

Reparations from a Gender Perspective:

Unlocking the Transformative Potential of Reparations in the Transitional Justice System for Women in Colombia.

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Abbreviations

Committee for Convention on the Elimination of All Forms of Discrimination against Women.....	(CEDAW Committee)
Fuerzas Armadas Revolucionarias de Colombia	(FARC)
Guarantees of non-repetition	(GNR)
Interamerican Commission of Human Rights.....	(CIDH)
Interamerican Court of Human Rights.....	(COIDH)
Land Restitution Unit	(URT for its Spanish name)
Lesbians, gays, bisexual, transgender, queer + Community.....	(LGBTQ+ community)
Productive Project Programs.....	(PPP)
United Nations	(UN)

1. Introduction

“Raise your voices, women, women who are alive, let us move the earth strong with strength and courage. facing problems, transforming reality; That's why I don't shut up, I will always tell the truth”¹

Women in Colombia have been disproportionately affected in the conflict yet have emerged central voices to build and defend peace. Their attachment to their territories and their different cultural heritage gave them the strength to face the violence.² Their voices and realities should be recognized. It is important to understand the conditions that they need in order to have transformative reparation and to have a better life than the one they had. Their voices are central to transforming the violent reality that the country faces. The road to peace starts by looking at how culturally we see and treat each other.

A primary notion that one has when in the middle of conflict is how to navigate attaining peace. Women were able to empower themselves from places of leadership. This was a fundamental issue for the territory, because it allowed the peasants the peace of mind of living in their territory without fear that there would be a conflict or an impending death.³

The Colombian armed conflict has been the longest in the region. The peace agreement signed in 2016 by the Colombian government and the guerrilla group Fuerzas Armadas Revolucionarias de Colombia (FARC) was an important milestone in the achievement of peace, however, that goal is still very far from reach.⁴ Although this conflict has tremendously affected civil society; different governments denied the existence of it for decades. Instead opting to fight it as a drug cartels problem.⁵ To address the conflict in this way created even more violence and fear and ignored the real root cause of it, primarily: inequality, exclusion, and discrimination within the society, especially in the rural areas.⁶ It was not until 2011, with the law 1448 (or the victim's law) that there was a formal recognition of the existence of the conflict and the massive problems

¹ Comision de la Verdad, “Mi Cuerpo Mi Verdad” (Bogota, Colombia, 2022). 186. The lyrics of “resistance songs” from the women of Tumaco, in the pacific coast of the country.

² Natalia Tamayo-Gaviria, “Las Resistencias de Las Mujeres En La Guerra,” *El Espectador*, 2022.

³ Comision de la Verdad, “Mi Cuerpo Mi Verdad.” 175.

⁴ Carolina Jiménez, “Colombia Can't Afford to Abandon Peace,” *The New York Times*, 2021.

⁵ Andrea García-Salazar and Karol Cotes-Cantillo, “El Enfoque de Género y La Ley 1448 En Colombia” 31 (2019), https://doi.org/10.22409/1984-0292/v31i_esp/29024. 229.

⁶ Ibid

of land dispossession and the responsibility to help the victims was brought to light.⁷ The central feature of the law was to restore the land to the victims that were forcibly displaced from their territory. Furthermore, it intended to give them new economic support by the creation of productive projects, where the families were capable of using their land for economic and financial gain. However, even though the law brings important innovations and instruments for the transitional justice system, not only has the application been very slow, it completely lacks a gender perspective.⁸

The purpose of this thesis is answering the question what conditions does the Productive Project Programs need to incorporate to have a transformative reparation for women? This would be answered by examining the flaws from the Agreement 46 regarding the gender approach in the guidelines for the PPP. The current situation of women from the case study in Montes de Maria would be the foundation to see if the Agreement answers the “woman question” that is, does it bring some regulations considering the different experiences of women. Should there be assumptions about women when regulating something? And if so? Which assumptions?

To consider a gender perspective is to recognize that women have been disproportionately affected by the conflict, but also acknowledge that even in peaceful times, women have faced structural violence and discrimination just for existing. Colombia has a deeply conservative and patriarchal society⁹, especially within the rural areas – where the majority of the forced displacements happened. Hence, there is a close cultural relation of harmful gender stereotypes¹⁰ such as: women are strictly delegated to doing house and care work. They have no chance of working the land, becoming economically independent, or having their own agency. The victim's law does not consider the different experience of women when returning to their

⁷ Rocío del Pilar Peña- Huertas, “From Transitional Justice to Post-Agreement Rural Reform: Many Obstacles and a Long Way to Go,” in *Truth, Justice and Reconciliation in Colombia. Transitioning from Violence*, Routledge, Europa Perspectives in Transitional Justice, 2018.89.

⁸ Anne Kathrin von Au, “The Transformative Potential of Gender Justice in the Land Restitution Programme in Colombia,” 2013, <https://doi.org/10.18543/aahdh-11-2013pp207-239>. 226.

⁹ David Jáuregui-Sarmiento, “4 síntomas del machismo en Colombia,” Señal Colombia, accessed August 1, 2023, <https://www.senalcolombia.tv/documental/machismo-colombia-sintomas>.

¹⁰ “a gender stereotype operates to creates assumptions about the attributes or characteristics possessed by individuals and the roles that they perform, based on their membership in a particular sex or gender group” see Simone Cusack, “The CEDAW as a Legal Framework for Transnational Discourses on Gender Stereotyping,” in *Women’s Human Rights. CEDAW in International, Regional and National Law*, By Anne Hellum and Henriette Sinding Aasen (United Kingdom: Cambridge University Press, 2013). 127

land, not the cultural and social changes that need to be addressed, which makes the reparation for them neither adequate nor effective.

The different experiences of women must be considered in legal studies¹¹, and more specifically, in the transitional justice system. One of the pillars of the Colombian transitional justice system is the reparations that the victims are entitled to. Furthermore, these reparations must have some specifications in order to have a transformative effect on people's lives.¹² Within the land restitution process, which is a reparation mechanism that aims to return people to the land that was taken from them because of the armed conflict in Colombia, there is a specific phase where this pillar can be fulfilled. After the land restitution, this is, the post-restitution phase, the aim of the systems is to reintegrate the family into society and make them economically independent with the Productive Project Programs (PPP).¹³ However, as the majority of the legal systems, these programs are based on a gender-neutral disposition¹⁴, which does not account for the different experiences of women. Or even if they try to create some specific focus on gender, they fall short on properly addressing the structural discrimination that targets women.¹⁵ Reparation aims to transform people's lives for a better one. To properly address women's trials, reparations must answer their specific needs and experiences in order to create the conditions for a better life.

The post-restitution phase is crucial in this regard, as this is the moment when reparations to the victims can achieve their transformative potential. At this time, programs and policies can be developed that would not only return the land to the victims but can also address structural violence that have affected certain groups in society.¹⁶ Within this stage, there is a legal

¹¹ Nicola Lacey, "Feminist Legal Theory and the Rights of Women," in *Gender and Human Rights*, 2004. 29.

¹² Corte Constitucional, "Sentencia T-054," 2017. 6 Para 15.

¹³ Congreso de la República de Colombia, "Ley 1448 Por La Cual Se Dictan Medidas de Atención, Asistencia y Reparación Integral a Las Víctimas Del Conflicto Armado Interno y Se Dictan Otras Disposiciones.," 2011. Art 73, 4.

¹⁴ Lacey, "Feminist Legal Theory and the Rights of Women." 26.

¹⁵ German A. Cardoza-Sanchez et al., "LA PAZ SERÁ CON LAS MUJERES RURALES O NO SERÁ. Vigencia Del Acuerdo de Paz, Políticas Públicas Prioritarias, Perspectivas de Implementación e Incidencia Desde Las Organizaciones de Mujeres Campesinas.," 2022. 29.

¹⁶ Corte Interamericana de Derechos humanos, "CASO GONZÁLEZ Y OTRAS ('CAMPO ALGODONERO') VS. MÉXICO," 2009. Para 450.

document (agreement 46) by the Land Restitution Unit¹⁷ (URT), that brings the guidelines to the PPP. These opportunities are given to families after the restitution, allowing them to create their own way of living and the ability to get profits from the work on their land. This document brings some important recognition regarding gender approach and positive actions; however, it falls very short in its mandate and implementation.

The first part of the paper will present the historical context of the conflict, in order to identify relevant issues in the current situation. The main role of land possession will be explained. In addition, there will be analysis of how the experience of women in the conflict has been disproportionate. This part will be followed by an analysis of the concept of transitional justice, including its four pillars (justice, truth, reparation and guarantees of non-repetition). This is important in order to understand the centrality of the land restitution with the whole system, in particular, the reparation and non-repetition guarantees.

2. Methodology

The thesis provides an overview of the history and background of the conflict to shed some light on the context of the country, without aiming to make a summary. I utilize the Colombian Truth Commission's report¹⁸ as the main source, because of its diligent and interdisciplinary work, which entailed collaboration with different entities, organizations, as well as testimonies and interviews with actors from the conflict.¹⁹ On the other hand, to recognize the important meaning of what a truth commission entails for a society that is trying to transition from war to peace through conversations, memory, forgiveness, and mutual understanding²⁰. The thesis explains the

¹⁷ Entity created by art 103 of the law 1448 (victim's law) to be in charge of anything related to the land restitution process.

¹⁸ "The Commission will be a temporary and extrajudicial body, which seeks to know the truth of what happened in the context of the conflict and contribute to the clarification of the violations and infractions committed in it and offer a broad explanation of its complexity to society; promote the recognition of the victims and the voluntary recognition of the individual or collective responsibilities of those who participated directly and indirectly in the armed conflict; and promote coexistence in the territories to guarantee non-repetition." See. Congreso de la República de Colombia, "Acto Legislativo 01," 2017. Art 2.

¹⁹ "Con quién lo hicimos | Informe Final Comisión de la Verdad," *comisiondelaverdad*, accessed August 1, 2023, <https://www.comisiondelaverdad.co/con-quien-lo-hicimos-0>.

²⁰ "a truth commission can contribute in the long term to democratization and equal respect for all citizens by putting into practice in the process what it preaches in its outcome" see Corte Constitucional, "Sentencia C-579," 2013. 6.1.2.2.

important role of the land in the conflict and why women have been disproportionately affected by it. The fifth chapter takes a descriptive methodological approach of what has been understood as the transitional justice system in Colombia, and the explanation of what is the land restitution process that law 1448 created, which entails a form of reparation for the victims. A more in depth explanation of the feminist legal critique is applied as well.

2.1 Case Study Analysis

The sixth chapter is the analysis of the case study of the subregion of Montes de Maria, which was chosen because it has been one of the most affected territories in the conflict,²¹ and because there is a very high percentage of violence against women.²² This illustrates the real difficulties and danger that women face after the restitution, and how culture itself is central in this discussion. It is important to highlight that there are not a lot of studies that analyze the post-restitution phase in Colombia in general, and in Montes de Maria in particular. Nor is there a study that analyzes specifically the situation of women after the implementation of the PPP. However, there have been three studies that have given some important results to understand the post-restitution phase of some families in this region. This case study would be used to see the conditions of the families and women after the restitution of the land, and in this way to see what conditions should be improved regarding the creation and implementation of the PPP, for women to have a transformative reparation.

2.2 Agreement 46

The Agreement 46 is a legal instrument made by the URT to give the guidelines in the regulation, creation, and implementation of the PPP. It is a central document in the post-restitution phase. The thesis will use the feminist legal critique in order to analyze if the document has a gender approach or not, and what changes to the documents should be done in order for it to have a gender impact in the lives of the women from the Montes de Maria case.

²¹ Comision Colombiana de Juristas, “¿Por Qué Los Montes de María?,” accessed October 5, 2023, <https://coljuristas.org/elsilenciodelasgaitas/contexto.html>.

²² Ana M. Cerón-Cáceres, “Violencias Contra Las Mujeres y Derechos Humanos En Montes de María” (Bogota, Colombia, 2021). 58.

2.3 Gender Approach/feminist Critique

The gender approach of a topic or problem or a feminist critique²³ can be found in literature for a variety of disciplines, even with some different variations of the wording. The way these two terms have been used is to refer to the analysis of a problem, case, topic, from the different experiences of women. A gender approach or feminist critique can be seen almost as interchangeable concepts. However, Salazar Benitez mentions that the difference between them is that: both criticize the lack of analysis from the different experience of women in society, however, the feminist critique actually proposes solutions to the different problems.²⁴ This thesis will not use the theoretical differentiation of the mentioned author; hence, it will use the terms gender approach and feminist critique interchangeably.

The legal feminist critique can be said to base its analysis on asking the “woman question”. Which, “is designed to identify the gender implications of rules and practices that might otherwise appear to be neutral or objective”.²⁵ The objectivity and neutrality of the law is challenged in this view,²⁶ which states that the objectivity that the law claims to have is based on a male view of law and society.²⁷ Therefore it has some bias that the legal feminist critic wants to address and change according to the different experiences of women, their different views, and knowledge.²⁸ What assumptions does the law make about women? Does it correspond to reality? What different impact can law, rule, policy make on women, even if they seem to be neutral? This is the kind of question that the feminist legal critique makes, addressing the different impact of law on women, the lack of women experience consideration in the process of making laws, as well as challenging the neutrality that they claim to have. This thesis aims to do a legal feminist critique to the URT Agreement 46 of 2019, which is the guidelines for the PPP, as the main topic

²³ Gina Heathcote and Paola Zichi, “Feminist Methodologies,” in *Research Methods in International Law* (United Kingdom: Edward Elgar Publishing, 2021).; Anette Borchorst and Birte Siim, “The Women- Friendly Welfare States Revisited,” *Taylor & Francis Group* 10 (2002), <https://doi.org/10.1080/080387402760262186>.; Paula De los Reyes, “Working Life Inequalities: Do We Need Intersectionality?,” 2017.; Torjer A Olsen, “This Word Is (Not?) Very Exciting: Considering Intersectionality in Indigenous Studies,” 2018.; Karin Aggestam and Annika Bergman-Rosamond, “Swedish Feminist Foreign Policy in the Making: Ethics, Politics, and Gender,” *Carnegie Council on Ethics and International Affairs* 30 (2016), <https://doi.org/10.1017/S0892679416000241>.

²⁴ Octavio Salazar Benítez, “La Necesaria Perspectiva Feminista En La Enseñanza, Interpretación y Aplicación Del Derecho,” 2021. 364.

²⁵ Katharine Bartlett, “FEMINIST LEGAL METHODS” 103 (1990).837.

²⁶ Leslie Francis and Patricia Smith, “Feminist Philosophy of Law,” in *Stanford Encyclopedia of Philosophy*, n.d.

²⁷ Carrie Menkel-Meadow, “Mainstreaming Feminist Legal Theory,” 1992.1515.

²⁸ Menkel-Meadow. 1516.

in the post-restitution phase, in order to create some proposal to have a transformative reparation for women, specifically for women from the case study in the Montes de Maria.

3. Theoretical framework

It is necessary to explain different concepts and theories that will be used to analyze a specific case study, and finally to propose some recommendations.

3.1 Transitional Justice

The term transitional Justice often promotes debate and difference of opinions. It aims to resolve issues resulting from widespread injustices in the past and hold those responsible accountable. It is made up of a series of stages of profound social and political transformation that promote the interests of justice and reconciliation by judicial and non-judicial mechanisms.²⁹ More specifically, this paper adheres to the definition of the Colombian Constitutional Court: “Transitional justice seeks to resolve the strong tensions that arise between justice and peace, between the legal imperatives of satisfying the rights of victims and the need to achieve the cessation of hostilities. For this, it is necessary to achieve a delicate balance between ending hostilities and preventing a return to violence (negative peace) and consolidating peace through inclusive structural and political reforms (positive peace).”³⁰

This framework has four fundamental pillars in the system: Truth, Justice, Reparation and Non-repetition guarantees. These concepts have been recognized within the constitutional jurisprudence of the Colombian court. It applies both the national constitution and human rights international instruments in order to develop the fundamental rights of the victims.³¹

4. Colombia’s Armed Conflict

²⁹ Corte Constitucional, “Sentencia C-579.”: 6.1.1

³⁰ Ibid.6.1.1

³¹ Ibid 7.2

This section would give an overview of the history of the conflict, the main role that the land has played in it, and why it has affected women disproportionately. The Colombian internal armed conflict has been ongoing for more than six decades, and in 2016 the government signed a peace agreement with the largest guerrilla group on it, FARC. However, a challenge to achieve real peace remains. The issues of land and agricultural system reform are such salient topics in the country that they were the first points discussed in the peace agreement.³² The root causes of the conflict involve exclusion, discrimination, economic and political interests, and include a wide range of parties. The central issue is land ownership.

The report of the Colombian Truth commission explains in detail the different actors that played an important and consistent role in the conflict. It was not limited to a war between the guerrillas groups and the state, it was (and still is to some extent) a complicated intersection of paramilitary groups, economic and political elites of the regions and the center of the country.³³ There are also third parties that played an important role in different ways with a variety of actors.³⁴ Moreover, narcotics were the source of finance or purpose of the violence for all of them. However, even though this report is very important for Colombian history, this thesis will be limited to address some of its discoveries and recommendations relevant for this research.

The first guerrilla groups started around the decade of 1960. There are different groups with different ideologies, goals, and modus operandi, but they were basically inspired to end the marked inequality in the country and the political exclusion of the large portion of the population.³⁵ The way they originally financed their activities was to kidnap people, mainly from the economic and political elite.³⁶ They later became more and more aggressive to civilians, their killings and attacks were more indiscriminate to create political pressure, as well as taking violent control over specific territories, and committing violations to the International Humanitarian Law.³⁷ They aspired to win the military war against the state in spite of the

³² Gobierno de Colombia and FARC-EP, “ACUERDO FINAL PARA LA TERMINACIÓN DEL CONFLICTO Y LA CONSTRUCCIÓN DE UNA PAZ ESTABLE Y DURADERA,” 2016. 10.

³³ Comision de la Verdad, “Hallazgos y Recomendaciones” (Bogota, Colombia, 2022). 345.

³⁴ *Ibid*, 350.

³⁵ *Ibid*, 215.

³⁶ *Ibid*, 216.

³⁷ *Ibid*, 209.

suffering of civilians.³⁸ It could be considered that an inflection point was when the guerrilla movements started to finance their work with narcotics³⁹, and then became more brutal in their activities. They needed to have more territorial control in order to be able to compete in the market. At present, there are many people who label the guerrilla movements as another drug cartel with a political identity.⁴⁰

Another relevant group of actors in the conflict are the paramilitary units, which can be seen as a response to the territorial control of the guerrilla groups, but also as a result of the historical tradition of using private security groups.⁴¹ These groups are a sum of drug trafficking armies, counterinsurgency armies (against the guerrillas) as groups of armed civilians organized with a military doctrine, joined with sectors of the public force.⁴² It is extremely important to highlight the influence of the Cold War in Colombia. The Cold War is normally not discussed in the conflict, but the report mentioned it on different occasions. The “war against communism” greatly influenced the military and counterinsurgency force actions in Colombia.⁴³ The paramilitaries groups were supported by the government, which received recommendations from a military mission from the United States of America⁴⁴, allowing the civilians to arm themselves within a state defense and security framework.⁴⁵

The Cold War influenced the relationship that Colombia had with the USA.⁴⁶The latter country was fundamental in the creation of the security structure in Colombia, influenced by the doctrine and discourse of the war on drugs, the war on communism, and the war on terrorism.⁴⁷ This, along with the internal corruption of the economic and political elite, led to prioritization of the private economic interest, private security groups, and the strong counterinsurgency doctrine in the armed forces, that led to horrific violations of human rights.⁴⁸ This was known as “Doctrina

³⁸ Ibid, 217.

³⁹ Ibid, 428.

⁴⁰ Ibid, 429.

⁴¹ Ibid, 300.

⁴² Ibid, 420.

⁴³ Ibid, 512.

⁴⁴ Ibid, 303.

⁴⁵ Ibid, 304.

⁴⁶ Ibid, 517.

⁴⁷ Ibid, 512.

⁴⁸ Ibid, 513.

de la Seguridad Nacional” or Doctrine of National Security, which was scattered throughout Latin America, and was particularly strong in Colombia.⁴⁹ In the words of the Commission “[t]he doctrine also started from the identification and persecution of the ‘enemy’, which is ‘internal’, since it is not a foreign threat, but a national one, and which is made up of anyone who does not align with national objectives and who does not join the national power.” The strategy of the doctrine of national security used, then, the militarization of territories and the development of civil-military actions.

Regarding the control of land, but also racism, classism, and misogyny that perpetuated discrimination and exclusion for a large population in the country.⁵⁰ The influence from the Cold War and later the war on terror perpetuated how the Colombian conflict was handled by the government⁵¹, in particular the “internal enemy doctrine”⁵² that influenced not just the armed forces, but the entire Colombian society⁵³. Endless cases of corruption that perpetuated almost entirely the whole institutional structure,⁵⁴ and the permeation of the drug dealing business was in all spheres and levels, in the government, armed forces, guerrillas groups, paramilitary and economical and political elites affecting how the conflict was perpetuated for so long⁵⁵. It is a very complex net of different groups and interests, but with one thing in common, the desire to have and keep power and land, and maintain a status quo, where the ones that have always ruled will still do so.

4.1 The Role of the Land

⁴⁹ Ibid, 513.

⁵⁰ Ibid, 658.

⁵¹ Ibid, 518.

⁵² “Stigmatization as a mechanism for constructing the enemy, as the basis for persecution and physical, social and political extermination” see Comision de la Verdad.:689

⁵³ “The philosopher Sergio de Zubiría argues that a counterinsurgency political culture has been consolidated in the country, “friend-enemy” discourses have become entrenched and fear and security have inflated, these cultural and discursive factors being those that enhance and prolong the internal armed conflict. For its part, the stigmatization not only has not been defeated, but has deepened because it is convenient for economic and political sectors of power. From the sixties onwards, the doctrine of the internal enemy has been inscribed in the culture, in the ways of understanding the world and the behavior of the institutionality and a good part of the population.” See Comision de la Verdad.:691.

⁵⁴ Ibid, 345.

⁵⁵ Ibid, 398.

All of the actors involved in the conflict have fought for land possession and have displaced people from their homes and lands⁵⁶, but the paramilitary groups are considered to be mainly responsible for this crime.⁵⁷ Military, economic, and political interests were behind the endless desire for more land, to have more territory to control, and take away some from the “enemy”.⁵⁸ The dispossession of land was beneficial also for the extractive industry and multinationals.

What this means is that the Commission has been able to document multiple cases of economic use of dispossessed lands in the countryside and cities, in which the dispossessed lands are used for the installation and expansion of industrial, agro-industrial megaprojects (bananas, palm trees, oil, cane, forestry), energy (coal and oil), extractives (gold and other minerals) and tourism; the consolidation of free zones or large industrial parks.⁵⁹

Another reality to take into account is how the land destination was changed by this dynamic. Thousands of families were forced to turn to the plantation of coca (the base of the cocaine) because their normal agricultural plantation did not allow them to survive, and the drugs business took over the market and their territory.⁶⁰

In the context of the dispossession, the Truth Commission notes:

The dispossession is not a random, accidental or circumstantial event either, the lands were vacated due to forced displacement or to a lesser extent for different reasons. Factors such as the concentration of property and land speculation, disputes over strategic territories for the drug-trafficking business or the benefit of mining, energy, agro-industrial, infrastructure, and extensive livestock projects, foster these dynamics of land dispossession. The armed groups that forcibly displaced the population, the beneficiaries who dispossess the victims through robbery, deception or purchase at ridiculous prices, and some officials of institutions such as notaries and registry offices of public

⁵⁶ Ibid, 640.

⁵⁷ Ibid, 634.

⁵⁸ Ibid, 641.

⁵⁹ Ibid.

⁶⁰ Comision de la Verdad, “Hallazgos y Recomendaciones.”:644

instruments that legalize dispossession, aided by regulatory gaps or by violating the law.

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Based on the aforementioned, land has been one of the main elements in the complex dynamic of power interests. Thus, being the central focus for achieving peace.

According to the Truth Commission, there has been a practice called “accumulation by dispossession” which means, powerful elites or companies obtain a lot of land through violent means, threats, fraud, or for absurdly low prices. This created high levels of land accumulation,(0.92 on the Gini scale), which translated into high levels of poverty and almost absolute inequality.⁶² This triggered and maintained the violence, under the inefficient activity and involvement of the state.⁶³ The people that are affected by these practices (and some others perpetuated by the guerrilla and paramilitary) are mostly farmers, afro-Colombians and indigenous communities in rural areas that are being displaced from their land. To fully grasp the complexity of this problem it is important to examine⁶⁴ the data. There have been nine million forcibly displaced people and eight million hectares abandoned or usurped.⁶⁵ Furthermore, “the 42.7% of the owners of the largest properties did not know the legal source of their land; women only own 26% of the land; monocultures predominated in many departments (for example, 30% of the planted area in Meta corresponded to oil palm); and a million rural households lived on less space than a cow had available to graze”⁶⁶

It is necessary to consider that lack of capacity from the state to have a structural system of land registration and effective agricultural policies ensure that this situation perpetuates in

⁶¹ Ibid, 202.

⁶² Ibid, 650.

⁶³ Ibid, 597.

⁶⁴ “Similarly, a World Bank report published in 2021 stated that Colombia is the most unequal country in the OECD and the second in Latin America, surpassed only by Brazil.” See Comision de la Verdad.:652; “Similarly, UPRA estimated that a quarter of the land suitable for agriculture was in the hands of only 0.16% of the owners. At the time of the measurements, 54.31% of the 3,691,205 rural properties in the country lacked titles. These conditions have a negative impact on the agricultural sector such as inefficiency, low competitiveness and a lag in productivity. In addition, legal uncertainty regarding land ownership makes it difficult for transparent transactions to exist and becomes a barrier to investment in the countryside and a motor of violence.” See Comision de la Verdad.: 651

⁶⁵ Comision de la Verdad, “Hallazgos y Recomendaciones.”:596

⁶⁶ Ibid, 651.

time.⁶⁷ Furthermore, displaced people normally have to go to the big cities, where it is more difficult for them to find a job and they are also the target of discrimination and prejudice.⁶⁸ The narrative that was spun for almost five decades was denial. They focused on the existence of terrorists and drug dealers, with no recognition of the complex and corrupt systems. It was not until law 1448 passed in 2011 that there was a formal recognition of the armed conflict and acknowledgment that the government needed to help and redress the victims. This law allowed victims to reclaim restitution of their lands by following the procedures laid out in it. These guidelines entail a national registration for victims and a priority process for women.

4.2 Disproportional Experience of Women in the Conflict

In Colombia, especially rural areas, customs and women's roles are defined within a patriarchal society.⁶⁹ This entails the necessity to acknowledge that the experiences of women within this context diverge from those of men.⁷⁰ The Colombian Constitutional Court and the Interamerican Commission of Human Rights have created critical jurisprudence about this situation.⁷¹ In one of its decisions, the Colombian court recognized the analysis of the regional organism in this topic, taking the intersectional analysis into display, as well as establishing that women are excluded and discriminated against because of their gender. If they belong to a certain ethnicity or are racialized, they are double-violated, which just became worse during the conflict.⁷² Violence and discrimination against women already existed during "peaceful times", which lead to the conclusion that they experience conflict in a very different way than men.⁷³ More concretely, in this case, there is a systematic invisibility of the right of women to their property rights, and the constant institutional discriminations of women in terms of economic and productivity capacity

⁶⁷ Peña- Huertas, "From Transitional Justice to Post-Agreement Rural Reform: Many Obstacles and a Long Way to Go."95.

⁶⁸ Comision de la Verdad, "Hallazgos y Recomendaciones.":204

⁶⁹ Sanne Weber, "From Victims and Mothers to Citizens: Gender- Just Transformative Reparations and the Need for Public and Private Transitions," 2018. 94.

⁷⁰ Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, "Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli Sustainable Development Goals and Transitional Justice: Leaving No Victim Behind," 2022. Para 3(d).

⁷¹ García-Salazar and Cotes-Cantillo, "El Enfoque de Género y La Ley 1448 En Colombia.":232

⁷² Ibid.

⁷³ Ibid.

and decisions, because all policies are directed to men.⁷⁴ The Colombian Constitutional Court emphasized the disproportional effects of the conflict on women, especially rural, indigenous and afro-Colombians, in an important decision from 2008:

The Court notes, from the outset, that both series of factors which caused the differential and exacerbated impact of the armed conflict on women derive in turn from the persistence and prevalence of structural social patterns that foster discrimination, exclusion and marginalization that Colombian women experience in their daily lives, with the alarming levels of violence and subordination that are consubstantial to them both in public and private spaces, and that places them in a disadvantageous position at the starting point to face the impact of the conflict armed in their lives.⁷⁵

The Court's decision entails the recognition at the national and regional level of the different experience that women underwent in the conflict, and why it is harder for them.

In the report of the Truth Commission, there was a very important recognition of this reality as well. There was a specific chapter on the final report dedicated specifically to women and the LGBTQ+ community, due to the necessity to acknowledge their different experiences, based on the structural violence that they suffer. The commission stated:

The testimonies heard by the Commission show how patriarchy works in the Colombian reality: as a form of male domination over women, present at the root of the multiple violences that are practiced against them, that operate in different areas of their lives and their relationships and permeate various social sectors and institutions. The oppression generated by patriarchy intersects with other discrimination, such as racism or classism, and was aggravated by the armed conflict.⁷⁶

An intersectional approach is needed to understand the situation. There is a convergence of identities. The first one is to be a farmer, where the reality in Colombia has big inequality in the

⁷⁴ Donny Meertens, "La Dimensión de Género En El Desplazamiento Interno: Respuestas Institucionales En El Caso Colombiano," 2011.:49

⁷⁵ Corte Constitucional, "Auto 092/08," 2008.:23

⁷⁶ Comisión de la Verdad, "Mi Cuerpo Mi Verdad.":115

rural area, the second one is to be a woman and the third one is to be a victim of the conflict, with worse stigmatization if one is a victim of sexual violence.⁷⁷

A concrete example to visualize the problem over the land, and the disproportional affectation for women, is the access to a formal landowners title, which has been attached historically to a woman's relationship with a male partner.⁷⁸ The farmer's economy is seen as a family economy, but because the gender roles structured in the society put women just in the caretaker role, their work is not translated to economic assets. Therefore, the main producers of the family are the men.⁷⁹ Furthermore, the agricultural policies are normally targeted by the head of the house, which is usually a man, making women's work invisible and they must depend on a relationship with a male partner to have property rights.⁸⁰ There is a lack of a formal and structural system to analyze the reality of land ownership in rural areas. According to the National Administrative Department of Statistics, 63.7% of the rural land is owned by men, in comparison to 36.3% of women.⁸¹

Outlined above shows why it is harder for women to have a proper restitution process, but more obstacles appear. Because of the lack of formality in their property or possession of the land, by the time of the restitutions, it is extremely hard to prove that they used to live on the property,⁸² but also the relationship that they have or used to have with their male partner may make restitution difficult to attain. In the rural areas of Colombia, there is a high level of informality that makes this process even harder because of the lack of legal evidence.⁸³ This is a daily and serious problem for women, it is a common practice in the society that the man in the relationship is the owner of the property. If there is a separation after the displacement, or the partner was killed, or just away and with a new family, it is the woman's burden to collect

⁷⁷ Diana Esther Guzman Rodriguez and Nina Chaparro Gonzalez, "Restitucion de Tierras y Enfoque de Genero," 2013.:15

⁷⁸ Donny Meertens, "Justicia de Género y Tierras En Colombia: Desafios Para La Era Del 'Pos-Acuerdo'" 102 (2016):.92

⁷⁹ Ibid.

⁸⁰ Meertens, "Justicia de Género y Tierras En Colombia: Desafios Para La Era Del 'Pos-Acuerdo.'":91

⁸¹ DANE, "Propiedad Rural En Colombia Un Análisis Con Perspectiva de Género e Integración de Fuentes de Datos" (Bogota, Colombia, 2022):.12

⁸² "of the men and women claiming protection for their abandoned farms, 78% of the men were owners before displacement and only 22% of the women29." See, Meertens, "La Dimensión de Género En El Desplazamiento Interno: Respuestas Institucionales En El Caso Colombiano.".:48

⁸³ Meertens.:43

testimonies from people around to confirm that she actually used to live there.⁸⁴ This nuanced problem was also highlighted by the CEDAW Committee in its general recommendation about women in conflict and post-conflict societies “Women’s limited and unequal access to property becomes particularly damaging in post- conflict situations, especially when displaced women who have lost husbands or close male relatives return to their homes to find that they have no legal title to their land and, as a result, no means of earning a livelihood.”⁸⁵

Another situation that creates an extra burden for women is the fact that because of the traditional gender roles they are more attached to the family and community, making it more painful and hard to experience forced displacement, but also explaining why there is a high percentage of women as head of families within the forced displaced people .⁸⁶ Often, their male partners were killed in the conflict, or they separate, which normally leaves the women in charge of the family.⁸⁷ This is why the displacement of women is not affecting them just as individuals, but rather as part of the community, which is a collective entity. The scholar Donny Meertens emphasizes this problem:

Despite the lack of formal recognition, rural women in many ways have been the foundation of the social fabric in the community, as well as the transmitters of productive cultures, traditional wisdom, conservation of seeds, food production and other practices related to peasant economies. These traditions are broken with forced displacement, with consequences not only for them but for future generations. Displacement and uprooting have a disproportionate impact by making it impossible to exercise these roles in society and in the application and transmission of their knowledge. Land restitution can have a positive effect on the conservation of this knowledge.⁸⁸

⁸⁴ Katherine Tabares Acevedo, “Aproximación a Las Barreras Jurídicas y Procedimentales En La Restitución de Tierras. Estudio de Caso: Mujeres de Ataco, Sur Del Tolima” 12 (2020), <https://doi.org/10.25100/lamanzanadeladiscordia.v15i2.10872.:177>

⁸⁵ CEDAW Committee, “General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations,” 2013.:17

⁸⁶ Meertens, “La Dimensión de Género En El Desplazamiento Interno: Respuestas Institucionales En El Caso Colombiano.”:45

⁸⁷Ibid.

⁸⁸ Meertens, “La Dimensión de Género En El Desplazamiento Interno: Respuestas Institucionales En El Caso Colombiano.”:50

In accordance with the same view, the Truth Commission report in its gender chapter acknowledges the different impact of the conflict on women, and also within the female population, including those that live in the rural areas, indigenous, and afro-Colombians. “This relationship, which is both material and productive as well as symbolic and spiritual, includes essential elements that connect the lives of rural women with nature, since it represents a means of life, work, their own economy and food sovereignty, family care and the environment, identity and autonomy, as well as cultural, medicinal and food knowledge”⁸⁹ The ancestral and spiritual practices that some communities have is heavily connected with their territory.

Due to historical gender discrimination and exclusion in Colombian society as well as the unique effects of the armed conflict on women⁹⁰, the transformative reparation measures have to include the application of a differential approach regarding special protection measures for women during and after the land restitution process, confirming their unique needs and placing emphasis on the abolishment of gender stereotypes and structural violence.⁹¹ In this regard, in order to have a transformative reparation for women, greater support for them is necessary to avoid pressure and intimidation towards them, while recognizing their role as active agents in the economy and the public sector. In other words, not leaving the idea of reparation alone in the physical restitution but accompanying it with public policies that aim for a social change and development, which should address structural discrimination and exclusion that target women, which would help create a more just and equitable society.⁹² In the words of the CEDAW Committee “Rather than re-establishing the situation that existed before the violations of women’s rights, reparation measures should seek to transform the structural inequalities that led to the violations of women’s rights, respond to women’s specific needs and prevent their reoccurrence.”⁹³ This thesis will propose some recommendations in this regard later on.

⁸⁹ Comision de la Verdad, “Mi Cuerpo Mi Verdad.”: 149

⁹⁰ Comision de la Verdad, “Mi Cuerpo Mi Verdad.” 131.

⁹¹ von Au, “The Transformative Potential of Gender Justice in the Land Restitution Programme in Colombia.”:231.

⁹² Nelson Camilo Sánchez and Rodrigo Uprimny Yepes, “Propuestas Para Una Restitución de Tierras Transformadora,” in *Tareas pendientes: Propuestas para la Aformulación de políticas Públicas de Reparación en Colombia* (Bogota, Colombia, 2010):243

⁹³ CEDAW Committee, “General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations.”:22

As it was shown, scholars, national institutions and courts, and regional organisms have recognized the complex gender dynamics and hierarchies that established a structural exclusion and discrimination that women have to face in “peaceful times” and that aggravate in war or conflict times. Therefore, the necessity of having a gender perspective in the post-restitution phase that acknowledges this situation by recognizing the different experience and need of women is required, which must be accompanied by a transformation process of the community⁹⁴, as part of the reparations for the victims but also to achieve a fair and peaceful society.

This is central for the post-restitution phase. It must be considered the structural discrimination and violence that women suffer, in order to create the conditions for them to have a transformative reparation, to be able to create a better life for them. This will be analyzed deeper later.

5. The Transitional Justice System

Transitional justice can be understood as a “legal institution through which it is intended to integrate enormous efforts, applied by societies to face the consequences of massive violations and widespread or systematic abuses in terms of human rights, suffered in a conflict, towards a constructive stage of peace, respect, reconciliation and consolidation of democracy”⁹⁵ It is a broad spectrum where a society does its best to consolidate peace and justice with judicial and non-judicial instruments. This system portrays the transitional moment that Colombia is having, not only to see it as an exceptional legal situation, but also to understand this as a moment of possibilities, to have structural changes that address historical violence, exclusion, and discrimination.

The rights of the victims of serious human rights violations, like the ones in the Colombian armed conflict, have been developing in the national and regional jurisprudence by the Colombian Constitutional Court and the InterAmerican Court of Human Rights.⁹⁶ The

⁹⁴ Weber, “From Victims and Mothers to Citizens: Gender- Just Transformative Reparations and the Need for Public and Private Transitions.” 98.

⁹⁵ Corte Constitucional, “Sentencia C-771,” 2011.: 4.1

⁹⁶ Corte Constitucional, “Sentencia C-715,” 2012.:4.1

Transitional Justice system is based on four fundamental aspects. The first one is the right to truth, which is defined by the Colombian court.

(i) the right of the victims and their families to know the real truth about what happened, (ii) to know who was responsible for the attacks and violations of human rights, and (iii) to investigate and publicly disclose the truth about the facts. Likewise, (iv) in the case of violation of the right to life, the right to the truth implies that the family of the victims must be able to know where the remains are of their relative. On the other hand, (v) the CIDH has highlighted the double nature of the right to the truth, which is not only preached with respect to the victims and their family, but also with respect to society as a whole to achieve the perpetuation of historical memory. Finally, (vi) the CIDH has demonstrated the intrinsic connection between the right to the truth, and the right to justice and reparation.⁹⁷

The second right in the system is the right to justice. It is the right that compels the state to prevent any violations of its citizen's rights, but in the case that it occurs, it is constrained to provide the citizens with due process before a competent judge, providing all the necessary legal tools to have a proper reparation.⁹⁸ It is a very complex justice system, that is exceptional to the regular criminal law procedure, however, the complexity and specification of the Colombian one won't be discussed here.

The third pillar of the system is the right of the victims to an integral reparation. In the words of the Colombian Court, this is:

The right to Integral reparation includes the adoption of individual measures related to the right to (i) restitution, (ii) compensation, (iii) rehabilitation, (iv) satisfaction, and (v) guarantee of non-repetition. In its collective dimension, it involves general satisfaction measures such as the adoption of measures aimed at restoring, indemnifying or readjusting the rights of the collectivities or communities directly affected by the violations that occurred.⁹⁹

⁹⁷ Corte Constitucional.: 4.3

⁹⁸ Corte Constitucional. 2012: 5.2.1

⁹⁹ Corte Constitucional, "Sentencia C-579." 2013: 7.2.3

This entails that the reparation is not just the restitution of the right, but the recognition of what happened (as the report of the Truth Commission does) and the creation and implementation of holistic mechanisms that aims “to guarantee that the organizations that perpetrated the crimes investigated are dismantled and the structures that allowed their commission removed, in order to prevent the continuous, massive and systematic violations of rights from being repeated”¹⁰⁰ This concept of integral reparation is central to the aim of this thesis.

The guarantees of non-repetition (GNR) are the fourth pillar in the transitional justice system, which aims to create different mechanisms, programs and reforms in order to avoid the relapse in violence. There have been different studies over the years that analyzed how likely are post conflict societies to relapse into violence, some established a 30%, some others showed how almost half of the countries studied relapsed.¹⁰¹ However, the important point here is to see how easy it is for a fragile post conflict society to repeat the same patterns that took it to a civil war, armed conflict, etc. This is how important the guarantees of non-repetitions are, and even though they are the last element in the transitional justice systems, it does not mean it is one with less value.¹⁰²

5.1 The 1448 law of 2011

The aim of this law is to create a system in which the victims of the conflict can have assistance and integral reparation within a transitional justice framework.¹⁰³ It is a recognition of the problem of the land and the responsibility of the state to repair the victims.¹⁰⁴

The era of recognition of a state debt begins, under a collective reality that becomes a reference for politics such as the Colombian armed conflict. On the one hand, the creation of the National System of Comprehensive Reparation Care for Victims (SNARIV), urges

¹⁰⁰ Corte Constitucional, “Sentencia C-715.” 2012: 5.2.3

¹⁰¹ JEREMY J. SARKIN, “TOWARDS A GREATER UNDERSTANDING OF GUARANTEES OF NON-REPETITION (GNR) OR NON-RECURRENCE OF RIGHTS VIOLATIONS: How GNR INTERSECTS TRANSITIONAL JUSTICE WITH PROCESSES OF STATE (RE)BUILDING, THE RULE OF LAW, DEMOCRATIC GOVERNANCE, RECONCILIATION, NATION BUILDING, SOCIAL COHESION AND HUMAN RIGHTS PROTECTION,” 2021.193.

¹⁰² SARKIN. 203.

¹⁰³ Congreso de la República de Colombia, “Ley 1448 Por La Cual Se Dictan Medidas de Atención, Asistencia y Reparación Integral a Las Víctimas Del Conflicto Armado Interno y Se Dictan Otras Disposiciones.” Art 1.

¹⁰⁴ Peña- Huertas, “From Transitional Justice to Post-Agreement Rural Reform: Many Obstacles and a Long Way to Go.”96.

all State entities to develop actions that repair the rights of victims, in active search for the principles of truth, justice and reparation that manifest the integral need of the population in terms of education, health, employment, legal truth, among others. This is in conjunction with the creation of an entity that directs general actions and creates an identification structure for the victim population. This entity is the Unit for Comprehensive Care and Reparation for Victims (UARIV).¹⁰⁵

This was the first step towards a public policy that seriously recognized the need to repair and assist the victims.

A short introduction of the land restitution process that the law brings helps conceptualize how it works. There are three different stages. The first one is the administrative one, where the person that is claiming the restitution must make a formal petition for the restitution, which also consists of the registration in the Single Registry of Forcibly Dispossessed and Abandoned Lands along with the land that they claim to be theirs and his/her family¹⁰⁶. After this, the second stage starts, where a judge is the one that determines if the procedure can continue or not, because there could be more people involved in the claimed land.¹⁰⁷ The final state is when the judge determines that the restitution is possible and orders it to be done. It is important to highlight that when this is not possible, the person can ask for an equivalent land or a monetary compensation.¹⁰⁸

The special articles that refer to women as subject of special protection in the procedure are from articles 114 to 118. The special focus that the law has on women is translated in a preferential procedure within the one explained here, this is, the judges should solve women's cases first and faster, and the fact that the title of the land when restituted should be in the name of both spouses when is the case. The article 13 establishes the special focus on women but does not elaborate it further. This law has had some subsequent laws and decrees that kept working on the topic. However, it has not had a real impact on farmers and peasant's lives.¹⁰⁹ Finally, this procedure is part of a transitional justice system, which means it is not a permanent procedure, it was meant to

¹⁰⁵ García-Salazar and Cotes-Cantillo, "El Enfoque de Género y La Ley 1448 En Colombia.":230

¹⁰⁶ Congreso de la República de Colombia, "Ley 1448 Por La Cual Se Dictan Medidas de Atención, Asistencia y Reparación Integral a Las Víctimas Del Conflicto Armado Interno y Se Dictan Otras Disposiciones." Art 76.

¹⁰⁷ Congreso de la República de Colombia. Art 91.

¹⁰⁸ Congreso de la República de Colombia. Art 97.

¹⁰⁹ Yeny Pino Franco and Yesica P. Naranjo2, "Mujeres Campesinas, Capitalismo e Implementación de Los Acuerdos de Paz En Dabeiba, Antioquia (Colombia)," 2018. 121.

last ten years, but the law 2078 of 2021 prorogated its mandate for ten more years, this is, until 2031, because it recognized the low efficiency in the system.

5.2 Transformative Reparation

The restitution of the land is a form of integral reparation, which is a right of the victims, and this must be “adequately, differentiated, transformative and effective.”¹¹⁰ The transformative effect of the reparation means that they “seek to contribute to the elimination of discrimination and marginalization schemes that contributed to victimization, under the understanding that transforming these conditions avoids the repetition of the facts and lays the foundations for reconciliation in the country”.¹¹¹ The reparation must go beyond the notion that the victim would be compensated by only the restitution of the right. When the violation of a right happened in a context of structural discrimination and violence, reparations cannot be to take things to the way they were.¹¹² Integral reparation is a concept that has been pointed out by the COIDH as a holistic accumulation of different public policies.¹¹³ The Court has established that:

The Court recalls that the concept of “integral reparation” (*restitutio in integrum*) implies the restoration of the previous situation and the elimination of the effects that the violation produced, as well as an indemnity as compensation for the damages caused. However, taking into account the situation of structural discrimination in which the events that occurred in the present case are framed and which was recognized by the State (*supra paras. 129 and 152*), the reparations must have a transformative vocation of said situation, in such a way that they have an effect that is not only restorative but also corrective. In this sense, a restitution to the same structural situation of violence and discrimination is not admissible.¹¹⁴

¹¹⁰ Congreso de la República de Colombia, “Ley 1448 Por La Cual Se Dictan Medidas de Atención, Asistencia y Reparación Integral a Las Víctimas Del Conflicto Armado Interno y Se Dictan Otras Disposiciones.” Art 25.

¹¹¹ EL PRESIDENTE DE LA REPÚBLICA DE COLOMBIA, “Decreto 4800,” 2011.

¹¹² Ruth Rubio-Marín and Clara Sandoval, “Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment,” 2011.1064.

¹¹³ Sánchez and Uprimny Yepes, “Propuestas Para Una Restitución de Tierras Transformadora.”:225

¹¹⁴ Corte Interamericana de Derechos humanos, “CASO GONZÁLEZ Y OTRAS (‘CAMPO ALGODONERO’) VS. MÉXICO.” Para 450.

The transformative aim of reparations has been incorporated in the jurisprudence of the Colombian Constitutional Court that contextualized it for the country's context.¹¹⁵ "Colombia not only intends to provide comprehensive reparation to the victims with the five measures, but also to prevent them from returning to their previous situation of material precariousness and discrimination. The transforming approach seeks, precisely, to transform these circumstances, since exclusion is a factor that generates the armed conflict."¹¹⁶ This is the guidelines that any reparation should seek to accomplish. This is why the post-restitution phase is vital to make this a reality.

5.3. The Post-restitution Phase: The Productive Projects Programs

This stage is situated after the judge's decision, within the land restitution process, that determined that the land that the solicitors were claiming is actually theirs, and ordered the material restitution of it. This phase is pivotal to ensure a transformative reparation for the victims, in order for them to be able to reintegrate into society. The law 1448 in article 73 establishes the principles by which the restitution must be guided. Two of them set the basis of the importance of the post-restitution phase: "1. Preferential. Land restitution, accompanied by post-restitution support actions, constitutes the preferred comprehensive reparation measure for the victims;"¹¹⁷ and "Stabilization. Victims of forced displacement and forced abandonment have the right to a voluntary return or relocation in conditions of sustainability, security and dignity."¹¹⁸ Furthermore, article 91 from the same legal document, establishes the content of the judicial decision by which the land restitution process is solved. It states that "The orders that are necessary to guarantee the effectiveness of the legal and material restitution of the immovable property and the stability in the exercise and effective enjoyment of the rights of the repaired persons;"¹¹⁹ In the decision, the judge establishes specific orders to different entities in order for the family that was restituted to be able to have stability in their land and in their new life.

¹¹⁵ Corte Constitucional, "Sentencia C-715," 715. 8.2.3.2 (iii) Para 6.

¹¹⁶ Corte Constitucional, "Sentencia T-054," 6 Para 15.

¹¹⁷ Congreso de la República de Colombia, "Ley 1448 Por La Cual Se Dictan Medidas de Atención, Asistencia y Reparación Integral a Las Víctimas Del Conflicto Armado Interno y Se Dictan Otras Disposiciones." Art 73, 1.

¹¹⁸ Congreso de la República de Colombia. Art 73, 4.

¹¹⁹ Congreso de la República de Colombia. Art 91, P.

This is the legal basis of the post-restitution phase and the role of the government to accompany the victims, which was also developed by the Colombian Constitutional Court as well.

Land restitution cannot be limited to the simple delivery of a portion of the land. The peasant people, like the different ethnic groups that inhabit the national territory, work and live from the land. For them, their territory is much more than the place where their house is built. For this reason, the properties awarded to them must meet minimum conditions of habitability, productive vocation and access to public services. The adjudication processes must, for their part, include the resources and the physical and intangible elements necessary to allow them to develop agricultural or economic activities, as the case may be, which are essential to guarantee their vital minimum, as well as to carry out work, social, spiritually and culturally¹²⁰

This is the legal basis of the productive project programs are located (PPP), with its jurisprudence. It is an order from the judge to the Land Restitution Unit to create a PPP to the restituted family.

The PPP “Seek the sustainability of the post-judgment Land Restitution policy through actions for the social and productive reintegration of restituted individuals, families and communities”¹²¹ The URT is the central entity in charge of the creation and implementation of the PPP. In 2019 the Unit created guidelines for this task, in the Agreement 46, which gives the explanation of the different steps that the different entities involved in the land restitution process must follow, along with the definitions of different concepts and different focuses that authorities and functionaries must take into account.¹²²

The first part of the Agreement brings definitions. These definitions are important as they recognize some realities in the post-restitution phase, however, as it will be analyzed later, they fall short to give a solution for these specific problems. 1)The affirmative actions, as a way to help specific groups that have been affected by inequality and discrimination.¹²³ 2) The care

¹²⁰ Corte Constitucional, “Sentencia T-558,” 2015. Para 5.5

¹²¹ Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, “Programa Proyectos Productivos Para Población Beneficiaria de Restitución de Tierras,” 2015.

¹²² Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, “Acuerdo 46,” 2019.

¹²³ Ibid, Art 1 Para 1.

economy is related to the work that is done in the house with no economic retribution.¹²⁴ 3)And lastly the Subject of Special Protection, which are certain people that because of some conditions they need the positive actions in order to reach a real equality.¹²⁵

The first step in the creation of a PPP is the design of the productive project itself, which is divided into “(i) diagnosis; (ii) agreement; (iii) formulation; (iv) feasibility; and (v) socialization.”¹²⁶. Here, with the technical accompaniment from the URT and other entities relating to the topic and family, they will discuss the different possibilities based on the territories, agricultural work in the region, possible close networking, and financial viability among other factors.¹²⁷ After this, there is a socialization of the options that suits the land and the family. Art 30 encourages the participation of all members of the family. Finally, the implementation phase is the actual materialization of the project that was chosen to be made, and its verification is in charge of the URT.¹²⁸

5.4 Legal Feminist Critique

The legal feminist critique can be said to base its analysis on asking the “women question”. This is, “is designed to identify the gender implications of rules and practices which might otherwise appear to be neutral or objective”.¹²⁹

Feminist legal critique also seek to find the proper response that law must have to the different experiences of women in society, the unequal power dynamics that puts them in a disadvantaged position. “Women but not men have been systematically subordinated because of their sex—unable to vote, to own property, or to enter into legal contracts. Women are much more at risk to be raped. Women are much more likely to be responsible for caregiving in the family. Women are likely to earn less for the same work, and likely to be segregated in jobs that pay less than work that is male dominated.”¹³⁰ It is not only about the different effect that “neutral” laws can

¹²⁴ Ibid, Art 1 Para 7.

¹²⁵ Ibid, Art 1 Para 15.

¹²⁶ Ibid, Art 25.

¹²⁷ Ibid, Art 29.

¹²⁸ Ibid, Art 32.

¹²⁹ Katharine Bartlett, “FEMINIST LEGAL METHODS” 103 (1990).837.

¹³⁰ Francis and Smith, “Feminist Philosophy of Law.”

have on women, but also, what kind of affirmative actions does the law have to create, in order to try to balance in equality terms, the unbalances that exist in society. It must face complex structural power relations to properly address women's different needs.

6. Post-restitution Through the Lens of the Feminist Critique.

The challenges that women face in the process can be better analyzed in the post-restitution stage, as they have to rebuild their new life but face the same gender stereotypes and rules. It is the moment to create a better opportunity for a transformative reparation. Structural changes in the imagery of the society and culture must be addressed in order for this to happen.

The thesis will analyze a case study in the subregion of Montes de Maria in the Caribbean region of the country. I explain the situation for the families after the restitution and how the PPP has been working there. I then apply the legal feminist critique to analyze the Agreement 46 of 2019 by the URT, the legal document that establishes the new guidelines for the PPP. Finally, I argue how to improve the PPP's gender dispositions, based on a feminist critique, as this can be beneficial for the women in Montes de Maria.

Montes de Maria is located in the northern part of the country. Due to the high level of forced internal displacement in the XX century most of the population live in the city, in contrast with the rest of the country that lives in countryside.¹³¹ It has 8,26% of indigenous communities is the second region with most black communities in it (Afrocolombians, Raizales¹³² and Palenqueros¹³³). Furthermore, it is the poorest region in the country.¹³⁴

In a region with a high concentration of land – and historical livestock and agricultural credentials – this data reveals a reconfiguration of the productive apparatus and

¹³¹ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, “COLOMBIA ADENTRO Relatos Territoriales Sobre El Conflicto Armado CARIBE,” 2022. 41.

¹³² People native from the Colombian islands Sna Andres, Providencia and Santa Catalina. See Silvia E. Torres, “Los Raizales: Cultura e Identidad Angloafrocaribeña En El Caribe Insular Colombiano,” n.d.

¹³³ “The palenquera community is made up of the descendants of the enslaved who, through acts of resistance and freedom, took refuge in the territories of the North Coast of Colombia since the 15th century called palenques” see Comunidades negras, afrocolombianas, raizales y palenqueras,” Unidad para las Víctimas, September 1, 2015, <https://www.unidadvictimas.gov.co/es/comunidades-negras-afrocolombianas-raizales-y-palenqueras/277>.

¹³⁴ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, “COLOMBIA ADENTRO Relatos Territoriales Sobre El Conflicto Armado CARIBE.” 42.

inefficiency in the exploitation of land, whose excessive hoarding has been one of the structuring axes of the war in Colombia. This is a situation that hits hard the daily life of the peasant and ethnic populations of the Caribbean, who develop their life projects primarily in the rural world.¹³⁵

This region represents 22,75% of the country's population, however, it has 28,38% of the victims of the armed conflict.¹³⁶ The subregion of Montes de María has a strategic location, it is a place to take people and products out and inside the center of the country to the coast, which has been a crucial point for the conflict where different guerrilla groups and paramilitary have strongly been present.¹³⁷ This last group has had a very strong influence in the region, and they work with an alliance of drug cartels, stock breeders, political elites, and other big landowners in the region.¹³⁸ The forced internal displacement was due to different reasons, among the massacres, killings and generalized violence in the region,¹³⁹ but also the existence of a structural system made to favor big industries to accumulate land, like mining, plantation of bananas and African Palm.¹⁴⁰

According to the Land Restitution Unit¹⁴¹, 16.940 hectares have been restituted in the fifth teen municipalities that conform to the subregion of the Montes de María, which have benefited 3.485 people.¹⁴² The case study for this thesis is based on 3 reports. The first one is made by the Observatory for Restitution and Regulation of Agrarian Property Rights (an investigation network from different Colombian universities). The study takes seventy-nine restitutions decisions by judges that resolved 234 cases, and based on field work, and interviews, it analyzes the situation of the restituted families after the restitution of their land. It is important to notice, "Of the 18 people interviewed, 14 (73.7%) are men and 5 are women (26.7%), (in one of the cases the sentence fails in the name of a couple), a fact consistent with two very visible

¹³⁵ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición. 43.

¹³⁶ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición.

¹³⁷ Comisión Colombiana de Juristas, "¿Por Qué Los Montes de María?"

¹³⁸ Paola García-Reyes et al., "Informe Sobre El Estado Actual e Impactos Del Proceso de Restitución de Tierras En Montes de María," 2015. 10.

¹³⁹ García-Reyes et al. 12.

¹⁴⁰ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, "COLOMBIA ADENTRO Relatos Territoriales Sobre El Conflicto Armado CARIBE." 165.

¹⁴¹ Public entity created by the law 1448/11 to organize and direct everything related to the land restitution process.

¹⁴² Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, "Más de 16.000 Hectáreas Se Han Restituido En Los Montes de María," 2021.

phenomena in the restitution process: ownership and restitution are fundamentally male deeds”.¹⁴³

The people that were interviewed were farmers that work in agriculture or in some cases also bred small animals. It is important to highlight the role of the care work as a woman’s job in this subregion, as “In the case of the women interviewed, the occupation they mention is doing housework, while field work is the responsibility of their partners or children”¹⁴⁴ which shows the division of productive and care work is a reality in the rural areas. This makes women dependent on their male partner or relatives.

The conclusion of the three studies goes in the same direction. Regarding the development of the PPP, some of the interviewed state that they were not satisfied with the PPP because they did not have a consistent help in their projects.¹⁴⁵ This critic correlates with the study’s conclusion, that states “Although the process is accompanied by the delivery of productive projects, it is not clear how these are being implemented or if they allow the sustainability of the restitution”¹⁴⁶ likewise, a second study¹⁴⁷ where they checked the post-restitution state of other families and the impact of the PPP, came to the same conclusion, that their realities have not improved significantly, and that on some occasions the accompaniment in their PPP is not long enough to transform their own stability. Furthermore, it also established that the number of people that got their land back is less than the number of solicitors.¹⁴⁸

A similar conclusion was made by a third study that establishes that “the process seems to have had a positive but fragile impact on a very small part of the population affected by violence. This does not invalidate her character as a good politician, but it does call into question her ability to face a problem of massive dimensions.”¹⁴⁹ There is also a lack of institutional presence in the

¹⁴³ García-Reyes et al., “Informe Sobre El Estado Actual e Impactos Del Proceso de Restitución de Tierras En Montes de María.” 27.

¹⁴⁴ García-Reyes et al. 29.

¹⁴⁵ García-Reyes et al. 35.

¹⁴⁶ García-Reyes et al. 39.

¹⁴⁷ Observatorio de Territorios Étnicos y Campesinos, “Informe de Seguimiento a Sentencias y Órdenes de Procesos de Restitución de Tierras En Montes de María,” 2018.

¹⁴⁸ Observatorio de Territorios Étnicos y Campesinos. 8.

¹⁴⁹ Paola García-Reyes and Belén Pardo-Herrero, “CENSO DE POBLACIÓN BENEFICIARIA DEL PROCESO DE RESTITUCIÓN DE TIERRAS EN LOS MONTES DE MARÍA,” 2016.43.

region, that does not allow the PPP to work properly and the families to be economically sustainable “Indeed, the institutional presence is almost nil. 95.5% of those surveyed said that their properties did not have any public service and 84.9% said they did not have a water reservoir or an irrigation district. The restitution has not had any impact in this aspect, 188 (91%) of those surveyed said that no public works had been started on their properties after the ruling.”¹⁵⁰ There has not been a specific analysis of how women’s lives have changed with the PPP.

It is important to highlight that neither of the three studies researched how the life of the women after the restitution has been, and what the gender impacts of the PPP are. The lack of research with a gender focus is also central to understanding the current situation in the post-restitution phase, as there is not a way to see how women’s lives are being affected in this case. It is clear that the PPP is not working very well in the Montes de Maria region, and there is still a lot of work to be done.

However, from the studies cited above, some things are clear about the case in Montes de Maria. The problem of the land ownership it is still dominantly male, as the 73% of the people restituted interviewed in one study¹⁵¹ are men and 74% in the other¹⁵². Second, is that women are still relegated to care work, which blocks them from working the land or participating in decision-making spaces.

The studies in which this case study is based are from 2015, 2016 and 2018, which is before the Agreement 46 of 2019, in which the URT created new guidelines to follow in the creation and application of the PPP. In these new guidelines the URT tried to apply a gender focus and the creation of affirmative actions for women. Can the new provisions of this Agreement make a difference in the impact on women’s lives? A feminist legal analysis would be done to the Agreement in order to answer this question. There has not been a study analyzing the influence of these new guidelines on the lives of women yet.

¹⁵⁰ Ibid.

¹⁵¹ García-Reyes et al., “Informe Sobre El Estado Actual e Impactos Del Proceso de Restitución de Tierras En Montes de María.” 27.

¹⁵² García-Reyes and Pardo-Herrero, “CENSO DE POBLACIÓN BENEFICIARIA DEL PROCESO DE RESTITUCIÓN DE TIERRAS EN LOS MONTES DE MARÍA.” 15.

It has to be recognized first of all that the new guidelines that the Agreement made tried to have a more progressive view in the PPP creation and implementation. It took into account diverse issues important to take in this kind of programs and also in any kind of legal regulation. It defines care work, gender focus and affirmative actions. It does guide the work of the entities and personnel that work with the beneficiaries of the restitution to have a differential focus on its work, including the gender one, but it still falls short on this purpose for different reasons. This will be analyzed in more detail.

The first part of the analysis will be focused on what are the specific affirmative actions for women's representation in the PPP. The second one would focus on the care economy and the way the documents define and address it, and the last one will see how the document addresses the cultural change that they document mentions.

6.1 Affirmative Actions

Affirmative actions “As defined by the Constitutional Court, they are policies or measures aimed at favoring certain people or groups, in order to eliminate or reduce social, cultural or economic inequalities and achieve that members of an underrepresented group, who have been discriminated against, have greater representation or inclusion.”¹⁵³ There is a formal recognition that there is a need for extra mechanisms to help achieve de facto equality for certain groups of people. The way to implement these actions within a gender focus is explained in art 41 of the same text. One of the topics this affirmative action mentions is regarding the choosing of the representation of the family.

Families that are the beneficiaries of the PPP have the autonomy to select its own representatives, that would be the face of the family interest in the creation and application of the PPP.¹⁵⁴ It is part of the “operative committee” which is the decision-making body of the finances and implementation of the PPP.¹⁵⁵ Regarding the selection of the family's representative, art 41

¹⁵³ Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, “Acuerdo 46.” Art 1.

¹⁵⁴ Ibid, Art 17.

¹⁵⁵ Ibid, Art 16.

(affirmative actions) just mentions that “The election of two representatives will be allowed, promoting the participation of women.”¹⁵⁶ There is no obligation of having a woman in the representation of the house, it is just a suggestion of having one as a representative, but ultimately it would be up to the family to decide. This article falls short in the purpose of the affirmative action’s goals, which is to achieve de facto equality, because when leaving the option up to the family there is a high probability that they choose according to traditional gender roles, which mandates that the public sphere and economic matters are men’s concerns as the breadwinner, which will leave the women with less decision-making power. It is important to respect family autonomy in this process, however, the aim of the affirmative actions is to acknowledge the disadvantaged position of women in rural Colombia in order to create a mechanism to reach de facto equality.

The gender roles and stereotypes are a very salient issue to address for women to be able to have their rights fulfilled. In academia¹⁵⁷, there has been a recognition of the important role that they play in society “gender stereotypes often embody dominant social and cultural norms, meaning the formal and informal rules that govern the values, beliefs, attitudes and behaviors that a particular community or culture deems acceptable.”¹⁵⁸ This creates unbalanced power dynamics that can lead to violence and discrimination in different ways. Colombian is not an exception to this reality, in fact, the way women’s role in society is determined by these gender roles, within a masculine dominance, has been studied and recognized.¹⁵⁹ This is why the article does not respond properly to the problem of women participation, it does not give enough tools to face the structural disadvantage of women with merely recommending their participation.

The same women who are supposed to benefit from these programs are the ones that criticize it also by questioning “welfare measures, especially in productive projects that traditionally reiterate gender stereotypes, involving women in domestic and care work, not assimilating them

¹⁵⁶ Ibid, Art 41 (1) para 2.

¹⁵⁷ von Au, “The Transformative Potential of Gender Justice in the Land Restitution Programme in Colombia.”

¹⁵⁸ Cusack, “The CEDAW as a Legal Framework for Transnational Discourses on Gender Stereotyping.” 124.

¹⁵⁹ Comision de la Verdad, “Mi Cuerpo Mi Verdad.” Pag 115.

as an equally productive subject”¹⁶⁰ Montes de Maria is a deeply patriarchal society, in which these soft recommendations will not change the life of women and will not allow them to have a voice, not even in their own house.¹⁶¹

6.2 Care Economy

The second part of the analysis is related to the definition and treatment of the care work. Art 1 defines it as “It refers to the unpaid work that is carried out in the home, related to maintenance of the home, care for other people in the home or the community and the maintenance of the paid workforce, in accordance with article 2 of Law 1413 2010. For the design and implementation of Productive Projects it is important to analyze that the participation of rural women in peasant, family and community agriculture oscillates between productive and reproductive work.”¹⁶² Again, it is important to recognize the importance of the definition and the existence of care work that the document makes, however, it does not give an answer to the problem.

First of all, it reinforces the gender stereotype that dictates that care work is a women’s work, which is one of the reasons of the subordinate position of women in the family and in society¹⁶³ and their economical dependency of a male partner or a family relative.¹⁶⁴ This is a salient topic, especially in Montes de Maria, as it also the main source of the economical and psychological violence that women suffer by their male partners “in the framework of relationships where the work done by women does not have the same value as that done by men and they are the ones who consider themselves owners of common goods.”¹⁶⁵ The cultural image that women have to take care of the care work not only makes them economically independent, but with no way out for the internal violence in the family, which has a very high percentage in the region, and

¹⁶⁰ Cardoza-Sanchez et al., “LA PAZ SERÁ CON LAS MUJERES RURALES O NO SERÁ. Vigencia Del Acuerdo de Paz, Políticas Públicas Prioritarias, Perspectivas de Implementación e Incidencia Desde Las Orga- Nizaciones de Mujeres Campesinas.” 7.

¹⁶¹ Cerón-Cáceres, “Violencias Contra Las Mujeres y Derechos Humanos En Montes de María.” 57.

¹⁶² Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, “Acuerdo 46.” Art 1 para 7.

¹⁶³ Laura Victoria Gómez-Correa, “RELACIÓN ENTRE LAS DESIGUALDADES DE GÉNERO Y LA ECONOMÍA DEL CUIDADO EN ENTORNOS RURALES EN COLOMBIA” (Bogota, Colombia, PONTIFICIA UNIVERSIDAD JAVERIANA, 2020).

¹⁶⁴ Ximena Peña and Camila Uribe, “Economía Del Cuidado: Valoración y Visibilización Del Trabajo No Remunerado” (Ediciones Uniandes, 2013). 4.

¹⁶⁵ Cerón-Cáceres, “Violencias Contra Las Mujeres y Derechos Humanos En Montes de María.” 65.

normalizes in society.¹⁶⁶ This situation does not allow them to have a new and better life after the restitution.

Second, the article does not provide a solution or a way to address it, nor does it do it in the rest of the legal document. It does not provide an answer on what to do with the care work that has kept women outside the labor market, and in this case, how to address it in order for women to be an active participant in the PPP. In the legal feminist terms, asking the woman question in this case is to see that the law is making an assumption based on a patriarchal imaginary that women are the ones that have to take responsibility for the care work.¹⁶⁷ Which brings all the consequences already explained above.

The importance of the care work and its influence on women's lives is backed up by data from diverse sources¹⁶⁸, as the Center of economical and regional studies from the Colombian Republic Bank says, "rural women continue to have higher unemployment rates than men and urban women, as well as lower labor market participation than their urban counterparts."¹⁶⁹ This proves the fact that rural women dedicate the majority of their time into unpaid care work,¹⁷⁰ which is more difficult in rural areas than in cities because of the lack of basic services and technological advancements are lagging. Another study based on how women and men use their time (between unpaid care work and productive work) for the period of 2012-2015 shows that women use 60 % of their time in unpaid care work, in contrast with 18% of men using their time for unpaid care work. ¹⁷¹ Navigating the inherent disadvantages of having low market participation and spending so much time doing unpaid care work must be addressed in order for the women in Montes de Maria to have a transformative reparation.

¹⁶⁶ Ibid, 58.

¹⁶⁷ Bartlett, "FEMINIST LEGAL METHODS." 848.

¹⁶⁸ "La Economía del Cuidado, un enfoque estratégico para disminuir la desigualdad y construir paz en Colombia | Programa De Las Naciones Unidas Para El Desarrollo," UNDP, accessed August 1, 2023, <https://www.undp.org/es/colombia/speeches/economia-del-cuidado-un-enfoque-para-disminuir-la-desigualdad>.

¹⁶⁹ Andrea Otero-Cortés, "El Mercado Laboral Rural En Colombia, 2010-2019 *," 2019. 1.

¹⁷⁰ Otero-Cortés. 5.

¹⁷¹ Genny A. García-Vásquez and Carlos M. Macías, "Economía Del Cuidado: Comparación de Las Encuestas de Usos Del Tiempo Colombia – Algunos Países de América Latina," 2022. 10.

6.3 Progressive Cultural Change

The document mandates the necessity to have a gender focus on the PPP in these terms: “It seeks to analyze, make visible and eliminate the inequalities that the division of behaviors, values, and beliefs based on sex, gender identity, and sexual orientation have generated. In accordance with article 114 of Law 1448 of 2011, the Unit will work with emphasis on recognizing the contribution of rural women to development and productive rural activities.”¹⁷² Within the same article it also calls for a progressive cultural change regarding the gender roles through the “...development of activities to sensitize the beneficiaries and other people involved in their implementation that lead to progressive cultural changes in gender roles in rural areas.”¹⁷³ It is very important that the article calls for this kind of awareness that there is a need for change, however, it does not specify how to do it, nor which entity or body will be in charge of making it a reality.

The structural violence and discrimination that women have suffered are based on a patriarchal imaginary in the culture that portrays the gender stereotypes and roles that puts women in a subordination position, which blocks them to have their rights fulfilled, and in this case, to have a transformative reparation. This topic has to be clearly defined and determined the way to address it in order to be implemented effectively. The violence against women in Montes de María is extremely high. It ranges from intrafamily violence, economical, psychological, and physical violence.¹⁷⁴ The numbers are very worrying by themselves, without counting the number of women that won't make a formal report because of fear or distrust in the judicial system or any other reason.¹⁷⁵ But the central issues in this problems is that is basically part of the culture, in the imaginary of the men that sees it as their right, and from the women's perspectives, that are used to live around this from an early age.¹⁷⁶ The cultural change is a mandate, not only for women to be able to fulfil their rights, but in the Montes de María context, it is also the way to save women's life.

¹⁷² Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, “Acuerdo 46.” Art 4 (3).

¹⁷³ Ibid.

¹⁷⁴ Cerón-Cáceres, “Violencias Contra Las Mujeres y Derechos Humanos En Montes de María.” 57.

¹⁷⁵ Cerón-Cáceres. 60.

¹⁷⁶ Ibid, 65.

6.4 Proposals for a Transformative Reparation from a Feminist Perspective

In this section, based on the analysis already made, I will present recommendations to the problems that Agreement 46 has. It would be divided in the same categories: affirmative actions, care economy and progressive cultural change.

6.4.1 Affirmative Actions

Art 1 of the Agreement states that the definition that the legal document uses is the one defined by the Constitutional Court in the decisions C-964 de 2003 and C-371 de 2000.¹⁷⁷ In this last one, the court analyzes the constitutionality of the quota law for the participation of women in politics; in this regard, the court defined these mechanisms as affirmative action or positive discrimination mechanisms that aim to achieve de facto equality for historically discriminated groups.¹⁷⁸ This is the definition of the temporary special measures that the CEDAW created in Article 4. The name of this mechanism varies from country to country, like “positive action”, “affirmative action”, “positive discrimination” among others.¹⁷⁹

The goal of the special measures is “creating access for women and overcoming their underrepresentation in certain fields, at redistributing resources and power in particular areas, and/or at initiating institutional change to overcome past or present discrimination and accelerate the achievement of de facto equality.”¹⁸⁰ In this particular case, field, or area that the measure in the Agreement 46 wants to improve is women’s participation. Specifically, it addresses their role in the decision-making body for the PPP. Family’s representation in the operative committee is crucial, as is the place where all the decisions are made regarding how to face their new life. In order for affirmative action to achieve de facto equality, it cannot just recommend the family to have a woman as their representative, it must mandate that at least one woman from the family be one of their representatives.

¹⁷⁷ Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, “Acuerdo 46.” Art 1.

¹⁷⁸ Corte Constitucional, “Sentencia C-371,” 2000. VII Para 14.

¹⁷⁹ CEDAW Committee, “General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures,” 2004. Para 17.

¹⁸⁰ CEDAW Committee. Para 33.

An analogy with other temporary special measures can be made here. The most common measures are the quotas, which is the obligation for states and political parties to have a certain percentage of women in their list or in some positions.¹⁸¹ In the first year that they were implemented in Colombian elections, the quotas had an important influence in the percentage of women participating in the elections.¹⁸² In the same way, there should be an obligation to have at least one woman as a representative of the family, which would also be part of the operative committee. It cannot not be left up to the family to decide, it cannot be just a suggestion in the Agreement. It must be an obligation. Women in the Montes de Maria need to be able to control their life, the way the PPP are leading their reincorporation in the community, and have a voice in their own work. It is an essential mechanism to improve women's lives.

6.4.2 Care Economy

The recommendations regarding the care economy are divided into two different ones. One would be aiming to suggest a solution to the work that the care economy mandates, and the other one will focus on the cultural changes that are needed regarding the social image that the care work is a “women's work”.

The scholar Donny Meerten mentions the importance of women's networks in the post-restitution phase in order to be able to return to their land and have a support system in their reintegration in the territory.¹⁸³ To concretely materialize this, the thesis proposes the creation of women's cooperatives that will not only be an important network and support for the reintegration and the returning women to their land, but also as an important way to deal with the care work. The cooperatives and the solidarity economy has gotten important attention worldwide recently.¹⁸⁴ Following the International Labour Organization definition, the social and solidarity economy “encompasses enterprises, organizations and other entities that are engaged in economic, social, and environmental activities to serve the collective and/or general interest,

¹⁸¹ Diana Esther Guzmán and Paola Molano, “Ley de Cuotas En Colombia: Avances y Retos Diez Años de La Ley 581 de 2000,” 2012. 7.

¹⁸² María I. Tula, “Mujeres y Política. Un Panorama Sobre La Adopción de Las Cuotas de Género y Sus Efectos En América Latina y Colombia*,” n.d. 27.

¹⁸³ Donny Meertens, “Between Dispossession and Restitution: Reflections on Gender, Justice and Return in the Colombian Caribbean Coast” 52 (2016). 67.

¹⁸⁴ General Assembly of the United Nations, “Resolution Adopted by the General Assembly on 16 December 2021 Cooperatives in Social Development,” 2021.

which are based on the principles of voluntary cooperation and mutual aid, democratic and/or participatory governance, autonomy and independence, and the primacy of people and social purpose over capital in the distribution and use of surpluses and/or profits as well as assets.”¹⁸⁵ The cooperatives are inside this system.

The UN General Assembly resolution from April 2023 promotes the solidarity economy as a way to achieve sustainable development. It recognizes that “the social and solidarity economy can play a key role in eliminating poverty and catalyzing social transformation.”¹⁸⁶ Furthermore, these cooperatives can also be used as an important tool to address the care work. Globally the care work is majoritarian taken by women, this creates an extra burden for them with no clear solution¹⁸⁷, and is also the case in the Montes de Maria. In the public sector there are not enough entities that provide care work services, (inexistence in the region), and the services provided by the private sector are expensive and out of reach for the families in the region that have a high poverty percentage.¹⁸⁸ The cooperatives aim to fill this gap, as a third way, in order for the most vulnerable groups to have access to these services.¹⁸⁹ Furthermore, it is also an obligation to the states under the CEDAW, which in its article 11 establishes “To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities”¹⁹⁰

The cooperatives that can be created within the micro-zones that the URL defines for the creation of the PPP can be used as a way to provide these care services. The creation of the cooperatives should be articulated with the URL and have it as part of the PPP, but also articulates with local authorities and the national government for fundings, and even look for

¹⁸⁵ International Labour Organization, “Resolution Concerning Decent Work and the Social and Solidarity Economy,” 2022. II, 5.

¹⁸⁶ General Assembly of the United Nations, “Resolution Adopted by the General Assembly on 18 April 2023,” 2023.3

¹⁸⁷ “Care Provision through Cooperatives and the Wider Social and Solidarity Economy (SSE),” Document, ILO, January 1, 2018, http://www.ilo.org/global/topics/cooperatives/areas-of-work/WCMS_618212/lang--en/index.htm.

¹⁸⁸ Cerón-Cáceres, “Violencias Contra Las Mujeres y Derechos Humanos En Montes de María.” 27.

¹⁸⁹ “Care Provision through Cooperatives and the Wider Social and Solidarity Economy (SSE).”

¹⁹⁰ United Nations, “Convention for the Eliminations of All Forms of Discrimination against Women,” 1979. Art 11 (c)

possible partnership with different cooperatives already existing in the region that may include care work services in their purposes or alike activities.¹⁹¹

There is a good example of how cooperatives can be very useful for women's empowerment and fulfillment of their rights. There is a women's cooperative in India (Sangini) that was created by SEWA, which is the informal women's workers union, in 1968.¹⁹² The cooperative takes full care of the children from the associates, they provide nutrition, health, education, for a very low price. This allowed women to be able to work, in fact, "More than 60% of the mothers who use the cooperative increased the number of working days thanks to the access to these care services, which increased their income."¹⁹³ The success of the cooperative has diverse reasons, as the self-government from the institution but also the connections it has with other systems "The cooperative links to local municipal health officers for government health programs focused on immunization, micronutrient supplementation and growth monitoring. The Sangini Cooperative works closely with SEWA's health cooperative to organize community health camps, counseling sessions, education and awareness sessions with parents."¹⁹⁴ These cooperatives would allow women in Montes de Maria to have more time to work their land, to be more active participants in the PPP, to be able to travel and commercialize their products, to fulfill their agency. It could be an important step to stop the economic violence that they suffer, that triggers a lot of other ones.

The second part of this recommendation, which is the education and awareness that care work is not a "women's work" can be linked with the progressive cultural change proposal, as it has to do with traditional gender roles. Therefore, it would be part of the educational change from the next recommendation.

6.4.3 Progressive Cultural Change

¹⁹¹ Paula Herrera-Idárraga, Helena M. Hernández Bonilla, and Tatiana Gélvez Rubio, "RECOMENDACIONES DE POLÍTICA CUIDADO EN COLOMBIA: CONTEXTO Y PERSPECTIVAS," 2020. 13.

¹⁹² Ibid.

¹⁹³ Ibid, 14.

¹⁹⁴ SEWA, "SEWA Sangini Cooperative Providing Child Care for Women Informal Workers During the COVID-19 Pandemic in India," 2022.3.

Art 5 of the CEDAW brings an important obligation to the states regarding the cultural change “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”¹⁹⁵ The article recognizes that the violence against women and their subordinate position in society are linked to the cultural image of the role and position of women and men, which has to be addressed and progressively changed. The reality of rural Colombia mirrors this situation, when even in “peaceful times” women are subject to different kinds of discrimination and violence.¹⁹⁶ This is why the cultural change is so central to the transformative reparation for women to be able to fully participate in the PPP and be able to reintegrate into a society. It is necessary to address the root causes of the systems that block them to fulfill their potential and rights.

This is also part of the recommendation from the Truth Commission regarding the necessity to have a transformation in the culture that eradicates sexist stereotypes that perpetuates the subordinate position of women in society¹⁹⁷ in order to have a peaceful coexistence. In this regard, this thesis proposes to have an education program within the PPP that would be mandatory to all family members to attend in order to continue the program. This would be a program that creates awareness of the structural discrimination that women suffer, as well as the traditional gender roles that rules the imaginary of society, which creates an extra burden in women’s daily life, as well as impediments in their life choices. In this regard, there would be an emphasis that the care work is not just a woman's work, but a responsibility that the family needs to share and take on as a whole. The program would seek what the UN has called gender transformative education, which “examine, challenge, and change harmful gender norms and imbalances of power that advantage boys and men over girls, women and persons of other genders.”¹⁹⁸ This education is not only a job for schools and teachers, but all parts of the society are involved in the awareness of this situation and how to change it from different approaches.

¹⁹⁵ United Nations, “Convention for the Eliminations of All Forms of Discrimination against Women,” Art 5.

¹⁹⁶ Comision de la Verdad, “Mi Cuerpo Mi Verdad.” 116.

¹⁹⁷ Comision de la Verdad. 211.

¹⁹⁸ UNICEF, “GENDER TRANSFORMATIVE EDUCATION Reimagining Education for a More Just and Inclusive World,” 2021. 6. 18.

Social norms that block women's agency are not only detrimental for them, but also for the growth of society as a whole.¹⁹⁹

The URT would be in charge of creating this educational module or system, in partnership with education institutions and civil society organizations or non-governmental organizations that have been working on these issues, which can give a better understanding on how to develop these programs and the content of the curriculum and way of teaching it. The awareness-education program has to be integrated as part of the PPP, as it is a crucial issue in the participation of women in it, and to be able to have a transformative reparation. Raising gender-awareness²⁰⁰ can be a powerful tool to create a better life for them, and in this way fulfill the guarantees of non-repetition, as one of the pillars of the transitional justice system. This change is both part of the Colombian obligation as part of the CEDAW convention, and also one of the recommendations from the Truth Commission, that even though these last ones are not mandatory, they are crucial in order to change the factors that have perpetuated the conflict for so long. An intersectional approach must be considered in the creation and application of these recommendations in order to answer women's special needs according to their different identities, as it could be indigenous, afros, palenqueras, LBTIQ+ community etc.

The cultural change is central for women to be able to have a better life, to fully participate in the PPP and have a transformative reparation. Their label as second level citizens, and the normalization of the violence that they suffer is a crucial aspect to address in any reparation mechanism.²⁰¹ The region's patriarchal culture is strong and violent, the community has to change this image in order for women and society to live in peace. All these changes have to be addressed by Agreement 46 to be implemented in the PPP, as part of the reparation measure that the land restitution process entails.

¹⁹⁹ United Nations and Development Programme, "2023 GENDER SOCIAL NORMS INDEX Breaking Down Gender Biases Shifting Social Norms towards Gender Equality," 2023.

²⁰⁰ "Gender awareness raising aims to promote and encourage a general understanding of gender-related challenges, for instance, violence against women and the gender pay gap. It also aims to show how values and norms influence our reality, reinforce stereotypes and support the structures that produce inequalities" see European Institute for Gender Equality. "Gender Awareness-Raising." Accessed June 7, 2023. https://eige.europa.eu/gender-mainstreaming/tools-methods/gender-awareness-raising?language_content_entity=en.

²⁰¹ Cerón-Cáceres, "Violencias Contra Las Mujeres y Derechos Humanos En Montes de María." 65.

One possible counterargument for what this thesis wants to propose is that the Colombian peace agreement, signed in 2016 between the government and the guerrilla group FARC, which was the first one that had a gender focus on its principal points, as well as specific affirmative gendered actions, has what it takes to make these changes. The land restitution process along with the PPP and the peace agreement are intrinsically linked. Point 1 of the peace agreement, deals with the integral rural reform, which although it calls for many changes and programs, refers to the restitution of land in the chapter about victims. The agreement establishes the following: "In a scenario of the end of the conflict, in order to strengthen and energize the land restitution processes, we have agreed to guarantee the articulation of these and the collective reparation processes, the development programs with territorial approach and the plans and programs derived from the implementation of the Final Agreement:"²⁰² The agreement does not modify anything related to the restitution process, it simply calls for the processes to continue and simply for them to be applied in a harmonious and parallel manner with the systems created by the agreement on the integral rural reform and other reparations. What can be understood is that the implementation of the peace agreement is, in turn, the implementation of the land restitution processes.

The land restitution process has to be understood entirely along the PPP as a reparation mechanism, and as such, part of the peace agreement as well. So, why bother about things that the peace agreement already has? The latest report²⁰³ from the Kroc Institute²⁰⁴ leaves a lot of concerns about the gender points in the agreement in general, but also the application of the law 1448 as well. The report establishes that there is a very low percentage of the gender mechanisms in the agreement that are being applied. The report does not mention the PPP specifically, but it does mention the implementation of the law 1448 that is still lacking a gender

²⁰² Pino Franco and Naranjo2, "Mujeres Campesinas, Capitalismo e Implementación de Los Acuerdos de Paz En Dabeiba, Antioquia (Colombia)."184.

²⁰³ Josefina Echavarría Álvarez et al., "El Tiempo Se Agota Para La Implementación Del Enfoque de Género: Avances, Retos y Oportunidades a Seis Años de La Firma Del Acuerdo Final," 2023, <https://doi.org/10.7274/ff365428x38>.

²⁰⁴ The Peace agreement gave the Kroc Institute of the University of Notre Dame the task to monitor the implementation of the agreement.

focus in practice, and that the implementation is not good. The fact that a law or policy has “gender” on it does not mean that its application has a gender focus.²⁰⁵

This is to show that there is still a long way to go in order to have a gender focus in land restitution in general, and the PPP in particular. There are changes needed it to do in the norms, but also in the way they are being implemented. There are more reports²⁰⁶ from other institutions²⁰⁷, and organizations that call for attention on the lack of the implementation of the peace agreement within its gender points.²⁰⁸ “The resources earmarked for implementation show a marginal allocation for gender in the peacebuilding policy; the resources appropriated and committed during 2020 and 2021 for the execution of gender actions barely reach 4% of the total resources allocated to the peacebuilding policy”²⁰⁹

The transformative reparation for women calls for laws and policies that answers to the specific needs they have, but also for a structural change in the way Colombian society have seen and treated women. That is related to the way traditional gender roles have been enforced upon, which has created a disproportionate burden for women to fulfill their rights, which is particularly strong in the subregion of Montes de Maria. This is why an interdisciplinary answer is need it to address this issue. Both in the policymaking and the implementation, as a main issue to have a gender focus in the PPP.

7. Conclusion

This thesis aimed to shed light on the complex context of the Colombian armed conflict, specifically to emphasize the important role of property, that may be considered a main factor in the path to achieve sustainable peace. Furthermore, I sought to reveal the disproportionate experience of women during the conflict, as well as their different experience during “peaceful

²⁰⁵ Echavarría Álvarez et al., “El Tiempo Se Agota Para La Implementación Del Enfoque de Género: Avances, Retos y Oportunidades a Seis Años de La Firma Del Acuerdo Final.” 114.

²⁰⁶ Grupo de Género en la Paz - GPAZ, “LA PAZ AVANZA CON LAS MUJERES III Informe de Observaciones Sobre Los Avances En La Implementación Del Enfoque de Género Del Acuerdo de Paz,” 2021.

²⁰⁷ Vanesa Botero Blandón and Ana M. Ávila Serrano, “Reforma Rural Integral y Construcción de Paz Para Las Mujeres En Colombia,” 2021.163.

²⁰⁸ Comision de la Verdad, “Hallazgos y Recomendaciones.” 782.

²⁰⁹ Cardoza-Sanchez et al., “LA PAZ SERÁ CON LAS MUJERES RURALES O NO SERÁ. Vigencia Del Acuerdo de Paz, Políticas Públicas Prioritarias, Perspectivas de Implementación e Incidencia Desde Las Orga- Nizaciones de Mujeres Campesinas.” 29.

times”. This was necessary to highlight why a gender approach in the post-restitution phase in the land restitution process is needed. This is the phase where people can receive real reparation in order to reconstruct a better life for themselves. The transformative reparation concept developed by the jurisprudence of the COIDH and the Colombian Constitutional Court is an important guidance in the way the transitional justice system in Colombia aims to work. In the same way, the potential of the reparation measures to transform the realities of victims, that even before the conflict suffered from lack of rights, poverty and structural violence, has to be unlocked in its potential to transform not only people’s lives but the society as a whole. Nevertheless, this thesis wanted to add a feminist view of the transitional period and post-restitution phase, in which these tools can be used in order to pursue a holistic solution for the structural violence and inequalities that women suffer. The goal is to attain a real transformative reparation for women. In this way, not only would the reparation be fulfilled, non-repetition guarantees would be ensured. This is due to the focus on the fact that the inequalities and violence that they suffer are rooted in cultural images in a patriarchal society. Women’s specific situation in the PPP must be considered in order for the reparation to be effective for them. This requires not only legal means, but also an interdisciplinary policy approach, in order to be able to answer the “woman question”. Women are the foundation for the construction of a peaceful society, we need to hear their voices.

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