

HARVARD LAW SCHOOL

Monica Arango Olaya

LL.M. Program

Displ@ced

April 2010

Supervised by Lucie White

LL.M. Long Paper

“My name is *Pearl*. I left Aguas Blanca, Cesar in 1998. I left because I lived in terror. The groups started to form and started to rob. The first time was in the farm the pleasures. I was robed and I went running through a creek, a friend had a baby and she would put her hand on the baby’s mouth to keep her quiet. They did not do anything to us but all the farms were robbed. I decided to leave. When I arrived to Cartagena someone talked to me about the *League of Displaced Women* and I started to go to the meetings and to go to the rights trainings. I have been 10 years in the organization, which has taught me everything I know. For me, things will only change if the Award is implemented, if we make that the law is implemented. As a beneficiary of the Award I have received one of the emergency aids. For me dignity is that my rights are respected, that we are no longer mistreated as women. That is not happening. Sometimes someone arrives to *Accion Social* and asks something and they do not even answer, when a person has a right to receive information. Now we are knocking doors, going to the authorities to demand that the Award is implemented. I want to study, I have not even completed primary education, but to access education I have to comply with thousands of requirements. In the *League* we have made groups. Some people are in public policies and they are sent to the health authorities to demand implementation. Others go to “productive projects” to demand implementation, that’s how we are working. We do not have a consolidated result but we are getting there slowly. They are listening to us. I feel listened. And when they reject me I read to them that they have to listen to me and they know they have to comply.”¹²

¹ Interview with a member of the League of Displaced Women in Cartagena.

² I would like to thank the generosity of Lucie White for having guided me in the process of this paper, her patience and deep insights have been invaluable for me. I would also like to thank the generosity of Manuel José Cepeda Espinosa, Patricia Guerrero, Julieta Lemaitre Ripoll, Clara Elena Reales, Federico Guzman Duque, Lina María Céspedes, Laura Badillo, Claudía Mejía, Olga Amparo Sanchez, and foremost the members of la Liga de Mujeres Desplazadas for having agreed to meet with me and discuss many of the issues this paper is taking up.

1. Introduction

Roughly, 2 million Colombian women relate to Pearl's story. They are survivors of Colombia's political violence, but foremost they are still trying to survive forced displacement. As women they live the conflict in a particular way: they are the ones left behind, they are the providers of their families, they are the responsible of the children, they have been subject of gender violence in the form of physical, sexual and mental abuse. Yet, the particularities of the human rights abuses they have suffered have been invisible for more than 40 years of conflict in the state's response and legal and policy framework. Colombian Constitutional Court *tutela* decision T-025 of 2004 and its subsequent Follow Up Award 092 of 2008 has addressed such reality and delivered a compelling gendered remedy under a particularly expansive structure.

The case of internal displacement in Colombia, and particularly the case of displaced women can be viewed as a process that has bolstered citizenship and legal empowerment through participatory authorship and grassroots constitutionalism. Displacement, and its consequences take away from individuals the possibility to exist in the state. The expansive remedial structure generated by *Tutela* T-025 restores the exercise of citizenship as an active relationship between the state and IDPs. In that relationship the individual is recognized by the state as to accrue certain constitutional rights. Through that process the person is able to exist in the state and the rule of law structure by exercising such rights.

The process is allowed by the particular structure canvassed by Justice Cepeda in the process of compliance with the orders given by *Tutela* T-025. Such structure has been an axis of inclusion and participation that has triggered the reconciliation of a movement, the mobilization around one common objective, which in turn has allowed invisible sufferers to become visible as individuals to the state. It has inserted them in an active state-individual relationship that puts them in a road to better their position in society.

That participation has generated the appropriation of fundamental rights. At the same time it has triggered an increase in the claim of these individuals of the rendered legal entitlements, which activates the state-individual relationship and therefore the exercise of rights such as political participation, which is essential to citizenship.

The internally displaced women's (IDWs) Colombian case serves as a platform for a reflection around three axes: i) the significance of delivering gendered remedies for political violence in its internal and external dimensions; ii) a process that I have identified as grassroots constitutionalism, which through a participatory scheme has mobilized a movement towards the restitution of their rights, but moreover has served as a tool and space of empowerment by shifting power relations between sufferers and the state; and iii) the putting into action through rights recognition the human rights dignity ideology as an operational concept to legitimize the Court's expansive remedial structure and likewise render as judicially enforceable social and economic rights. I will address

those three dimensions of the decision in corresponding order in this paper. I understand such reflections as valuable lessons of constitutional and social movements relevance.

I will first explain broadly the decision leaving out the specificities of the constitutional allocation, which will be taken up, as relevant, in each section. Second, I will address the gendered dimension of Award 092. I will deliver some reflections around the construction of the Award, and the symbolic dimension of legally recognizing gendered entitlements for the IDWs community and the women's movement. I will also address the relationship between the Court and its actors and what its novel structure has rendered as an organizing force. Third, I will explain the ongoing process of the compliance of the decision as an example of public interest litigation to address an unconstitutional state of affairs where a structural remedy is canvassed, as opposed to a judicial decision that is restricted to the plaintiff's fundamental rights abuses. I have identified such process as grassroots constitutionalism and will focus on examples of the experience of the members of the *League of Displaced Women*, a grassroots organization that has actively participated in the process and has over 100 individual beneficiaries of the Award. Fourth, I will address the constitutional ideology behind the decision. I will explain how the right and principle of dignity as an operational concept in the decision has served two major purposes: first, it has legitimized the Court's actions and second, it has allowed the Court to render as judicially enforceable rights that are generally determined as of progressive realization. I will also offer a critique that addresses the constraints of such and option. Finally, I will offer some remarks around how the use of dignity, in this process, has given all sorts of power to enable the story.

1.1. Decision T-025 of 2004 and Award 092.

Decision T-025 of 2004, which is the ground for Award 092 of 2008, judicialized the public policy regarding internally displaced people (IDPs) in Colombia. After assessing the structural human rights violations in which millions of internally displaced people were living it declared an unconstitutional state of affairs. It determined that the state policies addressing this humanitarian crisis had two major structural flaws that did not meet a threshold of minimum constitutional standards set by the Court³: “(i) The precariousness of the institutional capacity to implement the policy, and (ii) the insufficient appropriation of funds”.⁴ The institutional capacity was essentially insufficient in three levels: “(i) the design and regulatory development of the public policy to respond to forced displacement; (ii) the implementation of the policy; and (iii) the follow-up and evaluation of the activities carried out during implementation of the policy”.⁵ The appropriation of insufficient funds resulted in the lack of i) satisfaction of the basic needs of IDPs; ii) protection of fundamental rights; and iii) sufficient tools to implement the existing policies”.

³ Colombian Constitutional Court, Decision T-025 of 2004, adopted by the third chamber of the Court, composed by Manuel José Cepeda-Espinosa, Jaime Córdoba-Triviño and Rodrigo Escobar-Gil (Colombian Constitutional Court, Decision T-025 of 2004). The Court held that the structural deficiencies of the state to protect IDPs’ fundamental rights created an unconstitutional state of affairs which amounted to a continuous violation of their rights to life, personal integrity, equality, petition, work, health, social security, education, minimum subsistence income, housing, land protection, return and re-establishment, and to a dignified life. Likewise, it underscored the special constitutional protection awarded to the elderly, children, women and indigenous and afro-Colombian communities affected by the displacement.

⁴ Colombian Constitutional Court, Decision T-025 of 2004, Section 6.

⁵ RODOLFO ARANGO RIVADENEIRA (ed), “Judicial Protection of Displaced Persons: The Colombia Experience”. The Brookings Institution. 23 (2009).

The Court's complex orders were directed to protect all IDPs, not just to guarantee the protection of the fundamental rights violations raised by the petitioners. Their cases gave ground to the Court to address the structural violations, which started a process to establish criteria for the competent authorities to re-structure the current situation to comply with minimum constitutional standards.⁶

Broadly, the Court, drawing from the Constitutional principle and right to guarantee a dignified existence,⁷ determined that the government authorities had positive obligations to guarantee a minimum mandatory level of protection of IDPs fundamental rights.⁸ The Court retained the competence to oversee the compliance of the complex orders issued in Decision T-025. The compliance with the orders, as well as the tailoring of the scope of the remedies has involved a gradual procedure of dialogue between the Court, the governmental authorities and civil society and are the ground for Award 092 on the situation of internally displaced women (IDWs).

⁶ Colombian Constitutional Court, Decision T-025 of 2004. The orders essentially determined: i) that national and territorial entities should adjust their activities to harmonize their institutional capacity with the constitutional duties towards the displaced; ii) a minimum threshold of effective and timely protection of IDPs' fundamental rights; iii) a two month period for the National Council for Comprehensive Assistance to the Population Displaced by Violence (CNAIPD) to define the resources needed to fulfill the State's constitutional obligations towards IDPs; iv) a three month period for the CNAIPD to adopt a program of action with a precise schedule to overcome the flaws in the institutional capacity for the implementation of the state policy for IDPs. The Court underscored the need for the official institutions to award the organizations that represent IDPs participation in the adoption decisions to overcome the unconstitutional state of affairs.

⁷ Colombian Constitutional Court, Decision T-025 of 2004. "(...) notwithstanding the above, the Court highlights that there exist certain minimum rights of the displaced population, which must be satisfied under all circumstances by the authorities, given that the dignified subsistence of the people in this situation depends on it."

⁸ RODOLFO ARANGO RIVADENEIRA (ed), "Judicial Protection of Displaced Persons: The Colombia Experience". The Brookings Institution. 23 (2009). That minimum was established as a duty for the authorities to "(a) respect for the essential nucleus of the fundamental constitutional rights of displaced persons, and (b) the satisfaction, by the authorities, of certain positive duties, derived from the rights constitutionally and internationally recognized to displaced persons."

Award 092 of 2008 analyses the disparate gender impact that affects IDWs. It recognized that women suffer particular kinds of human rights violations in light of such disparate impact. The Court translated such violations into rights determining that the government had breached IDWs' rights for the inexistence of appropriate and adequate specific public policies to answer to the disparate impact, acute and differential to IDWs, and to the gender aspects of the displacement. Such omissions were not complying with Colombia's international obligations to protect women's rights. To remedy such breach, the Court, ordered a comprehensive structural remedy i) the creation of 13 specific programs to address the failures of the public policy in the attention of the forced displacement from the women's perspective, in order to counteract the gender risks of the armed conflict and the gender dimension of the forced displacement;⁹ ii) the establishment of two constitutional presumptions that apply to displaced women;¹⁰ iii) the adoption of individual orders of protection for 600 women in the country; iv) the

⁹ Colombian Constitutional Court, Award 092 of 2008. The programs ordered are: a) the program of prevention of the disparate gender impact of displacement by the prevention of the extraordinary risks of displacement in the contexts of the armed conflict; b) the program of prevention of sexual violence against the displaced woman and of integral attention to its victims; c) the program of prevention of domestic and community violence against displaced woman and integral attention to victims; d) the program of promotion of health of the IDW; e) the program of support to the displaced women who are heads of households, facilitation to the access to productive and employment opportunities and prevention of domestic exploitation and employment exploitation of the displaced women; f) the program of education support for displaced women over 15 years of age; g) the program for the facilitation of access to land property for displaced women; h) the program of protection of the rights of indigenous displaced women; i) the program of protection of the rights of displaced afro Colombian women; j) the program for the promotion of the participation of the displaced women and for the prevention of violence against women leaders or that acquire public visibility because of their efforts of social, civic or human rights promotion; k) the program for the guarantee of the rights to justice, truth, reparation and non-repetition for the displaced women as victims of the armed conflict; l) the program for psychosocial support for displaced women; and m) the program for the elimination of the obstacles for women in the access to the official protection system for IDP.

¹⁰ Colombian Constitutional Court, Award 092 of 2008. The two assumptions are i) the constitutional assumption of accentuated vulnerability of IDW in the access to the different components of the SNAIPD and the integral assessment of their situation by competent staff; and ii) the constitutional assumption of the extension of the Humanitarian Emergency Help in favor of the IDW until particular integral self-sufficiency is proved in conditions of dignity.

communication to the General District Attorney of the many recounts of sexual crimes committed in the context of the internal armed conflict of Colombia.

2. Gendered Remedies

Women's suffering and experience of political violence in Colombia for the case of internally displaced women (IDWs) has a quantitative and a qualitative dimension. Women constitute 53% of IDPs, roughly 4 million population in Colombia. As women they suffer a disparate and particular impact from the conflict. Nevertheless, this distinction in the legal characterization of their suffering was only legally recognized in 2008 when the Colombian Constitutional Court rendered Award 092.

Women's experience of political violence is often neglected in judicial settings. Women's suffering in the conflict, the complexity of the harms they have been inflicted and the gendered dimension of its consequences had been invisible in legal reform, judicial opinions and policy proposals before the Colombian Constitutional Court's intervention with decision Award 092.

Award 092 aims to create a structural remedy for the situation for IDWs by addressing public policies that target deep structures of the impact of displacement for women. The decision can be divided in two major axes: i) a criminal law dimension that pertains to sexual violence in the conflict and ii) a structural remedial dimension that

pertains to the creation of specific public policies to address the women's human rights violence in the context of displacement. The individual protections for 600 IDWs expressly recognized in the decision a right to be included to some of the programs determined in the structural remedial dimension, as well as the delivery of Emergency Humanitarian Aid. I will only address the structural public policy remedial dimension by taking a look at its effects in its development and implementation. After describing the major features of the structural remedy set by the Court I will address two different levels of a conversation that I deem to guide the public policy holding, which have created a complex web of relationships: one that can be perceived as participatory authorship and a second level that relates to grassroots constitutionalism. I will now address of these points in order.

A. Structural remedial dimension: public policies.

The implementation of the orders issued in decision T-025 comprise a process where the Court has issued a series of Awards as follow up decisions that address, amongst others, the determination of the scope of the humanitarian crisis, the construction and adoption of indicators to measure the effective enjoyment of rights, and follow up orders addressing particular and specific situation of vulnerable groups specially protected by the Constitution. The structure adopted by the Court to determine the compliance with its initial orders has consisted in the creation of a dialogue between all the actors part of the decision. To this end, the Court has requested reports from

anyone who wishes to present relevant information on the situation of IDPs and on the advancement of the restructuring of the public policies. Similarly, it has called to public hearings. In these, depending on the objective of the hearing the incumbents, sufferers, representative NGOs, the government and overseeing national and international entities have presented briefs on the situation of IDPs. One of the first hearings addressed the situation of IDWs.

Award 092 has a two-fold grounding. First, it stems from the legal protections characterized in decision T-025, which recognize a differential factual and legal grounding for IDWs. The factual grounding refers to the disparate impact of the armed conflict and the internal displacement of women in qualitative and quantitative terms. The legal grounding refers to the special character of women as subjects of special constitutional protection, rooted in the Colombian Constitution and in Colombia's international obligations -in the context of international law of human rights and International Humanitarian Law. Second, the assessment of the particular situation of IDWs revealed in the special hearing organized by the Court on the 10 of May of 2007 and the corresponding reports presented by the participants, which were NGO's representing IDWs, grassroots organizations, the government, the Ombudsman, the Attorney General of the Nation and ACNUR.

The Court, in Award 092, determined that the violence exercised in the Colombian armed conflict victimized women in an acute and differential way. Women, as survivors of political violence were compelled to assume extraordinary economic,

social and family roles, which imposed them the brunt of overcoming extreme material and psychological burdens, that men are not compelled to assume. The Court characterized the differential impact of the conflict on IDWs into 18 gender aspects that needed specific attention from the government's public policies.

The Court found that women's differential affectation by displacement, because of their gender can be characterized in 10 particular risks: i) the risk of sexual violence, sexual exploitation or slavery; ii) the risk of exploitation or slavery to exercise domestic labor and roles determined as feminine by the illegal armed actors, in a society with patriarchal traits; iii) the risk of forced conscription of their daughters and sons by the illegal armed actors, which is enhanced when the woman is the head of the household; iv) the risks derived of personal or affective relationships, -voluntary, accidental or alleged, with members of illegal armed groups, or the public force; v) the risk of prosecution or murder due to strategies of coercive control of public and private behavior; vi) the risk of murder or disappearance of their economic provider by the disintegration of their family groups, and networks of social and material support; viii) the risk to be more easily relinquished from their land and assets by illegal armed actors due to their historic position in relationship with property, particularly rural land; ix) the accentuated risks derived from the status as indigenous or afro-Colombian women; and x) the risk of loss or absence of their partner or economic provider during the process of internal displacement.¹¹

¹¹ Colombian Constitutional Court, Award 092 of 2008, Per Justice Manuel José Cepeda Espinosa. (Colombian Constitutional Court, Award 092 of 2008)

The qualitative impact of the displacement was characterized in eighteen gender aspects divided in two groups: i) the standard structural violence and discrimination in the Colombian society that are accentuated by a) the life conditions of IDWs and b) the acute and differential problems that arise from the official system of attention to displaced population for women; and ii) the specific problems and needs of IDW that are not experienced by displaced men or non displaced women.

The gender aspects that determined that the standard structural violence and discrimination was accentuated for IDWs were: i) sexual violence and abuse, including forced prostitution, sexual slavery and trafficking; ii) domestic violence and gender community violence; iii) the ignorance and violation of the right to health, specifically sexual and reproductive rights in all levels; iv) the assumption of the head of the household without minimum conditions of subsistence required by the principle of human dignity, with particular complications for women with small children, health problems, disabilities or elderly women; v) aggravated obstacles to the access to the educational system; vi) aggravated obstacles to the insertion to the economic system and to the access to productive and labor opportunities; vii) domestic and employment exploitation, including trafficking of persons for economic exploitation; viii) aggravated obstacles in property access and protection of assets for the future, specially in the plans of return and relocation; ix) acute contexts of discrimination against indigenous and afro-Colombian displaced women; x) the violence against women leaders or women who acquire visibility because of their work in the social and civic promotion or human rights; xi) discrimination in their insertion into public and political spheres, with impact in their

participatory rights; and xii) the ignorance of their rights to justice, truth and reparation as victims of the armed conflict.

The Court identified specific IDWs' problems and needs: i) special requirements of attention and psychosocial support; ii) specific problems for women before the official registry and the characterization of displaced people; iii) accessibility problems to the system of attention for IDP; iv) high frequency of staff not trained to treat displaced women, or manifestly hostile and insensitive to their situation; v) a mayor "family" focus of the system of attention that neglects women who are not the head of the household; and vi) a structural reluctance from the system to grant the extension of the Humanitarian Emergency Aid to vulnerable women, or heads of households, who, because of their special vulnerability are entitled to it.

To address these problems the Court ordered the design and implementation of 13 different programs that would generate a structure to address the ongoing social deprivation in which IDWs live, as explained in the decision. These programs are:

- (a) Program for the prevention of the disparate gender impact of displacement through the prevention of the extraordinary risks of displacement in the context of the armed conflict;
- (b) Program of prevention of sexual violence against the displaced woman and of integral attention to its victims;

- (c) Program of prevention of domestic and community violence against displaced woman and integral attention to victims;
- (d) Program of promotion of health of the IDW;
- (e) Program of support to the displaced women who are heads of households, facilitation to the access to productive and employment opportunities and prevention of domestic exploitation and employment exploitation of the displaced women;
- (f) Program of education support for displaced women over 15 years of age;
- (g) Program for the facilitation of access to land property for displaced women;
- (h) Program of protection of the rights of indigenous displaced women;
- (i) Program of protection of the rights of displaced Afro-Colombian women;
- (j) Program for the promotion of the participation of the displaced women and for the prevention of violence against women leaders or that acquire public visibility because of their efforts of social, civic or human rights promotion;
- (k) Program for the guarantee of the rights to justice, truth, reparation and non-repetition for the displaced women as victims of the armed conflict;
- (l) Program for psychosocial support for displaced women; and
- (m) Program for the elimination of the obstacles for women in the access to the official protection system for IDP.¹²

¹² Colombian Constitutional Court, Award 092 of 2008. The standards set by the Court required the following from the programs: rationality; specificity; definition of goals at the short, medium and long term; an accelerated chronogram of implementation; sufficient material coverage; an available and sufficient budget; guarantee of continuity; the adoption of measurable result indicators; design and implementation of institutional coordination mechanisms; design and implementation of mechanisms of monitoring and evaluation as well as mechanisms of timely corrections; design and implementation of mechanisms for the response to punctual requests; design and implementation of mechanisms for the periodical divulgation of information; harmonization of the public policy so that it works as one instrument;

The design and content of each of these programs was to be determined by the government authorities through a participatory procedure in which at least the NGOs participating in the process of implementation were to be included. Similarly, the Court's determination of those needs was drawn from the reports provided by different organizations to the Court, particularly in the Public Hearing.

Colombia's Constitutional Court, by taking up women's voices and recognizing gendered remedies for human rights abuses is putting into play its constitutional rhetoric that guarantees women a special protection, as a vulnerable group in society. The decision canvasses the recognition of gender roles in society, hierarchies and injustices that only happen to women. Such a step is not only relevant for the direct beneficiaries of the decision but it is posing a valuable contribution towards a state that recognizes women's reality in society. Moreover, that the state has gendered obligations towards the guarantee of women's human rights. The decision, beyond addressing the past injustices that lead to a reality of misery within a humanitarian crisis, is inserting in its social narrative and in institutional frameworks a gendered consciousness. It is catalyzing a conversation as a tool for women to reclaim spaces by directing a spotlight into how gender can shape human rights abuses and balancing such reality with a response that matches the abuse, in an effort to compensate it.

national appropriation of funds; harmony with other processes like the demobilization of paramilitary groups; coordination by Acción Social; and the immediate adoption of measures for the participation in the articulation of the programs of the IDW.

While IDW's decision is by no means part of a transitional justice process nor it constitutes reparation for the crime of forced displacement it is addressing direct consequences from the conflict that have generated a humanitarian crisis. The decision does not provide a reparation for the crime nor is that its intention, as its legal grounding is elsewhere, but it is addressing a structural remedy for an ongoing reality: gender dynamics of human rights abuse as a consequence of forced displacement in the context of Colombia's internal conflict. Such recognition has an important symbolic dimension for the IDW's community and the women's movement in Colombia. Much of the success of such characterization lies in the participatory process undertaken by the Court to reach such conclusion that will be addressed in the next section.

B. Analysis of gendered dimension

The particularity of Award 092 lays in the gendered nature of the decision, which is novel for Colombia, but also relevant for international instances as an example of an attempt to address gendered violence and how the gendered legal characterization of human rights abuses can provide a space for power from a symbolic dimension towards a material empowerment. The gendered dimension of the remedies rendered by Award 092 is set in that it is restricted to women and responds to particular differences that affect them in the contexts of displacement. The Award takes up the voices of the women in displacement and translates their reality and needs in terms of rights. Such legal characterization rendered a legal gendered remedial structure to be implemented by the

different government agencies. Its aim is to resolve the ongoing deprivation of displaced women.

The issuance of the Award is an initiative of Justice Manuel José Cepeda Espinosa. It is grounded on the reality of women's situation, which was evidenced through the complex and long conversation between the Court and different NGOs representing displaced women, social organizations, grassroots organizations and international human rights organizations as well as the government's agencies. The aspect I wish to underscore of this process for the effects it has produced concerns the participatory aspect of the decision, as it has generated a mobilization and grouping of the different organizations around the implementation of the Award. This participatory framework has given voice to the particular rights violations of IDWs, mobilized the women's social movement, created common spaces of work for women's organizations, and generated symbolic and substantive power for women.

I find in this participatory process of the implementation of the Award, two different levels of the conversation addressing participation as a form of inclusion. Such processes show how the decision and its implementation have set the ground for a scenario that goes further from a marginalized community with a legally characterized benefit to a community that has set different relationships and structures that empower them.

The implementation of the structural remedial framework process has changed power dynamics generating different set of relationships outside and inside the legal procedure that have produced two effects. First, it has pulled the NGOs and organizations representing IDWs rights together around an objective; it has mobilized them to channel their voice together to the Court encouraging a discussion amongst them around their points of view and proposals. On a second level, it has contributed in a process of generating a space for the beneficiaries of the decision where they exercise citizenship, where they participate in the matters that concern them through the use of rights. In this second dimension IDWs, at least in the League, are what Greenthal has described as “building and exercising power by collecting and activating relationships”.¹³

The first level is a process of participatory authorship by the women’s groups in the implementation and construction of the structural remedies determined by the decision and can be viewed as a form of what has deemed as democratic experimentalism. The second level of the conversation is what I deem that can fit to the concept of grassroots constitutionalism. I will introduce this concept here but it will be furthered explored in the next section where it will be addressed through the voices of the members of the League of Displaced Women. The experience of this grassroots organization evidences how the human rights education activities and the creation of a physical space as the City of Women within the context of the legal intervention of the Award attempt to bridge the divide between legally and materially disempowered citizens

¹³ MIKE GRINTHAL, *Power With: Lawyers and Relational Organizing*, Harvard Law School 3L paper, 5 (2006).

to conscious citizens with tools to activate and participate in political spaces, but primarily claim and exercise their rights.

2.1. Participatory Authorship.

The first level of the conversation that I find I refer as participatory authorship. It reflects the participation of different women’s groups in the dialogue opened by the Court to oversee the compliance of Decision T-025. This process has empowered and mobilized the women’s groups to have a voice in the decision and the framework to address compliance of its orders in implementation. The legal structure of the implementation of the structural remedy of Decision T-025 and Award 092 has provided three different spaces of participation each of which is characterized in different terms and produces a different effect. The following table illustrates these spaces:

Participant	Space	Form	Effect
Women’s rights NGO’s, grassroots organizations, social organizations	Structural remedy, forum as initiative of NGOs outside the legal procedure	Submission of joint reports	Sense of authorship, monitoring bodies, unification of movement, mobilization.
Women’s rights NGO’s, grassroots organizations, social organizations, IDWs	Public hearings	Participation in the hearing	Sense of recognition, visibility, claim of accountability
Women’s rights NGO’s, grassroots organizations, social organizations	Design and implementation	Design and draft guidelines for the design of the programs	Effective inclusion in the conversation, citizenship exercise through participation in the design of public

			policies- implementation of entitlements rendered by Award 092
--	--	--	--

Participatory authorship can be viewed as a form what Dorf and Sabel have determined as democratic experimentalism.¹⁴ Dorf and Sabel claim that democratic experimentalism “reinterprets democratic deliberation to advance the Madisonian project of using the institutions of the government itself to foster practical cooperation despite the human propensity for opportunism, including especially the abuse of public power for private ends. It rests, moreover, on the bedrock of respect, associated in Madison’s time with the idea of religious toleration, for diverse, changing understandings of the world, and the contentious varieties of individual and group life they inform, as antecedent to and protected by the Constitution”.¹⁵ Democratic experimentalism proposes a different approach to judicial review through experimentation with the local knowledge and provision of information to the judges that would allow “individuals and groups to challenge arrangements they think violate their constitutional and other rights by reference to working alternatives that do not do. In this way the vindication of individual rights encourages mutual learning and vice versa, and judges discretion in applying broad principles is schooled and disciplined by actual experimentation with the possibilities they could never have imagined”.¹⁶

¹⁴ MICHEL C. DORF & CHARLES SABEL, *A Constitution of Democratic Experimentalism* Colum.L. Rev. (1998).

¹⁵ Id., 288.

¹⁶ Id., 288.

The structural remedy around the implementation of Decision T-025 and Award 092 generated a space of public debate amongst the Court, the government agencies and the organizations advocating for IDPs rights. Such debates were carried inside and outside the legal framework. The stages, indicators of compliance as well as the development of the remedies were crafted through this dialogue. Such exercise shares the democratic experimentalism aim “to change the reasons and evidence produced in public debate, and with them the conditions for participation in civil life, so that our disputatious democracy is made both more effective as an instrument of public problem solving and more faithful to its purpose of assuring the self determination of free and equal citizens”.¹⁷

The first concrete moment of participation of the women’s groups in decision T-025 is in the context of the compliance procedure. While decision T-025 did address the special guarantees the Constitution sets for women for their protection as a vulnerable group it did not comprise any differential particular structural remedy that would address women’s individual needs as a consequence of displacement.

The different women’s groups reacted to these omissions by proposing that the indicators that were to be determined to measure the government’s compliance with the Court orders should include a gender dimension.¹⁸ At this point the women’s groups started to participate actively in the structure of overview of compliance of the orders of

¹⁷ Id., 288-289.

¹⁸ Interview with Patricia Guerrero, Director La Liga de Mujeres Desplazadas, (Jan. 20 2010); Interview with Olga Amparo Sanchez, Director La Casa de la Mujer, (Jan. 26 2010).

decision T-025. In order to get visibility of the women's problems in the context of displacement, in March of 2007 two women's organizations, *La Ruta de Mujeres Desplazadas* and the *Red de Mujeres en Acción Hacia el Futuro* co-sponsored a conference where IDWs explained their situation. Justice Manuel Jose Cepeda Espinosa attended this conference and had a chance to listen to these stories. In May 2007 the Court called for a public hearing to assess the situation of women. The structure of the Hearing was to give the chance to IDWs, who had traveled from different parts of the country, to tell their stories. Subsequently the government had to answer to the particular claims and explain the policies that addressed the denounced violations. The Hearing made it evident that the government did not have any policy that would address IDWs specific needs in the context of the breach of their fundamental rights. Different organizations were to present reports on the situation of IDWs. In 2008, taking as a source the hearing and the reports filed by different organizations the Court issued Decision Award 092.

Justice Cepeda explained how during the hearing a power shift had taken place. There was a particular value in the structure of the Hearing. The fact that IDWs had to be listened and then could pose questions, and ask for accountability from the institutional government agencies changed the relationship between the actors.¹⁹

The essential feature for the implementation of the order to create the 13 programs that would address the prevention of the gender risks for IDWs as well as the

¹⁹ Interview with Manuel José Cepeda Espinosa, Professor, University of Los Ándes in Bogotá, Colombia (Jan. 15, 2010).

restitution of their rights, as recognized in the decision, were to be designed and implemented with the effective material participation of at least the organizations that were communicated the decision.²⁰ In the Award the Court stated:

“The Director of Acción Social has to guarantee the active participation of the organizations that promote the rights of women displaced by the violence within the process of design adoption and implementation of the program. As a minimum, the national and international organizations to which this Award is being communicated have to be part of the process. Additionally, the Director of Acción Social can involve in these processes other organization that he deems appropriate to invite. To this end, the director of Acción Social has to convene to a public participatory hearing to the mentioned organizations at the start of the process of design and adoption of he programs, were it shall be determined the path to follow for the compliance of this Award.”²¹

²⁰ The organizations within this process are: (1) CODHES; (2) Corporación Casa de la Mujer; (3) Corporación Sisma Mujer; (4) Liga de Mujeres Desplazadas; (5) AFRODES; (6) PROFAMILIA; (7) Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado; (8) Plan Internacional; (9) Comité Internacional de la Cruz Roja; (10) Amnistía Internacional; (11) Human Rights Watch; (12) Comisión Colombiana de Juristas; (13) Comisión Intereclesial Justicia y Paz; (14) Asociación Nacional de Mujeres Campesinas, Negras e Indígenas de Colombia (ANMUCIC); (15) Red Nacional de Mujeres Desplazadas; (16) Mesa de Trabajo Mujer y Conflicto Armado; (17) Consejo Noruego para Refugiados; (18) Corporación Opción Legal; (19) Pastoral Social de la Iglesia Católica; (20) la Mesa Nacional de Fortalecimiento a Organizaciones de Población Desplazada; (21) UNICEF; (22) ONIC; (23) Conferencia Nacional de Organizaciones Afrocolombianas; (24) Comisión Interamericana de Derechos Humanos; (25) Organización Femenina Popular; (26) Ruta Pacífica de Mujeres; (27) Comité de América Latina y el Caribe para la defensa de los derechos de la mujer (CLADEM).

²¹ Colombian Constitutional Court, Award 092 of 2008: “To assure the material and effective participation of these organizations, the director of Acción Social shall send a report to the Court with detailed information at the moment of the start of the implementation of the programs – to the latest after 3 months of the notification of this Award, referring: a) which organizations were involved in the process of design and implementation of the program, how were they invited to participate and which was the reach of their participation; and b) which of the formal proposals referred by these organizations were accepted by

Under CODHES's leadership, one of the longtime mainstream leading organizations in Colombia advocating for IDPs rights,²² two Fora were created that would address each of the structural pillars of the decision: public policies and sexual violence. Each of these forums would discuss the implementation of the orders and draft joint reports to monitor the implementation of the Award.

The subsequent Awards determined the non-compliance of the authorities with the orders given by the Court.²³ There seemed to be no institutional initiative to generate the participatory framework ordered by the Court. Nevertheless, the women's organizations had mobilized and managed to present a set of guidelines for the design and implementation of the 13 programs. The Court adopted these proposals as mandatory guidelines for the design of the programs to which *Accion Social* was bound.²⁴

Acción Social and incorporated in the design of the program, and which were rejected, as well as the reasons that ground that decision".

²² See <http://www.codhes.org/>

²³ Colombian Constitutional Court Award 237 of 2008, issued in September 2008, determined the failure of the authorities to comply with the orders given in Award 092. The Court verified that *Accion Social* had never initiated the process of participation for the design and implementation of the programs; the shortage of the three-month period for the authorities to comply with the orders and with the fund appropriation. The Court set a new hearing for the 10 of July of 2009 where the Director of *Accion Social* was to report on the implementation of all the orders of decision T-025 and its follow up Awards. He was also to report on the compliance with Award 092. The hearing allowed the participation of the different organizations and gave them the opportunity to ask specific questions. The organizations had the possibility to present reports to the Court on the implementation of the Award.

Award 266 of 2009 comprises the reports and questions presented at the Hearing on the implementation of Award 092 and in line with those findings presents a set of questions for *Accion Social* to answer. In October 2009 *Accion Social* presented a report to the Court addressing the questions. It claimed the implementation of the orders that attain to the 600 individual protections. It reported a series of actions such as capacity building of public officials in gender and sexual and reproductive rights and drafting of information manuals. There was no report of a completed design and implementation of a program, however; it merely reported isolated actions.

²⁴ Sistema Nacional de Atención Integral a la Población Desplazada - SNAIPD -, *Informe del Gobierno Nacional a la Corte Constitucional sobre los Avances en la Superación del Estado de Cosas Inconstitucional Declarado mediante la Sentencia T-025 de 2004*, 134-145 (2009).

While there are preliminary schemes of programs were articulated by the government with different levels of development, there is no serious proposal of a structural policy that would amount to an articulated program in the terms stated by the Court. The programs show an overlap of ideas amongst them; schematic and partial ideas with no substantial development; the use of other regular national programs to demonstrate compliance; and a cut and paste from existent programs with minor changes. The programs do not show consistency, coherence or articulation. They are mostly in a pre-design stage and lack specificity. Nevertheless, there have been reports of compliance with the delivery of the Humanitarian Emergency Aid to the six hundred women protected by the Award. The focus on the protection of the six hundred individual cases of vulnerable women has become, to a certain extent, an excuse for the executive to: (i) prioritize the compliance with that order over the others; and (ii) to present the compliance with that order as part of the compliance with others.²⁵

The structure that has just been described has generated spaces of power through participation in the structural legal remedy set by decision T-025. Each of those forms of participation has rendered different effects. The first kind of participation is the submission of reports to the Court through the Fora the different groups created. The Fora is a created space of discussion that is outside the legal structure of the decision. Such a space has allowed the different groups to discuss their views on the implementation of the Award, as well as all the concerns and realities each organization sees in the situation of

²⁵ MONICA ARANGO OLAYA & JOSEPH PILERI, *Legal Empowerment through Grassroots Constitutionalism*, paper under the supervision of Harvard Law Professor Lucie White, (2010).

IDWs.²⁶ This space is channeling the voice of the movement and strengthening their position while representing the interest of the IDWs community.²⁷ The Awards include the claims presented in the reports by the organizations. The inclusion of such claims has provided a sense of authorship for the movement triggering a mobilization around such monitoring exercise. Likewise, NGO's representatives feel the Award represents a taking up of their voices through the inclusion of their gendered language in legal terms.²⁸

The second sort of participation is within the legal procedure, in the Public Hearings. The first of those hearings took place in 2007 and its structure shifted power relationships. It was organized for the displaced women to talk first, to share their stories, to ask questions to the government and present reports. The government was to explain the policies for women within the remedial structure of decision T-025 and answer specific IDWs concerns. The effect of such space gave IDWs a sense of recognition, visibility and gave the authorities a detailed image of their situation through their stories. The government had to listen to the women and such exercise provided a sense of accountability.

The third level of the participation is the direct participation in the design and implementation of the different programs the Award ordered by different NGOs, and women's rights organizations. Award 092 had ordered the governmental authorities to

²⁶ Interview with Lina Céspedes, Attorney, Consult for Human Rights and Displacement (*Consultoría para los Derechos Humanos y el Desplazamiento*) in Bogotá, Colombia (Jan. 5, 2010).

²⁷ Id. Attorney Céspedes explained how in 2009 the For a, in conjunction with international human rights organizations had presented on the situation of IDWs in Colombia before the Inter-American Commission of Human Rights.

²⁸ Interview with Laura Badillo, La Ruta Pacífica de las Mujeres, (Jan. 13 2010); Interview with Claudia Mejía, Director SISMA Mujer, (Jan. 15, 2010).

comply with a set of guidelines in the design and implementation of the public policy programs that had to include the participation of at least all the organizations that were communicated the Award. The government authorities did not go ahead with such framework and did not design the programs during the time frame set by the Court. Regardless, the organizations mobilized and presented the Court a set of guidelines for the programs that were adopted as binding for the government authorities.

The process of participatory authorship described can fit in the democratic experimentalism project as it forms a sort of “collective problem solving suited to the local diversity and volatility of problems that confound modern democracies, while maintaining the accountability of public officials and government essential to the very idea of constitutional order.”²⁹ This process of participation in the design and implementation of the policies is advocating for an institutional and doctrinal change. It is pushing the government institutions to work with the beneficiaries of the entitlements rendered in Award 092 and use their knowledge to propose solutions and ways to implement a gendered dimension to respond to the crisis of internal displacement.

This process of participatory authorship has provided different kinds of opportunities for the movement, which have made them stronger within and outside the legal procedure. Similarly, it has effectively made them a necessary part of the

²⁹ MICHEL C. DORF & CHARLES SABEL, *A Constitution of Democratic Experimentalism* 314 Colum.L. Rev. (1998.)

conversation.³⁰ The report submission has transformed women's organizations into monitoring bodies, as well as advocates for the implementation of the structural remedies designed in the Award. The Public Hearings organized by the Court generated a space where IDWs would present their concerns and gained a real voice in the procedure with the possibility to ask concrete questions to the government agencies regarding their failures in addressing their situation. Finally, the determination of the Court in the Award of the participation of the women's organizations in design and implementation of the 13 programs makes them part of the conversation with the government agencies designing the public policies. Such structure, regardless of the actual level of implementation of the orders, redistributes power relationships between the organizations and the government agencies.

The second level of the conversation can be assessed as “grassroots constitutionalism”, which creates a framework for women to participate in the remedial structures of the decision. The legal entitlements rendered and the procedural structure for implementation of the Award has enabled this process, nevertheless it has not been compelled by the Court's legal proceedings.

3. Grassroots constitutionalism

³⁰ Interview with Clara Elena Reales, Auxiliary Judge, Colombian Constitutional Court in Bogotá, Colombia (Jan. 14, 2010).

The process of decision T-025 and Award 092 can be seen as a process of grassroots constitutionalism.³¹ Grazyna Shapzka has used the term grass-roots constitutionalism as a form of legitimization of the Constitution in a particular moment from below or from participation. By Grass-roots constitutionalism she understands “a process of slow formation of constitutional principles “from below”, in the everyday experience of citizens participating in local governments, non-governmental organizations, associations, and ethics commissions whose members participate in the decision-making process or in conflict resolution, and construct their by-laws”.³² Professor Mark Tushnet³³ takes this concept as a form of what professor Sajó suggests as “consequential legitimization”³⁴ concentrating in performance. He suggests “as a government created by the Constitution goes about its operations, its demonstrable efficacy in stabilizing society, promoting economic growth, protecting civil liberties and the like gradually generates in the citizenry the kind of loyalty or enthusiasm that Ackerman says arises in constitutional moments. As professor Sajó puts it “performance may offer new sources of legitimacy. If it is backed by efficient service delivery by the policy networks””.³⁵

³¹ GRAZYNA SHAPZKA, *Paradigm Lost? The Constitutional Process in Poland and the hope for Grass Roots Constitutionalism*, in *The Rule of Law After Communism Problems and concepts in East Central Europe* 149 (Martin Krygier & Adam Czarnota eds, Asgate, 1999). Professor Mark Tushnet also uses the term and suggests this happens in constitutional moments and it’s a form of what Professor Sajó determines as consequentiality legitimization. He states that grassroots constitutionalism is interested in performance not in process and depends in government’s action.

³² VICKI C. JACKSON & MARK TUSHNET, *Comparative Constitutional Law*, 289 (sec. ed. 2006).

³³ MARK TUSHNET, *Misleading Metaphors in Comparative Constitutionalism: Moments and Enthusiasm*, *Int’l J. Const. L.*, (2005)

³⁴ ANDRAS SAJÓ, *Constitution without the constitutional moment: a view from the new member states*, 3, - *Int’l J. Const. L.*, (I-CON) 257 (2005)

³⁵ MARK TUSHNET, *Misleading Metaphors in Comparative Constitutionalism: Moments and Enthusiasm*, *Int’l J. Const. L.*, 265 (2005).

Post and Siegal propose a similar approach towards the understanding of grassroots appropriation of constitutional principles for a legitimate constitutional arrangement. They suggest that “democratic constitutionalism is that the authority of the Constitution depends on its democratic legitimacy, upon the Constitution’s ability to inspire Americans to recognize it as their Constitution. This belief is sustained by traditions of popular engagement that authorize citizens to make claims about the Constitution’s meaning and to oppose their government – through constitutional lawmaking, electoral politics, and the institutions of civil society—when they believe that it is not respecting the Constitution. Government officials, in turn, both resist and respond to these citizen claims”.³⁶ Post and Siegal understand such interaction as the one that gives meaning to the Constitution. I suggest that such restoration of relationships advocate for the inclusion in the exercise of citizenship.

Lani Guinier with Gerald Torres propose a different approach towards a democratic understanding of Courts in action through the concept of Demosprudence.³⁷ Demosprudence “is a democracy-enhancing jurisprudence. It describes law-making or legal practices that inform and are informed by the wisdom of people. Demosprudence, unlike traditional jurisprudence, is not concerned primarily with the logical reasoning or legal principles that animate and justify a judicial opinion. Demosprudence is instead focused on enhancing the democratic potential of the work lawyers, judges, and other legal elites. Demosprudence through dissent attempts to understand the democracy-

³⁶ *Supra* note 36, 374.

³⁷ LANI GUINIER, *Supreme Court Foreward: Demosprudence Through Dissent*, 122 Harv. L.Rev. (2008).

enhancing potential implicit and explicit in the practice of dissents”.³⁸ Guinier finds in oral dissent the opportunity to trigger constitutional deliberation. She argues “that oral dissents, like the orality of spoken poetry or the rhetoric of feminism, have a distinctive potential to root disagreement about the meaning and interpretation of constitutional law in a more democratically accountable soil. (...) oral dissents can become a crucial tool in the ongoing dialogue between constitutional law and constitutional culture.”³⁹ This approach sees demosprudence “as an interpretative tool to spotlight the relationship between the law making power of formal legal authorities (whether judges or legislators) and the equally important though often undervalued power of social movements or mobilized constituencies to make and interpret law.”⁴⁰

I take the proposed concept through the structures generated by Decision T-025 and Award 092 and the previous processes of the League of Displaced Women, not as form to legitimize the Constitution, but as a form of inclusion in society and exercise of citizenship. Its relationship built out of law and through law processes is generating a wider conversation where the inclusion of the voices of the rights bearers also shapes the determination of their legal entitlements producing somewhat more democratic approach to constitutional law. As such, it has the effect of strengthening the rule of law but will only be complete if decision T-025 and Award 092 are finally implemented. As expressed by Tushnet the performance of the policy network is crucial for this process to be successful and complete.

³⁸ Id., 15-16.

³⁹ Id., 14.

⁴⁰ Id., FN 46.

Grassroots constitutionalism creates a framework for women's participation in the remedial structures that T.025 set up as a dialogue between state actors, sufferers and civil society incumbents as social organization and human rights NGOs, which generate a mobilization and a reshaping of the power structures in the adjudication of fundamental rights that strengthens the rule of law.

In this constitutional process people at the grassroots level have used law as a tool to shift power and as an organizing force for creating spaces of power and organization thus triggering the mobilization of a movement. Nevertheless, this process, while is set around a legal action is impossible to render empowerment without the previous organizing structures of grassroots organizations. The League of Displaced Women, as one of the leading grassroots organization in this process has been active in dialoguing with the Court within the remedial order. The organization is the creator of the City of Women as a space of restitution of rights and community building, which provides a good example for my analysis.

Empowerment refers to have power. Power is defined as to be able. As described by Greenthal, to have power is to be able to accomplish one's goals. "If you cannot accomplish your goals, then you do not have (enough) power. If someone else can accomplish your goals on your behalf, then you do not have power."⁴¹ Through those definitions of power we can distinguish, as Greenthal does, power from empowerment.

⁴¹ *Supra* note 13, 7.

“In a civilized society, power may mean the ability to move the levers that control already –existing organizations of people and resources (...) this external empowerment is greater than the psychological transformation often referred to by those using the word “empowerment”, though that transformation may be a part of coming to power, (...).”⁴²

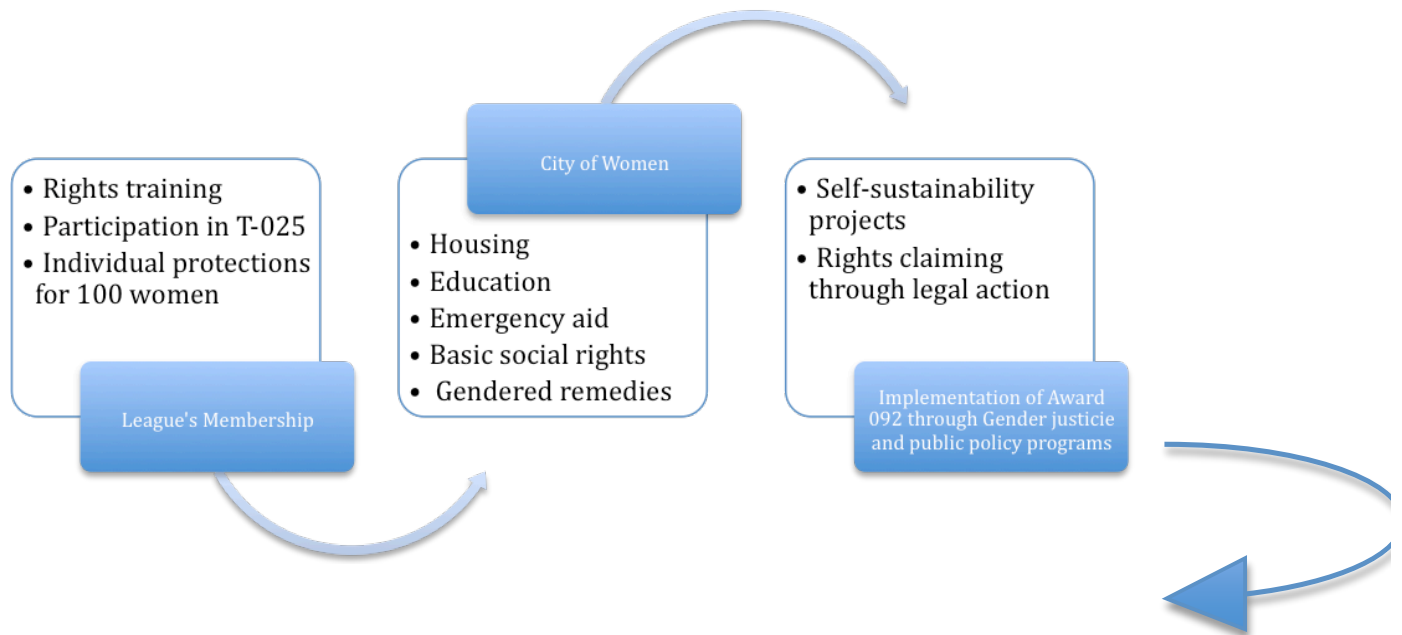
Rights recognition can be seen as a tool for power. A tool that by rendering entitlements that advance the material and symbolic position in which an individual exercises its existence can allow better life conditions. From a communitarian perspective, rights can be seen as a way of recognition and inclusion in society.⁴³ The gendered structural remedy provided by Award 092 has produced such effect. It can be seen as the ground of a garden, which allows or creates a new space, within an organized structure that incorporates other elements and allows the flourishing of plants. The other elements of the process that have been determinant for this phenomena to develop come together in the work that the League of Displaced Women have been doing for years. Such organization through its different programs and accomplishments around the claiming for the restitution of the IDWs rights has managed to create a framework of sustainability, institutional organizational development, leadership and development.⁴⁴ Some of those characteristics that empower its members as citizens have been developed around the structural remedial process of Award 092, which are a tool of material and

⁴² *Supra* note 13, 7.

⁴³ *Supra* note 13, 13: “While there is a great deal of cautionary truth to this critique (rights define by weakness as grievances so that those who claim them or have lawyers claiming them for them) are defined by their weakness and need for state intervention- to talk in terms of rights is to atomize the individual) critics of rights have overlooked another, communitarian understanding of rights that has always informed American legal culture. Far from being merely “claims waiting to happen”, rights are understood by many people as recognition and inclusion in society”.

⁴⁴ *Supra* note 13. Grinthal takes these three elements as crucial in order to generate structures that maintain power.

symbolic exercise of rights. The following chart illustrates the process that will be then explained in detail:



In *Turbaco*, outside of Cartagena, there is a neighborhood with approximately 90 houses. The neighborhood is called the City of Women. It was named like that because women built it. Over 300 internally displaced women from Colombia’s conflict, members of the League of Displaced Women (the League), which started working in the empowerment of internally displaced women (IDW) since 1997, were part of the project. The city of women was canvassed under the 2003 “Dream of a Dignified Life” project, one of many other projects of the League. As a project with resources from the State and from international cooperation its objective was to create dignified housing for these

women, who as a cause of the crime of internal displacement had been left with nothing and the government's policies had rendered no substantial remedies for their situation.⁴⁵

The League was born as an answer to counter act the most basic needs of these women. These were growing with time and had been under looked by the state authorities. They started to meet in the garages of the houses doing basic rights trainings. The League was created with the intention to group women to work to satisfy their most basic needs. In this context the project Dream of a Dignified Life was born, which has as an objective to build houses for all the members of the League. Patricia Guerrero, the Director and one of the founders of the League, managed to advocate for the project in international instances and got 52% of the money for the project.⁴⁶ She presented the program before a national program of social interest housing, which approved subsidies that amounted to a 46% of the project. These were given in the form of individual subsidies so each woman had to present their case to the state authorities for the housing to be approved. 2% of the project had to be paid by the beneficiaries. In order to lower the cost of the building of the houses the women organized themselves and got training to build a brick factory in the land that they would build the houses. Likewise, they would prepare the land for the foundation of the houses that they would eventually build and

⁴⁵ In 1997 the legislature issued Law 387, which created a special national council (Acción Social) to oversee the special remedies created to combat IDPs crisis. These remedies included the enforcement of rights for IDPs (i) the right to international assistance; (ii) fundamental civil rights; (iii) freedom from discrimination; (iv) the right to family reunification; (v) the right to avail him/herself of durable solutions to hi/her situation; (vi) the right to return to place of origin; (vii) the right not to be forcibly displaced; and (viii) the right not to have their freedom of movement subjected to restrictions additional to those established by law) and a public policy that created a resource allocation of emergency aid to victims of displacement, measures for its prevention and programs of economic sustainability.

⁴⁶ Visit to the League of Displaced Women, January 2010. As a result of Dr. Guerrero's advocacy she managed to get help from the US government "Colombia Plan" channeled by Senator Patrick Leahy, who got the program to give them half a million dollars for the housing project in 2004.

paint. The construction of the City of Women is a joint effort were all the members of the League have contributed in different ways.

The housing project unleashed acute security problems. They were severely harassed during the construction and had to file 5 “urgent actions”⁴⁷ that reported the danger and harassment that they were suffering. In 2005 under the Ombudsman system of “early alert”⁴⁸ a risk report was rendered.⁴⁹ I recounted the disappearances, killings and constant harassment that the members of the organization were living. The report determined that the women members of the organization were under high risk and called the authorities to mobilize around the League and respond to give the protection they needed.

In 2006 the City of Women was launched. A second risk report was issued and two months after the launch the community center of the urbanization was burned. With the help of ACNUR Colombia and the embassies of Canada and Australia the community Center was rebuilt.⁵⁰ Around the year 2007 the League got to know of the follow up process of decision T-025. In a desperate situation, as the assassinations and the high degree of insecurity for the members of the league they started to participate in the

⁴⁷ *Supra* note 53, 13. In July 2004 two women leaders of the League were robbed in their houses. In October 2004 a young man was robed and shot by two unknown men. In early 2005 death squads started to leave in the urbanization dead bodies. In may 2005 Julio Miguel Pérez, a community leader was murdered while he was taking care of the brick building of the League. Around the same time another women leader was threatened.

⁴⁸ The early alert system is a system designed by the ombudsman office that aims to identity early calls of danger for the civil society connected with the armed conflict.

⁴⁹ Office of the Ombudsman, Risk report No. 027-05

⁵⁰ *Supra* note 47, 19.

process seeking protection from the Court and the visibility of their problems.⁵¹ In August of 2007 the Court issued Award 200 with the objective to protect the right to life of the displaced leaders, women from the League were included in this protections.⁵²

In 2007 the League launched its Gender Justice Agenda project. The project is a joint effort between the League and the Human Rights and Gender and Democracy Observatory that seeks to bring justice to women part of the League as victims of displacement and sexual violence based on gender.⁵³

The league also launched its Public Policy Project in 2007, another joint effort of the League and the Gender Democracy and Human Rights Observatory that seeks to

⁵¹ Interview with Patricia Guerrero, Director La Liga de Mujeres Desplazadas, (Jan. 20 2010).

⁵² The Award established an assumption of risk over the women of the League and ordered the Ministry of Interior to develop a strategy to protect these women. The state was in the obligation to adopt all the necessary measures to protect these women. The authorities, to respond to their obligation, created a Committee for the Evaluation and Regulation of Risk in the Administrative Department of Security. In September 2007, the Committee ordered the protection for six month, with transportation and bodyguards, for 13 women of the League. Dr. Guerrero also got individual protection. This period was extended in for two months in 2008. The League presented to the Ministry of the Interior a petition to extend the measures but they answered stating they had complied with all the necessary protections. These actions were part of the League's Gender Justice project.

⁵³ See http://www.ligademujeresdesplazadas.org/agenda_justicia/default.htm. The specific objectives of the project are: Be in charge of the political Direction of the Initiative of Women for Peace in Bolivar; present in conjunction with DEJusticia a right of petition regarding the measures undertaken by the prosecutor Office to guarantee the rights of the women victim of the conflict in the context of the Justice and Peace Law (Law for the demobilization of paramilitaries in Colombia); build a red of strategic allies for the development of joint actions in the formation and access to information; get the office of the Ombudsman to issue Early Alerts of security for the women of the League; conduct six "urgent actions" regarding the crimes committed against the IDWs leaders and their families and the projects of organization as a strategy of visibility and resistance; work for the inclusion of the group of women leaders in the Special Program of Protection for Human Rights Defenders of the Human Rights Division of the Ministry of Interior to get support for a telephone red and money for transportation; present a project in the Call for Project of the Spanish International Cooperation Agency to get funding for the agenda, particularly for the design of software for the analysis of testimonies; present suggestions to the Congress for law projects that relate issues of women's right to justice; be part of the Forum for the Humanitarian Prevention of the System of Early Alerts of the Office of the Ombudsman; file reports to the Constitutional Court to support the implementation of the effective exercise of the rights of the displaced population determined in Decision T-025. Likewise, the implementation of all the measures adopted in the name of the members of the League who have been relocated in the City of Women; participate in CODHES 2007 national survey for the verification of the rights of displaced population.

strengthen the process of organization and democratic participation of grassroots communities in the City of Women. The project states that citizenship participation is a political exercise and relates to the direct intervention in public activities without the need to be mediated by political parties and representation through vote.⁵⁴

In April 2008 Award 092 was rendered and almost 100 of the women of the League were included in the individual protections. These individual protections included the delivery of emergency aid, the inclusion in the new programs as appropriate, the specific order of inclusion in the education and health systems. In this context and due to the ongoing level of risk for the women of the League they decided to file a writ of non-compliance of Award 200. The writ recounted the actions of the Ministry of Interior and denounced its lack of compliance with the protections to their right to life and personal security. It also stated the actions of the Office of Prosecutor to investigate more than 142 crimes that had been denounced by the women of the League in the context of the investigations triggered by Award 092.⁵⁵

Simultaneously, the League continued to send information to the Court for its follow up Awards. The League joined the Fora created for the implementation of the Award 092 and presented joint reports with the other women organizations. The League

⁵⁴ See http://www.observatorionegenero.org/magazine/proyecto_politicas.asp. The specific objectives of the project include: the design and implementation of a process of organization of teams, the education in political culture, methodologies to follow up processes of election, incidence of proposals and government plans and strategies of dissemination with the mission to sensitize on the rights and duties of citizens around the local and regional implementation of the public policies directed to the displaced population with a gender dimension; trigger the inclusion of women and grassroots community leaders in citizen participation; accompany election processes in the local governments; and contribute to the active representation of displaced women in the government amongst others.

⁵⁵ *Supra* note 53.

also communicated to the Court new threats suffered by one of the members of the League at the end of 2008. Those facts were also recounted in another “urgent action” filed to the office of the Ombudsman. In January of 2009 a family member of one of the women of the league was killed. In response the Constitutional Court issued Award 009 of 2009, which ordered the Ministry of Interior and the Director of *Accion Social* to file a report summarizing all the actions it had undertaken under Award 200 to protect the women from the League and to explain the negligence to respond to the three risk reports issued by the Office of the Ombudsman.⁵⁶

The space generated by the City of Women addressed one of the main factors in this women’s deprivation as a result of displacement, it gave them a place to live in dignified conditions. With rights training and a place to live their legal actions have been intertwined around the implementation of the Award as a tool for their rights recognition and implementation. As I interviewed some of these women beneficiaries of the Award they highlighted in their stories some of the effects of this process. This process is ultimately the story of their lives and realities in a search for a better position in society out of the undignified deprivation the displacement generated. I find three major effects articulated around three recurring themes: self-sustainability, rights language, projects and dignity.

I went to Cartagena in January 2010 to visit the League of Displaced Women and their City of Women in Turbaco. I spoke with many of its members and interviewed 6 of

⁵⁶ See <http://www.ligademujeresdesplazadas.org/magazine/seccion.asp?id=125>

them: *Violet, Pearl, Azalea, Camellia, Iris, and Gardenia*.⁵⁷ These women have been members of the organization for around 8-10 years, they all were all beneficiaries of the Award and lived in the City of Women. Several themes came up in the interviews. I will discuss three of them: self-sustainability projects, rights language, and dignity. Most of them described the self-sustainability projects they had as a life plan. They discussed their participation in one of the programs under the Court's order that they had been part of as a consequence of the Award, as the delivery of emergency humanitarian aid. The second theme, rights language, comes up in three ways in the interviews. The league members were fluent in rights language and legal proceedings from the constitutional point of view. Likewise, they spoke about how the starting point of their journey as members of the League was when they attended human rights trainings. All that rights background has generated their engagement with the Court and other of the League projects, which revolve around the claiming of those rights and political participation in the local government. The third theme, dignity, came up as the response to the question of what was dignity for them in an attempt to explore if the Court's constitutional rhetoric shaping the rights rendered had reached its beneficiaries. This last approach to the interviews will be taken up in the fourth section, where the Court's ideology is developed.

3.1 Self-sustainability projects

⁵⁷ For security reasons all the names of the women interviewed have been changed.

Award 092 determined that the unemployment rate of IDWs was double than of men, (13.4% vs. 6.8%).⁵⁸ The Court concluded that the obstacles women had to face in labor and economic inclusion derived from the difficulties in their access to the education system and opportunities of profession and labor training. Likewise, it stated that those conditions got worse bearing in mind the high incidence of woman heads of household. IDWs as heads of household have to bear extraordinary economic burdens. The Court underscored that there were gender obstacles entrenched in the socioeconomic restitution programs provided under the *Acción Social*.⁵⁹ To reestablish the breach of the right to an adequate level of life in conditions of dignity it ordered the design and implementation of the program of support for IDWs heads of households, of facilitation of access to labor and productive opportunities and of prevention of domestic exploitation. The Court set as one the program's standard a gender dimension of the individual differences of its beneficiaries such as race and age. The Award expressly recognized constitutional titles to access this program in favor of the individually protected women included in the Award.⁶⁰

The executive authorities have not created such a program in the gendered terms established by the Court. Nevertheless, in order to comply with measures for the individual protection, *Accion Social* offered the inclusion in a program for self-

⁵⁸ Colombian Constitutional Court, Award 092 of 2008, 91.

⁵⁹ Colombian Constitutional Court, Award 092 of 2008, 140 (sec. IV.B.4.2.6.). The Court deemed that such obstacles amounted to be the ground of the violation of the right to an adequate life in conditions of dignity, or minimum core. In turn it represented the violation of the right to work and to free development of the personality with direct incidence in the exercise of the rights of the children who depend on the women. The Court also relied in the stated duty of support in the form of socioeconomic stability for the government in favor of IDPs, set in Decision T-025.

⁶⁰ Colombian Constitutional Court, Award 092 of 2008.

sustainability provided by the SENA for the cases of the individually protected members of the League.⁶¹ The SENA is a national institution, which provides free education with the objective of providing technical level training.⁶² Some of the women I interviewed had attended the capacity building for productive projects. They were extremely critical of the effectiveness of the program and of the SENA. They were hesitant to attend the productive projects capacity building, as they did not want the executive to use their attendance as compliance with the Award order regarding economic sustainability.

It is crucial to underscore again that the only way to achieve a complete process of grassroots constitutionalism, where the rule of law does not lose legitimacy is with the restoration of confidence from the rights bearers in the public institutions. Without the effective performance and rendering of their entitlements constitutional legitimacy would have failed and with it the opportunity to restore the violation of IDWs fundamental rights and the state of unconstitutional affairs. Self-sustainability programs are essential for a way out of such state. The inclusion of women in labor and economic relationships would provide the ground for an effective exercise of other fundamental rights.

Most of the women I interviewed have plans that envision self-sustainability projects. *Violet* wants to have a restaurant at her place. *Azalea* is an artisan and wants to open a market as a family business. *Azalea's* daughter wants to have a paper shop. *Camellia* wants a beauty shop and Iris a frying chicken business.

⁶¹ See <http://www.sena.edu.co/Portal/Atenci%C3%B3n+a+Desplazados/>. The Program advanced by the SENA is directed to any registered IDP, older than 14 years old. It seeks to provide occupational advice, technical and industry formation and consulting for the development of productive projects.

⁶² See <http://www.sena.edu.co/Portal/Direcci%C3%B3n+General/Historia+del+SENA/>

Some of the IDWs members did attend some sort of training conducted by the SENA on productive projects capacity building. They started with the design of the projects, and received some economic aid in the form of goods but the SENA never came back and the program is currently paralyzed.

Violet participated in the capacity building project promoted by the SENA towards economic self-sustainability. The project aimed to generate a plan to create a project that would give her a steady income. The project was to give her 800 dollars in the form of materials for her project, but it has been more than a year and there has been no follow up from the SENA.

Azalea, commenting on the SENA's capacity building program, stated, "we all went but then we realized that they were not going with the Court's guidelines. It was a way for them to show that they had complied, but it was not effective compliance. So we stopped going. What happens with the SENA is that we don't believe them anymore. I have done all the capacity trainings there, for gardener, to work in a shrimp factory but they never called us to give us a job. We do not want to be part of the game of capacity building because we sign there and then they say that they have complied. My daughter was part of the capacity building and they gave her 800 dollars in supplies for a project. That is not sustainability. She opened a shop for paper supplies. Its not a substantial amount of money but is more or less working. She has three children and no husband. I

want that the authorities comply with what the Court said. Its an obligation not a present.”⁶³

Iris explained that the SENA “came and gave us some orientation and then never came back. They have not complied. It’s terrible because I want to put a business frying chicken. I am old, I am 57 and I get discriminated because of that. I cannot get a job, which is why I need to have a project home that I can depend on.”⁶⁴

Such projects unveil that the need for these women to be able to get out of their diminished situation is entrenched in a form of steady income, in the inclusion in economic and labor opportunities. The process has allowed them to envision a way to develop these projects but the limitations in the implementation of the Award are paralyzing such enterprise.

The problems on the design and implementation of programs such as the self-sustainability program evidence the complexity of the development of a gendered public policy and for the state to reach individuals. A partial view could underscore that the government has no real will to develop the programs. Nonetheless, there are huge barriers that have drawn back the effective compliance. The high level of centralization of Colombia’s government institutions, the lack of knowledge from its officials on how to envision and carry out a gendered dimension to the programs in a real and effective way,

⁶³ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

⁶⁴ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

the high level technical complexity of the Award 092 are some of the barriers that can be noted.

3.2. Rights language.

Rights language is directly linked with a particular constitutional tradition, which responds to the assertion and belief on fundamental liberties, duties and obligations for citizens and for the State. They create a set of specific arrangements that generate a state-citizen relationship that aims to reflect how a well-ordered society looks like. Individual rights recognition respond to a constitutional tradition that seeks the protection against “the tyranny of the majority and the tyranny of entrenched interests.”⁶⁵

Scholarship has provided a rights critique suggesting that “a judgment or law that seems favorable might have long term cost of re-inscribing injury on the class. There is a cost-benefit analysis to be performed between the value of the judicial relief or protective legislation sought and the protraction of the group’s subordinate status as a political reality. It is as an injured subordinate that one approaches the law seeking protection or vindication”.⁶⁶ Rights recognition implies rights bearers. Constitutional adjudication, by characterizing legal entitlements, is not just identifying a group but describing it. As Adler has put it “rights imply a rights-bearing constituency with an identity bounded by

⁶⁵ MICHEL C. DORF & CHARLES SABEL, *A Constitution of Democratic Experimentalism* Colum.L. Rev. 284 (1998).

⁶⁶ LIBBY ADLER, “The Gay Agenda”, 18 Mich.J. Gender & L. 180 (2009)

traits and/or norms”.⁶⁷ This identity building from constitutional interpretation suggests a particular relationship between the right and the right bearer; one that makes the latter be defined by the former by a set of political decisions. This approach to rights also has to consider the imaginary for citizens of having certain entitlements. As mentioned, a communitarian approach sees rights as a way of inclusion and participation in state-individual relationships under the rule of law, instead as undue entitlements.

The possibility to speak in terms of rights and constitutional recognition is generating an inclusion in a rule of law system, even when there is resistance towards a judicial decision. Post and Segal suggest that “to criticize a judicial decision as betraying the Constitution is to speak from a normative identification with the Constitution. Citizens who invoke the Constitution to criticize courts associate the Constitution with understandings they find normatively compelling and believe to be binding on others. When citizens speak about their most passionately held commitments in the language of a shared constitutional tradition. In this way even resistance to judicial interpretation can enhance the Constitution’s democratic legitimacy”.⁶⁸

More important than the effect of rights language on a Constitution’s democratic legitimacy is the question of what does such use do for the rights bearers. Colombia’s recent constitutional tradition with the inclusion of the *tutela* or writ of protection of fundamental rights by the 1991 Constitution has shaped the citizens approach to rights

⁶⁷ ID. 182.

⁶⁸ *Supra* note 36, 375.

recognition.⁶⁹ As a procedure that needs no intermediaries as lawyers or complex requirements to claim fundamental rights, *tutela* is understood as a powerful tool. Its power has lied in the effectiveness of the procedure. The perception of rights rendered by *tutela* judgments is more inclined towards generating a sense of inclusion and power than diminishment.

The women interviewed saw power in rights knowledge and recognition. It rendered them self-confidence, as well as a sense of respect towards their situation, as if the recognition lessened the stigma displacement generates. This approach to rights recognition lies in the symbolic dimension of its effects. Its constraint is linked with the effective compliance with the entitlement. To have an entitlement does not necessarily mean that there will be compliance.

⁶⁹ The 1991 Colombian Constitution (CP) designed the Colombian constitutional jurisdiction as it stands today. It determines two kinds of judicial review under the Constitutional Court (CC): i) unconstitutionality actions and ii) *tutela* actions. Unconstitutionality actions are abstract review cases brought by any citizen before the Constitutional Court (art. 241 CP) and *tutela* actions are writs of protection of fundamental rights or concrete judicial review (Art. 86 CP). Article 86 of the Colombian Constitution⁶⁹ determines the right for every person to claim the immediate protection of a fundamental constitutional right when the person feels that the right has been violated or may be violated by the action or omission of any public authority. The *tutela* action is governed by a very simple procedure by which any citizen without the need of legal representation may present the action either in written form or orally before any judge. Judges have to give priority to the action and decide within the next ten days. They have the competence to take any appropriate measures to protect the exercise of a fundamental right when it has been violated or there is a threat for it violation. All *tutela* actions can be appealed before a superior judge and after decided, either in first or second instance, they have to be sent to the CC for a possible revision. The CC, under its discretionary powers decides if it wants to review the decision either to correct the decision or because it poses an important new problem for the development of the jurisprudence. Generally, *tutela* actions are decided by Review Chambers composed by three Justices. Exceptionally, *tutela* actions are decided en banc by the 9 Justices - Chamber, when the subject matter requires the unifying of the jurisprudence; those actions are identified as SU decisions. As stated in MANUEL JOSÉ CEPEDA ESPINOSA, “*Judicial Activism in a Violent Context: The Origin, Role and Impact of the Colombian Constitutional Court*” 3 WASH. U. GLOBAL STUD. L. REV. 529 (2004). pg. 24 Traditionally, *tutela* actions referred to the breach of basic civil and political rights. Nevertheless, the jurisprudence of the CC has progressively shaped a doctrine where social, economic and cultural rights have been protected as judicially enforceable rights under certain circumstances.⁶⁹ This doctrine has expanded the scope of the standing to petition for a *tutela* action to include entities, state authorities and officials as respondents as well as private persons in power positions.

It is quite compelling to talk to rural women with almost no formal education and hear them speak in terms of rights. *Violet*, who is 47 years old and comes from *Uraba* an area mainly dedicated to banana plantations. 10 years ago, in the neighborhood of *Olaya* she started to attend rights trainings with the League. *Pearl* commented on her rights education framing it as “everything I have learned was at the league”.⁷⁰ She explained how in the League she “learned how to present a right of petition, a writ of protection of fundamental rights”, currently to claim those rights at the League “we made groups. Some people are in public policies and they are sent to the health authorities to demand implementation. Others go to “productive projects” to demand implementation, that’s how we are working. We do not have a consolidated result but we are getting there slowly. They are listening to us. I feel listened. And when they reject me I read to them that they have to listen to me and they know they have to comply”.⁷¹

Violet’s and *Pearl*’s experience evidence how they see rights as a tool of power; as a mean that can lead to give them material empowerment through rights exercise. Rights knowledge have given them a new language to interact in institutional settings and has provided an axis of work in their community.

Azalea is one of the founders of the League, she explained that 11 ears ago, when she was displaced “I used to live in the *Pozon*, in the island of the lion, one of the infra-human times of my life. I went to a meeting because of a neighbor and I liked it so I stayed. I learned I had rights. Now I am traveling all the time telling other organizations

⁷⁰ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

⁷¹ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

our story and multiplying our experience.”⁷² In the League she works in the second phase of the project on public policy, which entails the follow up of the Award, its implementation in the development plan of the city. She is also helping in the process to move forward the building of a school for the neighborhood.

For *Azalea*, rights language and knowledge has provided a space to share power. It has opened a path where she understands her organizing structure in the League as a successful story that is worth sharing. Moreover, she takes the legal entitlements from the Award as a tool to participate in a comprehensive public policy project in her local community. Such knowledge and recognition is crafting a space of participation for her.

Camellia, a 25-year-old girl and 7-year-old member of the League reported that she had “learned many things in the human right workshops. I learned that you are rejected; people reject you and say things you do not expect them to say. Things that hurt. I learned that everyone is a person; because a person is displaced she does not have to be sad. I was sad before but not any more. I am a person, there is no shame in being displaced, I am still a normal person. Those workshops have really been good. Before I used to cry all the time. Anything could make me cry. I got to know the content of the Award at the workshops. I am a beneficiary of it”.⁷³

For *Camellia* rights recognition has helped her change her perception of herself as a displaced person. She sees in rights and the “magic” around them a framing that takes

⁷² Interview with a member of the League of Displaced Women in Cartagena, January 2010.

⁷³ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

away the stigma of displacement, and makes her feel part of humanity. While in a symbolic dimension rights language have offered her a shield from the harms of society, from the narrative around her situation.

Iris and *Gardenia*, other 10-year members of the League have been part of many projects in the League. Both learned their rights through the education trainings at the League. The membership and participation in rights trainings and the different projects of the League have pushed *Gardenia* to get involved in the attention committee for the displaced population in Turbaco. Their experience of rights knowledge, recognition and appropriation, as *Azalea's*, has provided a space of inclusion in conversations that attain their community in a political level.

Such approach to rights evidences an active relationship with constitutional arrangements, with the distribution of state responsibilities. The journey they have undergone since the displacement and the possibilities that rights claiming have opened represent rights recognition as tool at this point of the process. Women give value to such language as a way of inclusion in the political arena. They did not know how rights operated before getting to Cartagena or before becoming members of the League. The organizations efforts to provide education on legal entitlements as a mechanism to bargain for a better situation provided a ground from where to build other processes that ultimately are all linked around law as a tool.

There are several constraints around placing all stakes in the belief of rights. Rights can be agents of change but they depend on several political factors around and beyond the recognition. One of the possible outcomes of the Court's determination to recognize women's rights is to contribute to contest social understandings that have placed women in an acute diminished situation. The determination to order gendered remedies creates a constitutional rhetoric; one that places women as the subject of a particular constitutional protection might inscribe a determinate social value and contribute to mobilize towards a different understanding of women and gender.

From a rights critique perspective it could generate a backlash in terms of social reaction.⁷⁴ The rights bearers can be viewed weaker in society under specific entitlements. The evidence of the gender risks determined in the Award could purport women as victims, not survivors. Such framing could augment their vulnerability. The idea that rights recognition restores immediately the violation of a right is false. Litigation, rights and remedies do not produce immediately social change".⁷⁵

Effective restitution of IDWs rights is crucial for the process of grassroots constitutionalism. Nevertheless, "constitutional ideals enforced by Courts express

⁷⁴ *Supra* note 36, 375. "Courts play a special role in this process -democratic constitutionalism-. Courts exercise a distinctive form of authority to declare and enforce rights, which they enjoy by virtue of the Constitution and the norms of professional legal reason that they employ. Citizens look to courts to protect important social values and to constrain government wherever it exceeds constitutional limitations. Yet judicial authority to enforce the Constitution, like the authority to all government officials, ultimately depends on the confidence of citizens. If courts interpret the constitution in terms that diverge from the deeply held convictions of the American people, Americans will find ways to communicate their objections and resist judicial judgments."

⁷⁵ STUART A SCHEINGOLD, *The Politics of Rights: Lawyers, public policy and political change*, 5 (2 ed.) 2004. "Rights-and-remedies is primarily a test of wills and resources between the parties to suits, and it is not directly assimilable to a program of social action."

national identity; they radiate gravitas and consequence”.⁷⁶ Rights have the possibility to be political tools. Sheingold has suggested that “regardless of the problems of implementation, rights can be useful political tools. It is possible to capitalize on the perceptions of entitlements associated with rights to initiate and nurture political mobilization –a dual process of activating a quiescent citizenry and organizing groups into effective political units. Political mobilization can in this fashion build support for interests that have been excluded from existing allocations of values and thus promote a realignment of political forces”.⁷⁷ Such approach, as or rights being able of being agents of change can be viewed as possible in this particular process as the framework provided by the Award has set a structure where power redistribution has been possible.⁷⁸

Much depends on the effective compliance with such legal entitlements. The process has been long and while there is an effective improvement in IDWs situation is far from a dramatic departure from the unconstitutional state of affairs. On another level, there is no way of determining at this point if the recognition of gendered rights will generate a backlash towards women, diminishing more their situation; Nor, if such legal intervention will trigger unsettling identity politics for the group. At this point there is evidence that the recognition has augmented the security of many IDWs leaders. Such reaction can be viewed as a threat for unveiling gender roles and attempting to shift them through legal translation. If viewed as a form of power the attempt to terrorize them with

⁷⁶ *Supra* note 36, 379.

⁷⁷ *Supra* note 73, 131.

⁷⁸ *Id.*, 6. “To this end, I propose a political approach to analyzing the utility of litigation. No framework is adequate if it fails to attach primary importance to the redistribution of power. If litigation can play a redistributive role, it can be useful as an agent of change.”

threats and effective killings is a way of trying to diminish acquired power or a place in a political space.

The operational concept in the constitutional rhetoric of Award 092 was set by the idea of human dignity. This will be explored in the next section.

4. Ideology

This section will address the constitutional rhetoric that grounds the decision. It is an attempt to make visible the ideology behind the constitutional allocation of social and economic rights, which was set in human dignity under the umbrella of the social state grounded in the rule of law. Such determination is significant in several ways. First, the use of dignity has legitimated the Court's structural remedy according to Colombian constitutional tradition as its deeply rooted in Colombia's jurisprudence that roots from its Constitutional arrangements. Likewise, it legitimates the Court's order under international human rights standards. Finally, it has triggered a mirror effect where the use of such concept covers the beneficiaries of the legal entitlements with a sense or feeling of dignity, linked to the satisfaction of their rights. I will address each point in order. Such constitutional rhetoric will also be contrasted with the beneficiaries idea of dignity through the voices of some interviews.

4.1. Constitutional rhetoric

The use of human dignity as an operational concept in the IDWs case has legitimized the Court's expansive remedial powers, as well as the distributional effect of the allocation of resources to create economic self-sustainability. As set by Colombian constitutional jurisprudence the right to dignity cannot be constrained by any other right or interest. On a normative and political level, the use of the right to dignity has the power of constitutional consensus as it bridges the divide from concern to empathy through institutional action. Nevertheless, constitutional scholarship has criticized its use in rights allocation as an open ended legal concept that needs substantive rights in order to transcend into action in its exercise.⁷⁹ Likewise, it has been accused to generate tension with equality outcomes.⁸⁰

On the other hand, social rights have been traditionally regarded as rights of second generation. Rights that are subject to a progressive compliance with no judicially enforceable dimension, in light of the resource allocation its protection supposes. Fundamental rights are subjective rights regarded as "such important positions that its granting or denial cannot be left in the hands of a simple parliamentary majority".⁸¹ Social rights are deemed as rights that imply a provision. Fundamental social rights are regarded as positive general rights, "rights of the individual before the state that if the individual had the financial media, and if there was enough supply in the market, could

⁷⁹ See NEOMI RAO, "On the Use and Abuse of Dignity in Constitutional Law", 14 Colum. J. Eur. L. 201 (2008)

⁸⁰ See RORY O'CONNELL, "The Role of Dignity in Equality law: Lessons from Canada and South Africa", 6 Int'l J. Const. L. (2008).

⁸¹ ROBERT ALEXY, *Theorie der Grundrechte*, 406 (1996).

be obtained from private offer.”⁸² This approach intertwines the idea of social democracy, where the importance of the allocation of the right can be so high that in order for a society to survive the state has to be able to guarantee the exercise of a baseline of these rights.

Decision T-025 determined that the duty to guarantee a minimum mandatory level of satisfaction of the rights of displaced people stemmed from the harmful conditions to human dignity that IDPs live in, which gave rise to the declaration of the unconstitutional state of affairs.⁸³ The Court determined the unequivocal state obligation to protect the rights to life, dignity, integrity—physical, psychological and moral—family unity, the provision of urgent and basic health care, the protection from discriminatory practices

⁸² ID.

⁸³ Colombian Constitutional Court, Decision T-024 of 2004, (Section 9.). (Translation taken from in RODOLFO ARANGO RIVADENEIRA (ed), “Judicial Protection of Displaced Persons: The Colombia Experience”. The Brookings Institution. 23 (Nov. 2009).) “In order to define the minimum level of satisfaction of the constitutional rights of displaced persons, a distinction must be drawn between (a) respect for the essential nucleus of the fundamental constitutional rights of displaced persons, and (b) the satisfaction, by the authorities, of certain positive duties, derived from the rights constitutionally and internationally recognized to displaced persons. In regards to the first aspect, it is clear that the authorities may not, in any case, act in such a way as to end up disregarding, violating or threatening the essential nucleus of the constitutional fundamental rights of internally displaced persons—just like they cannot act in such a way as to affect the essential nucleus of the rights of any person within the Colombian territory. (...) Regarding to the second aspect, the Chamber notes that most of the rights recognized by the international provisions and the Constitution to displaced persons bind the authorities, because of the very circumstances of displaced persons, to comply with clear obligations of a positive nature, which will necessarily entail public expenditure. (...) In the Court’s view, the rights with a markedly positive-duty imposing content that form part of the minimum levels that must always be secured to the displaced population, are those that have a close connection with the preservation of life under elementary conditions of dignity as distinct and autonomous human beings (...). It is there, in the preservation of the most basic conditions that permit a dignified survival, where a clear limit must be drawn between the State obligations towards the displaced population of imperative and urgent compliance, and those which, even though they must be fulfilled, do not have the same priority—which does not mean that the State is exempt from the duty of exhausting, to the maximum possible level, its institutional capacity to secure the full enjoyment of all the rights of displaced persons (...). “When a group of persons, which has been defined—and is definable—by the State for a long time, is unable to enjoy its fundamental rights because of an unconstitutional state of affairs, the competent authorities may not admit the fact that those persons die, nor that they continue living under conditions which are evidently harmful to their human dignity, to such a degree that their stable physical subsistence is at serious risk, and that they lack of the minimum opportunities to act as distinct and autonomous human beings.” (Section 9.)

based on the condition of displacement, and the right to education of displaced children under fifteen years of age.⁸⁴ Such determination included a duty of budget appropriation and redistribution.⁸⁵ The Court underscored that the state was obliged to guarantee the right to self-sufficiency through the identification of alternatives for dignified socioeconomic stabilization with the full participation of the interested person and in accordance to his specific situation and characteristics.⁸⁶

⁸⁴ Colombian Constitutional Court, Decision T-025 of 2004. (Translation taken from in RODOLFO ARANGO RIVADENEIRA (ed), “Judicial Protection of Displaced Persons: The Colombia Experience”. The Brookings Institution. 23 (Nov. 2009).) “[The] minimum level of protection that must be guaranteed in an effective and timely manner... implies (i) that the essential nucleus of the constitutional fundamental rights of displaced persons may not be threatened in any case, and (ii) that the State must satisfy its minimum positive duties in relation to the rights to life, dignity, integrity—physical, psychological and moral—family unity, the provision of urgent and basic health care, the protection from discriminatory practices based on the condition of displacement, and the right to education of displaced children under fifteen years of age.

In regards to the provision of support for the socio-economic stabilization of persons in conditions of displacement, the State’s minimum duty is that of identifying, in a precise manner and with the full participation of the interested person, the specific circumstances of his or her individual and family situation, his or her immediate place of origin, and the alternatives of dignified subsistence available to him or her, with the aim of defining that person’s concrete possibilities of undertaking a reasonable project for individual economic stabilization, or of participating in a productive manner in a collective project, for the purpose of generating income which may allow him or her, and any dependent displaced relatives, an autonomous livelihood.

Finally, in regards to the right to return and re-establishment, authorities’ minimum duty is that of (i) not imposing coercive measures to force persons to return to their places of origin or to re-establish themselves elsewhere, (ii) not preventing displaced persons from returning to their habitual place of residence or reestablishing themselves elsewhere; (iii) providing the necessary information about the security conditions that exist at the place where they will return, and about the responsibilities that the State shall assume in the fields of security and socio-economic assistance in order to guarantee a safe and dignified return; (iv) refraining from promoting return or re-establishment whenever such decisions imply exposing displaced persons to a risk for their lives or personal integrity, and (v) providing the support required to secure that return is carried out in safe conditions, and that those who return are able to generate income which can provide them autonomous livelihoods.”

⁸⁵ Colombian Constitutional Court, Decision T-025 of 2004. (Translation taken from in RODOLFO ARANGO RIVADENEIRA (ed), “Judicial Protection of Displaced Persons: The Colombia Experience”. The Brookings Institution. (Nov. 2009).) “(...) from the constitutional point of view, it is imperative to appropriate the budget that is necessary for the full materialization of the fundamental rights of displaced persons. The State’s constitutional obligation to secure adequate protection for those who are experiencing undignified living conditions by virtue of forced internal displacement may not be indefinitely postponed (...) (Section 6.3.2. of the judgment.)

⁸⁶ Colombian Constitutional Court, Decision T-025 of 2004. (Translation taken from in RODOLFO ARANGO RIVADENEIRA (ed), “Judicial Protection of Displaced Persons: The Colombia Experience”. The Brookings Institution. (Nov. 2009).) “8. Regarding to the provision of support for self-sufficiency (Article 16 of the Constitution) by way of the socio-economic stabilization of persons in conditions of displacement—a State

Award 092 draw from the rules stated in decision T-025 to shape the remedies it has put in place. The Award underscored Colombia's constitutional commitment as a social state grounded in the rule of law, founded in the respect of human dignity.⁸⁷ In light of such understanding the Court determined that one of the aspects that affects in a differential and acute way women victims of forced internal displacement is the taking over the role of head of the family without the minimum material conditions required by the principle of human dignity.⁸⁸ The Court saw the quantitative and qualitative impact of the gender aspects of displacement on the exercise of women's constitutional rights as a

obligation established in Law 387 of 1998 and which can be deduced from a joint reading of the Guiding Principles, in particular Principles 1, 3, 4, 11 and 18-, the Court considers that the State's minimum duty is that of identifying, with the full participation of the interested person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering the work market, as well as to use the information provided by the displaced population in order to identify income-generation alternatives for displaced persons. It is important to note that this minimum right of displaced persons does not bind the authorities to provide, in an immediate manner, the material support required to begin the productive projects which are formulated, or to secure access to the work market on the grounds of the individual evaluation at hand; even though such support must necessarily materialize through the programs and projects designed and implemented by the authorities for the purpose, the minimum and immediately enforceable duty imposed by this right upon the State is that of gathering the information which can allow it to provide the necessary attention and consideration to the specific conditions of each displaced person or family, identifying with the highest possible accuracy and diligence their personal capacities, so as to extract from such evaluation solid conclusions that can facilitate the creation of stabilization opportunities that respond to the real conditions of each displaced persons, and which can, in turn, be incorporated into the national or territorial development plans."

⁸⁷ I.4.1. Specific constitutional mandates. The constitutional obligations for the Colombian state regarding the protection of the women from all sorts of violence and discrimination are multiple and clear. Article 1 of the Constitution establishes that Colombia is a Social State of Rights founded in the respect of human dignity. Article 2 establishes as one of the essential ends of the State to effectively guarantee the principles, rights and duties contained in the Constitution and establishes unequivocally that "the state authorities are vested to protect the life, honor, beliefs and other rights and liberties of all residents in Colombia as well as to assure the compliance of the social duties of the state and the individuals."

⁸⁸ Colombian Constitutional Court, Award 092 of 2008. "In the context of the attention to women victims of forced displacement and the protection of their rights, the Constitutional Court has identified 18 gender aspects of the forced displacement. This gender aspect affect women in an acute, differential and specific way because of their gender condition in the context of the Colombian armed conflict. (...) iv) the taking over of the role of head of the family without the minimum material conditions required by the principle of human dignity with special complications in the cases of women with small children, women with health problems, women with disabilities or elder women."

breach of the principle of human dignity.⁸⁹ It underscored how the experiences of the different gender risks women go through when displaced and the disregard of the government authorities did not comply with international standards that protect human dignity.⁹⁰

The ground to order the design and implementation of the different programs as structural remedies lied in the Court's understanding that the violation of the rights to a life in conditions of dignity, the rights to health and work, the right to basic food, are the reflection of the extreme conditions in which IDW live. These were deemed perpetuated because of the State's failure to adopt all the necessary measures to guarantee minimum material conditions of subsistence required by the principle of human dignity.⁹¹

⁸⁹ Colombian Constitutional Court, Award 092 of 2008. Forced internal displacement has numerous gender aspects that explain its differential, disparate and qualitative impact on the exercise of fundamental rights of an equally disparate number of women. The Chamber has identified eighteen gender aspects and each of those produce individually serious violations of the constitutional rights of the harmed, its cumulative effect that affects all women affected by the displacement is manifestly against the Constitution and the principle of human dignity over which it is founded.

⁹⁰ Colombian Constitutional Court, Award 092 of 2008. "IV.B.4.2.1. (Sexual Violence) Sexual violence against displaced women is expressly prohibited in Guiding Principle No. 11 that by protecting the right to dignity and physical, mental and moral integrity establishes that internally displaced persons shall be protected particularly from "rape, mutilation, torture, cruel and inhuman treatment and other outrages to personal dignity, like the acts of violence against women, forced prostitution or any other attack to sexual freedom" as well as against "acts of violence with the objective to produce terror within the internally displaced. (...) IV.B.4.2.2. The major exposition of displaced women to domestic and community violence constitutes a violation to the state constitutional and international obligations referenced in section III.4. because they constitute forms of violence in the context of the armed conflict. These forms of violence are a violation of the minimum rights of the displaced population noted in Decision T-025/04, which are: the right to life, the right to dignity and physical, psychological and moral integrity, and the right to health. State constitutional and International obligations in regard to this gender aspect of the internal displacement are equally clear. They command the a positive duty to undertake all the necessary measures to guarantee the respect, prevention and protection of the rights violated by domestic and community gender violence against displaced women."

⁹¹ Colombian Constitutional Court, Award 092 of 2008. Sexual and reproductive health. IV.B.4.2.4. The alarming registered patterns of women heads of the households without the minimum material conditions of subsistence required by the principle of human dignity violate several constitutional obligations. The life conditions that internally displaced women heads of households have to bear are an extreme manifestation of the violation of their constitutional rights. These were noted in decision T-025 of 2004, namely: the right to a life in dignity conditions, the rights to health and work, the right to basic food, "that

4.2. The Court's use of human dignity.

The idea of dignity comes from Kant who characterizes dignity as such that has no price, therefore has no equivalent. It refers to such that represents an end in itself with an intrinsic value. He asserts, “morality is the only condition under which a rational being can be an end in itself, from only through this is it possible to be a law-making member in a kingdom of ends. Therefore morality, and humanity so far as it is capable of morality, is the only thing which has dignity”.⁹² Kant's approach to dignity has been set in autonomy.⁹³ Nevertheless this is not the only one. O'Connell suggests how Rawls “connects Kant's notion of treating persons as ends in themselves to the “bases of social respect” –how an individual feels valued in his or her community. This is essential to an individual's self-respect, without which life may seem to lack value or meaning. (...) this more socially oriented notion of dignity incorporates both a subjective element (how an individual's self-respect may be devalued if social goods are unequally distributed (unless distribution works to the benefit of the least advantaged in society) such a view,

results unfulfilled in a great number of cases because of the high levels of poverty that many IDPs reach. That prevents them from being able to satisfy their basic biological needs, which has an effect in the exercise of all the other constitutional rights, particularly the right to life, personal integrity and health”. Moreover, this situation has a direct consequence over the effective exercise of the fundamental rights of children that depend on the women heads of the household in a situation of displacement, which makes harsher the violation of the Constitution (art. 44 C.P.) and calls the competent authorities for the adoption of stronger measures.

⁹² IMMANUEL KANT, *Groundwork for the Metaphysics of Morals*, translated by H.J. Paton, 102 (2009).

⁹³ RORY O'CONNELL, “The Role of Dignity in Equality law: Lessons from Canada and South Africa”, 6 *Int'l J. Const. L.* 273 (2008). “Kant's moral writings link dignity, equality, and autonomy intimately. A rational being has the ability to act morally. This capacity to act morally confers a worth on the rational being that is beyond price and this “unconditioned and incomparable worth” is termed dignity. This leads to one version of the categorical imperative: that persons should not be treated merely as means but, rather, as ends in themselves. For Kant, “autonomy is therefore the ground of the dignity of human nature”.

rather than questioning the legitimacy of social protection measures, regards them as intimately linked to dignity”.⁹⁴ International human rights texts have also relied in human dignity as the ground for a conception of something common amongst individuals, which is linked through equality in a relationship with social goods distribution.⁹⁵

Legal systems based on Roman law as the Colombian quite often have included dignity as a principle or right in its constitutional arrangements. In a broad sense “respect for dignity implies respect for the autonomy of each person, and the rights of everyone not to be devalued as a human being or treated in a degrading or humiliating manner”.⁹⁶ It has been underscored that “human dignity in the constitutional context, is a legal concept, but its practical expression lies in the daily human experience and in the relationship towards the individual of the state and society including courts in which he lives”.⁹⁷

Colombia’s constitutional arrangements, as said, have set dignity as a principle and as a right. Such determination gives dignity a two-fold dimension. As a principle there is a hierarchy of importance that sets dignity as a justification for judicial

⁹⁴ RORY O'CONNELL, “The Role of Dignity in Equality law: Lessons from Canada and South Africa”, 6 Int'l J. Const. L. 274 (2008).

⁹⁵ RORY O'CONNELL, “The Role of Dignity in Equality law: Lessons from Canada and South Africa”, 6 Int'l J. Const. L. 274 (2008). “A final, more materialistic conception of dignity again relates it to social goods. This notion eschews the subjective question of how a person feels; rather it asks whether social goods are equally distributed to everyone’s material benefit. The spirit of this approach is best captured in international human rights texts, which invoke “human dignity” –in the sense of our common humanity-to ground human rights and equality. Such texts then condemn any “distinction exclusion or restriction” that nullifies the “recognition, enjoyment or exercise” of rights in the “political, economic, social, cultural, civil or any other field” on the grounds specified in the international texts, such as gender, race, or disability.”

⁹⁶ ARTHUR CHASKALSON, *Human Dignity as a Constitutional Value* in D. KRETZMER & E. KLEIN EDS., *The Concept of Human Dignity in Human Rights Discourse*, 134, (2002)

⁹⁷ D. KRETZMER & E. KLEIN EDS., *The Concept of Human Dignity in Human Rights Discourse*, 167, (2002)

determinations or constitutional interpretations.⁹⁸ As a right it renders a subjective dimension regarding a particular entitlement.

The usage by the Court of dignity as an operational concept is an expression of political determinations of a kind of desired State, inscribed in Colombia's Constitution in the principle of human dignity. This is a State that chooses a principle of solidarity as a ground for the definition of its duties and relationships, and that imposes a positive obligation for the state authorities to provide conditions to its citizens to live in humane conditions. As stated by Nussbaum good human functioning is based on a conception of the human being. Such conception is political and aims to produce individuals with the capabilities to function in society. This conception can be related to the concept of power previously described in Greenthal's terms.⁹⁹

Human dignity as the operational concept behind the adjudication of social rights is determining what is the situation of IDWs as to what are they able to do and be, when deprived of basic conditions such as housing, health, education or food and what are the obligations of the state to respond to such reality. The remedy aims to create a process of self-sustainability, as one of its core ambitions. It aims to go beyond emergency assistentialism, but to generate the conditions for women to achieve self-sustainability.

Through the understanding of human dignity the Court set a threshold of duties,

⁹⁸ RONALD DWORKIN, *Taking Rights Seriously*, 22, 26 (1977). "I call a principle a standard that is to be observed, not because it will advance or secure an economic, political, or social situation deemed desirable, but because it is a requirement of justice or morality. (...) principles have a dimension that rules do not—the dimension of weight or importance. When principles intersect (...) one who must resolve the conflict has to take into account the relative weight of each".

⁹⁹ *Supra* note 13.

translated as subjective entitlements in terms of social rights, that are necessary to be able to exercise life in humane conditions as a state guarantee. In Nussbaum terms “the task of political planning is to make available to each and every citizen the material, institutional and educational circumstances in which good human functioning may be chosen; to move each and every one of them across a threshold of capability into circumstances in which they may choose to live and function well.”¹⁰⁰ The set of rights that the Court is recognizing aims to render the conditions to exercise the power “to be able to”.

Colombia’s jurisprudence has developed human dignity as three-dimension right. It is an expression of individual autonomy, certain material conditions of existence, and the intangibility of physical and moral integrity.¹⁰¹ Depending on the dimension that the

¹⁰⁰ MARTHA NUSSBAUM, “*Artistotelian Social Democracy*” in *LIBERALISM AND THE GOOD*, 203 (Ed. Bruce Douglass), (1990).

¹⁰¹ Colombian Constitutional Court, Decision T-760 of 2008. (Sec. 3.2.1.2.) “The Constitutional Court has reaffirmed that one of the central elements that gives meaning to the use of the expression “fundamental rights” is the concept of human dignity, which, as stated in article 2 of Decree 2591 of 1991, has to be appreciated in the context in which each person is inserted. Decision T-227 of 2003 stated:

“In decision T-801 of 1998, the Court stated that “the reality in each case, its particularities and uniqueness is what allows to characterize it, to define if a fundamental right has been truly violated, if there has been an affection to the dignity of the petitioner and if he is in a defenseless situation before the aggressor”. From this decision is from where a central element emerges to systematize the concept of fundamental right: human dignity“.

The Court explains that this concept is related to the “freedom to choose a concrete plan of life in the context of the social conditions where the individual evolves” and with “the real and effective possibility to enjoy certain goods and services that allow all human beings to function in society according to their special conditions and qualities, under the logic of inclusion and the possibility to play an active role in society”. Regarding the relationship between fundamental rights and human dignity, the jurisprudence, in decision T-227 of 2003, concluded the following:

“The concept of human dignity that the Court has collected is explained within the axiological system of the Constitution and in function of that system. The elevation to a constitutional rank of the “freedom of choice of a concrete plan of life in the context of the social conditions that the individual evolves” and with “the real and effective possibility to enjoy certain goods and services that allow to all human beings function in society according to its special conditions and qualities, under the logic of inclusion and the possibility to play an active role in society”, define the girth of what is considered essential, inherent, and because of that, inalienable for the person, the reason because it is translated into subjective rights (understood as positive expectations (benefits) or negative) which contents are subtracted from the transient majorities. Therefore, it is fundamental

case involves it has been necessarily linked to other constitutional or fundamental rights. Regardless of the dimension that is approached, the use of dignity by the Court defines the basic level of compliance of certain rights that the Colombian State must guarantee as it is used as principle that cannot be limited and that demands positive obligations.¹⁰²

Such jurisprudential developments and conception of human dignity in Colombia's constitutional arrangements incorporate a two-level legitimacy. The first is a reflection of Colombia's international human rights commitments. The use of international obligations as a source of constitutional adjudication is a form of legitimacy for the Court's structural remedy approach. The second relates to Colombia's religious tradition. As a country with a strong catholic heritage, dignity values are entrenched in society and generate consensus, even when they advocate for a redistribution policy. Such reality legitimates its use from a top down legal conception and down-up cultural conception. The view of the rights bearers of dignity evidences the symbolic power of such approach.

4.3. IDW's perception of Dignity

that a constitutional right that is functionally directed to achieve human dignity can be translated into a subjective right.”

In that sense, the scope of the fundamental right to health is determined by the constitutional dogmatic, that recognizes the guaranteed content of the right. Therefore, the scope of protection is not determined by the health plan. Because there can exist a health service, not covered but the plan that is required with urgency and compromises in an acute way a dignified life or its personal integrity.”

¹⁰² Colombia's Constitutional Court, Decision C-075 of 2007. “Broadly, in line with the constitutional jurisprudence, human dignity as the founding principle of the State, constitutes the essential precondition for the effective establishment of the system of rights and guarantees of the Constitution, and therefore has an absolute value, which is not susceptible to be limited under any circumstance.”

Intertwined in the rights language and the projects for self-sustainability the IDWs League members assess the implementation of the Award in terms of dignity. I asked the women what dignity meant for them. All their responses linked their understanding of dignity to the restitution of their rights. For *Pearl* things will change “if the Award is implemented, if we make that the law is implemented”.¹⁰³ As a beneficiary of the Award she has received one of the emergency aids. For her dignity is that the her rights are respected “that we are no longer mistreated as women. That is not happening. Sometimes someone arrives to *Accion Social* and asks something and they do not even answer, when a person has a right to receive information. Now we are knocking doors, going to the authorities to demand that the Award is implemented. I want to study, I have not even completed primary education, but to access education I have to comply with thousands of requirements”.¹⁰⁴

Pearl’s conception of dignity is linked to other’s respect for her rights. It has to do with her voice being listened and the proper assessment of her claims. She sees the opportunity of dignity in the possibility to claim rights and make such claims into the exercise of the rights rendered in the decision.

For *Azalea* “dignity is the restitution of my rights, that there is a truth, justice and reparation. That we are not signaled, discriminated, that perception that we are a thing

¹⁰³ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

¹⁰⁴ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

that takes something away from us, there was a moment where we were not displaced and we did not want to be displaced”.¹⁰⁵

Again, Azalea sees dignity in a change of perception of society towards her and her situation as a displaced woman. The stigma attached to displacement gives the sense of being deprived in a structural way. Rights are seen as the ones to give back that sense of inclusion in society as “normal” individuals.

Camellia stated “now I live a dignified life in my house. Not like when I lived in the *Pozon* and water was flooding all the time the house. I have 25 years and two children one goes to school under the benefits of the decision. I live with the father of my children and he works he has a job so we get health services through him”.¹⁰⁶

Gardenia regards dignity as a personal thing. “You can’t change it for anything. I wanted to have a dignified house, something stable. Not live where I was living when I got here. That has generated to me tons of problems, traumas; it was a far away place with no water or energy, a place that had nothing. That was against dignity. The Award comes out as part of the work we did in Bogota. We used to go to *Accion Social* to say that these women cannot live in such conditions. We have battled with the organization but we still have a lot more to do. We need to bring psychosocial help and a school for

¹⁰⁵ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

¹⁰⁶ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

our children. Dignity is something very beautiful that I do not have the words to express”.¹⁰⁷

Gardenia’s account of dignity is linked to the work she has done at the League. She see dignity as a construction between her work and the rights recognized in the Award. Dignity requires agency and it follows the change of institutional response to her claims.

Iris entrenches dignity in the respect of her rights and gives agency to such realization. She explained that “a person has to make her dignity be valued. It does not matter if a person is not rich, or has not studied, they have to respect you as a person. My situation has changed before and after the Award. Before the Award I had nothing. With the emergency aid of the Award I was able to buy a refrigerator. I am allergic to the dust and I was also able to put a floor to my house”.¹⁰⁸

Iris, as *Gardenia*, sees dignity in agency terms. For her, dignity is grounded in the possibility to acquire material minimal commodities that make her days better. She sees a transformation from undignified towards dignified in the construction and possibility of a physical space. The material aid provided by the Award is a tool to build that sense of dignity.

¹⁰⁷ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

¹⁰⁸ Interview with a member of the League of Displaced Women in Cartagena, January 2010.

Such recount of dignity as centered in the implementation of rights sets the ground for various reflections. Their construction of dignity, through this grassroots constitutionalism and its intertwine with the legal entitlements rendered by the process of implementation of Award 092 has put a certain language and goals in their realities. Dignity is centered in the realization of their rights. The satisfaction of their basic needs has been translated to a language where rights and dignity have a place. For IDWs part of the League rights claiming has become a tool to exercise what they deem as a state obligation. It provides a path to feel dignified, to be part of the world in their relationship with institutional settings. Nevertheless, the drawback lies in setting much of their expectations around the implementation of Award 092 and the work they do around it

The use of dignity renders a symbolic dimension for the beneficiaries of the decision. The interviews I conducted allow an understanding that there is a conception of human dignity that is translated from the Court's entitlements. The beneficiaries sensed human dignity as the possibility to exercise the rights recognized in the Award. Such inscription makes them see their situation as one that demands from the state a determinate action for the restitution of some sort of humanity. It incorporates a sense that their deprivations renders a legal entitlement that is not to be seen as stigma of weakness but a state obligation to their condition as human beings that empowers them before authorities, to allow a space of claiming such that is owed to them.

5. Final remarks

The story of the issuance and process of implementation of Award 092 as a process of recognition of gendered remedies has important internal and external significances. It evidences a deep compromise of Colombia's Constitutional Court to assert the principles and rights entrenched in Colombian's constitutional arrangements. It is a definite affirmative action; an effort to render the necessary conditions to restore the violations of women's rights. It is about empathy. But until this point it is a story about the myths of rights. At this point is a process that has not been completed with the effective enforcement of the entitlements rendered. Regardless, it has been an axis to both generate processes of organization and mobilization that redistribute power relationships and shed light to other processes, outside the legal framework of the Award, such as the ones conducted by the League of Displaced Women in Cartagena.

The exercise the Court has provided is a break down of a deep social problem, which is translated it into responsibilities and entitlements. The Court has decided to empower women with a particular tool, gendered rights. It has done such move using dignity as an operational concept and social rights as the subjective entitlement. Such approach has created expectations of redistribution that if are not fulfilled will end up corroding Colombian constitutional legitimacy but more importantly will perpetuate an underscored unconstitutional state of affairs.

Participatory authorship and grassroots constitutionalism are political approaches to litigation and are more interested in the shift of power relationships through social movements or mobilization and grassroots organizing that in a the particular legal process. They look at the processes unleashed by law and its focus goes beyond the effective implementation of the entitlements rendered.¹⁰⁹ Such analysis is an incorporation of a political dimension to rights adjudication as underscoring that “a faith in the political efficacy and ethical sufficiency of law as a principle of government”¹¹⁰ is not enough.

Those processes are offering opportunities to a build up on the recognition of gender roles in society, hierarchies and injustices that only happen to women. The starting point of such opportunity for change and restoration of fundamental rights is a rule shift provided by the Award. It presents a framework towards institutional gendered awareness. It is a recognition of gender dynamics of human rights abuse as a consequence of forced displacement in the context of Colombia’s internal conflict. But legal interpretation cannot be free from its implementation, “legal interpretation must be capable of transforming itself into action; it must be capable of overcoming inhibitions against violence in order to generate its requisite deeds; it must be capable of massing a sufficient degree of violence to deter reprisal and revenge”.¹¹¹ As put by Cover “the

¹⁰⁹ *Supra* note 75, 8. “The politics of rights focuses on distinctive forms of political action which are closely associated with lawyers and litigation. Attention is directed to the articulation of public policy goals by courts and to the post-judgment political process. In investigating that process it is necessary to examine both symbolic and coercive capabilities which attach to rights and to consider tactics that can maximize these capabilities.”

¹¹⁰ *Id.*, 17.

¹¹¹ ROBERT M. COVER, *Violence and the Word*, Yale L. Journ. Vol 95 No. 8, Charles L. Black, Jr. Festschrift 1617 (1986).

practice of interpretation requires an understanding of what will do with such a judicial utterance and, in many instances, an adjustment to that understanding, regardless of how misguided one may think the likely institutional response will be”.¹¹²

The process described as participatory authorship evidences how can such legal entitlements be used by organizations as a tool to reclaim spaces and therefore shift power relationships within a particular legal framework. It asserts how a structural remedy, under a participatory scheme, can propel mobilization and effective inclusion in policy networks. Grassroots constitutionalism underscores the importance of a grassroots dimension to rights adjudication in the bolstering of citizenship towards the restoration of fundamental rights.

The Court’s use of dignity as an operational concept for the enforcement of social rights is consistent with Colombia’s constitutional and cultural tradition. Nevertheless, the Court’s determination to protect gendered rights under such rationale cannot be undermined. It represents the idea of what is it that women need in order to be able to lead a dignified life and be properly restored in the exercise of their most basic rights. It is deeply entrenched in Colombia’s constitutional arrangements as a social state grounded in the rule of law. Moreover, it rests in the assumption that the state is obliged to provide such conditions. It seeks to give power to women “to be able to”. IDWs’ understanding of dignity in this case also unveils Colombia’s faith in law. IDWs see dignity in the restoration of their rights. The idea that rights guard change and are powerful tools that

¹¹² Id., 1612

can give a voice, take away stigma, and that can operate as a mean of inclusion in society.
Moreover, the idea that to have rights is to have power, even when such power rests in
hope.

BIBLIOGRAPHY

ANDRAS SAJÓ, *Constitution without the constitutional moment: a view from the new member states*, 3, - Int'l J. Const. L.,(I-CON) 257 (2005)

ARTHUR CHASKALSON, *Human Dignity as a Constitutional Value* in D. KRETZMER & E. KLEIN EDS., *The Concept of Human Dignity in Human Rights Discourse*, 134, (2002)

Colombian Constitutional Court, Decision T-025 of 2004, per Justice Manuel José Cepeda Espinosa.

Colombian Constitutional Court, Award 092 of 2008, Per Justice Manuel José Cepeda Espinosa.

GRAZYNA SHAPZKA, *Paradigm Lost? The Constitutional Process in Poland and the hope for Grass Roots Constitutionalism*, in *The Rule of Law After Communism Problems and concepts in East Central Europe* 149 (Martin Krygier & Adam Czarnota eds, Asgate, 1999).

D. KRETZMER & E. KLEIN EDS., *The Concept of Human Dignity in Human Rights Discourse*, 167, (2002)

IMMANUEL KANT, *Groundwork for the Metaphysics of Morals*, translated by H.J. Paton, 102 (2009).

Interview with Lina Céspedes, Attorney, Consult for Human Rights and Displacement (*Consultoría para los Derechos Humanos y el Desplazamiento*) in Bogotá, Colombia (Jan. 5, 2010).

Interview with Laura Badillo, La Ruta Pacífica de las Mujeres, (Jan. 13 2010)

Interview with Clara Elena Reales, Auxiliary Judge, Colombian Constitutional Court in Bogotá, Colombia (Jan. 14, 2010).

Interview with Claudia Mejía, Director SISMA Mujer, (Jan. 15, 2010).

Interview with Patricia Guerrero, Director La Liga de Mujeres Desplazadas, (Jan. 20 2010)

Interview with Olga Amparo Sanchez, Director La Casa de la Mujer, (Jan. 26 2010).

Interview with Manuel José Cepeda Espinosa, Professor, University of Los Andes in Bogotá, Colombia (Jan. 15, 2010).

LANI GUINIER, *Supreme Court Foreward: Demosprudence Through Dissent*, 122 Harv. L.Rev. (2008).

LIBBY ADLER, “The Gay Agenda”, 18 Mich.J. Gender & L. 180 (2009)

MARTHA NUSSBAUM, “*Artistotelian Social Democracy*” in LIBERALISM AND THE GOOD, 203 (Ed. Bruce Douglass), (1990).

MARK TUSHNET, *Misleading Metaphors in Comparative Constitutionalism: Moments and Enthusiasm*, Int'l J. Const. L., (2005)

MICHEL C. DORF & CHARLES SABEL, *A Constitution of Democratic Experimentalism* Colum.L. Rev. (1998).

MIKE GRINTHAL, *Power With: Lawyers and Relational Organizing*, Harvard Law School 3L paper, 5 (2006).

MONICA ARANGO OLAYA & JOSEPH PILERI, *Legal Empowerment through Grassroots Constitutionalism*, paper under the supervision of Harvard Law Professor Lucie White, (2010).

NEOMI RAO, “On the Use and Abuse of Dignity in Constitutional Law”, 14 Colum. J. Eur. L. 201 (2008)

ROBERT ALEXY, *Theorie der Grundrechte*, 406 (1996).

ROBERT M. COVER, *Violence and the Word*, Yale L. Journ. Vol 95 No. 8, Charles L. Black, Jr. Festschrift 1617 (1986).

RODOLFO ARANGO RIVADENEIRA (ed), “Judicial Protection of Displaced Persons: The Colombia Experience”. The Brookings Institution, (2009).

RODOLFO ARANGO RIVADENERIA, *El Concepto de Derechos Sociales Fundamentales*, (2005)

RODRIGO UPRIMNY, *Should Courts Enforce Social Rights? The Experience of the Colombian Constitutional Court*, in Coomans, Fons (ed.), *Justiciability of Economic and Social Rights. Experiences from Domestic Systems*. Antwerp, Oxford: Intersentia – Maastricht Centre for Human Rights, (2006)

RONALD DWORKIN, *Taking Rights Seriously*, 22, 26 (1977).

RORY O'CONNELL, “The Role of Dignity in Equality law: Lessons from Canada and South Africa”, 6 Int'l J. Const. L. (2008).

Sistema Nacional de Atención Integral a la Población Desplazada - SNAIPD -, *Informe del Gobierno Nacional a la Corte Constitucional sobre los Avances en la Superación del Estado de Cosas Inconstitucional Declarado mediante la Sentencia T-025 de 2004*, (2009).

STUART A SCHEINGOLD, *The Politics of Rights: Lawyers, public policy and political change*, 5 (2 ed.) 2004.

VICKI C. JACKSON & MARK TUSHNET, *Comparative Constitutional Law*, 289 (sec. ed. 2006).