land restitution were filed in the land restitution jurisdiction, of which 18 correspond to African communities.²¹¹ One of the major bottlenecks in ethnic restitution is in the administrative phase. By 2018, 71.4 percent of requests were still in this phase, while only 28.7 percent were in the judicial phase. Progress is more effective with indigenous communities than with Afro descendants, which again reinforces the pronounced discrimination against them.

Some Conclusions Regarding Law 1448

From the beginning, Law 1448 was intended to generate transformative reparations and help to prevent violence. However, the implementation of the mechanisms created by the law has limited its impact in these regards. The complexity and ambition of what was proposed and the minimal compliance with its components have undermined the confidence that victims and society had in the process. In this sense, it can be argued that the creation of the law was more focused on innovation and meeting high standards in

208 Office of the Ombudsman et al., "Sexto Informe."

209 Comisión de Seguimiento y Monitoreo de los entes de control, "Sexto Informe de seguimiento a la implementación del Decreto Law 4635 de 2011 para la población negra, afrocolombiana, palenquera y raizal víctima del conflicto armado" (August 2018).

210 Ibid.

211 Comisión de Seguimiento y Monitoreo de los entes de control, "Séptimo Informe de seguimiento a la implementación del Decreto Law 4635 de 2011 para la población negra, afrocolombiana, palenquera y raizal víctima del conflicto armado" (August 2019).

terms of guaranteeing the rights of victims than on analyzing what was effectively achievable with a long-term and progressive vision. These limitations to what could be accomplished through the law increased the potential influence of political will in relation to the scope of the law. It should therefore not be a surprise that the change of government and its lack of political support have had such a negative impact on the law's implementation.

With all the mechanisms and processes that were created by Law 1448, the lack of coordination has been most responsible for the limited positive impact on confidence in the state. The case of the UARIV is the most alarming and also the most complex to address, especially insofar as it has such a broad mandate. Similarly, the lack of coordination, particularly in the post-ruling phase, has also limited the preventive capacity of the land restitution process.

Law 1448 has made the most progress in strengthening leadership and a culture of respect for human rights, reinforcing what was begun in 2005. Nonetheless, despite important formal advances, such as the creation of the Victim Participation Tables and the Transitional Justice Committees and the modification of the burden of proof in the land restitution process, the reintegration of victims into public life is still limited. Again, this is evidence that the law was more focused on what "ought to be" rather than on what was feasible, and it did not foresee the material and formal barriers that could occur. One example is the small number of victims' representatives on Transitional Justice Committees, which undoubtedly limited victims' ability to influence public policy. That being said, the law succeeded in consolidating the idea that participation of victims, at least regarding decisions that impact their rights as victims, must be guaranteed. The level of participation of victims in the negotiation process that culminated with the Peace Agreement is an example of this impact. However, at least in terms of the functioning of the mechanisms that were created by Law 1448, participation remains formal. It will be a few years until it is possible to analyze whether participation in the processes and mechanisms created by the Peace Agreement is not just formal but also material.²¹²

Land restitution, as a tool to reduce land ownership informality, has also made important advances, but has done little to address the structural causes that allowed the dispossession. Disconnecting the study of land dispossession from conflict analysis has had negative impacts in relation to nonrepetition and prevention because it limited the study of the networks and other factors that have contributed to or favored land dispossession. Regarding inequality, although Law 1448 defines reparations as comprehensive and transformative, in practice progress is hindered by the lack of political will.

Concerning possible structural transformations in gender discrimination, progress is also meager. However, given that until 2011 this issue was one of the least developed, not enough time has passed to draw firm conclusions. In principle, the efforts seem insufficient, the logic of discrimination remains, and any transformative impacts of strategies such as "Repairing the Right to Be" and "interlocking" and the focus on women victims of sexual violence are yet to be seen. Regarding ethnic discrimination, the positive impacts of the

²¹² Even though it is not part of this research, it is worth mentioning that the discussion and planning of the Development Plans with a Territorial Approach that were created by the Peace Agreement included a very interesting process of material participation. Nonetheless, the way in which they are being implemented applies a conservative vision of victim participation that limits material participation.

law are little or nonexistent, while the negative ones include the reproduction of the structural policies of discrimination. After almost 10 years of implementation, hardly any ordinary social transformations can be observed, while the case of Decree 4635 demonstrates the continuity of the patterns of discrimination.

Unlike what happened with Law 975, however, discussions of the shortcomings of Law 1448 have not led to legal reform to make the mechanisms and policies more effective. This is partly due to the fear of opening a “Pandora’s box” if the law were to be modified and partly due to the political context and the power of opponents. The existence of four bills to amend the land restitution process and restrict its scope suggests that this fear is well founded. In this sense, the mechanisms created by Law 1448 are caught in a vicious circle. On the one hand, they have a complex and overly broad mandate, which creates unmettable expectations among the victims. The lack of compliance opens the door to greater controls by oversight bodies, thus increasing the disillusionment of the victims and the feeling that the reparation policy does not work. On the other hand, the difficulty in modifying the law means that expectations and obligations continue to accumulate over the years.

Approximations of the Regional Impacts of Law 975 of 2005 and Law 1448 of 2011

To better understand the actual preventive impact of the transitional justice mechanisms that were created by Law 975 of 2005 and Law 1448 of 2011 in terms of the factors analyzed above—that is, institutional legitimacy, property irregularity, inequality, and structural gender and ethnic discrimination—it is useful to explore developments at the regional level. For this study, the regions of Urabá (Urabá Antioquia and Bajo Atrato Chocoano) and Montes de María were selected according to four basic variables: the strong presence of paramilitary groups, the strategic value of the zones for the armed conflict, above-average rates of violence, and prioritization by the transitional justice mechanisms.

Both regions experienced a strong paramilitary onslaught during the 1990s. The first witnessed the consolidation of two groups, the Élmer Cárdenas Block and the Bananero Front, and the second that of the Héroes de Montes de María Block. During that onslaught, the rates of violence in the regions rose above national figures. According to data from the UARIV as of November 2019, 47.9 percent of the total population of Urabá and 56.9 percent of the total population of Montes de María have been recognized as victims.²¹³ In themselves, these figures are scandalous, but they are even more so when compared to the national-level figure of 18 percent.²¹⁴

The violence in the two regions has various causes, as is often the case in such complex conflicts as the Colombian one. Clearly, the regions' locations make them strategic corridors for illegal trafficking, insofar as both have access to the sea and connections with the center of the country. But, they also show how the course of the conflict was affected by different views on development, the reduction of inequality, and the concentration of property as well as the emergence of movements seeking greater political participation.

213 Data were calculated manually considering information from the UARIV Regional Office of Urabá and the UARIV report on each municipality of Montes de María of November 31, 2019.

214 Data were calculated manually considering the number of victims that were recognized through November 2019 by the UARIV and the total population of the country.

Urabá began to draw attention as the epicenter of the first paramilitary demobilizations in 2004, with the abandonment of arms by the Bananero Front. Montes de María has been prioritized by the National Policy for Territorial Consolidation since 2003 and was engaged early by transitional justice processes. The two regions have been addressed by the transitional justice mechanisms created by Laws 975 and 1448 in an attempt to help overcome the conflict.

The Urabá Region

In the Embera Katío indigenous language, Urabá means “the Promised Land.” Deserving of this title, the region is a territory with broad economic potential due to its wealth of natural resources (especially gold, copper, oil, and molybdenum), biodiversity, fertile land, and location. It is situated at a confluence of the departments of Antioquia, Córdoba, and Chocó and is subdivided into three subregions. (See Figure 1.) The Urabá antioqueño includes 11 municipalities: Arboletes, Necoclí, San Juan de Urabá, San Pedro de Urabá, Apartadó, Carepa, Chigorodó, Mutatá, Turbo, Murindó, and Vigía del Fuerte. The Bajo Atrato includes the Chocoano municipalities of Acandí, Riosucio, and Unguía. Because of the region’s location in the corner of South America, bordering Panama and between the Atlantic and Pacific Oceans, in addition to its jungle conditions, it has been a strategic place for illegal trafficking routes since 1970.²¹⁵

Forty-one percent of the indigenous people of the department of Antioquia are located in the subregion of Urabá antioqueño. The Senú, Embera, and Gundale (Kuna Dule) indigenous communities are present in the region. By 2016, there were five indigenous community councils with collective title awarded and 16 indigenous reservations. The Chocoano subregion is home to several Afro communities, especially in the Bajo Atrato, and some indigenous communities (Kuna or Tules).

At the beginning of the 20th century, the region was occupied by indigenous communities and the Afros who worked in the mines in Chocó. It was isolated from the interior of the country until 1954, when the highway to the sea was built, connecting Medellín with Turbo. This opened the door for colonization—especially by companies and peasants from

Figure 1. Map of the Urabá Region



SOURCE: Santiago Tobón Rubio and Roberto Cajamarca, “Una apuesta por la competitividad de Urabá: construcción territorial, inclusión productiva y bienestar social” (Bogotá: Instituto de Ciencia Política Hernán Echavarría Olózaga and Corporación Andina de Fomento, 2018)

215 Andrés López Restrepo, “Conflicto interno y narcotráfico entre 1970 y 2005,” in *Narcotráfico en Colombia: Economía y Violencia*, by Gustavo Duncan, Ricardo Vargas, Ricardo Rocha, and Andrés López, ed. Alfredo Rangel Suárez (Fundación Seguridad y Democracia, 2005), 183–228.

Antioquia—and the consequent struggle for land.²¹⁶ During the 1960s and 1970s, both subregions saw the consolidation of banana production with the arrival of transnational capital at the head of Frutera Sevilla, the Colombian subsidiary of the U.S. United Fruit Company. The lack of state regulation meant that this economic boom was accompanied by abuses against the settlers and precarious working conditions.²¹⁷

Simultaneously, the quality of life in the region deteriorated, insofar as the accelerated population growth brought about by the necessary labor force was not accompanied by government investments in public services or infrastructure. The situation produced an environment of social agitation that gave enormous prominence to trade unions, peasant associations, community councils, and other social organizations.²¹⁸ Conditions became even more tense with the emergence of violent struggles for land recovery led by peasant organizations. Along with the escalation in social tensions, guerrilla groups, such as the FARC and the EPL, became an increasing presence, consolidating in hegemony in the 1980s.²¹⁹ In the first local elections in 1986, the Patriotic Union, a left-wing political party that was created in the framework of the peace negotiations between guerrilla groups and the national government in 1984, won 16 mayoralties and 247 seats on communal councils.

These developments were viewed with concern by the regional elites. The first reaction was to organize self-defense groups with the support of the army in the late 1980s.²²⁰ In the early 1990s, paramilitary groups began to penetrate the region from southern Córdoba with the support of wealthy settlers, businessmen, and the military.²²¹ Initially, they were located in Urabá antioqueño and from there expanded to Chocó, producing an increase in human rights violations and the accumulation of land for the banana, pineapple, and palm agribusinesses and extensive livestock farming.²²²

By the end of the 1990s, the paramilitary groups had gained control of the region with the collusion of the Public Force.²²³ In his declaration in the Justice and Peace process, Hébert Veloza García, a former paramilitary leader of the region, confirmed that “without the help of the Public Force it would have been impossible to carry out the war in Urabá.”²²⁴ Three actions provide evidence of this alliance: the paramilitary occupation of Riosucio (Chocó) that unleashed a huge wave of displaced people in 1996; Operation Genesis in 1997, which exhibited the support of the commander of the XVI Brigade, General Rito Alejo del Río, who

216 Clara Inés García, *Urabá: Región, actores y conflicto, 1960–1990* (Cerec-Iner, 1996). Instituto de Estudios Regionales, *Urabá: Desarrollo regional: una tarea común universidad-región* (Universidad de Antioquia, 2003).

217 These included excessive working hours, employees without contracts, prohibition or co-optation of trade unions, and accommodation in subhuman conditions. Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario—Vicepresidencia de la República, “Dinámica reciente de la confrontación armada in el Urabá antioqueño” (2006). Óscar David Andrade Becerra, “Pacífico norte: laboratorio de violencia paramilitar,” in *Dinámicas históricas y territoriales del conflicto político, social y armado 1958–2016*, eds. Carlos Duarte et al. (Instituto de Estudios Interculturales Pontificia Universidad Javeriana Cali, 2019), 29–124.

218 Leonardo Agudelo Velásquez, “La industria bananera y el inicio de los conflictos sociales del siglo XX,” *Credencial Historia*, no. 258 (2011).

219 Melina Lombana Reyes, “La configuración espacial de Urabá en cinco décadas,” *Ciencia política* 7, no. 13 (2012): 40–79.

220 Superior District Court, Justice and Peace Chamber of Medellín, ruling against Jesús Ignacio Roldán Pérez of December 9, 2014.

221 Statements by Oscar de Jesús Echandía Sánchez, in the process carried out by the National Human Rights Unit of the Prosecutor’s Office, case 101. Echandía was the mayor of Puerto Boyacá in 1982 and promoted the creation of paramilitary groups in the area.

222 Criminal Chamber of the Superior Court of Medellín, ruling of May 30, 2017, case 2014–00388.

223 Supreme Court, ruling of February 23, 2010, case 32805. Superior District Court, Justice and Peace Chamber of Bogotá, ruling of October 30, 2013, against Hébert Veloza García. State Council, Administrative Litigation Chamber, Third Section, ruling of November 21, 2013, case 0500123-31-000-1998-02368-01(29764), among others.

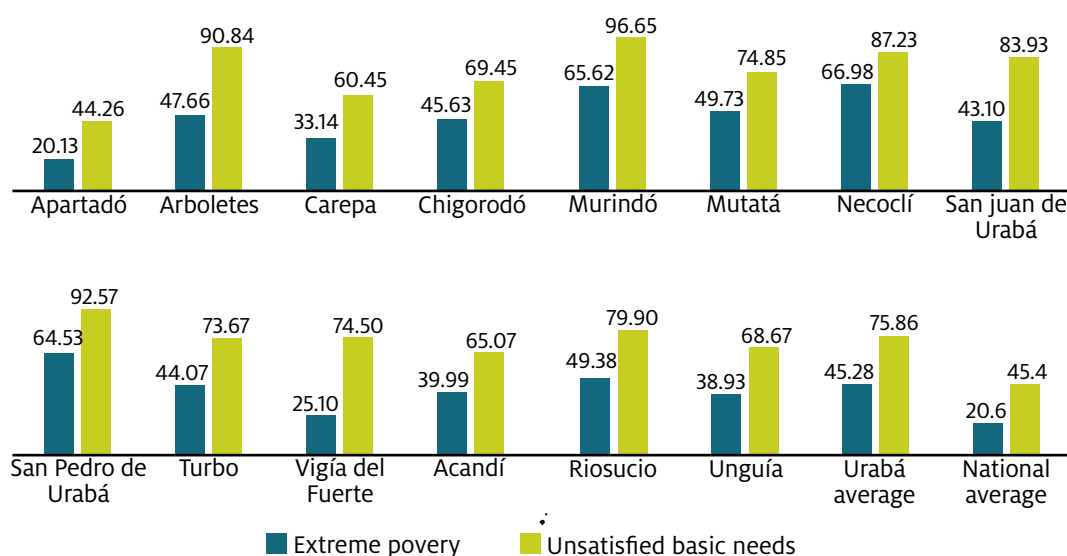
224 Verdad Abierta, “‘Paramilitarismo en Urabá no habría sido posible sin Fuerza Pública’: Fiscalía,” March 25, 2014.

has been condemned for these events; and the Mapiripán (Meta) massacre in July 1997, which was made possible because two military planes transported paramilitaries from Urabá to San José del Guaviare.²²⁵

Social Context of Urabá

According to the multidimensional poverty index, 75 percent of the rural population of the two subregions were living in poverty in 2005 (the last census with municipal data). Arboletes, Murindó, and San Pedro de Urabá have the most critical rates: 90.84 percent, 96.65 percent, and 92.57 percent, respectively. (See Figure 2.) Other social indicators show high levels of inequity: In terms of sewerage, since 2008 coverage has not exceeded 50 percent, and it has worsened in recent years, dropping from 47.9 percent in 2008 to 35.4 percent in 2016. The trend is similar for water supply, which declined from 57.8 percent coverage in 2008 to 45.8 percent in 2016.²²⁶

Figure 2. Population Living in Extreme Poverty and with Unsatisfied Basic Needs in Urabá



Source: National Administrative Department of Statistics, census 2005.

In 2019, the Urabá Antioquia’s average land ownership informality was at 51 percent, ascending to 80 percent in Necoclí and 83 percent in San Juan de Urabá. The Bajo Atrato’s land informality was at 76 percent,

225 Eighth Criminal Specialized Circuit Court of Bogota, ruling of Augusto 23, 2012, condemning General Rito Alejo del Río for his responsibility in the murder of the peasant Marino López Mena during Operation Genesis. Interamerican Court of Human Rights, “Mapiripan Massacre” vs. Colombia, ruling of September 15, 2005.

226 Data were calculated manually using information from the National Planning Department.

with no data from Carmen de Darién.²²⁷ It is estimated that 160,000 hectares of land were forcibly dispossessed during the armed conflict in the two subregions.²²⁸

In some sectors of the region, especially in the middle zone of the subregion of Urabá antioqueño, the state presence is strong. By 2017, US \$25 million dollars had been allocated for road projects, drinking water, basic sanitation, and urban equipment. In addition, investments of more than US\$10 million were made for educational infrastructure. In recent years, there has also been a construction boom.²²⁹ This dichotomy between marginalization and state presence could be explained by corruption. In 2010, 25 politicians were detained for having ties to the Elmer Cárdenas Block.²³⁰ In 2014, 32 politicians, including the mayor of Turbo, were detained for the same reason.²³¹ In 2018 alone, at least US\$1,519,600 of public money was lost in corruption. In 2019, 10 mayors faced 45 investigations against them for corruption.²³² Illegal economies are also a prominent force in the region. Although there are no lands or laboratories used for illegal crop production or processing, the municipalities “serve as a corridor or embarkation point making them strategic for drug trafficking and register high levels of violence.”²³³

Figures of Violence in Urabá

The first massacres in the region were committed by paramilitary groups as early as 1983. However, during the paramilitary onslaught of the 1990s, all rates of violence escalated. Between 1996 and 2006, 114 massacres were committed, with 530 victims. Fifty of the massacres, with 301 fatalities, were committed by paramilitary groups; six massacres, with 31 fatalities, were committed by the Public Force; 35 massacres, with 251 victims, were committed by guerrilla groups; and the rest were committed by unidentified groups.²³⁴ According to data on homicides and enforced disappearances, the most violent decade in the region was the 1990s. (See Figure 3.)

Although there are lower net data due to underreporting, cases of crimes against sexual integrity reported by the UARIV also showed an exponential increase during 1995 and 1997, growing almost 100 percent compared to the previous three years. In addition, between 1995 and 2006, 459,252 people were forcibly displaced. (See Figure 4.)

In total figures of victimizing events reported by the UARIV, as of January 2019, 348,179 men, 368,117 women, and 437 people from LGBTQ people had been victims in Urabá.

227 Agriculture Ministry, Unidad para la Planificación Rural Agropecuaria, índice de informalidad (UPRA).

228 BLU Radio Editorial Office, “En Urabá y el Atrato claman justicia por 160.000 hectáreas de tierras despojadas,” *Bluradio*, December 2, 2019.

229 Revista Dinero, “La realidad del Urabá: más allá de las masacres” (February 2017).

230 Verdad Abierta, “Capturan a 25 políticos del Urabá por presuntos nexos con ‘El Alemán,’” March 12, 2010.

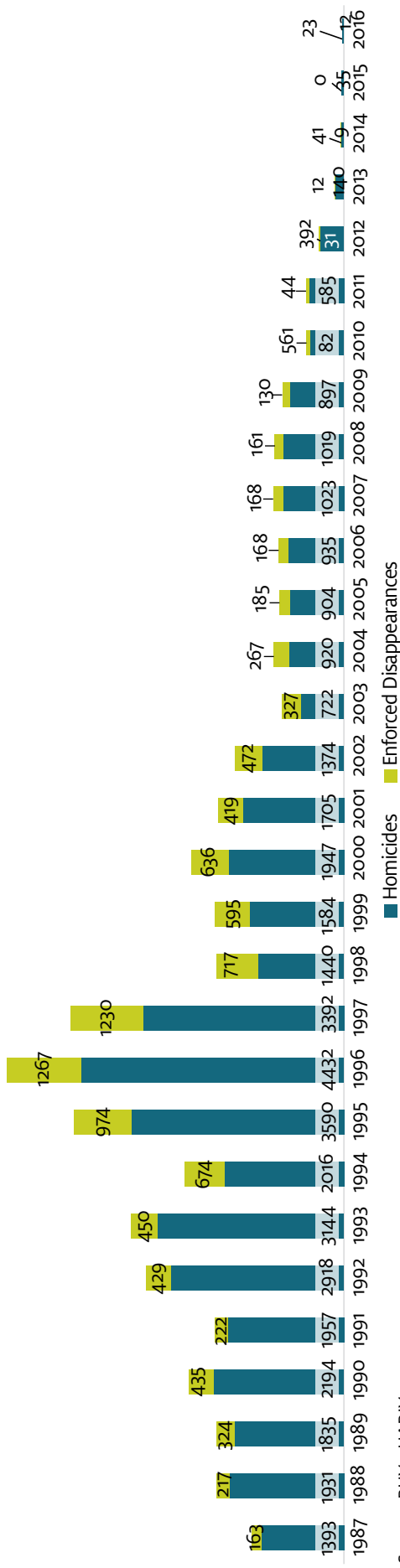
231 Noticias Caracol, “Capturan a 32 políticos en el Urabá antioqueño por parapolítica” August 27, 2014.

232 Vanesa Restrepo, “Alcaldes en líos: Más alcaldes bajo la lupa,” *El Colombiano*, April 9, 2019.

233 Office of the Ombudsman, “Informe Especial: economías ilegales, actores armados y nuevos escenarios de riesgo in el posacuerdo” (September 2018).

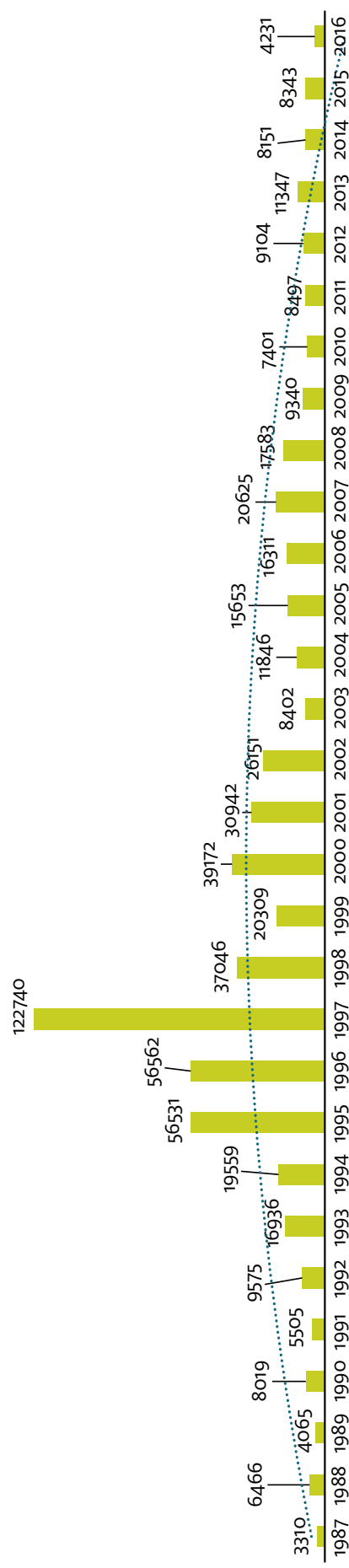
234 Database of the CNMH report “Basta Ya!”

Figure 3. Homicides and Enforced Disappearances in Urabá, 1987–2016



Source: RUV—UARIV.

Figure 4. Forced Displacement in Urabá, 1987–2016



Source: RUV—UARIV.

The Effects of Transitional Justice Mechanisms in Urabá

The effects of transitional justice mechanisms on the decrease in violence in Urabá appear to be marginal. As seen in the previous graphs, the downward trend began before the enactment of Laws 975 and 1448. Likewise, annual variations show that after both laws were enacted, violence rose, with increases between 2005 and 2007 and to a lesser extent between 2012 and 2013. The overall decrease in violence seems to be more related to the paramilitary hegemony that consolidated in the region in the late 1990s, with outbreaks of violence occurring in moments of tension related to that hegemony.

Although the first paramilitary demobilization was carried out in Urabá in 2004 with the Bananero Front, during the years following the enactment of Law 975 of 2005, several paramilitary redoubts remained in the region, and new armed structures began to emerge, “led by former commanders of the self-defense groups,” vying for power in the region.²³⁵ After the consolidation of the Gaitanista Self-Defense Forces of Colombia in 2009, violence escalated again between 2012 and 2013 with the start of an armed dispute between this paramilitary group and the 58th front of the FARC.²³⁶ During those years, the situation of violence in the region was deemed “critical.”²³⁷

The continuity of violence can be explained by a set of factors, including the presence of armed groups linked to drug trafficking and the strategic location of the region. Nevertheless, violence cannot be reduced to an effect of drug trafficking alone, and certain problematic regional conditions persist: a rural conflict over different conceptions of development models; former land dispossessors who seek to protect their lands through violence; and a state policy that is focused on the military and judicial components, making little investment in the social and community spheres.²³⁸

The low levels of transparency that are generally seen in the region have affected the implementation of transitional justice mechanisms. There is not enough information to conclude that the transitional justice mechanisms created by Law 975 or Law 1448 had a negative impact overall on confidence in the state. However, one can argue that they certainly have not helped to increase such confidence in the region. Officials of the Attorney General’s Office in the region have been criminally investigated for alleged links with paramilitary successor groups.²³⁹ Similarly, there have been reports of administrative insiders (*tramitadores*) and political candidates who, through misleading advertising, make false promises to victims about prioritizing their reparation processes.²⁴⁰ This prompted the implementation of an anti-corruption strategy to tackle fraud against victims in 2016, in which 1,044 complaints were made in Urabá of possible acts of corruption and fraud, both within the Victims’ Unit and by external actors.²⁴¹

235 MAPP-OEA, “IX Quarterly Report of 2007” included in *Reports of the Secretary General to Support the Peace Process in Colombia (2004–2007)*, Volume 1, 146.

236 The Gaitanista Self-Defense Forces of Colombia are also known as “Los Urabeños” and “Los Gaitanistas.” Fundación Ideas para la Paz, USAID y International Organization for Migration, “Dinámicas del conflicto armado in el nudo del paramillo y su impacto humanitario,” *Área de dinámicas del conflicto y negociaciones de paz unidad de análisis “siguiendo el conflicto,”* Bulletin 17 (April 2014).

237 MAPP-OEA, “Sixteenth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia” (2012). MAPP-OEA, “Seventeenth Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia” (2013).

238 MAPP-OEA, “Sixteenth Report.”

239 Revista Semana, “¿Neoparamilitares?,” April 2011.

240 UARIV, “Unidad rechaza uso de derechos de las víctimas para beneficios politiqueros o particulares” (June 2019).

241 Por los derechos humanos, “El flagelo de las víctimas: corrupción, tramitadores y asistencialismo” (November 2017).

In matters of land restitution, collusion persists between large occupants, armed actors, and public officials. “It is the same public officials who intimidate people so that they do not file complaints or do not receive them,” reported one civil society representative in Urabá.²⁴² In 2018, a public complaint was made against the new director of the URT of Urabá for previously being the lawyer in a land restitution process for a company that was possibly implicated in land dispossession.²⁴³

At the same time, the murder of young people, poor access to higher education, and continuing inequity remain as risk factors. The UARIV’s work in this regard seems insufficient. According to UARIV data, as of November 2019, 375,000 victims had been recognized in Urabá, of whom only 13 percent received compensation and 3 percent psychosocial care.²⁴⁴ Likewise, the “interlocking” and Group Emotional Recovery Strategy show little continuity in their application, making real transformations difficult. Eight “interlocking” processes were carried out in Apartadó, Chigorodó, Mutatá, and Turbo, as well as 14 Group Emotional Recovery Strategies, but there is no disaggregated information about the other components of the reparation.²⁴⁵

The persistence of violence makes it difficult to apply transitional justice mechanisms, suggesting an intrinsic relationship between the need to guarantee basic security conditions and the possibility of initiating social reconstruction through justice. The greatest security issues are in Bajo Atrato and northern Urabá in Antioquia, preventing the URT from working on the ground in these regions and leading it to prioritize its work in the center and south of the Antioquia region. At the same time, there is strong stigmatization of human rights defenders and land claimants. For example, during a public dispossession hearing conducted by the Second Judge Specialized in Restitution of Lands of Apartadó in 2019, the magistrate denied the existence of the dispossession, accused the victim of lying, and threatened her as well as her lawyers.²⁴⁶

In this context, the land restitution policy has made marginal advances. As of the end of 2019, 5,274 people had claimed 7,204 properties, through 7,730 claims. These properties are equivalent to 18 percent of the total for the region. Of the applications, 1,273 lawsuits had been filed, equivalent to just 16 percent of the total, and 170 rulings representing 274 cases had been issued. In the municipalities of Acandí, Riosucio, San Juan de Urabá, Carepa, Murindó, and Vigía del Fuerte, there are still no sentences. The total hectares restored was 14,996, corresponding to 0.6 percent of the hectares of Urabá and 9.3 percent of those possibly dispossessed. In regard to gender, 463 property titles were delivered to women versus 412 to men.²⁴⁷ Research on economic and political actors shows some progress. As of March 2018, of the 25 companies that had been ordered to return land or suspend mining exploitation or exploration titles, five were in Urabá.²⁴⁸ The Justice and Peace rulings had 120 mentions of economic actors.

In total, Justice and Peace issued four rulings against 31 demobilized persons in Urabá. On May 17, 2018, one of the few judgments was given in a prioritized process where macro-crime and macro-victimization criteria were applied, in which 27 members of the Élmer Cárdenas Block with a presence in Urabá were condemned.

242 Interview done in Apartadó, September 4, 2019.

243 Verdad Abierta, “Abogada de opositores ahora dirige oficina de Restitución in Urabá,” December 7, 2018.

244 Data were calculated manually using information from the UARIV Regional Office of Urabá of November 31, 2019.

245 Information provided by the UARIV in April 2019.

246 Noticias 1, “Un juez amenazó a una víctima con enviarla ante la Fiscalía por reclamar sus derechos” (October 2019).

247 Data were calculated manually using information from the database of Fundación Forjando Futuros.

248 Fundación Forjando Futuros, “Infografía.”

Although this ruling could have had profound effects in terms of structural changes, especially because of its analysis of the block's relations with government entities and the community and the media that the block had at its disposal, the absurd length of the ruling (almost 9,000 pages), the lack of a summary document, and the absence of a simple dissemination system have limited its impact.

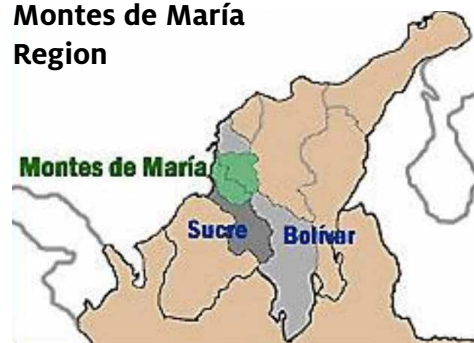
In regard to gender, information is scarce. In the data generated by the UARIV for each municipality, gender is not disaggregated in any of the measures that are conducted. As of June 2018, of 1,200 women victims of sexual violence reported in the region, only 135 had benefited from the comprehensive reparation strategy for women victims of sexual violence.²⁴⁹ Finally, progress in ethnic matters is equally minor. As of December 2019, of the 33 ethnic collective reparation subjects in Urabá, 17 were still in the initial phase of the reparation process (identification phase) and only seven were in the phase of implementation. Of these, only four had been compensated.²⁵⁰ In terms of land restitution, the data are just as discouraging. As of January 2020, only three Embera reservations in Unguía had received a favorable ruling, and no environmental damage assessment had been conducted, nor were any clear measures taken to repair the damage in any of the cases.

According to a representative of the Inter-Church Commission for Justice and Peace, there has not been enough dissemination of the transitional justice mechanisms within the ethnic communities, and there are unjustified delays in cases of restitution of ethnic territories with macro-productive projects.²⁵¹ This assessment was confirmed by a confidential source who used to work at the Urabá office of the URT.²⁵² Likewise, considering the victimization of ethnic peoples by the Public Force, such as the African communities in Bajo Atrato, the requirement of the URT to enter the land with the Public Force may revictimize them.

The Montes de María Region

The region of Montes de María includes 15 municipalities in the departments of Bolívar (Córdoba, El Carmen de Bolívar, El Guamo, María La Baja, San Jacinto, San Juan Nepomuceno, and Zambrano) and Sucre (Chalán, Colosó, Los Palmitos, Morroa, Ovejas, San Antonio de Palmito, San Onofre, and Toluviéjo). (See Figure 5.) More than 32 Afro-Colombian communities are located in the region, mainly in the northern part, and there are 63 councils of the Zenú indigenous communities. The fertility and productivity of the region earned it the name of “the Caribbean pantry,” while its privileged geographical position, adjacent to the Caribbean coast, makes it a strategic region for transit from the interior of the country to the Atlantic coast.

Figure 5. Map of the Montes de María Region



SOURCE: Paréntesis, “miércoles, 22 de febrero de 2012,” <http://parentesiscali.blogspot.com>

249 UARIV, “Víctimas de violencia sexual culminaron esta semana proceso de reparación in Urabá” (June 2018).

250 Data were calculated manually using information from the UARIV Regional Office of Urabá of November 31, 2019.

251 Interview with Diana Muriel, done in Bogotá, September 11, 2019.

252 Interview done through Skype, August 14, 2019.

Since the beginning of the 20th century, Montes de María has had high levels of social cohesion among peasant organizations.²⁵³ In the early 1900s, the first peasant organizations were formed with an anti-imperialist agenda against various foreign companies that wanted to seize large estates. This process of strengthening organized civil society continued throughout the entire first half of the 20th century, leading the region to be prioritized in the land-titling process under Law 135 of 1961, which sought to reduce the concentration of land.²⁵⁴ In the region, the program achieved the titling of 546 farms in collective plots and community companies, totaling around 120,000 hectares. This generated a dispute between big landowners and smallholders that was in part an argument over the type of development to apply in the region.²⁵⁵ Policies that were developed in the 1960s and 1970s promoting the peasant economy were rejected by rural elites, who advocated state support for extensive cattle raising and vast monocultures.²⁵⁶

During the 1970s and 1980s, community action councils, trade unions, and social organizations played an important role in improving the quality of life of the low-income sectors, building civil works and managing state action for access to credits and social programs. This generated a level of social cohesion that was seized upon by civic movements and left-wing parties to promote policies focused on agrarian reform and community development.²⁵⁷ However, it also led to a clash between the elites and the low-income sectors demanding greater participation. At the same time, some guerrilla groups began to settle in the region, though they only consolidated their power in the 1980s, with the arrival of the FARC.

The response of large landowners and elites was immediate. The first paramilitary groups emerged in the late 1980s, turning the region into the “cradle of paramilitarism.”²⁵⁸ At the same time, several people associated with drug trafficking bought lands in the coastal area of Montes de María.²⁵⁹ With the rise of the Convivir Security Cooperatives in the mid-1990s, paramilitary groups expanded considerably in the region, consolidating their power through the Heroes of the Montes de María Block. The paramilitary strengthening in the late 1990s led to a concentration of land that in other circumstances could not have been acquired, which was earmarked for palm and teak monoculture and livestock.²⁶⁰

In 2003, a major military intervention for the recovery of territory was launched in the region, as part of the Democratic Security policy. Called the National Policy of Territorial Consolidation, the strategy was designed to fight guerrilla groups. Although the program was presented as a way to bring development to the region, the intervention was mainly military and sought “the consolidation of security guarantees for large compa-

253 Óscar David Andrade Becerra et al., *Entre paramilitares y guerrillas: la desposesión territorial in los Montes de María. Dinámicas históricas y territoriales del conflicto político, social y armado 1958–2016* (Instituto de Estudios Interculturales Pontificia Universidad Javeriana Cali, 2019).

254 Orlando Fals Borda, *Historia Doble de la Costa Tomo IV: Retorno a la Tierra* (Carlos Valencia Editores, 1986).

255 Instituto de Estudios Interculturales, *Lectura territorial de los Montes de María. Informe de consultoría para USAID* (Pontificia Universidad Javeriana de Cali, 2016).

256 Ideas para la Paz, “Análisis regional de los Montes de María” (2011).

257 Ibid.

258 Historical Memory Group, “Basta Ya!,” 170.

259 Corporación Nuevo Arco Iris, *Parapolítica: La ruta de la expansión paramilitar y los acuerdos políticos* (CEREC, 2008). Gustavo Duncan, *Los señores de la guerra: De paramilitares, mafiosos y autodefensas en Colombia* (Fundación Seguridad y Democracia, 2006).

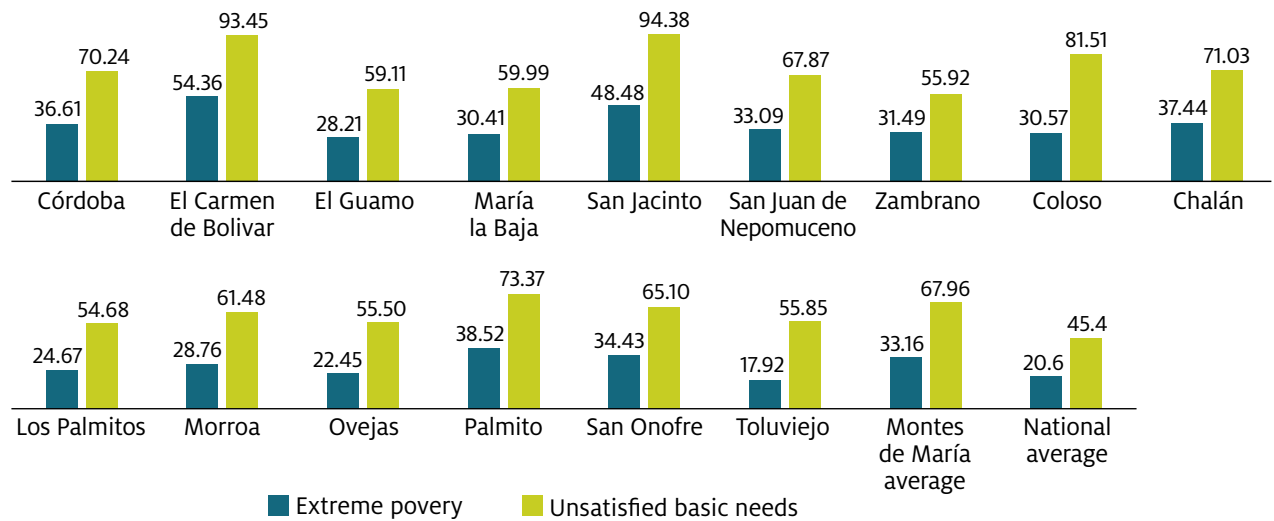
260 CNMH, “Justicia y Paz: Tierras in las versiones de los paramilitares” (April 2012); PNUD, “Los Montes de María: análisis de la conflictividad” (2010).

nies to locate in the region,” according to a former official of the consolidation policy.²⁶¹ The policy was also purely centralist, limiting the participation of local governments.²⁶²

Social Context of Montes de María

According to the multidimensional poverty index, 67 percent of the rural population of Montes de María was living in poverty in 2005 (the last census with municipal data). San Jacinto and El Carmen de Bolívar have the worst percentages, tripling the national average of poverty and quintupling that of misery. (See Figure 6.)

Figure 6. Population in Extreme Poverty and with Unsatisfied Basic Needs in Montes de María



Source: National Administrative Department of Statistics, census 2005.

Other social indicators show significant inequity. In terms of sewerage, since 2008 coverage has not exceeded 40 percent, and it has worsened in recent years, declining from 40.0 percent in 2008 to 34.1 percent in 2016. The trend is similar for water supply, which dropped from 60.1 percent coverage in 2008 to 59.3 percent in 2016.²⁶³ Likewise, there is a low level of schooling: an average of 5.7 years of studies for the population aged 15 to 64, lower than at the national level (8.2 years) and regional levels (Bolívar at 7.9 years and Sucre at 6.9). Finally, by 2019, Montes de María’s land ownership informality was at 71 percent, with an estimated 366.486 hectares being forcibly dispossessed during the armed conflict in the region, out of a total of 646.600.²⁶⁴

²⁶¹ Interview done in Bogotá, September 9, 2019.

²⁶² Indepaz, “Análisis regional de los Montes de María” (2011).

²⁶³ Data were calculated manually using information from the National Planning Department.

²⁶⁴ Agriculture Ministry, Unidad para la Planificación Rural Agropecuaria, índice de informalidad (UPRA); Forjando Futuros and Instituto Popular de Capacitación, “Restitución colectiva de tierras en Colombia: Una propuesta para cumplir con éxito la devolución de tierras in los 143 municipios de mayor despojo” (2012).

Figures of Violence in Montes de María

The first massacres in the region date back to 1991 and involved paramilitary groups and the Public Forces. From that year to 2005, a total of 65 massacres, with 469 fatalities, were committed. The most violent year was 2000, with 15 paramilitary massacres with 168 fatalities, one FARC massacre with 11 victims, and two massacres committed by unidentified groups, with eight victims. Two paramilitary massacres lasted more than two days in a row, and one of these involved the murder of more than 60 people, evidence of the defenselessness of civilians.²⁶⁵ As seen in the graph, cases of homicides and enforced disappearance show a significant increase between 1995 and 1996, in parallel with the paramilitary onslaught. (See Figure 7.)

Although there are lower net data due to underreporting, cases of crimes against sexual integrity reported by the UARIV also showed an exponential increase during the paramilitary onslaught, between 1998 and 2001 increasing every year by 62 percent, 104 percent, 157 percent, and 28 percent, respectively. Likewise, the military offensive led to massive displacement of the population. (See Figure 8.)

In the total figures of cases reported by the UARIV, as of January 2019, there were 251,407 male victims; a slightly higher number of female victims, at 251,931 (524 more people); and 265 victims from LGBTQ people.

The Effects of Transitional Justice Mechanisms in Montes de María

During the time of the implementation of the two mechanisms of transitional justice, violence in Montes de María mostly showed a constant decrease. It went from 31,818 violent acts registered by the UARIV in 2006 to 28,830 in 2007. The following two years, the decrease was approximately 10,000 events each year, reaching a total of 9,327 in 2008. By 2011, this had fallen to just over 1,500, maintaining an average of 1,242 cases per year until 2018. Recent years, however, have seen new waves of violence in the region, although they have not risen to the pre-2005 levels of intensity. Today, leaders in the region are most worried by not knowing who is who and not being able to rely on the police due to their possible collusion with illegal armed groups, according to a confidential interview with a municipal Victims' Table representative.²⁶⁶

In January 2019, the Ombudsman's Office warned of the consolidation of the Gaitanista Self-Defense Forces of Colombia in María La Baja and the population's risk of victimization.²⁶⁷ In 2020, it issued another warning, this time for the imminent consolidation of the same group in El Carmen de Bolívar, the main municipality in the region. According to the Ombudsman's Office, the group seeks to control the territory through threatening, monitoring, and forcibly displacing social leaders; confining neighborhoods and implementing restrictions on mobility; and intimidating civil society organizations.²⁶⁸ In June 2019, the Ombudsman's Office described an event "in which approximately 15 men armed with insignia alluding to the [Self-Defense

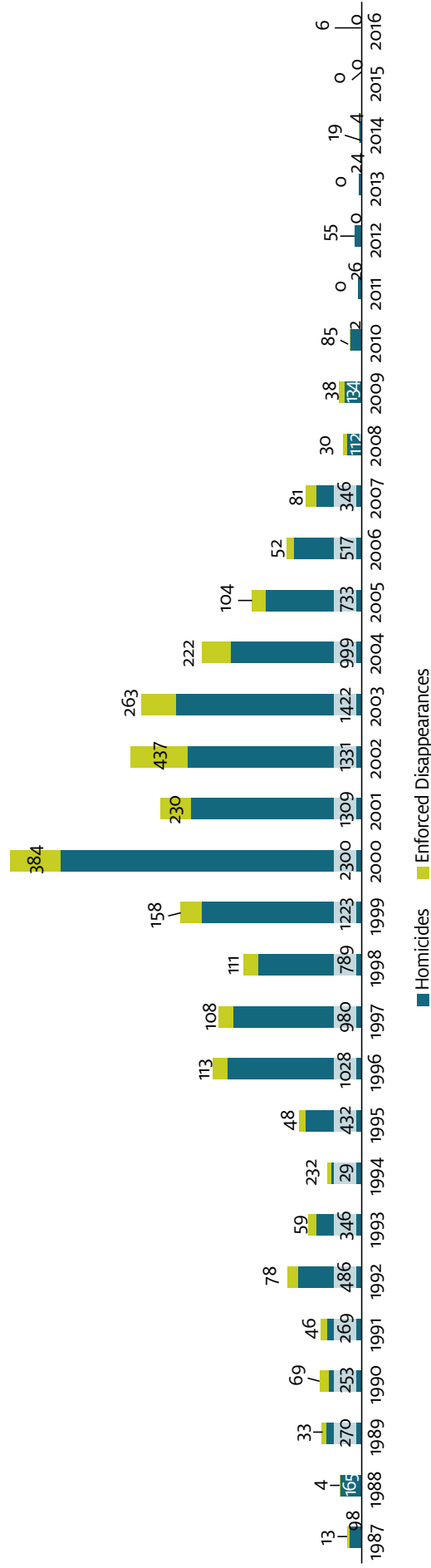
265 Database of the CNMH report "Basta Ya!"

266 Interview done in San Onofre, October 5, 2019.

267 According to the Office of the Ombudsman, there is a risk of infractions of international humanitarian law (i.e., attacks against the life, liberty, and physical integrity of the civilian population; intimidation of the civilian population; forced displacement; and forced recruitment) and human rights (i.e., life; integrity and personal security; freedom of transit and residence; and freedom of association, assembly, and demonstration).

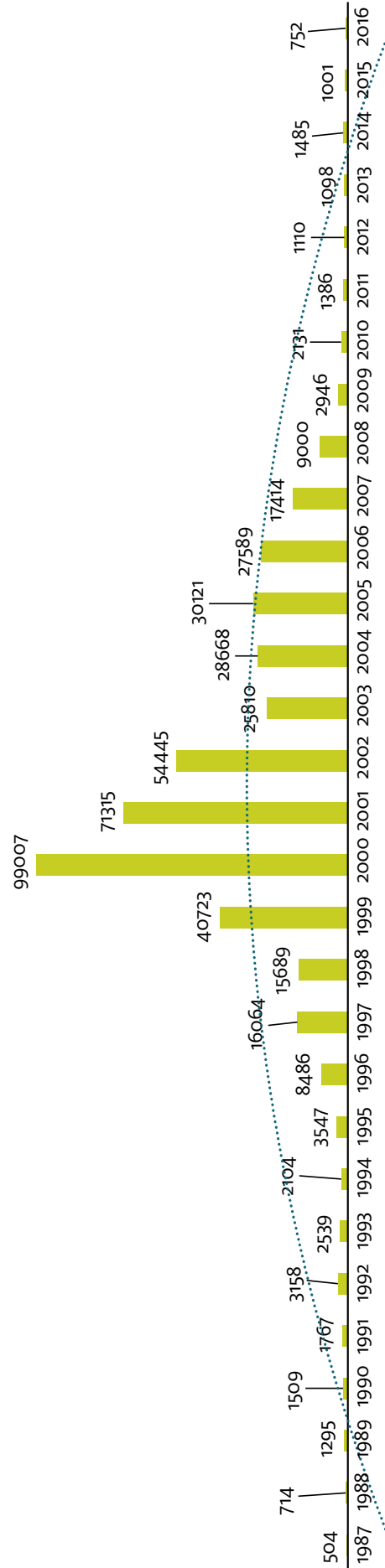
268 In addition to the risks that the Ombudsman's Office identified in its early warning 004 of 2019, threats against social leaders and of sexual violence were added to its early warning of 2020 regarding El Carmen de Bolívar.

Figure 7. Homicides and Enforced Disappearances in Montes de María, 1987–2016



Source: RUV—UARIV.

Figure 8. Forced Displacement in Montes de María, 1987–2016



Source: RUV—UARIV.

Forces of Colombia] fired on Marines.”²⁶⁹ On August 13, 2020, around 30 families in El Carmen de Bolívar were forcibly displaced as a result of the reopening of drug corridors that link routes from the cocaine hydrochloride processing centers in the south of Córdoba and Magdalena.²⁷⁰ On September 7, 2020, the Gaitanista Self-Defense Forces committed a massacre in El Carmen de Bolívar.²⁷¹

After more than 10 years of implementation, the transitional justice mechanisms of Laws 975 and 1448 have failed to respond to the causes of violence, generating a false peace. “Boil the milk, lower the stove. There is cream left and one cannot see the milk boiling underneath. This is what happens in Montes de María,” said a Montes de María leader.²⁷² In this sense, increases in violence are not surprising, as several underlying causes remain: unresolved social problems, serious inequality, lack of transparency, and corruption.²⁷³ At the same time, disputes over the control and use of the land continue to drive conflict in Montes de María.²⁷⁴ The Ombudsman’s Office, in its early warning 004 of 2019, stated:

As warned in 2012 through Risk Report No. 007.12, conflicts over land and water in María la Baja are determined by the legacies of the armed conflict, as well as by its new manifestations: the reorganization and consolidation of armed groups after the demobilization of the Self-Defense Forces and the strengthening of an internal drug-trafficking market.

It is in conflicts regarding the use and tenure of land that social conflicts in the municipality continue to be registered and with them the configuration of risks of systematic violations of the human rights of the communities. While the conditions for the socioeconomic stabilization of the displaced peasants remain weak, the current spatial ordering is also strengthened, as expressed by the growing concentration of land, the consolidation and the expansion of agro-industrial projects for oil palm and pineapple.

In terms of land restitution, by the end of 2019, 6,424 people had claimed 6,633 properties through 7,803 applications made to the URT. These properties are equivalent to 26 percent of the total for the region. Of the requests, 1,101 (14 percent) ended in lawsuits, and 425 land restitution judgments had been issued, representing 936 cases. Only Tolúviejo was without any land restitution rulings. The total of hectares restored was 17,761, which corresponds to 2.7 percent of the total hectares of the region and 4.9 percent of those that were possibly dispossessed. Regarding gender, 885 property titles were delivered to women versus 989 to men.²⁷⁵

Although Montes de María shows greater progress than Urabá in its restitution public policy, it has not yet seen a reduction of inequality in land tenure, which was a result of the paramilitary onslaught. One of the reasons for this lack of progress has been the existence of “clientelist networks that want to maintain

²⁶⁹ Ombudsman’s Office, early warning 006 of 2020.

²⁷⁰ Luisa Camila España Pantoja, “Procuraduría denuncia el desplazamiento forzado en Montes de María,” *RCN*, August 14, 2020.

²⁷¹ Cartagena, “Bolívar fue escenario de dos masacres en menos de 6 horas,” *El Tiempo*, September 8, 2020.

²⁷² Interview done in Carmen de Bolívar, October 2, 2019.

²⁷³ Verdad Abierta, “¿Cómo se fraguó la tragedia de los Montes de María?,” September 2, 2010.

²⁷⁴ This appraisal has been repeated by all the people who were interviewed in the region and by experts at the national and international levels.

²⁷⁵ Data were calculated manually using information from the database of Fundación Forjando Futuros.

the status quo,” said a former official of the consolidation program.²⁷⁶ The limited progress made against third parties related to dispossession also suggests a lack of political will to truly transform the region. As of March 2018, of the 25 companies that had been ordered to return land or suspend mining exploitation or exploration titles, six were in Montes de María.²⁷⁷ Justice and Peace rulings contain only 30 mentions of third parties. These data are significantly lower than in Urabá. In total, four sentences have been issued against 16 demobilized individuals.

At the same time, the transitional justice mechanisms have not contributed to the decrease in inequality more generally, which has instead increased in the last 10 years (see the section “Social Context in Montes de María,” above). According to UARIV data of November 2019, 208,513 victims have been recognized in Montes de María. Of these, only 6.4 percent received compensation and 3.22 percent were given psychosocial care.²⁷⁸ Eleven “interlocking” and 15 Group Emotional Recovery Strategies were carried out in Colosó, El Carmen de Bolívar, María La Baja, Ovejas, Morroa, San Jacinto, and San Onofre.²⁷⁹ However, the “interlocking” and Group Emotional Recovery Strategy programs show little continuity in their application, making real transformation difficult.

The few attempts to reduce inequality, such as the Justice and Peace ruling regarding Mampuján, have been limited by the lack of comprehensive implementation. In that judgment, at least 32 measures of transformative reparation were called for, including the construction of roads, public infrastructure, and productive projects. The measure that was first implemented was compensation, most of which was used to pay debts and ordinary expenses that did not imply future investment.²⁸⁰ One year after the ruling, only 5 percent of the transformative measures had been implemented.²⁸¹ In 2016, the Constitutional Court stated that not even in this case, which was considered “emblematic” by the national government, had “the coordination and monitoring efforts...been sufficiently reinforced to obtain the expected results in terms of restoration” and the effective enjoyment of rights.²⁸² In September 2019, the Attorney General’s Office summoned the mayor and former mayor of María La Baja to a hearing for noncompliance with the construction of the aqueduct that was ordered in the ruling.²⁸³

The lack of public policy coordination for victims hinders the impact on inequity in Montes de María. The intervention project in the village of El Salado in El Carmen de Bolívar, made by the Fundación Semana, demonstrates these problems. When it began in 2009, there was no assessment of the community’s needs and problems; 75 percent of properties were informal; national norms, procedures, and standards were impractical due to the dynamics and conditions of the village; and legal and administrative barriers prevented the application of public policy. Although the program ended up being a success, for the former director of

276 Interview done in Bogotá, September 9, 2019.

277 Fundación Forjando Futuros, “Infografía.”

278 Data were calculated manually using information from UARIV reports on each municipality of Montes de María of November 31, 2019.

279 Information provided by UARIV in April 2019.

280 Interviews with leaders of the Mampujan community done in Bogotá and María La Baja between September 25, 2019, and October 3, 2019.

281 MAPP-OEA, “Volume II: Periodic Reports of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia 2007–2014” (2019), 347.

282 Constitutional Court, monitoring of ruling T-025 of 2004; decision (“auto”) 373 of 2016.

283 Office of the General Prosecutor (Procuraduría General de la Nación), “Boletín 677 Procuraduría citó a audiencia al alcalde de María la Baja, Bolívar, por incumplimiento de ruling de justicia y paz” (September 2019).

the foundation, “the only thing the foundation did was to coordinate and revitalize public policy, a function that should be fulfilled by the UARIV but that it does not achieve due to its lack of flexibility and real power within the state.”²⁸⁴

The greatest progress in the region has been made in relation to the right to memory, particularly in terms of participation and a culture of respect for human rights. This is documented in one of the few regional reports made by the CNRR (the 2009 “The Massacre of El Salado: That War Was Not Ours”).²⁸⁵ This memory work was later continued by the CNMH, whose various initiatives include documentaries and publications such as “Juglares de la Memoria de los Montes de María” (2019); “El Salado, Montes de María: tierra de luchas y contrastes (Guía de maestros y maestras)” (2019); and the podcast “Las voces del Salado.”²⁸⁶ Working with CNRR strengthened communities, which facilitated their strong participation in the discussions that culminated with Law 1448 in 2011. It has also allowed them to manage their own memory projects, such as the itinerant museum El Mochuelo—Museo Itinerante de los Montes de María, organized by the Colectivo de Comunicaciones Montes de María Línea 21.

As in Urabá, there are shortcomings in the promotion of the inclusion of women and the reduction of gender discrimination in Montes de María, as the Constitutional Court concluded in 2017.²⁸⁷ In this decision, the court forced the UARIV to include in the collective reparation program of El Salado women victims of sexual violence, who had not previously been considered. Likewise, the Third Festival of Reconciliation, held in San Onofre in December 2019, displayed greater reluctance to talk about sexual violence than any other type of violence that was committed during the armed conflict. Both examples indicate there is still a long way to go regarding gender equality; the transitional justice mechanisms must prioritize this component.

Finally, again as in Urabá, the transitional justice mechanisms in Montes de María do not seem to have sought to empower ethnic communities, nor to diminish structural discrimination against them. In many cases, the mechanisms have even reinforced discrimination. “No institution enforces the ethnic decrees, nor the ethnic approach, and it depends on us. But without knowledge, how are we going to enforce the law?” wondered an Afro leader.²⁸⁸ As of November 2019, of the 24 ethnic communities to receive collective reparation, 22 were still in the first phase of the process (identification) and none were in the implementation phase.²⁸⁹ In terms of land restitution policy, as of January 2020, no ethnic communities had received a favorable land restitution ruling. According to the Ombudsman’s Office, tension exists “due to the implementation of land restitution and collective reparation programs that benefit rural, peasant and ethnic communities, in the face of large agro-industrial projects, which have been protected and promoted by the State.”²⁹⁰

284 Interview with Claudia García, September 17, 2019.

285 CNMH, “La masacre de El Salado: esa guerra no era nuestra” (2009).

286 More of the CNMH’s initiatives for the region of Montes de María are described online at <https://centrodememoriahistorica.gov.co/tag/montes-de-maria/>

287 Constitutional Court, ruling T-718 of 2017.

288 Interview done in Sincelejo, October 4, 2019.

289 Data were calculated manually using information from the UARIV’s reports on each municipality of Montes de María of November 31, 2019.

290 Early warning 004 of January 2019 of the Ombudsman’s Office.

Conclusions

In most current contexts in which transitional justice processes are implemented, it is seldom clear exactly when to start them. There are fewer and fewer cases of transition from a totalitarian regime and more and more cases of complex transitions toward peace, with multiple actors involved in violence and structural problems that drive its persistence. The implementation of the transitional justice mechanisms created by Law 975 of 2005 and Law 1448 of 2011 in Colombia shows that it is possible to initiate transitional justice processes in contexts of ongoing high-level violence and serious structural problems. This can be prompted by different developments, including the demobilization of an illegal armed group in an internal armed conflict with more than one actor involved in the violence (as with Law 975 of 2005); the recognition of the necessity to advance the satisfaction of victims' rights to reparation (as with Law 1448 of 2011); regional dynamics that lead to the reduction of the conflict and open opportunities for justice processes in some regions (as in Colombia); and the inability of ordinary state mechanisms to respond to the massive number of violations, victims, and perpetrators (as in Colombia).

Implementing a transitional justice process in contexts of ongoing conflict faces particular challenges. For example, it generates the need to coordinate justice processes with other policies such as security. This study shows the difficulties that arise when trying to implement transitional justice programs in regions that are still experiencing high rates of human rights violations. Montes de María, where violence decreased sooner than in Urabá, has made greater progress. Likewise, in regions of Urabá with more serious security risks, such as the north of the Antioquia Urabá or the Chocoano Urabá, progress is especially limited. Navigating these particular circumstances also reinforces the need to apply short-, medium-, and long-term strategies linked to broader agendas, such as the Sustainable Development Goals, especially SDG 16, on peace and justice. This in turn implies the importance of moving beyond the traditional vision of transitional justice focused on violations of political and civil rights to also address violations of economic, social, cultural, and environmental rights, and to help eradicate systems of inequality and discrimination.

This study concludes that these challenges have not been adequately met by the transitional justice mechanisms created by Law 975 of 2005 and Law 1448 of 2011, thus limiting their preventive impact. In the regions that were analyzed, except when addressing the context of violence, transitional justice mechanisms have not studied in-depth violations other than homicide, forced disappearance, torture, kidnapping, forced displacement, terrorism, and theft or dispossession. Although the mechanisms have made progress in terms of creating a culture of respect for political and civil rights, such progress has not been seen in relation to economic, social, cultural, and environmental rights. To a great extent, this can be explained by the context in which the mechanisms were implemented, especially Law 975 of 2005, and its proximity to the most violent years in the history of Colombia. Now, after almost 15 years of implementation of these processes, discussions of human rights violations that were committed during the conflict have begun to include these other rights. The mechanisms created by the 2016 Peace Agreement should advance the promotion of a culture of respect for all rights.

As is often the case, where structural discrimination is most entrenched, it is also most difficult to address. Thus, it is not surprising that the mechanisms created by Laws 975 and 1448 are lagging the most in the realms of gender and ethnic discrimination. During the first years, implementation in this sense was null, even revictimizing. Pressure from civil society, international groups, and national entities such as the Constitutional Court have since led to a slow but steady recognition of the importance of applying a differential approach to these communities as the only way to break the continuum of violence against them. Nevertheless, the transitional justice mechanisms still have a long way to go in order to help reduce these types of discrimination. Such a process must include, at a minimum, constant training for officials so that they do not reproduce violence, revision of regulations to limit their negative impacts, and deeper analysis of differentiated ways in which these communities suffer violence. The impacts of the transitional justice mechanisms that are analyzed in this study in relation to inequity are equally deficient, on top of which is a lack of information that prevents monitoring.

Linking transitional justice to sustainable development makes it possible to talk about transitional justice as a factor that can contribute to the prevention of human rights violations, violence, repression, and violent conflict. To achieve this, however, its mechanisms must respond to local priorities and local economic, social, cultural, and political dynamics. This entails the need for coordination between the national and local levels, as the latter is the closest to the needs of the victims and territorial norms. This study points to two Achilles' heels of all the transitional justice mechanisms created in 2005 and 2011: institutional coordination and dispersion, revealing the absence of a strategy to comprehensively address demands and expectations regarding truth, justice, reparation, and nonrepetition. If adequate coordination is not achieved between the different mechanisms of transitional justice and between them and the other state institutions, no matter how many rights they seek to satisfy, in practice their materialization will be minimal.

That said, the transitional justice mechanisms studied here have generated some structural social transformations that promote prevention. First, they have strengthened leadership within communities and the social fabric that surrounds the victims, facilitating their reintegration into public life. This has been achieved especially through the exercises that were carried out initially by the CNRR and later by the CNMH. The creation of mechanisms for direct participation through Law 1448 has also contributed in this regard. Nonetheless, the limited compliance in convening these mechanisms, such as the Transitional Justice Committees, the security problems, and the insufficient numbers of victims participating demonstrate the great challenge of trying to fulfil the laws' objectives.

Second, the transitional justice mechanisms have contributed to strengthening a culture of respect for human rights. In this sense, the capacity of the mechanisms to achieve recognition of the victims and of what happened, to restore memory to the communities, and to change the discourse in the face of violence stands out. Their work has also shaped the political agenda. Notions that now seem self-evident in Colombia—such as the existence of economic and political networks to support armed groups, the legitimacy of the victims' claims, the need to address land dispossession, the complexity of the conflict (replacing the view that only some armed groups committed abuses), and the need for victims' participation and comprehensive reparation—would not be so without the mechanisms that were created by Law 975 of 2005 and Law 1448 of 2011.

Finally, the two laws offer some specific lessons regarding the impacts that a transitional justice mechanism can have in terms of prevention, and how to promote them.

Law 975 demonstrates the following:

- Although a transitional justice mechanism is not always designed with formal references to prevention or nonrepetition, its implementation can have such effects.
- In the short term, it is necessary to prioritize the socialization of justice mechanisms and to strengthen local leadership.
- Once a social perception is established, it is difficult to modify it, so it is crucial to pay special attention to the creation and start-up of transitional justice mechanisms. Initially, for example, the Justice and Peace process was marginal and even revictimizing, and although the quality of participation improved with the 2012 legal amendment, this was not sufficient to change victims' negative perceptions.
- Justice mechanisms must strengthen their communication offices and reinforce their policies on transparency and access to information. Issues such as overly long rulings and the absence of a simple way to access their decisions have limited the social impact of the Justice and Peace process.
- Regarding criminal investigations, it is important to prioritize mechanisms for investigating macro criminality that avoid addressing the crimes on a case-by-case basis, instead allowing patterns to be clarified and the responsible criminal organizations to be prosecuted and dismantled.

Law 1448 reveals the following:

- The saying "Jack of all trades, master of none" applies to transitional justice processes and their impact on confidence in the state. The complexity and ambition of what is proposed in the law and the minimal compliance with its components have undermined the trust that victims and society had in the process.
- Closely related, it is necessary to avoid ambitious formulas that are too focused on innovating and meeting high standards in guaranteeing the rights of victims. Instead, the emphasis must be placed on analyzing what is actually achievable according to a long-term and progressive vision.
- Creating laws that are too broad makes it difficult to change them later on. Thus, priority should be given to generating a set of rules that act in a coordinated and comprehensive manner, but that can be modified individually in the event that a particular element has negative effects.

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