

RESEARCH ARTICLE

Finding the Roads to Justice? Examining Trajectories of Transition for Internally Displaced Women in Colombia

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Colombia's transitional justice provisions for victims and women in particular, have attained global best practice status. What will be the real impact for victims of the civil war? How can the rule of law help Colombia find the roads to justice? Based on a 2010–2014 in-depth, multi-method study of the legal mobilization strategies of displaced women's organizations, we argue that the examination of women's transitional justice should not be reduced to an assessment of the implementation of a sophisticated and celebrated legal and political framework. We suggest that a possible way of developing a more complex transitional justice narrative is to examine what the turn to transitional justice is a shift *from*: by highlighting the temporal and temporary aspects of laws, legal institutions and legal identities in the Colombian armed conflict, we can achieve a better understanding of what previous legal transitions have meant for this particular group of victims. We suggest that this approach can be useful for developing analytical perspectives for appraising how the post-conflict framework plays out for victims.

Introduction

Civilians have been at the center of both the Colombian civil war and the country's efforts to overcome that period. They have suffered the brunt of the violence: 220,000 have been murdered, and more than 6 million displaced, most intensely in the period between 1996 and 2004 (Centro Nacional de Memoria Histórica 2013/2016; IDMC 2016). Torture, disappearances, sexual violence, harassment and extortion of civilians have been common, especially in the war-torn sections

of the country, where community leaders in particular are targeted (Centro Nacional de Memoria Histórica 2013/2016). The 2016 Colombian peace agreement between the Colombian government and the FARC guerilla has been celebrated as groundbreaking; not only for ending the war, but also for the extensive involvement of victims organizations both in the adoption of the 'Ley de Víctimas y de Restitución de Tierras 1448 de 2011' (the Victims' Law) and in the negotiations, and for the strong presence of women within the victims movement. The debates leading to the October 2016 referendum on the agreement, its rejection and the negotiation and ratification of a final agreement, as well as the award of the Nobel Peace Prize in 2016 to President Juan Manuel Santos

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Calderón also entailed a much praised focus on victims, victim's suffering and victim's participation.

With the global attainment of best practice status on the treatment of victims, Colombia is now becoming the subject of significant scholarly interest. In this context, how do we analytically make sense of the kind of transitional justice that will be on offer for victims in the wake of the 2016 Colombian peace agreement? This article attempts to think through that question by offering a reflection of what the shift in focus to victim's rights under the auspices of a transitional justice frame meant for victims and Colombian displaced women's grassroots organizations in particular. We argue that the examination of women's transitional justice should not be reduced to an assessment of the implementation of a sophisticated and celebrated legal and political framework. Instead, we propose to take a step back, to offer an account of the relevance and impact of transitional justice for internally displaced people (IDP) and displaced women's organizations as a complex story of how political and legal transitions have folded into each other over time and shaped the activism of a specific marginalized group.

The scope of our reflection – a focus of one particular group of victims, albeit demographically the largest – is defined by and builds on a 2010–2014 in-depth, multi-method study of the legal mobilization strategies of displaced women's organizations in Colombia.¹ The starting point for our study was the paucity of systematic knowledge about the proliferation of displaced women's organizations emerging in the context of progressive legal protection mechanisms for IDPs, and the specificities of this particular trajectory of women-led and women-focused legal and political mobilization. After the initial phase of the project, our research gradually came to revolve around transitional justice – in particular, the opportunities and risks that the Victims' Law, and the emerging discourse on victims offered to displaced women's organizations. By late 2011, it was

obvious that the Victims' Law was going to have a transformative effect on the institutions and agencies charged with IDP issues, and on grassroots IDP organizations. Hence, our attention increasingly focused on how this new legal frame (re)shaped needs-based discourses and claims, as well as the practical realities and challenges of organizing. It is from this particular temporal juncture we draw our empirical examples.

We suggest that a possible way of developing a more complex transitional justice narrative is to examine what the turn to transitional justice is a shift *from*: How did changing legal and institutional frames that were deployed to deal with the consequences of the armed conflict affect organizational structures and claims, as well as individual leadership biographies? We argue that by highlighting the temporal and temporary aspects of laws, legal institutions and legal identities in the Colombian armed conflict, we can achieve a better understanding of what previous legal transitions have meant for this particular group of victims – mostly poor, rural women. We suggest that this can help us in developing analytical perspectives for appraising how the post-conflict framework plays out for victims of forced displacement and the legal strategies they deploy to overcome their predicament and achieve justice.

The article proceeds as follows: as a starting point for our analytical reflection, we outline the heterogeneous positions held on law and the constitution of women-victims held by Colombian scholars. Our account of how political and legal transitions have folded into each other over time is then laid out in four interlinked trajectories of changing legal conceptualizations of the societal consequences of armed violence, institutional changes, the changes in grassroots actors identity and justice claims and finally, the cyclical relationship between insecurity and leadership found in the individual biographies of IDP women. In the conclusion, we use this analysis to reflect on the type of new frames that might be forged by displaced women's

organizations in a post-conflict context to overcome deprivation and insecurity.

Contribution to the Literature

In the Colombian context, armed conflict and pervasive societal violence coexist with a longstanding constitutional democracy, influential courts and progressive law-making. Colombia's 1991 constitution included an expansive bill of rights with far-reaching legal protections for vulnerable groups, which were further developed by the Constitutional Court in the course of more than 20 years of progressive jurisprudence (Cepeda-Espinosa 2004). In 1997 Colombia adopted Law 387, a landmark piece of legislation that required the government to prevent and address internal displacement. The Court's focus on structural litigation and its use of a 'differential approach' sensitive to gender, ethnicity, age, and capacity is particularly important to the IDP situation. In the groundbreaking T-025 (2004) (and ensuing follow-up awards), the Court declared an 'unconstitutional state of affairs' with respect to the IDP situation, issued general orders for institutional reform and policy adoption, and set up a specialized office to oversee compliance (Rodríguez and Rodríguez 2010). The Victims' Law created a new normative legal process for reparations, specifically a system of administering benefits through provision of legal status as victim.² The framing of a 'victim' category is patterned on the Constitutional Court's differential approach to internal displacement³ and provides for special guarantees and protection measures for groups, including women, who are exposed to greater risks within the dynamics of the armed conflict in general, and forced displacement in particular.

The growing and often critical literature on the Colombian transitional justice process mainly offers either a normative evaluation of this legal framework, focusing on for example the IDP framework (Carr 2009) or the Victims' Law (Summers 2012); or gives descriptive perspectives on law as a background factor in the Colombian context.

Here, important contributions track the evolution of victims as symbolic and political actor beginning with the 2005 Justice and Peace Law (García-Godos and Lid 2010; García-Godos 2013; Rettberg 2013); analyze popular perceptions of aspects of the transitional justice process (Firchow 2014; Taylor 2015; Nussio, Rettberg and Ugarriza 2015; Rettberg and Ugarriza 2016; Dixon 2016; Alcalá and Uribe 2016; Taylor, Nilsson, and Amezcua-Castro 2016); and the relationship between gender and transitional justice (Meertens and Zambrano 2010; Tabak 2011; O'Rourke 2012, Lemaitre 2016) or investigate the specific role of women as leaders (Restrepo 2016; Melo 2016).

However, we argue that while this growing literature to some degree engages with law as an instrument of social change in the Colombian conflict, it does not adequately account for the complexity of the context, in terms of unpacking the role of laws, legal institutions and legal identities in displaced women's legal mobilization and the legal and political construction of women as victims. To begin to work towards this kind of complexity, we situate our argument within two running debates on the role and place of law and policy frameworks in effecting social change in the context of the armed conflict.

The first debate concerns the political sociology of legal reform in Colombia. There is a solid tradition within Colombian scholarship for reflecting on the political sociology of legal reform in relation to societal violence. Mauricio Garcia (1993, 2013) argues that governments have adopted laws to gain legitimacy, with little intention or capacity to guarantee the enforcement of progressive laws. He links the abuse of the legitimizing power of law to a context where the government is unable to guarantee the monopoly on legitimate violence, and hence the rule of law. Writing specifically about the 2005 law that enacted a peace treaty with paramilitary armies, Saffon and Uprimny (2010: 228) argue that the transitional justice discourse that emerged in the wake of the passage of the law was 'not only manipulative but

also oppressive' and had 'the main purpose of hiding impunity'. Similarly, Vidal-López (2012: 14) criticizes the state's 'invention' of a transitional, post-conflict situation in Colombia, arguing that the Colombian state has 'used the rhetoric of transitional justice to produce an image, mainly aimed at the international community of donors and human rights organizations, that the country enjoys stability, an end to the war, and a post-conflict situation'. Trying to explain this particular Colombian penchant for progressive lawmaking, Lemaitre (2008, 2009) suggests that engagement in law reform in itself constitutes a meaningful end for activists, as it is an effort to produce social meanings that vigorously reject the prevalence of violence in a context where other types of peaceful contention are quite limited in their scope and power. Drawing from the approaches of these Colombian scholars, we posit that, while the past and impending changes that benefit victims can and do have instrumental power, the symbolic effects, that is, the creation of social meanings, is of central importance. These social meanings can both legitimize the government, and resist social justifications of violence against civilians, such as stigmatized political identities, racial hatred and gender stereotypes.

The second debate, in international circles as well as within Colombia, concerns the legal and political constructions of (gendered) victims. Rettberg (2013) notes that despite the optimism surrounding grassroots participation of victims, the dominant discourse is characterized by the normative agendas, statements and sensibilities of policymakers, activists and organizations. This needs to be complemented with data on the overall victims' population and on the opinions and attitudes of the average Colombian. Commentators have also voiced concern about the possibility that transitional justice – through its malleability – may crowd out or undermine sustained attention to deeper political conflicts (Rowen 2016). Similarly, Lemaitre (2016) questions the assumption that victims and states share the values of

the transitional justice apparatus, describing how women's reconstruction of everyday life in the aftermath of displacement responds to normative commitments to strength and solidarity that are absent from official policy. Moreover, it has become part of the staple rhetoric on the celebratory transitional justice discourse that 'Colombia needs to take a gendered approach to make peace last' (Sánchez 2016). This claim is closely related to the notion that gender has been a 'multiplier of violence' during the conflict (See Bouvier 2016; Krystalli 2016). Jaramillo-Sierra (2016) criticizes the representation of women as 'the most suffering victims' most 'in need of solidarity' which leads to a disproportionate focus on sexual violence (see also Lemaitre and Sandvik 2014) and builds on a problematic 'calculus of losses', whereby the much higher ratio of male casualties in the conflict is rendered invisible. We agree with this scholarship that the celebration of the prevalence of feminist approaches to transitional justice in Colombian laws and policies needs to be tempered with a more reflexive approach toward the possible mismatch between the policies, and the concerns and experiences of women victims. Taking these debates as our points of departure, our contribution to the literature is a case study that shows how the changes in institutions and legal frameworks shape and re-shape the organizational structures, justice claims and identity politics of women's IDP organizations and their leaders.

The Changing Legal Conceptualizations of Internal Displacement: From Migrants to Victims

The changing legislative and judicial approaches to Colombia's internal conflict are significant both because they signal the political discourse at the time of ratification in Congress, and also because of their constitutive nature, in terms of recognizing and making visible the experience of civil war (forced migration, human rights violations, humanitarian crisis, armed conflict) as well as producing new identities for its protagonists.

For example, irregular soldiers are variously named, according to degrees of legitimacy, as insurgents, bandits, guerrillas, terrorists, paramilitary, self-defense units, or non-state armed actors. Likewise civilians are named through different categories, each foregrounding some experiences and bracketing others: forced migrants, internally displaced persons, human rights victims, humanitarian beneficiaries, victims of armed conflict.

As the backdrop for our case study, we begin by mapping out the changing legal approaches deployed to conceptualize and address internal displacement specifically. The broader human rights frame on internal displacement emerged from Colombia's progressive 1991 Constitution. The 1991 Constitution included an expansive bill of rights with far-reaching legal protections and mechanisms for inclusions of vulnerable groups (women, indigenous peoples, Afro-Colombians [and so forth]), which were further developed by the Constitutional Court over the course of more than twenty years of progressive jurisprudence (Rodríguez, and Rodríguez 2010). Since the early 1990s, Colombian activists had begun to identify massive rural to urban migrations increasingly triggered by political violence, and to refer to them as 'internal displacements'. During this same period, international humanitarian agencies working in former hot spots in Latin America were looking for new institutional mandates to expand into new program areas, and they were eager to open programs in Colombia (including in particular UNHCR).⁴ This 'humanitarian crisis' frame was a new approach for Colombia, despite the long-running internal conflict.

The series of legal and policy reforms, as well as human rights reports that followed had little practical effect in alleviating the rising tide of forcible displacement or providing effective humanitarian aid. In 1997, Law 387 promoted by the Ernesto Samper administration (1994–1998) required the government to prevent and address internal displacement: enshrine IDPs' rights to protection from discrimination, recognize all civil

and political rights previously recognized in international law, and provide immediate humanitarian aid and assistance with economic stability and resettlement for a three-month period. However, the responsibility for implementing these provisions was distributed among a host of local and national institutions, which received no additional funding to meet their responsibilities.⁵ In 1999, the UN special rapporteur for internally displaced persons, Francis Deng, visited Colombia and criticized the lack of implementation of Law 387 (CIDH 1999; Deng 2000). The same year, the Inter-American Human Rights Commission's (IACHR) special rapporteur on displacement described the Colombian situation as a 'humanitarian crisis' (CIDH 1999). In 2004, the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) declared that Colombia had 'the biggest humanitarian crisis in Western Hemisphere' (UN News Center 2004). Throughout the rest of the decade, the forcible displacement of millions of people within Colombia's borders continued to create a protracted humanitarian crisis and led to impoverishment and rights deprivation (Sandvik and Lemaitre 2013: 36). Despite escalating rates of displacement in the early 2000s, the majority of IDPs were directed to existing poverty-alleviation programs. There were no programs designed specifically for women, and humanitarian assistance was scarce and vastly insufficient.

In 2004, the Constitutional Court responded with an exceptional structural litigation process. In decision Tutela 025, known as 'T-025', the Court issued general orders for institutional reform and policy adoption, and set up a specialized office to oversee compliance.⁶ The Court also issued follow-up orders through *autos* (awards).⁷ The Court adopted a new approach for its remedies – known as the 'differential approach' – that focused specific awards on groups divided by gender, ethnicity, age, and capacity. From a gender perspective, Award 092 of 2008 is the central follow-up decision to T-025. In Award 092, the Court found

that the government's failure to address the disparate impact of displacement on women violated the Constitution as well as Colombia's international human-rights obligations. To provide a comprehensive structural remedy, the Court ordered the creation of thirteen specific programs for displaced women, and granted individual orders of protection to 600 women across the country (the inadequate implementation of Award 092 has itself been the subject of several follow-up awards issued by the Court in recent years).⁸

These groundbreaking legal and judicial transformations that began in the late 1990s, which framed internal displacement as a human rights issue and a humanitarian crisis, have gradually been replaced by a focus on transitional justice and victims rights. Fundamentally, this new focus emphasizes a right to have one's past suffering recognized by law, and reparations provided. However, the 2005 Justice and Peace Law that was designed to regulate the peace process under the administration of president Alvaro Uribe (2002–2010) was the subject of widespread international and national criticism for addressing both victims and perpetrators in a single law, and by implication, for neglecting victims' rights. The law was further criticized for favoring requests made by the leaders of the Autodefensas Unidas de Colombia (AUC), the right-wing paramilitary group responsible for initiating the peace process (García-Godos and Lid 2010). This omission needs to be understood in the context of Uribe's consistent refusal to acknowledge the existence of a civil war, and the designation of insurgents as 'terrorists'. Although the law initially had little to say on the topic of victims' rights, it was later amended by the Constitutional Court (decision C-360 of 2006) and by Congress (Law 1592 of 2012) to add more stringent demands for truth, justice, and reparations.⁹

Victim mobilization after the passage of the Justice and Peace Law eventually led to the adoption of the 2011 Victims' Law, where administrative reparations became the

principal response to displacement-related human rights violations. While the Justice and Peace Law had provisions for small-scale reparation mechanisms within criminal procedures, the Victims' Law provided the basis for a large-scale transitional justice process where victims of armed conflict could be compensated through individual and collective administrative reparations, as well as through, in some cases, judicial reparations and land restitution.¹⁰ The law outlines administrative procedures for registering as a victim, and for receiving humanitarian aid, as well as for assigning administrative reparations when humanitarian aid is no longer needed. More importantly, it led to the creation of a government agency specifically dedicated to the provision of humanitarian aid and administrative reparations, the Victims' Unit as described in the section below. The law also adopts a differential approach, especially in response to activism by women and indigenous minorities: for example, it has particular protections for dispossessed women in the land restitution process, and ethnic minorities have separate laws that were consulted with their representatives.

Institutional consequences: From humanitarian aid to transitional justice

As a result of the changing legal and political conceptualizations of the armed conflict, its impact on the Colombian people and the responsibilities and liabilities of its protagonists, Colombia also experiences regular shifts in the social movement landscape as new laws create new categories, identities, sites and objects of contestation, and put new resources up for grabs. In the course of our research, several IDP leaders chided us for our 'outdated' focus on displacement, noting that 'now the law says you are a victim' (Lemaitre and Sandvik 2015). To illuminate the aspects of this institutional trajectory as the context for our case study, we chart out some of the concrete institutional consequences of the shift between the IDP framework and the Victim's Law.

Until 2011, Acción Social was the main institution in charge of responding to internal displacement. Acción Social, a large poverty-relief agency directly under the purview of the Colombian President, was in charge of handing out emergency relief and keeping a national register of internally displaced people, the RUPD (*Registro Unico de Población Desplazada* or Unified Register of Displaced People). As decreed by Law 387, Acción Social was designed to work hand in hand with other government agencies with poverty relief responsibilities (i.e. the National Planning Department, local governments, the child-welfare agency, etc.) through the so called- SNAIPD, national response system for displaced people. IDP organizations were represented in the system mainly through their mandated presence in participatory budget planning, but with a very limited scope and responsibility, mainly in the adoption of local plans known as the PIU (single plan for the integration of displaced people,) ordered by the Constitutional Court.¹¹ At the national level, the inclusion of IDPs in planning was directed by a special group of agencies known as the Consejo Nacional de Atención Integral a la Población Desplazada (national council of displaced population,) the same agencies in charge of operating the SNAIPD.

This humanitarian aid system coexisted with the institutions of transitional justice that emerged in 2005. As part of paramilitary demobilization, special investigative units heard the paramilitary leaders and soldiers confess their crimes and investigated the context of these crimes. These investigations allowed individual victims to ask for reparations either within a criminal process against an individual commander, or more generally in the administrative jurisdiction, by suing the Colombian state for gross negligence in failing to protect them. The 2005 Law also created a national commission for reparation and reconciliation (CNRR) in charge of publishing reports and educating the public at large about the war.

This was the institutional layout when we started our project in 2010, but by late 2010 the whole system was slated for transformation after the election of a new president, Juan Manuel Santos. We followed policy discussions surrounding what was eventually ratified as the Victims Law 2011, and Decreto 4800 of 2011, which aimed to implement the law with a dramatic change in the humanitarian aid system. The Victims' Law is explicitly founded on the principle of transitional justice, including the rights to truth, justice and reparations. The law ordered the establishment of an institutional system that responds to victims not only through the provision of humanitarian aid (as ordered under the IDP framework) or through socio-economic stabilization (primarily in the form of poverty-relief programs) but also through reparation for past harms. To address this aspect, the law established a set of judicial, administrative, social, and economic measures for the benefit of persons who had suffered damages caused by violations of international humanitarian law or international human rights law occurring after 1985.

Like the women we interviewed, we observed important institutional changes. During our research the national commission for reparation and reconciliation (CNRR) was replaced by a National Center for Historic Memory, *Centro Nacional de Memoria Histórica*. The SNAIPD was replaced by the Sistema Nacional de Atención y Reparación Integral a las Víctimas (SNARIV). Acción Social was replaced by an even larger agency known as the Victim's Unit, in charge of keeping a national register of victims of war crimes (and not just internal displacement), of handing out humanitarian aid, and also of giving victims administrative reparations which would now be handed out through the Victim's Unit, separate from judicial reparations available through administrative courts. That is, victims had the option to seek reparations through the Victim's Unit's lump sum program, or follow a lengthier process in court. Additionally the law created a Special Administrative Unit for

the Restitution of Dispossessed and Forcibly Abandoned Land (the Land Restitution Unit), which is charged primarily with managing the Registry of Dispossessed and Forcibly Abandoned Lands and leading groundbreaking processes of restitution. Furthermore the commission for historic memory was established as an autonomous entity under the Victims' Law, as 'El Centro Nacional de Memoria Histórica' with a larger budget and responsibility. The Center has undertaken projects with displaced women's organizations as 'survivors of armed conflict', and systematically refer to the displaced as 'victims of armed conflict'. Through its influential 'Basta Ya!: Colombia: memories of war and dignity' (2013; English 2016) the Center provided an important contribution in working towards a common understanding of the length, nature and scale of the violence as an armed, national conflict.

Institutional changes also affected IDP participatory spaces; at the national level, the Consejo Nacional de Atención Integral a la Población Desplazada (CNAIPD) became el Comité Ejecutivo para la Atención y Reparación a las Víctimas, with the same functions (under decree 0790 from 2012).¹² This transformation also had local effects; the committees for IDP assistance at district, municipal and province level became committees for transitional justice. The mesas (district, municipal and departmental level) for the strengthening of IDP organizations became mesas for victims and the national mesa for the strengthening of IDP organizations became the national mesa for victims. Moreover, the local planning framework for IDPs, the PIU (Planes Integrales Únicos) were replaced by the PAT (Planes de Acción Territorial) framework for victims, with new steering committees. Whereas IDPs had been the focus of the PIUs, under the PAT, IDPs were one of several victim groups. As observed by Reina (2014), although the participatory structures were envisioned to be essentially the same, new rules were created to fill previous regulatory voids with respect to the election of leaders, the constitution of

the tables, the requirements and incentives for participation as well as the manner in which these municipal spaces were situated vis-à-vis higher administrative levels. The local elections in late 2011 also ushered in a set of new municipal governments and mayors tasked with implementing the new normative framework on victims' rights; participatory planning had to be restarted from scratch.

Case Study: The Effects on Grassroots Actors

The research team— which consisted of the authors, three graduate students, and two undergraduate research assistants— conducted a multi-method study that followed internally displaced women's organizations as they demanded government assistance and protection. We maintained updated reviews of the literature and press coverage of internal displacement in Colombia and we also mapped the location of internally displaced women's organizations. By 2013, we had identified 66 organizations in 26 of Colombia's 32 provinces and interviewed 63 of their leaders. We also recorded their public appearances in various forums and collected media coverage of their appearances. We interviewed key government officials and observed 12 extended public meetings between IDP leaders and government entities. We chose six women's IDP organizations to study in depth, and spent between six months and one year producing extended case studies. They included Liga de Mujeres Desplazadas (Displaced Women's League, henceforth 'the Liga'), which is based in the northern department of Bolívar; the Mesa Municipal de Organizaciones de Población Desplazada de Mocoa (Mocoa Municipal Committee of Organizations of Internally Displaced People, henceforth 'the Mocoa committee'), which is based in the war-torn southern department of Putumayo; the Consejo Nacional de Mujer Indígena (National Council of Indigenous Women), which is a branch of ONIC, Colombia's largest indigenous rights

association); and the Colectivo de Mujeres al Derecho (loosely, Upright Women's Lawyers Collective, henceforth 'COLEMAD'), which is based in Barranquilla, on the Caribbean coast. Together with the Liga and the Mocoa committee, we designed, implemented and interpreted household surveys that measured effective enjoyment of human rights and then compared them to national IDP surveys.¹³

As noted above, the starting point for our study was an interest in the effect and effects of legal mobilization – here generally understood as a means of seeking social change through legal norms, discourse, or symbols, and extending beyond litigation to include activism in different political arenas – by IDP women. An important line of inquiry became how changing legal and institutional frames deployed to deal with the consequences of the armed conflict impacted the organizational structures and claims. Adding to this, we also want to make an observation of the relationship between law and identity in the individual leadership biographies of the women's IDP organizations we studied, as it can illuminate how women leaders construe and grapple with changing legal frameworks.

How women's IDP organizing adapted and changed

Our first observation relates to the pervasive instability of rights framed in violent contexts such as the Colombian civil war (Lemaitre and Sandvik 2015.) IDPs struggle to translate their needs into legal rights, and to access the resources available through a rights-focused transitional justice apparatus; as they do so, they must also grapple with a dynamically evolving legal framework. As explained above, the last two decades in Colombia have meant constant changes in the applicable rights, procedures and institutions for IDP, often pressured by international trends in human rights norms.

The shift from the humanitarian to the transitional justice legal frame and institutions had an effect on how IDPs perceive and present their identity. From the mid-2000s,

both the number of IDP organizations and the level of NGO concern about displacement increased radically. While figures are notoriously imprecise, Taylor (2011) estimates the number of IDP organizations at 2,000. This growth was especially rapid in the wake of T-025 – the 2004 decision in which the Constitutional Court elected, through structural litigation, to maintain oversight regarding the humanitarian crisis. Because of the Court's differential approach, beneficiaries of the law took on a corresponding identification: for example, members of groups that had been offered special protection – especially women and ethnic minorities – began to self-identify in ways that matched the Court's 'differential' categories.

On the one hand, the transfer from one legal regime to another may seem like a superficial transformation – something that could be handled by adding, as many IDP organizations have done, the word 'victim' to the name of an organization, and adding demands for reparations to the existing aims. For instance, one organization previously known by the acronym 'APROCOB' (Asociación de Proyectos en Construcción de Vida en Barrancabermeja) added 'women victims' to their name and became 'AVIPROCOB' (Asociación de Mujeres Víctimas Proyectos de Construcción de Vida en Barrancabermeja). Explaining this change, their leader stated that 'we are no longer displaced, we are *victims* of displacement'.¹⁴ This was not unique: 'Fundación de Mujeres Desplazadas del Magdalena Medio' (FUNMUDESMA) became 'Fundación de Mujeres Víctimas del Magdalena Medio' (FUNMUVIMAG) and so forth.

Similarly, Liga de Mujeres, our main collaborative partner in the research project and one of the major recipients of Award 092, continued to solicit funding under the 'victim of internal conflict' frame (Unidad de Víctimas 2013). We observed that changes in designation seemed for the most part strategic choices, as the victim identity appeared to offer access to new alliances, venues (newly created agencies and participatory

spaces), and resources (compensation, land restitution, and the 'projects' that might be accessed by victims in the foreseeable future).

Nevertheless, many of the displaced women we interviewed also claimed that the government's change in policy was a way of curtailing both the mobilization of IDPs and their emerging political identities, by placing them in the same group with victims who had different origins and circumstances (for example victims of land mines, who tend to be former soldiers, or wealthier victims of kidnappings). The concern was that pre-existing class-based discrimination of poor, rural women would deprive displaced women of any real agency in these forums.

Although the general effects of progressive normative frameworks on the lives of internally displaced women have been limited, structural litigation before the Constitutional Court has had significant effects in the realm of social movements, particularly by creating new opportunities for political mobilization. The Liga offers a strong example of the impact of Award 092 on grassroots organizing. By allowing feminist and grassroots women's organizations unprecedented access to the Constitutional Court — through the submission of documents and participation in public hearings — Award 092 has shaped both the self-perceptions of displaced women and their relationship with feminist NGOs. The Liga actively petitioned for Award 092, and 150 Liga members (out of 600 total) were listed as special beneficiaries. Award 092 also led to the establishment of the Mesa de Seguimiento del Auto 092 (Award 092 Follow-Up Committee), a civil society organization (of which the Liga was a part) responsible for monitoring the implementation of the award. Finally, in light of women's special vulnerabilities (Award 092 specifically invokes UN Resolution 1325 on women, peace, and security), access to the Court created the opportunity to frame the interests of internally displaced women as violations of fundamental rights.

At the time of fieldwork, we also observed that for these organizations, the shift to the transitional justice regime required new approaches to framing injustice, and different demands *for* justice. Humanitarianism, at least in its everyday sense, is future-oriented. It focuses on the material well-being of those who are suffering — which, in the Colombian case, includes demands for socio-economic stabilization (e.g. access to free health care, schooling for children, decent housing, and preferential treatment in poverty-alleviation programs). Since humanitarianism requires the transference of material resources, its vision of justice (rarely articulated as such) can be described as distributive. Transitional justice regimes, in contrast, are oriented to the past, and focus on three things: truth, justice, and reparations. While reparation can be (and often is) a form of poverty alleviation, we argue that it essentially entails compensatory rather than distributive justice. Hence, in practice, only the past, not the present, predicament of destitution can be the basis for claiming resources. To be viewed as a deserving recipient of humanitarian assistance and preferential treatment within poverty-alleviation schemes, displaced women had to prove that they were in dire economic circumstances of poverty. To be a deserving recipient for reparations, in contrast, victims have to substantiate claims of past harm committed by armed actors. This means that the recollection of past events became the basis for their current identity. Moreover, the focus on the past collapsed the distinction between those who were or were not impoverished in their current lives, creating a false equality between victim groups. This means that the fulfillment of reparations is not based on social class but on suffering.¹⁵

Individual biographies: The circle of insecurity and leadership

The regular shifts in legal frames not only impact organizational structures and claims, but were also reflected in the individual biographies of women leaders. However, this is expressed more as the ways in which the

insecurity these women had experienced was linked to legal labels, than as a mode of self-ascribing identity. Of the sixty-three IDP women leaders we interviewed, many were actively preparing themselves and their organizations to be able to continue to demand access to basic resources under the new transitional justice frame in the future, rearticulating their claims based on past harms instead of on present needs.

For example, one of our informants, a woman named Maria was a very active leader in the displaced community when we first met her in 2011. In the war she lost all that she and her family had constructed over decades of hard work, including their land and house. After a period of recovery, she emerged as a local IDP leader, organizing a settlement in the Southern Colombian town of Mocoa. This cooperative was eventually the beneficiary of a series of relatively successful development projects. With the 2011 Victims' Law, she began to represent victims in the new institutions created by the law as the committee she belonged to shifted from being the IDP committee to the municipal victims' committee. She also initiated a land-restitution legal process for herself and her family, and began to speak of herself more forcefully as a victim rather than as a displaced woman. For many women like Maria, community organizing and leadership came both from a passion for politics, and from the aspiration to overcome radical poverty. While poverty, exclusion and insecurity remained at the heart of their agenda, the framing of their claims and descriptions of their leadership strategies and their leadership roles shifted over time, incorporating discourses of peasant movements, human rights violations, humanitarian crisis and transitional justice.

At the same time, the personal experience of violence and loss is grounded not with reference to being an IDP or a victim, but with reference to a primary identity as peasant, indigenous etc., and with being a woman and mother in these communities. One such example, offered by Arias (2014) in a case study

affiliated to the project, is Ana Tulia Zapata of the Nasa, a well-known and respected indigenous leader. Her spouse and brother were assassinated for their leadership roles in the struggle to recuperate Nasa territory:

I am a widow, my husband disappeared in 1995 but I have continued to work in this process...When my children were small, this whole struggle for recuperation of land for this reservation, Huellas Caloto, began...when my spouse disappeared, because of FARC, I was left alone with five children, but I tried continue the work and forge ahead with the process (Arias 2014).

Finally, the availability of new legal identities also carried costs. Self-identification as internally displaced often involved a shift from previous identities as rural peasants and homesteaders – which, in a sense, implied giving up a part of one's history. When asked about their lives, displaced women we interviewed identified first and foremost as *campesinas* or *gente del campo* (peasants or rural people).¹⁶ However, the IDP identity has also carried stigma due to its association with insurgent guerillas (Lemaitre and Sandvik 2015: 28). According to a leader from AVIPROCOB, her experience of working the joint victim committees set up under the Victim's law had been 'horrible'. They felt rejected by other victims: 'they think the displaced smell bad, are thieves, and have every defect' (*'El desplazado es mal visto, huele feo, es ladrón, tiene todos los defectos'*).¹⁷ The new legal frames related to victimization in the war demanded that IDP leaders made new investment in resources to adapt and respond accordingly, including the need for achieving acceptance as a 'legitimate victim' from other victim groups.

Conclusion

This article has argued that to help us develop a nuanced understanding of the role and relevance of law in engendering

social change for displaced women in the post-conflict context, we need to develop a more complex transitional justice narrative by examining what the turn to transitional justice is a shift *from*. To that end, we have examined how changing legal and institutional frames deployed to deal with the consequences of the armed conflict have impacted organizational structures and claims, as well as individual leadership biographies. At the time of writing, Colombia is in the process of adopting the new legal frames necessary to implement the peace agreement with the FARC, which requires a transitional justice apparatus, as well as new institutions to bring resources to territories formerly ravaged by war, as well as to protect community activists and grassroots organizing. In spite of this uncertainty, we can draw some conclusions from past experience about the future transitions. First, that the new frames will be important for the creation of activist claims and identities as well as for the legitimization of the Colombian government. Second, this effect will not completely erase pervasive concerns, including radical poverty and insecurity, regardless of the applicable legal and policy frame.

Insecurity remains pervasive for community leaders, including IDP leaders. However, the scale of the security crisis and the effect of the peace agreement remain unclear. Despite the importance of achieving an end to armed hostilities between the government and the main armed actor FARC, and the substantial decline in violent deaths and other forms of conflict related violence (Pachico 2015), Colombia was listed as the world's most dangerous country for human rights defenders in 2016.¹⁸

Lastly, while the Victims' Law does provide a ten year period for the conclusion of individual and collective reparations, it seems highly unlikely that that goal will be met, or that the land reported as stolen will be returned, at least within this period. By the halfway-mark to the ten-year period, that is, by mid 2016, only 10% of over 6 million eligible victims had been repaired, and

this includes both collective and individual reparations (Blanquicet 2016). Similarly, out of around six million hectares reported stolen, only 5% had been restituted to their original owners (Plazas 2016). Even so, it must be noted that the Colombian restitution and reparations programs is the most ambitious of its kind in the world, and the success, while proportionately modest, is in sheer numbers and intention still admirable.¹⁹

We also predict that in spite of legal and institutional changes, and in spite of serious reasons for hope in the Colombian transition, remaining concerns about radical poverty and insecurity draw a picture of a nuanced progress that is not located solely in the governments' implementation of the legal and political framework, but also on grassroots adaptation to these changes, as well as their demands, perceptions and organization. Further research into the legal and institutional transformations following the peace agreement with the FARC must be aware of both the legitimating effect of new legal frameworks and the persistence of the institutions, organizations and more importantly, the needs that reappear with different legal frames. This persistence calls for more attention to the structures of distribution of power and resources that underlie progressive legal changes such as those of humanitarian aid for internally displaced people, transitional justice for victims and the emerging institutions of the peace agreement meant to bring peace to war-torn territories.

Notes

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² Article 3 defines 'victim' as persons who individually or collectively have suffered damages due to events occurring from January 1, 1985, as a consequence of violations of international humanitarian law or of serious and manifest violations

of international human rights norms occurring as a consequence of the internal armed conflict. For a discussion on the recognition of the suffering of combatants and whether to allow combatants to access transitional justice mechanisms, see CODHES (2017).

- ³ Recognizing that certain groups of the population have particular characteristics that make them more vulnerable in war due to their ethnicity, age, sex, sexual orientation and disability.
- ⁴ For an overview of context, see Tate (2007). To compare contemporary efforts to establish urban violence as a humanitarian crisis, see Sandvik and Hoelscher (2016) and more generally, Lohne and Sandvik (2017).
- ⁵ For how the making of this law intertwined with the 1998 IDP guidelines, see Sandvik and Lemaitre (2015).
- ⁶ The tutela is a constitutionally mandated direct petition procedure under which claimants can object to the violation of basic rights and receive a judicial decision within ten days.
- ⁷ See i.e. Award 092 of 2008 on women, Award 005 of 2009 on Afro-Colombians, and Award 004 of 2009 on indigenous peoples.
- ⁸ On the decision and its limitations, see Lemaitre and Sandvik (2016).
- ⁹ The Constitutional Court has adopted the following provisions: C-319 of 2006, 370 of 2006, 575 of 2006, C1199 of 2008, and T-496 of 2008.
- ¹⁰ Moreover, seeking to bring Colombian law into harmony with international law, Law 1719 of 2014 sets out to guarantee access to justice for victims of sexual violence, especially sexual violence in the context of the armed conflict. It explicitly adds the mention of an internal armed conflict to the Colombian criminal code.
- ¹¹ It has been noted that the implementation of the PIU suffered from endemic funding shortages, lack of buy in from municipalities and variable quality (Ibáñez and Velásquez 2008; Zapater 2011). Of note

are also the problems emanating from Colombian decentralization and the capture of municipal budgets by criminal actors.

- ¹² Decreto 0790 de 2012 <http://www.unidadvictimas.gov.co/es/decreto-0790-de-2012/13173>.
- ¹³ For a description of the development and use of these surveys, see Sandvik and Lemaitre (2013) and Lemaitre and Sandvik (2014).
- ¹⁴ NGO mapping of the department of Santander (2013). On file with authors.
- ¹⁵ At the same time, the Victims Law of 2011 engendered a new set of hyper-political claimants who have been targeted for repression, namely the victims who attempt to reclaim land that has been lost through the actions of armed actors. Insecurity – specifically, armed actions against potential beneficiaries and, increasingly, against officials of the victims' relief programs – has undermined implementation of the Victims' Law. Since 2011, the possibility of claiming land restitution has created a new category of victim, with its own designation: *reclamantes de tierra* (land-claimers). This group is made up of displaced people who, by claiming the land they lost due to violence, have adopted a new identity. While there is a clear political opportunity in land claiming, there is also a clear danger and land claimants continue to face violent reprisals from armed actors.
- ¹⁶ As a consequence of the strong national peasants' movement of the 1970s, the peasant identity is a more politicized one.
- ¹⁷ Interview on file with authors from Santander (2013).
- ¹⁸ The latest report from the human rights organization Frontline Defenders lists Colombia as the most dangerous country for human rights defenders. Of the 281 human rights defenders killed in 2016, in the 25 countries the organization reports on, 85 were in Colombia (Frontline 2017).

¹⁹ A Harvard study of the program, directed by Katherine Sikkink and funded by the Colombian government is pending publication. According to government sources, it was generally a positive evaluation (Unidad de Víctimas 2015).

Competing Interests

The authors have no competing interests to declare.

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