

FALSE DICHOTOMIES OF TRANSITIONAL JUSTICE:  
GENDER, CONFLICT AND COMBATANTS  
IN COLOMBIA

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## V. CONCLUSION: CONCEPTUALIZING A VISION OF GENDER-INCLUSIVE TRANSITIONAL JUSTICE . . . . . 156

### INTRODUCTION

*A British freelance journalist has come to Colombia to cover the forty-year long civil war, and falls in love with a local twenty-something woman named Lorena. He moves into her family's home in a rural town near the Ecuadorian border, and it becomes his base for covering the conflict. Lorena works evenings at a restaurant in order to support her young daughter, but is often gone for stretches of time and is secretive about her life. After months pass, Lorena eventually reveals that she works as a cook for the paramilitaries. She claims to have joined because she comes from a poor family and felt she had no other options. Friends warn the journalist that his girlfriend not only cooks for the paramilitaries, but is actually one of the most feared assassins of the "paras." He refuses to believe them, until one evening when he discovers Lorena cleaning her gun. He confronts her, and she admits that the paramilitaries have paid her to assassinate twenty-three people. Soon after her confession, Lorena herself is murdered in a vengeance killing, leaving her 5-year old daughter to be cared for by her grandmother.<sup>1</sup>*

Stories such as Lorena's are printed daily in the pages of Colombia's newspapers. They appear side-by-side with reports describing the crimes of some of the worst human rights offenders being tried under Colombia's Peace and Justice Law—one of the country's efforts to implement a strategy of transitional justice to achieve accountability for past human rights violations. In Colombia's armed conflict, women have been victims of horrendous human rights violations. But women are not strictly victims in Colombia's conflict. Women like Lorena play an active role in the conflict. Many women who join armed groups have previously been victims of sexual abuse, rape, or have suffered from a lack of educational and social opportunity. Can an individual have her rights vindicated as a victim, yet also be held accountable for the human rights violations she has committed as a perpetrator? This article argues that in order for transitional justice mechanisms to achieve their goals of re-legitimizing the state and preventing the recurrence of violence, it is essential that they view women who wield violence not as paradoxes, but as complex actors in a complex world.

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1. *Amor Asesino*, LA SEMANA, March 20, 2008, [http://www.semana.com/wf\\_InfoArticulo.aspx?IdArt=110374](http://www.semana.com/wf_InfoArticulo.aspx?IdArt=110374) (author's translation).

In Colombia, it is estimated that over one out of every four combatants is a woman or a girl.<sup>2</sup> It is a conflict in which some political violence is highly sexualized, and in which women's bodies become both targets and weapons of violence. The situation in Colombia challenges transitional justice mechanisms and human rights law to grapple with the complexity of the roles that women play in violent conflicts. Even more importantly, however, the challenges of incorporating female combatants into a transitional justice strategy reveal important truths about the role that gender plays in conflict for both men and women. These truths can be instructive in helping to conceptualize the role that gender and societal norms can play within violent conflicts throughout the world.

In this article, I argue that transitional justice and human rights mechanisms, despite the superficial respect and the attention paid to women's groups and women's needs, fail to reach true gender inclusiveness because they neglect to consider the multiple gendered roles that both men and women play in conflict and post-conflict. Furthermore, I claim that if scholars and practitioners examine transitional justice from a gendered lens, this perspective reveals not only crucial issues regarding the situation of women in conflict but sparks essential questions about the role of conflict in society that are instrumental to broader conversations about transitional justice. In this article, I briefly examine several post-conflict mechanisms in the context of Colombia, but I focus primarily on the theoretical importance of making this inquiry, the dangers of neglecting it, and the conclusion that examining closely the

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2. HUMAN RIGHTS WATCH, YOU'LL LEARN NOT TO CRY: CHILD COMBATANTS IN COLOMBIA 53 (2003), available at <http://www.hrw.org/reports/2003/colombia0903/index.htm>. Estimates of how many female combatants exist in Colombia vary. Human Rights Watch indicates that it is not able to guarantee accuracy of the figures offered by any of its sources, as there is no precise data on the numbers of females and children involved in conflict in Colombia. However, it states that between one-fourth and one-half of the guerrillas are female. For the purposes of this article, I utilize the term "combatant" as encompassing the multiplicity of roles that women may play in their affiliation with irregular armed groups, whether as fighters, recruiters, cooks, sexual workers, or commanders. For an excellent discussion of the debate surrounding the terminology used to describe combatants, see Megan Mackenzie, *Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone*, 18 SECURITY STUD. 241 (2009).

challenges in gender and transitional justice has the potential to teach us about and, indeed, perhaps prevent violent conflict.

Specific protection of women's rights has emerged as a prime focus of feminist activism and scholarship in the late twentieth century.<sup>3</sup> This strategy has proven to be an important one in addressing particular components of women's experiences during conflict. Yet one of the repercussions of having achieved broad-based recognition of women's rights has been the development of transitional justice and human rights mechanisms in which women are perpetually perceived and treated as "the victim." This tendency oversimplifies the multiple roles played by women and men in conflict. A human rights and transitional justice paradigm that encompasses the diverse experiences of actors and victims demands reframing transitional justice so that it is compatible with a gender-oriented critique.

In Section I of this article, I introduce the concept of transitional justice as a mechanism of accountability for human rights violations. In Section II, I outline three progressive approaches to feminist critique of transitional justice initiatives. I then examine the most recent body of critical feminist scholarship, highlighting some of the gender biases found in mainstream approaches transitional justice, and exposing what I consider to be "false dichotomies," upon which transitional justice mechanisms may rely. In Section III, I offer a brief overview of the Colombian conflict, and of female combatants there. I then explore how the theories elaborated upon in Section II may or may not apply to the situation of these women. In Section IV, I briefly review the Peace and Justice Law, the predominant mechanism of the transitional justice mechanisms in Colombia, with regard to the experience of these women. Rather than present an exhaustive review of transitional justice mechanisms in the country, in this article I focus only on particular elements of this law that have particular resonance in the lives of women combatants. And in Section V, recognizing that the endeavor of transitional justice is necessarily an imperfect science, I provide a framework for a transitional justice strategy in Colombia that is cognizant of gender

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3. MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 166 (1998).

inclusivity and which attempts to overcome these false dichotomies.

### I. WHAT IS TRANSITIONAL JUSTICE?

As countries emerge from years of human rights abuse and violent conflict, they often struggle to develop methods to reconcile society and to address the legacy of heinous acts that have taken place within their borders. These efforts, understood broadly as transitional justice, are concerned with reordering society to promote a more just, less repressive society that seeks to overcome past trauma, and to account for past injustice.<sup>4</sup> This process often, but not always, is implemented as a country shifts from an authoritarian regime to one based on liberal notions of democracy and pluralism. These mechanisms include judicial and non-judicial options, such as truth and reconciliation commissions, truth commissions (with no reconciliation as part of the mandate), prosecutions (international or domestic), victim reparations (which may be either material or symbolic, individual or collective), vetting or lustration (banning perpetrators from public office), or amnesty (either blanket or individualized).

In addition to those practices that fall under the umbrella of transitional justice programs, over recent decades, conflict zones throughout the world have witnessed significant reliance on and funding for reconstruction efforts, specifically through the disarmament, demobilization and reintegration (“DDR”) of combatants.<sup>5</sup> Most scholars distinguish DDR from transitional justice, and view the two as separate processes.<sup>6</sup> DDR is

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4. LOUIS BICKFORD, *Transitional Justice*, in 1 ENCYCLOPEDIA OF GENOCIDE AND CRIMES AGAINST HUMANITY 1045, 1045 (Dinah L. Shelton, ed., 2004) (“Transitional Justice refers to a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just or peaceful future.”).

5. In 2005, more than one million ex-combatants participated in DDR programs in twenty different countries, at a cost of 1.9 billion USD. ALBERT CARAMES ET AL., ANALYSIS OF DISARMAMENT, DEMOBILIZATION AND REINTEGRATION (DDR) PROGRAMMES EXISTING IN THE WORLD DURING 2005, at 4 (2006).

6. For an overview of the distinctions between the two endeavors of DDR and transitional justice, and for a cogent argument that the two endeavors would each benefit from greater coordination, see Lars Waldorf, *Linking DDR and Transitional Justice*, in DISARMING THE PAST: TRANSITIONAL JUSTICE AND EX-COMBATANTS 14 (Ana Cutter Patel et al. eds., 2009).

concerned primarily with former combatants, is implemented during or immediately after conflict, and is concerned with security alone, whereas transitional justice incorporates a wider spectrum of individuals, may take years to implement after conflict, and is concerned with accountability, truth-seeking and redress for past wrongs.<sup>7</sup> Despite these differences, both processes are oriented toward long-term objectives of reconciliation, stability, and peace, and are often funded by the same donors, implemented by the same national governments, and rely on partnerships with same civil society organizations. As a result of these convergences, increasing numbers of scholars and practitioners argue that the two processes would both benefit from being implemented in coordination with one another.<sup>8</sup> Because of its current and, even more significantly, future relevance within the Colombian process for guerilla who have yet to demobilize, this article considers the relevance of DDR as well as other transitional justice mechanisms.

The origins of the modern era of transitional justice are commonly traced to the Nuremburg trials, although history provides numerous examples of countries reckoning with corrupt regimes prior to World War II through means that also qualify as transitional justice.<sup>9</sup> A central tenet of most transitional justice mechanisms is that they are implemented during a finite period spanning two subsequent governments, as a

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7. U.N. Disarmament, Demobilization and Reintegration Resource Centre, IDDRS Framework, §§ 1.10.2, 6.20.3 (2006), <http://www.unddr.org/iddrs/framework.php>.

8. For a representative sampling of this perspective, see *id.*, Waldorf, *supra* note 6, Kimberly Theidon, *Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia*, 1 INT'L J. TRANSITIONAL JUST. 66 (2007), and SERGIO JARAMILLO ET AL., TRANSITIONAL JUSTICE AND DDR: THE CASE OF COLOMBIA (2009), available at <http://www.ictj.org/en/research/projects/ddr/country-cases/2379.html>.

9. For a detailed discussion of the historical development of and influences on transitional justice, see Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 70–72 (2003). Teitel situates post-World War II transitional justice within the context of the transitional justice following World War I, specifically citing the influence of (1) national trials within Germany that failed to deter the state aggression that followed only decades later and (2) the economic sanctions levied against Germany, which “came to be identified as a basis for the sense of economic frustration and resentment that fueled Germany’s role in WWII.” *Id.* at 72–73.

country transitions from one political regime to another.<sup>10</sup> They are largely born out of necessity and implemented with a sense of urgency. Leaders and populations of post-conflict governments sense acutely that there will be an intense and painful recovery period, and must make difficult decisions about what the best route forward is for victims and perpetrators of abuse.

## II. EXAMINING TRANSITIONAL JUSTICE WITH A GENDERED LENS

The field of transitional justice has remained largely sequestered from feminist critique that has been influential in shaping the fields of human rights and international law.<sup>11</sup> This may be due to the newness of the field, or to the urgency with which transitional justice mechanisms are typically implemented. Nonetheless, within the past decade, several scholars have begun to stress the importance of evaluating transitional justice from a gender-conscious theoretical perspective.<sup>12</sup> Ap-

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10. See GUILLERMO O'DONNELL & PHILIPPE C. SCHMITTER, *TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES* 5 (1998) (defining transition as the interval between one political regime and another); see also RUTI G. TEITEL, *TRANSITIONAL JUSTICE* 5 (2000) (explaining that transition is a finite period defined by a shift in political orders). It should be noted that, despite the commonly held understanding that transitional justice requires a change in political power, the endeavor does not always require a transition of government in order for the mechanisms of transitional justice to be implemented. Oftentimes, a transition or re-balancing of power is sufficient to pave the way for implementation of such programs. In other cases, governments may initiate transitional justice mechanisms before any significant end to the conflict itself is in sight. The conflict in Colombia represents this last approach; there has been no transition from one abusive regime to a second regime seeking accountability. I adopt a broader interpretation of what "transitional justice" implies, which includes not only regime transition but also efforts by a government, such as that of Colombia, to seek accountability for past and ongoing violence.

11. Vasuki Nesiah, *Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice*, 15 COLUM. J. GENDER & L. 799, 799-801 (2006).

12. The International Center on Transitional Justice convened a conference on this topic in 2005 in Bellagio, Italy and published a collection of essays based on these meetings. See Christine Bell & Catherine O'Rourke, *Does Feminism Need a Theory of Transitional Justice? An Introductory Essay*, 1 INT'L J. TRANSITIONAL JUST. 23 (2007) (examining "some of the gender implications of a specifically 'transitional' theory of Justice"); see also Fionnuala Ní Aoláin, *Political Violence and Gender During Times of Transition*, 15 COLUM. J. GENDER & L. 829, 829 (2006) (analyzing "the multiple ways in which transi-

plication of a gender critique does not necessarily imply a focus on women's unique needs, protection of women's rights, or increased participation in a post-conflict setting. Instead, theorists who prefer an analysis that is more gender-aware frequently criticize these emphases.

An examination of the possible theoretical intersections between gender theory and transitional justice reveals three approaches. The first approach is a non-feminist one, or one that posits that gender is irrelevant. It makes no explicit acknowledgment of issues that uniquely affect women and men, and does not recognize gender arrangements that exist in society. This category is typified by a reliance on civil and political rights. For example, a non-feminist approach might treat a victim of torture identically whether he is a man, who has been electro-shocked during his imprisonment, or a woman, who has suffered rape or sexual enslavement as part of her imprisonment.<sup>13</sup> Or if a guerilla group commits a massacre of civilians, this approach would call for equal attention to all those who had been harmed, meaning people who had been injured, raped, killed, or had property destroyed.

A second approach to transitional justice is one that is explicitly feminist and, as such, criticizes the lack of attention within the field of transitional justice to the specific needs of women. This feminist critique is particularly concerned with the lack of attention paid to sexual violence within conflict. This approach maintains the prominence of the civil and political scheme and transposes it onto the crimes that most affect women. One arena in which a feminist approach to transitional justice has had particular salience has been in the realm of international criminal justice; feminist influences have brought about the recognition of crimes such as sexual violence and rape.<sup>14</sup> In the examples offered above, this approach understands the female victim's abuse in prison as explicitly gender-related, and categorizes the crime as such in le-

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tional justice processes have conceptualized political violence, and how that maps onto a gendered understanding of violence experiences and accountability mechanisms in a transitional context").

13. Men are also victims of sexual abuse, yet this approach would not consider the explicitly sexual nature of the crimes of rape or sexual enslavement of either men or women.

14. For further discussion on the emergence of criminalization of violence against women, see *infra* Part II.B.



gal terms. With regard to the civilian massacre, this second approach highlights women who had suffered rape or sexual violence and categorizes those crimes as violations of human rights targeted against women.

A third school of thought has emerged that exposes the limitations of mainstream civil and political approaches to transitional justice and highlights the gender biases in many dominant discourses. Throughout this article I refer to this emerging body of scholarship as the gender-oriented approach to transitional justice.<sup>15</sup> These gender-oriented theorists examine how conflict affects both men and women, how gender stereotypes and expectations for both men and women contribute to conflict, and how prevalent transitional justice mechanisms may be implemented to the ultimate detriment of women.<sup>16</sup> This theoretical approach also attempts to complicate the concept of truth within transitional justice,<sup>17</sup> to challenge the presumption that women's sole experience is one of victimhood,<sup>18</sup> and to highlight the ways in which normative concepts regarding gender may have a detrimental effect on men as well as women within the framework of transitional justice.<sup>19</sup> In the case of torture or rape victims, this approach might call for attention to the ways in which normative concepts of gender may impact the choices that perpetrators of torture or rape may make in committing human rights abuses. It may also highlight that despite the different nature of the abuse suffered by each the man and the woman, both may ex-

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15. My characterization here of these scholars as "gender-oriented" is not meant to imply that they are not "feminist" in nature; rather, the distinction is meant as an aide to understand the distinction between those scholars who emphasize that more attention should be paid to gender writ-large, as opposed to simply paying more attention to women.

16. See, e.g., Eilish Rooney, *Engendering Transitional Justice: Questions of Absence and Silence*, 3 INT'L J. L. CONTEXT 173 (2007) (analyzing the disparity between liberal, gender-neutral norms and the underrepresentation of women in the Good Friday Agreement).

17. See, e.g., Fionnula Ní Aoláin & Catherine Turner, *Gender, Truth and Transition*, 16 UCLA WOMEN'S L.J. 229, 234 (2007) (noting that truth commissions tend to view female victims solely through the lens of sexual violence).

18. Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L. 335, 337 (2006).

19. See, e.g., Brandon Hamber, *Masculinity and Transitional Justice: An Exploratory Essay*, 1 INT'L J. TRANSITIONAL JUST. 375 (2007) (exploring the role of "violent masculinity" in transitional justice).

perience the role of “victim” within conflict, yet neither is unilaterally defined by it.

This article is primarily concerned with understanding how this most recent gender-oriented approach toward transitional justice might apply to a subject that has not yet been extensively contemplated by these theorists: the situation of female combatants.<sup>20</sup> The existence of female combatants in conflicts worldwide is a phenomenon that is under-documented and under-analyzed. Consequently, it poses unique challenges for transitional justice and human rights mechanisms’ treatment of gender issues in many countries throughout the world, including the case study of Colombia examined here.

A gender-oriented critique of transitional justice reveals numerous important problems that can arise if transitions to a post-conflict era are not implemented with an eye toward gender. These criticisms converge around three central concerns, which I classify as “false dichotomies” inherent in the approach of many transitional justice programs.<sup>21</sup> I argue that if these false dichotomies, which can either be imposed by or

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20. Despite the relative lack of attention paid to female combatants among scholars of transitional justice, there is a fairly broad literature available on this subject from feminist international relations scholars who explore the role that women play in combat, including CYNTHIA ENLOW, *DOES KHAKI BECOME YOU? THE MILITARIZATION OF WOMEN’S LIVES* (1988) and FEMINISM AND INTERNATIONAL RELATIONS: CONVERSATIONS ABOUT THE PAST, PRESENT AND FUTURE (J. Ann Tickner & Laura Sjoberg eds., 2011). For a recent important contribution to this body of literature, specifically addressing transitional justice, see Luisa Maria Dietrich Ortega, *Transitional Justice and Female Ex-Combatants: Lessons Learned from International Experience*, in *DISARMING THE PAST*, *supra* note 6, at 158.

21. The three false dichotomies that I outline in this paper do not encompass all the critiques and concerns of feminist scholars regarding transitional justice. Of particular note, I have only briefly addressed the important debate over the issue of “gender mainstreaming” and other structural concerns with injecting gender considerations into international human rights norms, which do not explicitly fall within the three groupings as I have defined them. For more complete discussions of these critiques, see Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM. RTS. J. 1 (2005), explaining that “mainstreaming” obscures areas where gendered inequalities are woven into the international system, and Julie Mertus, *Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles*, 41 COLUM. J. TRANSNAT’L L. 541 (2003), questioning the assumption that post-conflict gender equality is best enforced through a system of legally enforceable individual rights.

perpetuated by transitional justice mechanisms, are not addressed directly, the efficacy of such programs will be severely hampered. I examine three of these dichotomies in this article, each of which presents unique challenges if they are to be overcome: (A) the false dichotomy between the “conflict” and the “post-conflict” era; (B) the public/private dichotomy that may be transposed onto transitional justice mechanisms and be perpetuated by them; and (C) the dichotomy between victims and perpetrators within and after conflict.

I first explore each theme in detail in order to describe the problems that arise and to elucidate why I term each of these concerns a “false dichotomy” within the context of gender and transitional justice. This backdrop provides a useful starting point for a more focused examination of the applicability of these theories to the experience of women in combat generally, and in Colombia specifically.

#### A. *False Dichotomy Between “Conflict” and “Post-Conflict”*

A central theme that unites many feminist critics is unease with the bifurcation inherent within many transitional justice schemes. This unease is captured by a provocative question: what exactly is transitional justice transitioning “from,” and what it is transitioning “to”?<sup>22</sup> Inherent in the concept of a post-conflict “transition” is the implication of a shift from a male-defined political violence to a liberal democratic framework.<sup>23</sup> If women’s rights are abused during conflict, mainstream transitional justice may seek accountability and retribution for the male actors who violated women’s rights. Yet without an examination of core gender relationships, transitional justice mechanisms may simply reassert and cement the male-oriented relationships that lead to the conflict in the first place.<sup>24</sup> War is often compartmentalized into two discrete phases, yet this division does not accurately reflect that under-

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22. Bell & O’Rourke, *supra* note 12, at 23; see also CHRIS COULTER, BUSH WIVES AND GIRL SOLDIERS: WOMEN’S LIVES THROUGH WAR AND PEACE IN SIERRA LEONE 7–8 (2009) (indicating that women’s experiences during conflict can often serve as a powerful reminder that war and peace are not mutually exclusive, and that it is never entirely clear where one begins and the other ends).

23. COULTER, *supra* note 22.

24. See Ní Aoláin, *supra* note 12 (noting that transitions are usually negotiated by men ignoring the gendered perspective).

lying social norms regarding violence and gender may exist on a continuum running through society. Vasuki Nesiah argues that the temptation to draw a clean line between the conflict and the post-conflict must be overcome; it is false to believe that either women or men experience the conflict and post-conflict as a sharp binary opposition.<sup>25</sup> It is crucial to recognize that women may experience different types of suffering during and after conflict—in some cases women may view their situations as improving, in others, as worsening. Regardless, my challenge to the dichotomy of conflict/post-conflict is intended to put pressure on the notion that with the termination of the “conflict,” so too ends the major period of human rights abuse that requires accounting for.

One consequence of reconceptualizing war outside of the boxes of “conflict” and “post-conflict” also demands that scholars revisit the distinction between the “front line” that affects soldiers, and the “home front” in which civilians reside.<sup>26</sup> Increasingly, wars take place not only on a battlefield, but permeate into the hearts of communities, transforming the lives of soldiers and civilians alike.<sup>27</sup> Yet the concept of a “front line” where war occurs persists, as does the concept that soldiers are the primary actors. These misconceptions are apparent in the overly generalized and stereotypical way in which men’s and women’s roles are often portrayed in discussions of war and peace.

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25. Nesiah, *supra* note 11, at 801.

26. Anthropological research focusing on war and conflict has reached the consensus that it is not accurate to speak of a front line in war that affects only professional armies. See, e.g., COULTER, *supra* note 22 (summarizing anthropological scholarship that argues violence is a continuum running through social, political, and economic spheres).

27. See Benjamin Valentino et al., “*Draining the Sea*”: *Mass Killing and Guerrilla Warfare*, 58 INT’L ORG. 375, 375 (2004) (estimating that “between thirteen and twenty-six million civilians have died in civil, international, and colonial wars since 1945,” and highlighting that intentional killing of civilians during war is often a calculated military strategy designed to combat powerful guerrilla insurgencies). For an exploration of the varied impact of civil wars on civilian populations globally, see Macartan Humphreys & Jeremy M. Weinstein, *Handling and Manhandling Civilians in Civil War*, 100 AM. POL. SCI. REV. 429, 429 (2006). For a data analysis of the intentional and direct killing of civilians primarily conducted by non-state actors, see Kristine Eck & Lisa Hultman, *One-Sided Violence Against Civilians in War: Insights from New Fatality Data*, 44 J. PEACE RES. 233, 233 (2007).

The false dichotomy between conflict and post-conflict has a profound impact on the standard transitional justice model, which relies on an assumption that with the arrival of a politically-determined end to conflict, so too comes an improvement in the lives of those affected by conflict. Understanding the falsity of this dichotomy raises the controversial question of whether women's positions relative to society improve or worsen as a result of conflict. Despite a politically negotiated ending to conflict, women may perceive their situations to worsen *after* conflict has supposedly ended. For many women, the period after violence ends presents new challenges and hardships. Any underlying structural violence that existed prior to or during conflict is likely to continue in the "post" conflict era, unless efforts are intentionally made to modify it. Furthermore, when war breaks down traditional social structures and men leave home to fight, women have consistently adopted greater responsibility. In fact, they may feel that their circumstances are improved. In Nepal, for instance, when men left home to fight in the Maoist conflict, their wives discovered opportunities to farm and plow their own land, and to assume public positions in a local district council.<sup>28</sup> A similar trend occurred in the United States during World War II as Rosie the Riveter called upon women to contribute publically to the war effort by working outside the home in positions they had previously not occupied. For some women, the end of conflict brings a return to the expected gender roles, and potentially, retribution for women who have defied gender stereotypes. Transitional justice attempts to bring society back to "normal" and, in doing so, may reassert patriarchy privately even while re-ordering the public sphere.<sup>29</sup>

Breaking down the theoretical wall between the "conflict" and the "post-conflict" is a useful exercise from multiple scholarly perspectives. Legal scholars who promote an "Ordinary

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28. Rita Manchanda, *Ambivalent Gains in South Asian Conflicts*, in *THE AFTERMATH: WOMEN IN POST-CONFLICT TRANSFORMATION* 99, 117 (Sheila Meintjes, Anu Pillay & Meredeth Turshen, eds., 2001).

29. See Ní Aoláin, *supra* note 12, at 844 (arguing that a feature of transitional accountability is a focus on public acts and exclusion of private gendered violence); see also MacKenzie, *supra* note 2, at 258 (noting that anthropological research with Sierra Leonean female combatants indicated that most women felt more constrained in their social and political choices after the conflict was over than they had during conflict).

Justice” approach to transitional justice also advance the proposition that the conflict/post-conflict dichotomy of transitional justice is a false one.<sup>30</sup> This theory undermines any predictions of an idealist “peace” that transitional justice may bring. Because regular periods of social division and transition exist even in established democracies, this critique attempts to explode the notion that transitional justice is a “distinctive topic presenting distinctive set of moral and justice dilemmas.”<sup>31</sup> Though this critique is not explicitly feminist, it buttresses the gender-oriented argument that adherence to this false dichotomy may produce unrealistic expectations and dangerous side effects within a transitional regime.

Although legal scholars tend to dominate the field of transitional justice, important findings of other disciplines can be incorporated as well to promote a more gender-aware transitional justice scheme. The prevalence of lawyers within the field of transitional justice, coupled with the false impression that the conflict and post-conflict eras are entirely distinct, may result in an over-reliance on a rights-based framework that may not always adequately consider factors such as gender or culture within a society. Anthropologist Chris Coulter indicates that many of the international organizations and NGOs that implement post-conflict transitional justice mechanisms operate from a human rights framework described in legalistic language.<sup>32</sup> This framework, however, may not be accustomed to in-depth examination of societal or cultural systems of meaning that exist separately from the context of conflict. Other disciplines, such as anthropology and sociology, might be better suited to this task, as they are dedicated to understanding the complexity of social processes. For example, a legal approach may envision a law-based, governmental structure for resolving conflict, but may not take into consideration pre-existing community based structures that may already exist to resolve conflict, such as through tribal or community net-

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30. See generally Eric A. Posner & Adrian Vermeule, *Transitional Justice as Ordinary Justice*, 117 HARV. L. REV. 761 (2004) (arguing regime transitions should not be seen as a self-contained subject and that analogies can be drawn to transitions that occur within consolidated democracies); see also Bell & O'Rourke, *supra* note 12, at 35 (evaluating the relevance of other theories of transitional justice from a feminist perspective).

31. Posner & Vermeule, *supra* note 30, at 763–64.

32. Coulter, *supra* note 22, at 8.

works. Interdisciplinary work, both among theorists and on the ground, may lead to fruitful collaboration that avoids some of the pitfalls of a purely rights-based framework typified by a legal approach.

Finally, in considering the falsity of the distinction between the “conflict” era and the “post-conflict era” of most transitional justice mechanisms, another concern regarding the position of women is the tendency to assume that all women share the same needs and benefit from the same solutions in a post-conflict era. This tendency has been described as “essentializing” women, who are then grouped as a homogeneous category in order to meet their needs post-conflict.<sup>33</sup> Not only does this approach risk negating a multi-layered, diverse experience for women within conflict, but it also risks tokenizing those women whose voices are audible, while assuming that they speak for all women’s experience during and after conflict. It is crucial that transitional justice mechanisms encompass the diversity of women’s experiences, not as uniformly better or worse after the supposed era of conflict is complete, but as varying from individual to individual. Such a recognition of the complexity of women’s lives during and after conflict might also prevent transitional justice mechanisms from relying on essentialized and overbroad characterizations of “the female experience” during conflict.

The debate surrounding essentialization of women’s rights presents a paradox that a variety of theorists have grappled with for decades. This debate asks whether it is preferable to specifically protect women’s needs and risk marginalizing them (“sidestreaming” women’s issues), or, whether it is better to incorporate a consideration of gender into general human rights norms and all elements of transitional justice (“gender mainstreaming”).<sup>34</sup> Side-streaming relegates women’s issues to the category of “women’s rights,” and separates them from “human rights,” implying that women are excluded from the latter category. In this scenario, because women are

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33. Ratna Kapur, *The Tragedy of Victimization Rhetoric*, in 4 FEMINIST LEGAL STUDIES, CRITICAL CONCEPTS IN LAW 163, 167 (Joanne Conaghan ed., 2009) (“Gender essentialism refers to the fixing of certain attributes to women . . . . These essential attributes are considered to be shared by all women and hence also universal.”).

34. Charlesworth, *supra* note 21, at 1.



distinguished, conceptually the term “human” may become equated with “male.” Gender mainstreaming, however, according to Hilary Charlesworth, is at once, “too broad and too narrow.”<sup>35</sup> It is too broad because it descends into rhetoric of interrogating power imbalances between the genders, but may not have much effect in the field without a specific prescription for implementation. It is too narrow because it neglects the distinct struggles that men and women face in and after conflict.<sup>36</sup>

### B. *Public & Private Dichotomies in Transitional Justice*

Feminist critiques of mainstream transitional justice draw on a traditional feminist analysis of the public and private dichotomy between men’s space and women’s space.<sup>37</sup> Transitional justice mechanisms tend to focus on how rights have been abused publicly rather than privately. Reconciliation is approached in a very public manner, whether through trials, truth commissions, or amnesty hearings. Methods of reconciliation address public crimes, such as rape as a weapon of war, but do not address private crimes, such as domestic violence. Disarmament measures in transitional justice entail removing weapons from the public sphere, yet there is often no public condemnation of violence or weapons in the private realm.<sup>38</sup> The numerous ways in which transitional justice mechanisms rely on the distinction between public and private space undermine the potential that these mechanisms have to dismantle pre-existing gender norms which exist in society before conflict begins.

One area in which the dichotomy between public and private is particularly striking is in the realm of sexual violence against women. Great strides have been made in this arena, and it is important to recognize how significant these accomplishments have been within the realm of public rights, despite the failings in this area in private rights. Until the end of

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35. *Id.* at 13.

36. Julie Mertus, *supra* note 21, at 551.

37. See generally CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988) (describing the traditional societal breakdown of men and women’s roles in which men dominate the public sphere of work outside the home, and women dominate the private sphere of running the household and child-rearing).

38. Ní Aoláin, *supra* note 12, at 847–48.



the twentieth century, most human rights bodies largely ignored sexual violence against women, despite the ubiquity of rape and other sexual violence especially during times of war.<sup>39</sup> During times of political crisis, women's bodies are often transformed into battlegrounds for competing ideologies.<sup>40</sup> Opponents may target women's bodies for attack, demonstrating military strength through a capacity to violate the mothers, sisters, wives, or daughters of their opponents. In addition, women are generally disproportionately affected by conflict.<sup>41</sup> They bear the burden of conflict when they lose loved ones who may also be a source of financial support, when they suddenly become the heads of families who may be displaced from their homes by fighting or occupation, when they must take on the responsibility of providing for a family in the context of a society that may not afford women equal financial rights, and when they are directly targeted as victims of violence in conflict.<sup>42</sup>

As various human rights instruments were adopted over the last century, the problem of violence against women, whether in the public or the private sphere, remained unaddressed until relatively recently. As recently as 1979, when the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>43</sup> was adopted, the question of how to combat violence against women was not even part of the discussion.<sup>44</sup> The Convention does not address violence

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39. KECK & SIKKINK, *supra* note 3, at 180.

40. See generally Kelly D. Askin, *The Quest for Post-Conflict Gender Justice*, 41 COLUM. J. TRANSNAT'L L. 509 (2003) (arguing that violence against women in conflict situations is often the result of deliberate policy and can reflect the ideology of combatants).

41. Bell & O'Rourke, *supra* note 12, at 25; Ní Aoláin, *supra* note 12, at 830 (observing that women and children comprise the vast majority of those affected by conflict); see also Askin, *supra* note 40, at 512 (noting that victims of sexual violence during conflicts are disproportionately women and girls).

42. Cf. Askin, *supra* note 40, at 515 (noting contributions of women during and after conflict to rebuild and maintain their families and society in the face discrimination and other obstacles).

43. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, UN Doc. A/RES/34/180 (Dec. 18, 1979) [hereinafter CEDAW].

44. KECK & SIKKINK, *supra* note 3, at 168.

against women but instead focuses on issues of discrimination and equality.<sup>45</sup>

The issue of violence against women finally began to gain prominence when international networks of feminists demanded an end to impunity for violations of sexual violence during times of war.<sup>46</sup> Women's groups from the across the world coalesced around this mission,<sup>47</sup> and women's rights advocates began to promote the application of a human rights methodology (focusing on civil and political rights) onto the issue of sexual violence.<sup>48</sup> In 1995, the UN Conference on Women in Beijing declared violence against women to be one of the convention's dominant issues of concern.<sup>49</sup> This cursory historical review documenting the upsurge in attention paid to public sexual violence against women demonstrates just how radical these demands were as recently as the turn of the twentieth century. This increase in attention paid to public sexual violence against women was a sea change in the spectrum of human rights and huge triumph for women's rights advocates internationally. This dramatic shift is apparent not only in documents such as the Beijing Declaration and Platform for Action, but is also evident in the jurisprudence of

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45. CEDAW, *supra* note 43; KECK & SIKKINK, *supra* note 3, at 166.

46. See KECK & SIKKINK, *supra* note 3, at 171–72 (arguing that the concept of “violence against women” was constructed and popularized by international feminist networks). The issue of violence against women was first publicly discussed in an international forum in 1976 at the First International Tribune on Crimes Against Women in Brussels. *Id.* at 175.

47. See Elisabeth Friedman, *Women's Human Rights: The Emergence of a Movement*, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 18, 18 & 21 (Julie Peters & Andrea Wolper eds., 1995) (describing the development of the international women's rights groups and the incorporation of violence against women as a target of human rights law).

48. Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUMAN RIGHTS QUARTERLY 486, 493 (1990).

49. Fourth World Conference on Women, Sept. 4–15, 1995, *Beijing Declaration*, ¶ 29, U.N. Doc. A/CONF.177/20/Rev.1 (1996). The rise of this concern internationally is also reflected in the adoption of the UN General Assembly Declaration on the Elimination of Violence against Women and the Organization of American States' adoption of the Inter-American convention on the Prevention, Punishment and Eradication of Violence against Women, both of which occurred in 1994. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Feb. 23, 1994); Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, 33 I.L.M. 1534.

international criminal tribunals,<sup>50</sup> in the Rome Statute adopting an International Criminal Court,<sup>51</sup> and in a variety of resolutions and comments adopted by the United Nations.

Following this hard-fought feminist victory, many of the subsequent generation of feminist theorists have rejected the categorization of sexual violence as the singular human rights issue facing women.<sup>52</sup> Now that human rights law recognizes violence against women as a major rights-category, these theorists stress that sexual violence is not the sole form in which women suffer abuse during times of armed conflict.<sup>53</sup> Certainly, conflict-related sexual violence continues to be an enormous problem facing women, yet the nearly singular focus on this concern may have the effect of crowding out non-conflict related or private sexual violence. Sexual violence, when it is perpetrated as a method of public political violence, is chastised, yet private sexual abuse is left untouched by transitional mechanisms.<sup>54</sup> This trend risks ghettoizing domestic sexual abuse into a separate realm, unrelated to sexual violence that occurs publicly. This pattern is dangerous due to the fact that violence within many societies may exist on a continuum, perhaps increasing during conflict or perhaps decreasing during conflict, yet it is perpetually present. If transitional justice truly aims to reorient society toward a safer and more secure reality for all its members, both private and political sexual vio-

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50. E.g., Kelly D. Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, 93 Am. J. Int'l. L. 97, 99–100 (1999). For example, in the case of Jean-Paul Akesyu, the ICTR established that rape can be considered an element of a genocidal campaign, *Prosecutor v. Akayesu*, Case No. ICTR 96-4-T, Judgment, ¶¶ 706–07, 731–34, and that rape can constitute torture, *id.* ¶¶ 597, 687.

51. See Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3. Both Article 7 (crimes against humanity) and Article 8 (war crimes) specifically delineate crimes regarding sexual violence. *Id.* art. 7–8. Article 36 (on qualifications, nominations and expertise of judges) indicates that among other qualifications, judges should have expertise in issues such as violence against women and children. *Id.* art. 36. Additionally, the creation of a Victim and Witness Unit is an example of the evolution of creative approaches to addressing sexual violence. WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 339–41 (2011).

52. For a description of the questions raised as scholars have begun to question the preoccupation with sexual violence to the exclusion of other issues relevant to women, see Nesiah, *supra* note 11, at 806.

53. *Id.* at 805.

54. Ní Aoláin, *supra* note 12, at 844.

lence, as well as the inter-relation between the two, must be addressed in transitional justice measures.

Additionally, the dominance of sexual violence within transitional justice mechanisms may reflect an inherent bias of the transitional justice and human rights worlds toward addressing political and human rights as opposed to social and economic rights.<sup>55</sup> This may result in marginalization of socio-economic issues, such as access to health care, or gendered aspects of displacement, which some women may find more relevant on a daily basis than sexual violence. As highlighted by one scholar, no “third-world consensus” exists regarding which issues are of primary import to women in the developing world.<sup>56</sup> As futile as it may be to create a hierarchy of abuses experienced by women, these highly divergent perspectives serve as reminders that uniformity of experience cannot be assumed among women in conflict.

The United Nations has made marked progress toward international recognition of public sexual violence during conflict, most prominently through UN Security Council Resolution 1325, adopted in 2000.<sup>57</sup> This was the first resolution passed recognizing the disproportionate impact of conflict on women. It calls for visibility for women in the public sphere, *inter alia*, the increased participation of women in decision making related to the prevention, management and resolution of conflict.<sup>58</sup>

Despite the significance of its aims, Resolution 1325 falls vulnerable to several critiques due to its reliance on, and perpetuation of, a gendered dichotomy between the public and private spheres. First, its focus on public sexual violence neglects other essential economic and social needs that women and communities may view as more pressing concerns during

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55. *Id.* at 841.

56. *See* Nesiah, *supra* note 11, at 805 (referencing Afghan women who were interviewed about the effects of sexual violence and who preferred to discuss challenges of feeding their families). *But see* KECK & SIKKINK, *supra* note 3, at 179 (referencing interviews with poor women in rural India who stated that the one thing that could improve their lives was an end to domestic abuse).

57. S.C. Res. 1325, U.N. Doc. S/RES/1325 (October 31, 2000) (calling on states to protect women and children from sexual violence and prosecute crimes of sexual violence).

58. *Id.* ¶¶ 1–2

conflict.<sup>59</sup> Secondly, although Resolution 1325 aspires to recognize that women can play important roles in both the public and private spheres, in doing so, it may underrepresent the diversity of the female experience. For example, it urges that states “increase representation of women in all decision making levels in national, regional and international institutions for the prevention, management and resolution of conflict.”<sup>60</sup> The conscientious inclusion of women in the public sphere is an important starting point, yet this approach risks the assumption that inclusion of a woman in decision making will represent “women’s issues,” when perhaps a highly-educated upper class white woman may have a vastly different experience than, for example, a poor, illiterate, indigenous woman. This approach, derisively referred to as the “add women and stir” solution, is not enough of a change to ameliorate sexism.<sup>61</sup> It risks falling into the conceptual trap of essentializing the ‘woman’ who is absent,<sup>62</sup> assuming that any woman can represent all women. Finally, Resolution 1325 emphasizes women’s participation in the “formal” sphere, yet its drafters offer no explanation as to why adding gender in this context might be important. Through a close examination of the records from the Open Debate of the Security Council on Women, Peace and Security, Diane Otto demonstrates that there was an implicit assumption throughout the debate that the rationale behind including women in a formal sense relied on an understanding of gender in a biological sense, rather than in an analytical sense.<sup>63</sup> Hence, the Security Council’s failure

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59. Ní Aoláin highlights that, although many transitional justice mechanisms’ focus is on violations of political and civil rights, some women stress that violations of social and economic rights are more acutely experienced. This critique is equally relevant when examining Resolution 1325. Ní Aoláin, *supra* note 12.

60. S.C. Res. 1325, *supra* note 57, ¶ 1.

61. Hilary Charlesworth, *The Hidden Gender of International Law*, 16 TEMP. INT’L & COMP. L. J. 93, 94–95 (2002).

62. Fionnuala Ní Aoláin & Eilish Rooney, *Underenforcement and Intersectionality: Gendered Aspects of Transition for Women*, 1 INT’L J. TRANSITIONAL JUST. 338, 350 (2007).

63. Dianne Otto, *A Sign of “Weakness”? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325*, 13 MICH. J. GENDER & L. 113, 140 (2007).

to “fully embrace a framework of gender equality.”<sup>64</sup> Inclusion of women as proposed by Resolution 1325 is no guarantee that the interests of all women will be represented, even if they are intentionally brought into the realm of the public sphere.

The public/private dichotomy is similarly problematic with regard to the implications of public testimony during mechanisms such as Truth and Reconciliation Commissions (TRCs).<sup>65</sup> Many public commissions encourage female victims to testify about crimes of sexual violence they have suffered. Yet the men and women of traditional societies may indeed ostracize or reject women who have been raped, and although it may be acceptable for these women to discuss sexual violence at a TRC, it is not always acceptable once they return to their families in the private sphere. Ironically, TRCs may have the effect of exacerbating social stigma directed at a rape victim. As Fionnuala Ní Aoláin explains, “[T]he forms of accountability sought in the post-conflict/post-regime environment reflect the gender biases that manifest in the prior context.”<sup>66</sup> Although a post-conflict regime may attempt to overcome a societal bias directed at women who have experienced sexual violation, occasionally the method utilized to accomplish this goal may only retrench the pre-conflict gender bias.

The public nature of truth and reconciliation commissions may result in exclusions of women’s experiences that reflect a longstanding human rights hierarchy of privileging the more “public” political and civil rights over “private” economic and social rights. Research demonstrates that some women have been frustrated with their experiences testifying in such settings.<sup>67</sup> Women explain that although they were asked repeatedly to testify about public crimes including sexual violence, the abuses that most dramatically affected their lives

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64. For an in-depth analysis of Security Council Resolution 1325, see *id.* 113–75.

65. See FIONA C. ROSS, BEARING WITNESS: WOMEN AND THE TRUTH AND RECONCILIATION COMMISSION IN SOUTH AFRICA (2003) for a detailed assessment of how a focus on apartheid had the effect of eclipsing women’s experiences and silencing important components of their experiences. See also Ní Aoláin & Turner, *supra* note 17, at 261 (describing the focus on sexual violence causing the marginalization of women’s other experiences).

66. Ní Aoláin, *supra* note 12, at 830–31.

67. Ross, *supra* note 62, at 88–89.

were those that occurred in the private sphere, such as domestic violence, the loss of loved ones, displacement, or conflict-induced poverty.<sup>68</sup> Additionally, logistics of participating in a commission may preclude women's involvement; the simple act of traveling to testify may be difficult for a woman who cares for children, or may actually be dangerous for witnesses for whom adequate precautions are not taken. For instance, a Rwandan woman who testified at the ICTR trial of Jean-Paul Akayesu was killed shortly thereafter.<sup>69</sup> The predominance of the public sphere in transitional justice efforts, therefore, may sideline women's most relevant accounts of injustice.

### C. *False Dichotomy Between Victims and Perpetrators*

Transitional justice mechanisms may operate based on a model of victims and perpetrators that assumes women to be passive victims *a priori*, rather than actors.<sup>70</sup> While women's human rights violations certainly should not be ignored, this characterization is problematic because the equation of female identity with victimhood denies women a broader and more nuanced role within society. Transitional justice seeks accountability for the (usually) female victims of sexual violence, positing women in the pre-conflict role of victim, and in the post-conflict role of victim to be compensated or avenged. This dynamic isolates women's experiences and denies them the multiple subject positions that they may occupy in reality—a woman may have been raped, but perhaps she prioritizes (and takes pride in) her role as head of a household caring for several children. This tendency to equate women and victims

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68. Ní Aoláin & Turner *supra* note 17 at 25.

69. See Alex Obote-Odora, *Rape and Sexual Violence in International Law: ICTR Contribution*, 12 NEW ENG. J. INT'L & COMP. L. 136, 144 (2005) (noting the difficulties of traveling from Rwanda to Arusha and the suspicious deaths of witnesses after testifying); see also Connie Walsh, *Witness Protection, Gender and the ICTR*, COALITION FOR WOMEN'S HUMAN RIGHTS IN CONFLICT SITUATIONS, [http://www.womensrightscoalition.org/site/advocacyDossiers/rwanda/witnessProtection/report\\_en.php](http://www.womensrightscoalition.org/site/advocacyDossiers/rwanda/witnessProtection/report_en.php) (last visited Oct. 15, 2011).

70. Nesiah, *supra* note 11, at 801; Chris Coulter, *Feminist Review, Female Fighters in the Sierra Leone War: Challenging the Assumptions?* 88 FEMINIST REV. 54, 66 (2008). Coulter is just one example of an anthropologist who also challenges these presumptions. She explains, "The oppositional concepts of victim and perpetrator, and the attached notion of victims having no agency, are so all-pervasive in humanitarian discourse that they are difficult to completely avoid." *Id.*



reinforces a binary relationship: if women are victims, men are perpetrators. This positioning denies men a broader and more nuanced spectrum of roles that they may occupy in a conflict or post-conflict setting; they, too, may be victims of human rights abuse.<sup>71</sup>

Women occupy multiple and varied roles within conflicts across the globe: they are human rights advocates, politicians, judges, fighters, genocidaires, victims, pawns, mothers, and prosecutors.<sup>72</sup> Whether motivated by idealism, racism, fear, or other impetuses, in these roles women have occasionally demonstrated a capacity for violence, and the response of the international human rights community represents a simultaneous discomfort and fascination with these cases. Although women in numerous armed struggles have taken up arms, women's involvement as combatants tends to be ignored by the press and by human rights analyses. Public discomfort with unexpected women's roles is perhaps most strikingly demonstrated by the international attention paid to the prosecution of Pauline Nyiramasuhuko at the International Criminal Tribunal for Rwanda (ICTR). Nyiramasuhuko, the former Minister of Family and Women's Affairs of Rwanda, was the first woman to be charged and convicted of crimes including genocide and rape as a crime against humanity at the ICTR, for her role in inciting and overseeing the mass rape of the women of

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71. Transitional justice scholarship has addressed this question previously, specifically with regard to child soldiers, who are arguably both victims and perpetrators of crimes. See, e.g., Nienke Grossman, *Rehabilitation or Revenge? Prosecuting Child Soldiers, for Human Rights Violations*, 38 GEO. J. INT'L L. 323 (2007) (arguing that children under eighteen who participate in conflicts should be treated as victims not perpetrators). Furthermore, conflicts in which boys have been recruited as child soldiers also raise important questions regarding the role of hyper-masculinity in promoting conflict. See generally, Fionnula Ní Aoláin et al., *Masculinities and Child Soldiers in Post-Conflict Societies* (Univ. of Minn. Legal Studies Research Paper Series, Research Paper No. 10-57), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1804564](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1804564) (applying "theories and constructs from masculinities studies to address . . . issues that arise from the deployment of child soldiers in armed conflicts").

72. See, e.g., WOMEN WAGING PEACE, PREPARING FOR PEACE: THE CRITICAL ROLE OF WOMEN IN COLOMBIA 20, 22-23 (2004), available at [http://www.huntalternatives.org/download/17\\_preparing\\_for\\_peace\\_the\\_critical\\_role\\_of\\_women\\_in\\_colombia.pdf](http://www.huntalternatives.org/download/17_preparing_for_peace_the_critical_role_of_women_in_colombia.pdf) (discussing some of the roles occupied by women in conflicts).



the town of Butare in 1994.<sup>73</sup> Presumably because the charges against her were rare, her case received a disproportionate level of attention compared to the dozens of men in the Rwandan government who bore similar levels of responsibility for promoting the systematic rape, torture, and murder of thousands of women.<sup>74</sup>

As reassessment of women's roles within conflict becomes necessary, so, too, do men's roles demand closer examination.<sup>75</sup> Unsurprisingly, scholars have discovered that men experience conflict and gender in myriad ways; that "masculinities are not uniform and that power relations exist within them."<sup>76</sup> Men and women are both affected by conflict in ways that may challenge preconceived notions about how genders are supposed to behave. Social class, education, and life experience may be more determinative than gender in creating options for individuals in conflict. For example, a young man who is university-educated might have more options available to him and will be less likely to join an armed group than his poor, uneducated counterpart.

Case studies demonstrate that men and women alike express feelings of passivity with regard to the nationalistic conflicts transpiring in their countries.<sup>77</sup> Increased attention to the way that men experience violence and conflict further supports the proposal that young men's formative experiences can influence how they relate to armed conflict. Bosnian Serb males who were tried for rape and crimes against humanity at the International Criminal Tribunal for the Former Yugoslavia describe growing up with a collective memory of Muslim op-

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73. *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-T, Judgment and Sentence, (June 24, 2011); Peter Landesman, *A Woman's Work*, N.Y. TIMES MAG., Sept. 15, 2002, at 82; Askin, *supra* note 40, at 513, n.29.

74. See generally Stephanie K. Wood, *A Woman Scorned for the "Least Condemned" War Crime: Precedent and Problems with Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda*, 13 COLUM. J. GENDER & L. 274, 287 (2004).

75. Hamber, *supra* note 19, at 378.

76. *Id.* at 379.

77. See Cynthia Enloe, *All the Men Are in the Militias, All the Women Are Victims: The Politics of Masculinity and Femininity in Nationalist Wars*, in THE WOMEN AND WAR READER 50 (Lois Ann Lorentzen & Jennifer Turpin ed., 1998) (studying the experiences of one Sarajevan man to reveal the gendered ethnic and nationalist processes shaping his actions); see also Theidon, *supra* note 8, at 75-76.

pression of Serbs.<sup>78</sup> Cynthia Enloe describes an interview with one prisoner who grew up understanding his lack of success in his professional and romantic life as a result of Muslim oppression. This young man fell into a Serbian armed group and with little apparent political consciousness, participated in the rape and murder of Muslim women. Enloe suggests that he easily transposed his childhood feelings of victimhood onto the conflict at hand, leading him to participate in these crimes.<sup>79</sup> In Colombia as well, both young men and young women may experience a sense of helplessness and lack of options—described very much as a type of victimhood—that propel them to take up arms.<sup>80</sup> Depending on the situation, both men and women may identify as victims, perpetrators, or may experience ambivalence about identifying with these roles. The tendency to categorize women as victims resorts to essentialization of women. Perhaps ironically, feminists, in their struggle to raise awareness of issues facing some women, are also guilty of these over-generalizations.<sup>81</sup> Awareness of the complicated nuances inherent in using the term “victim” can lead to richer interpretation of conflict.

### III. CONFLICT, GENDER AND TRANSITIONAL JUSTICE IN COLOMBIA

The Colombian context provides fertile ground on which to examine how the three false dichotomies, developed above, affect the nature of armed conflict. Recognizing the intrinsic connection between the specific injustices of conflict and the transitional justice measures implemented post-conflict,<sup>82</sup> this section examines some of the gender-related attributes of Co-

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78. Enloe, *supra* note 77, at 58.

79. *Id.*

80. Theidon, *supra* note 8, at 75.

81. See Kapur, *supra* note 33, for a detailed characterization of feminist political discourses that have resorted to essentialization of women as victims and the problematic nature of this analysis. Kapur challenges feminists to transcend equating females with the victim subject and encourages disruption of gender and cultural norms that are widespread.

82. A country's choice of transitional justice mechanisms are often directly informed by the type of injustice endemic to a particular conflict, and by the societal processes that lead to conflict in the first place. See Teitel, *supra* note 10, at 6 (“[W]hat is deemed just [in a transitional justice context] is contingent on and informed by prior injustice.”).

Colombia's conflict. In particular, it highlights the role of the estimated twenty-five to fifty percent of Colombia's combatants who are female.<sup>83</sup> Yet the picture presented with regard to these female combatants is incomplete without an understanding of the ways in which gender dynamics play out in Colombia's conflict and put pressures on both women and men, influencing the way in which both genders are involved in and affected by conflict. Here, I focus on the conflict in Colombia as the primary paradigm for evaluating the relevance of gender-critical theories of transitional justice. I hope to demonstrate that lessons learned regarding societal roles, expectations and presumptions dominated by gender can affect both men and women, both during and after conflict. Therefore, I argue, these lessons and the subsequent importance of considering the way in which transitional justice can impose or reinforce gender constructs are applicable to multiple conflict situations worldwide, including those in which there are no female combatants.

I first offer a brief synopsis of the conflict in Colombia and the participation of women as fighters. I then examine the participation of Colombian women in light of the three false dichotomies described above which a gender-oriented perspective can reveal. The Colombian context demonstrates how these trends can affect the development of a conflict and, further, how they might play out in a post-conflict era.

#### A. *Overview of the Colombian Conflict*

Colombia's armed conflict has lasted longer than any other in the Western Hemisphere.<sup>84</sup> It has internally displaced nearly four million people, second only to the conflict in the Sudan.<sup>85</sup> During much of this time, the conflict has

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83. See HUMAN RIGHTS WATCH, *supra* note 2, at 53 (considering female membership of FARC based on interviews of former combatants).

84. Christopher Welna, *Colombia's Triple Challenge: Peace, Democracy, and Human Rights*, in PEACE, DEMOCRACY, AND HUMAN RIGHTS IN COLOMBIA 3, 6 (Christopher Welna & Gustavo Gallón eds., 2007).

85. INTERNAL DISPLACEMENT MONITORING GRP., INTERNAL DISPLACEMENT: GLOBAL OVERVIEW OF TRENDS IN 2007 6(2008), available at <http://www.internal-displacement.org/publications/global-overview-2010.pdf>.

caused the deaths of over 700 civilians each month.<sup>86</sup> Estimates as to the overall number of conflict-related casualties vary, yet most estimates cite between 70,000-120,000 casualties.<sup>87</sup>

The backdrop of the current conflict was a period called *La Violencia* (1948–1953) when two political parties competed for political supremacy.<sup>88</sup> They agreed upon a power-sharing government in 1958 that placated the political majority, yet did not include the ultra-left wing communist factions. The exclusion of these factions sparked the rise of leftist guerilla groups, including the most prominent, the FARC (*Fuerzas Armadas Revolucionarias de Colombia*) and the ELN (*Ejército de Liberación Nacional*).<sup>89</sup> The FARC advocates for social protection for lower classes, agricultural reform, and local autonomy.<sup>90</sup> FARC promotes its mission through guerilla warfare consisting of conquest of territory, kidnappings, and occasional direct combat with government troops.<sup>91</sup> In response to

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86. Marc Chernick, *Negotiating Peace Amid Multiple Forms of Violence: The Protracted Search for a Settlement to the Armed Conflicts in Colombia*, in *COMPARATIVE PEACE PROCESSES IN LATIN AMERICA* 159 (Cynthia J. Aranson ed., 1999).

87. See Amnesty Int'l, *Colombia: Scarred Bodies, Hidden Crimes, Sexual Violence Against Women in the Armed Conflict*, 7, AI Index AMR 23/040/2004 (Oct. 13, 2004), available at <http://www.amnesty.org/en/library/info/AMR23/040/2004> (claiming more than 70,000 conflict-related deaths occurred in 1984–2004 period). Estimates vary as to what the overall totals are of casualties in Colombia's conflict, largely due to difficulty in determining which casualties should be considered "conflict-related." One recent survey estimates that there have been over 120,000 conflict-related casualties between 1964 and 2003. DIEGO FERNANDO OTERO PRADA, *LAS CIFRAS DEL CONFLICTO COLOMBIANO* 44 (2007).

88. The Colombian Liberal and Conservative Parties were the two parties at the source of the conflict. For a comprehensive summary of this beginning phase of conflict in Colombia, see MARY ROLDÁN, *BLOOD AND FIRE: La Violencia in Antioquia, Colombia, 1946–1953* (2002).

89. Herbert Tico Braun, "¡Que haiga paz!": *The Cultural Context of Conflict in Colombia*, in *PEACE, DEMOCRACY, AND HUMAN RIGHTS IN COLOMBIA*, *supra* note 84, at 27.

90. Keith Stanski, *Terrorism, Gender, and Ideology: A Case Study of Women Who Join the Revolutionary Armed Forces of Colombia (FARC)*, in *1 THE MAKING OF A TERRORIST: RECRUITMENT, TRAINING AND ROOT CAUSES* 136, 139 (2005).

91. Daniel García-Peña Jaramillo, *Colombia: In Search of a New Model for Conflict Resolution*, in *PEACE, DEMOCRACY, AND HUMAN RIGHTS IN COLOMBIA*, *supra* note 84, at 105 (following its eighth conference in 1993, FARC gave higher priority to expanding its territorial presence and increasing its finances through kidnappings and taxation).

a perceived incapacity or unwillingness of the government to protect its citizens adequately from the guerrilla groups, various paramilitary groups formed, which have sporadically benefited from state sponsorship.<sup>92</sup> When the various paramilitary groups joined forces in 1997 under the umbrella group of the AUC (*Auto-Defensas Unidas de Colombia*), they were already notorious for rampant violations of human rights and financially dependent on narco-trafficking.<sup>93</sup> Since the mid-1980s, the FARC has also supported its revolutionary efforts with revenue from narcotics sales.<sup>94</sup>

Several Colombian administrations have attempted to negotiate peace deals with these armed groups. Most notably, former President Andres Pastrana ceded a large territory of land to the FARC in 1998, yet failed to negotiate a settlement. Alvaro Uribe, President from 2002-2010, took a hard line with the FARC and refused to negotiate. Uribe did, however, engage with the paramilitaries, most recently in the form of the controversial Peace and Justice Law. Under this law the AUC officially demobilized, though some paramilitaries still remain active.

### B. *Women as Combatants in Colombia*

All non-governmental armed political groups in Colombia have utilized female fighters.<sup>95</sup> Although the paramilitaries do include some women among their ranks, the guerillas are much more predominately female: of the FARC,<sup>96</sup> between

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92. See generally HUMAN RIGHTS WATCH, THE "SIXTH DIVISION," MILITARY-PARAMILITARY TIES AND U.S. POLICY IN COLOMBIA (2001), available at <http://www.hrw.org/reports/2001/colombia/6theng.pdf> (studying the relationship between three Colombian Army brigades and paramilitaries).

93. García-Peña Jaramillo, *supra* note 91, at 106.

94. See Álvaro Camacho Guizado & Andrés López Restrepo, *From Smugglers to Drug Lords to Traquetos*, in PEACE, DEMOCRACY, AND HUMAN RIGHTS IN COLOMBIA, *supra* note 84, at 80 (observing that a 1984 seizure of a cocaine laboratory was used by U.S. Ambassador Lewis Tamba to publically announce FARC's involvement in drug trafficking and sales).

95. HUMAN RIGHTS WATCH, *supra* note 2, at 53.

96. Great discrepancy exists between the number of FARC combatants according to FARC and according to the government. Compare Jeremy McDermott, *Colombia's Rebels: A Fading Force?* BBC NEWS (Feb. 1, 2008), <http://news.bbc.co.uk/2/hi/americas/7217817.stm> (citing the Colombian government's figures that the 2008 number of FARC is between six and eight thousand), with Gary Leech, *Interview with FARC Commander Raúl Reyes*, COLOMBIA

twenty-five and fifty percent are female.<sup>97</sup> Although the FARC's senior command is all men, several women have become "comandantes," comparable to the rank of officer.<sup>98</sup> The FARC actively works to recruit women to its ranks, highlighting its revolutionary Marxist mission; FARC's website "invites [all women] to participate in our just revolutionary fight for a New Colombia with social justice, for better living dignity and independence."<sup>99</sup> There are reports of women and girls being forced to join the FARC, yet precise data on forced recruitment are unavailable. Anecdotal evidence, interviews, and anthropological research indicates that the majority of women and girls make a conscious choice to become guerillas.<sup>100</sup> Similarly to young men who make this choice, young women often view becoming combatants as the best of a dismal array of alternatives for poor people with few options, rather than as a statement of idealism.<sup>101</sup>

History provides several isolated examples of females bearing arms, including Joan of Arc and Eleanor of Aquitaine, but women who fight in combat have remained the exception rather than the rule. Still, particularly in movements that advocate revolution, or that seek liberation from colonial or repressive regimes, it is not uncommon to find a high percentage of female participation.<sup>102</sup> These women exemplify the attempt to leave the private sphere of the home with which women are typically associated, and to enter the public world

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JOURNAL (July 12, 2007), <http://www.colombiajournal.org/colombia259.htm> (indicating FARC commander Raúl Reyes claimed FARC to have 18,000 active members).

97. HUMAN RIGHTS WATCH, *supra* note 2, at 53.

98. Jeremy McDermott, *Colombia's Female Fighting Force*, BBC NEWS, (Jan. 4, 2002), <http://new.bbc.co.uk/2/hi/americas/1742217.stm>.

99. Keith Stanski, *supra* note 90, at 139–40.

100. HUMAN RIGHTS WATCH, *supra* note 2, at 35.

101. *Id.*

102. Women have participated in irregular forces of countries including: Colombia, El Salvador, Eritrea, Nepal, Sri Lanka, Kosovo, Sierra Leone, Uganda, Mozambique, Angola, Liberia, South Africa, Peru, and Palestinian fighters in Lebanon and Israeli-Occupied Territories. Judith Gardam and Michelle Jarvis, *Women and Armed Conflict: The International Response to the Beijing Platform for Action*, 32 COLUM. HUM. RTS. L. REV. 1 (2000) ("In recent times women and young girls have fought in many conflicts including South Africa, Mozambique, El Salvador, Guatemala, Peru, Sri Lanka, the Philippines, Eritrea, and with Palestinian fighters in Lebanon and the Israeli-occupied territories"); THE AFTERMATH, *supra* note 28, at 29, 22, 90, 101, 113–14.

of armed combat. Many of these groups have made claims—on the surface—of gender equality. In Latin America, the legacy of female fighters is particularly glorified among the poor of the countryside, famously demonstrated by an image of a Nicaraguan Sandanista toting a gun while breastfeeding her baby.<sup>103</sup>

Within Colombian armed groups, the degree to which men and women achieve equality varies by region. In some forces, women train and fight combat missions alongside men. Despite this, it is invariably the women in the rebel camp who cook and clean.<sup>104</sup> Though it may appear inconsistent, many of the groups that recruit women as fighters are also the worst perpetrators of sexual violence against civilian women. Within the FARC, despite the articulated policy of non-tolerance for rape and overt sexual harassment, it has been documented that this policy holds for rank-and-file but not necessarily for commanders.<sup>105</sup> Women perform as deadly fighters and assassins, but there are many contexts in which women do not function as equals.

Despite the presence of these women fighters, many human rights groups focus only on the victimization and targeting of women. For instance, the Inter-American Commission on Human Rights (IACHR) identifies four central manifestations of violence that affect women within Colombia's armed conflict. These manifestations are: (1) women or their families are direct targets of physical, psychological, and sexual violence; (2) women are forcibly displaced; (3) women are forcibly recruited which invariably results in sexual or re-

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103. A photograph depicting an unidentified Sandanista female fighter, smiling while nursing an infant and carrying a rifle over her shoulder, was widely circulated by the FSLN during the Nicaraguan revolution as a symbol of Sandanista dedication to female equality. Orlando Valenzuela, *Miliciiana de Waswalito* (1984) (on file with author).

104. Sandra Jordan, *Girls Go to War as Colombia's Frontline Killers*, THE OBSERVER, (July 14, 2002), <http://www.guardian.co.uk/world/2002/jul/14/sandrajordan.theobserver>.

105. HUMAN RIGHTS WATCH, *supra* note 2, at 56. These dynamics are reflected in conflicts across the globe. For example, in the Democratic Republic of Congo, a Congolese girl who willingly joined an armed group at age twelve explained that "when the men [in the Interhamwe] were pillaging people's villages, they would rape women. But at that time they wouldn't take us with them." MATT HOBSON, SAVE THE CHILDREN, FORGOTTEN CASUALTIES OF WAR: GIRLS IN ARMED CONFLICT 6 (2005).



productive abuse; (4) women are objects of social control exerted by guerilla groups over conflict regions.<sup>106</sup> Each of these manifestations of violence against women reflects abuses of human rights, yet this list fails to reflect the overlap between the ways in which women may be victims of human rights abuse and also may be perpetrators of abuses.

In addition to the IACHR, hundreds of human rights organizations have published reports and advocacy papers on the impact of the conflict in Colombia on women, yet very few address the status of the women who have fought as combatants. In its 102-page report, the IACHR devotes one page to women who are forcibly or voluntarily recruited, and who then experience sexual abuse.<sup>107</sup> The report acknowledges the difficulty “in distinguishing among the forced and non-forced recruitment.”<sup>108</sup> Yet, it describes recruitment tactics that coerce young women and girls to join, but does not allow for the possibility that a woman might choose to join combat willingly.<sup>109</sup> Although the final conclusions of these human rights organizations are important, they ignore the precarious role of these women fighters.<sup>110</sup> Certainly the overall number of women affected by the sexual violence is much larger than the number of female fighters; Amnesty International claims that between sixty and seventy percent of Colombian women experience sexual violence in their lives.<sup>111</sup> Most human rights reports include the word victim in the title, but the image of a “victim” wearing army fatigues and carrying an AK47 may be difficult to reconcile.

This difficult intersection of identities, of an individual as woman and as soldier, provides fertile ground for understand-

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106. INTER-AM. COMM’N ON H.R., VIOLENCE AND DISCRIMINATION AGAINST WOMEN IN THE ARMED CONFLICT IN COLOMBIA, OEA/Ser.L./V/II., doc. 67 iii (2006), <http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm>.

107. See *id.* at 33–35 for isolated paragraphs dealing with sexual abuse of female recruits.

108. *Id.* at 88.

109. *Id.*

110. Cf. MacKenzie, *supra* note 2 (criticizing the narrow perceptions of human rights organizations studying the conflict in Sierra Leone). MacKenzie also argues that, despite the important role played by NGOs of highlighting conflict-related violence against women, these reports have also perpetuated the impression that women are victims and not actors in conflict. *Id.*

111. Amnesty Int’l, *supra* note 87, at 12.



ing conflict in Colombia. In turn, transitional justice mechanisms that address the needs of female combatants must interrogate what it means to be both a woman and a soldier in Colombia. Furthermore, these mechanisms shed light on the fact that gender dynamics affecting not only women, but also men, may be perilously ignored within post-conflict mechanisms.

1. *False Dichotomy Between “Conflict” and “Post-Conflict”:  
Sexualization of Conflict Violence*

*“Young man, are you bored?”<sup>112</sup>*

These words accompany a photo of a fatigue-clothed girl, beckoning Colombian boys to join the army in a government-sponsored advertisement. On the other side of the conflict, Colombia’s guerilla groups also solicit young men by luring them with attractive young girls. A website promoting the FARC displays images of young couples in fatigues, romantically involved in the jungles of Colombia, fighting for a radical leftist cause, seeking to liberate Colombia from a corrupt government.

Although these manipulations of sexuality can be interpreted as superficial recruiting tactics, I suggest that they are reflective of the larger role that gender plays within Colombian society, and are intimately intertwined with violent conflict. Violence that occurs within the context of conflict may be more pronounced, yet the gendered origins of conflict-violence are the same as the gendered origins of violence that permeates society regardless of conflict. Transitional justice mechanisms may be designed to address violence that occurs within the artificial timeframe of a “conflict” period, yet as I demonstrate below, violence within Colombian society, exists on a continuum and cannot be isolated within a period labeled as conflict. Attempts to distinguish the violence that occurs during conflict as unconnected to daily societal violence reinforces a false dichotomy between conflict and post-conflict violence. Unless transitional justice mechanisms are explicitly designed to take these dynamics into account, gender norms will not shift on their own, and in the post-conflict era, they

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112. *Id.* (author’s translation).

may remain unchanged from the gender norms that predominated in a society during the pre-conflict era.

In order to elucidate the manner in which gender affects violence both during and after conflict, it is helpful to consider the role that gender may play *before* conflict arises, and may play in fomenting or, at a minimum, perpetuating conflict. Colombian society reveals a phenomenon explained by Kimberly Theidon as “militarized masculinity,”<sup>113</sup> in which a masculine identity is intrinsically connected to and dependent on involvement in armed conflict. Theidon’s work describes Colombian women who explained that in choosing romantic partners, they seek out “gran hombres” (big men) who have proven themselves desirable because they are successful combatants and leaders of the guerilla. Yet it is both men and women who are responsible for prioritizing these values within an economy of war: militarized masculinity is valued not only by the men whose guns are measures of power and prestige, but also by women who view relationships with these men as valuable commodities. Violence and the gender constructs that accompany it are reinforced and idealized in a country that is all too accustomed to war.<sup>114</sup>

In Colombia, women are targeted during conflict in horrific ways, and are victims of physical, psychological, and sexual aggression. Sexual violence in particular is utilized with the intention of undermining the strength of the enemy.<sup>115</sup> Women are sometimes targeted for their behavior, including romantic relationships with a man of a particular faction, or for refusal to obey proscribed social norms imposed by the group controlling the region where they live.<sup>116</sup> Women’s bodies are also targeted in order to attack men who are considered the enemy, as local custom charges men with the responsibility of protecting the sexuality of their wives, sisters, or daughters.

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113. Theidon, *supra* note 8, at 76. See also Coulter, *supra* note 22, at 14 (arguing, based on anthropological research in Sierra Leone, that a militarized masculinity has consequences for how female combatants are interpreted within a society, since “women who oppose female stereotypes in war will often be regarded as deviant or unnatural”).

114. Theidon, *supra* note 8, at 76.

115. Amnesty Int’l, *supra* note 87, at 20 (“[W]omen and girls are also killed because they are related to or have emotional ties with people who are considered by the armed groups to be military targets.”).

116. INTER-AM. COMM’N ON H.R., *supra* note 106, at 18.

Sexual exploitation of a woman, therefore, targets not only a woman but also the capacity of men to exert control and power within their community. This phenomena is described in a report by the UN Special Rapporteur on Violence Against Women after a visit to Colombia:

Perhaps more than the honor of the victim, it is the perceived honor of the enemy that is targeted in the perpetration of sexual violence against women; it is seen and often experienced as a means of humiliating the opposition. Sexual violence against women is meant to demonstrate victory over the men of the other group who have failed to protect their women. It is a message of castration and emasculation of the enemy group. It is a battle among men fought over the bodies of women.<sup>117</sup>

The behavior of guerillas as they exert their influence over new regions of the country also demonstrates that relevance of sex and gender is not limited to acute physical sexual violence against women. Territorial conquest of an area by guerillas is generally accompanied by the exertion of strict social control over the local population.<sup>118</sup> Guerillas often place particular emphasis on adherence to antiquated, and/or formal gender roles.<sup>119</sup> Men are prohibited from wearing long hair or earrings.<sup>120</sup> Women are required to dress modestly, are forbidden from baring their legs or stomachs, and are banned from sexual relationships outside of marriage.<sup>121</sup> Homosexuality and prostitution are deemed irreconcilable with traditional social structure and are banned.<sup>122</sup> These rigid social controls reflect gender roles as they “should” be, and are

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117. U.N. Econ. and Soc. Council, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Comm’n on Human Rights, ¶ 12, U.N. Doc. E/CN.4/1998/54 (Jan. 26, 1998) (by Radhika Coomaraswamy).

118. See Amnesty Int’l, *supra* note 87, at 3 (noting that women are targeted “to sow terror within communities making it easier for military control to be imposed, to force people to flee their homes, [and] to assist acquisition of territory”).

119. INTER-AM. COMM’N ON H.R., *supra* note 106, at 37.

120. *Id.*

121. *Id.*

122. See *id.* (“[B]eing a prostitute . . . can drive the armed groups to persecute women and inflict on them the most appalling punishment.”); see also Natalia Herrera & Douglas Porch, ‘Like Going to a Fiesta’ — the Role of Female Fighters in Colombia’s FARC-EP, 19 SMALL WARS & INSURGENCIES 609, 624

in accordance with an idealized vision of “la patria” (the fatherland) as promulgated by the guerillas. They do not view their policy of recruiting women combatants as being internally inconsistent with these national ideals, although these social norms are in direct opposition to the sexual and social values lived out by the combatants in their daily lives.<sup>123</sup> Gendered social controls allow the guerillas (men or women) to demonstrate that it is they, and not the men of a community, who exert control over the population of a newly conquered area.

Oftentimes an end to conflict does not bring an end to violence against women. In Colombia, one study revealed that domestic violence was endemic in seven out of ten households headed by a reintegrated combatant.<sup>124</sup> Indeed, research across the globe appears to suggest a “post-conflict” increase in domestic violence, as was reported in a 2002 UNIFEM study on the relationship between women and conflict.<sup>125</sup> For example, in Cambodia, one woman stated, “Men who have witnessed and perpetrated violence during war seem to continually act violently to their families. My husband was a Khmer Rouge soldier. I think this has made him broken in some important human way.”<sup>126</sup> Research reflects that individuals who are trained as soldiers to use violence as their primary means of interacting with the world often have difficulty interacting with their families in ways that do not involve violence;<sup>127</sup> some

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(2008) (observing that homosexuality is considered a threat to discipline and reporting on the execution of two men for homosexuality).

123. See Jordan, *supra* note 104 (noting the strict discipline enforced in the FARC camps).

124. *En 7 de Cada 10 Hogares de Reinsertados Hay Violencia*, EL TIEMPO, (Mar. 31, 2008), <http://www.eltiempo.com/archivo/documento/MAM-2880037>.

125. ELISABETH REHN & ELLEN JOHNSON SIRLEAF, WOMEN, WAR AND PEACE: THE INDEPENDENT EXPERTS’ ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN’S ROLES IN PEACE-BUILDING 16 (2002) (citing Int’l Comm. of the Red Cross, *Women Facing War: ICRC Study on the Impact of Armed Conflict on Women*, 44-45, No. 844 (2001) (by Charlotte Lindsey)). While research suggests an increase in post-conflict domestic violence, it should be noted that the research is inconclusive, as it is difficult to determine whether reports necessarily represent an increase in actual domestic violence, or an increase in *reporting* of domestic violence.

126. *Id.* at 14 (citing CATHY ZIMMERMAN, PLATES IN A BASKET WILL RATTLE: DOMESTIC VIOLENCE IN CAMBODIA (1995)).

127. *Id.* at 15 (citing David Meddings & Stephanie M. Connor, *Circumstances Around Weapon Injury in Cambodia After Departure of a Peacekeeping Force:*

commentators believe it is not the experience of conflict but the culture of violence and masculinity that permeates military forces that causes soldiers to be violent in civilian life.<sup>128</sup> Without concrete efforts to modify the ways in which ex-combatants conceptualize sexuality and violence, the training and ideology about gender roles that men and women receive during wartime will endure in the post-conflict era. Instead of violence ending during the post-conflict era, violence occupies its “normal” position in society, as intra-familial and intra-communal violence.

## 2. *Female Combatants: Transitioning Between the Public and the Private*

Woefully little research has been published on why women join armed combat groups.<sup>129</sup> The choice to willingly leave the “private” sphere of one’s hometown and family, and to enter into the “public” sphere of the guerilla not only requires that women adopt a lifestyle that may be physically demanding and isolated, but one which also requires them to adopt a role in society that is atypical from what may be expected of them as women. All combatants in the guerilla may suffer the societal stigma of having transgressed a societal norm by having joined an armed group, but these women may suffer an additional stigma of having transgressed the gendered expectation that a woman’s place is in the private sphere. Sandra McEvoy offers the example of women combatants in Northern Ireland who manufactured petrol bombs in

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*Prospective Cohort Study*, 319 BRITISH MED. J. 412 (1999); Michael Markus et al., *Incidence of Weapon Injuries Not Related to Interfactual Combat in Afghanistan in 1996: Prospective Cohort Study*, 319 BRITISH MED. J. 415 (1999); David Meddings, *Weapons Injuries During and After Periods of Conflict: Retrospective Analysis*, 315 BRITISH MED. J. 1417 (1997)).

128. Catherine Lutz & Jon Elliston, *Domestic Terror*, THE NATION, Oct. 14, 2002, at 18.

129. KAREN KAMPWIRTH, *WOMEN AND GUERRILLA MOVEMENTS: NICARAGUA, EL SALVADOR, CHIAPAS, CUBA* 4–6 (2002). There are some notable exceptions to this trend, and in recent years more scholars have turned their attention to this topic. For example, see CHRISTIANE LELIÈVRE AUSSEL ET AL., *HACIENDO MEMORIA Y DEJANDO RASTROS: ENCUENTROS CON MUJERES EXCOMBATIENTES EN EL NOROCCIDENTE DE COLOMBIA* (2004) for an examination of the role and sentiments of women combatants and contributors in the war in the northeast of Colombia. See also Dietrich Ortega, *supra* note 20, for a global perspective on female combatants and transitional justice.

their homes, an example which smashes open the public/private dichotomy with regard to women's roles in conflict and demands a nuanced "understanding of power relationships previously considered straightforward, especially the relationship between the private and public sphere."<sup>130</sup>

The research that is available offers a variety of motivations for women enlisting in combat.<sup>131</sup> Feminism is definitely an influence in many cases, primarily because it causes some disintegration of gendered societal barriers and lessened male opposition to females in combat. Additional explanations for why Colombian women join combat include the desire to join a partner, to avenge past crimes, or to escape from domestic violence.<sup>132</sup> Membership is sometimes also due to fear of guerillas or to a scarcity of better options for survival. Some women indicate that joining the guerilla can be empowering, as it offers the promise of meaningful work and an adventurous lifestyle that is not available in traditional civilian life. According to the International Labor Organization, women in Liberia joined combat to protect themselves from murder or rape, or to prove their equality with males. All the research reiterates limited options: "for many . . . females, becoming a soldier was a matter of kill or be killed."<sup>133</sup> In Colombia, a former girl combatant recalled being recruited by the FARC: "Well, then every time he came to our house he asked us whether we would go [to join the movement]. We decided to go because he said it would give us an education that staying at home wouldn't. So we left."<sup>134</sup>

Ironically, women who leave behind the private sphere with the aspiration of attaining gender equality in the public

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130. Sandra McEvoy, *Loyalist Women Paramilitaries in Northern Ireland: Beginning a Feminist Conversation About Conflict Resolution*, in GENDER AND INTERNATIONAL SECURITY: FEMINIST PERSPECTIVES 129, 130 (Laura Sjoberg ed., 2010).

131. For an excellent compilation of anthropological interviews with female combatants and their reflections on their service in the FARC, see Herrera & Porch, *supra* note 122, at 609.

132. Gunhild Schwitalla & Luisa Maria Dietrich, *Demobilization of Female Ex-Combatants in Colombia*, 27 FORCED MIGRATION R. 58, 58 (2007); Caterina Chantal Arena, *Development of Women Combatant Roles in Contemporary Armed Conflict: The Case of Colombia*, 11 MEDITERRANEAN J. HUM. RTS 65, 65 (2007).

133. Int'l Labor Org., *Girl Combatants: Women Warriors Fight Their Way Back into Liberian Society*, WORLD OF WORK, Aug. 2005, at 8, 9–11, available at [http://www.ilo.org/wow/Articles/lang—en/WCMS\\_081362/index.htm](http://www.ilo.org/wow/Articles/lang—en/WCMS_081362/index.htm).

134. Keith Stanski, *supra* note 90, at 141.

sphere of the world of combatants do not necessarily achieve this goal, revealing that it is unhelpful to assume that once women occupy public roles they are fully equal. Whether women remain at home with their families or join the combatants, their sexual lives are often dictated by the constraints of a militarized, patriarchal society. As a civilian, a woman is subject to the threat of rape and social sexual controls if guerillas occupy her home. Women who become combatants in Colombia are subject to a similarly rigid control over their sexual activity, yet this type of control contrasts sharply with that exerted over civilians. Sexual activity with other soldiers is encouraged, yet regulated by top guerrilla commanders who must grant permission for overnight visits between partners. Protocol demands adherence to birth control methods; some women report that a female's orientation into a combat unit includes mandatory insertion of Norplant or IUDs, and women who become pregnant are often forced to abort.<sup>135</sup> One woman reported that she visited a FARC nurse to monitor her pregnancy and learned later that her fetus had been aborted.<sup>136</sup> The refusal to abort a pregnancy is one of the most common explanations that demobilized women offer for their decision to abandon the guerillas.<sup>137</sup>

The gap between an idealized notion of women's capacity to succeed outside the private sphere, and the reality of female existence in the public sphere may leave women disenchanted with their new "public" role as a combatants. Interviews with demobilized women, whose ideology led them to join the revo-

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135. Amnesty Int'l, *supra* note 87, at 27. *But cf.* LELIÈVRE AUSSEL ET AL., *supra* note 129, at 160–62, 172–78 (relaying a somewhat different picture of the male-female relations among combatants based on interviews with former female combatants and describing relations as characterized by great friendship and solidarity despite some difficulties women face if they become pregnant). It should be noted, however, that these interviews were with members of other armed groups that had previously demobilized in the 1990s and did not include FARC members. *Id.* at 54.

136. Stanski, *supra* note 90, at 148 (quoting an anonymous Colombian woman who told him, "Two years ago, in 2000, I got pregnant. They gave me an abortion but they didn't tell me in advance that they were going to do it. They told me they were checking on it. I wanted to have the baby.").

137. Herrera & Porch, *supra* note 122, at 612. *See also id.* at 625 (citing FARC policy that female combatants are required to abort in the first four months of pregnancy and that revelation of a late-term pregnancy is interpreted as a desertion plan and punished with abortion).



lutionary movement, indicated that they often left disillusioned.<sup>138</sup> If women already have children prior to joining the guerilla, they are generally prohibited from maintaining contact with them, and essentially must decide between having a family and fighting.<sup>139</sup> The experiences of women in combat units tend to indicate that although it may appear that they have crossed a barrier between the realm of the public and of the private, that barrier may only have been temporarily or superficially transgressed.

### 3. *Victims and Perpetrators: Why Colombians Become Combatants*

The existence of female combatants undermines the stereotype that women within conflict are always and exclusively victims. Their presence, however, also calls into question the meaning of victimhood. If a person joins an armed fighting group, but is coerced into joining, is she a victim or a perpetrator? What of an individual who willingly joins an armed group, but does so because she knows that she has no other opportunities to support herself at home? These queries apply equally to men and to women. Just as the experience of female combatants in Colombia reveals the failings of classifying women unilaterally as victims, so too does it demand greater interrogation of men's roles within conflict.<sup>140</sup>

Colombia's military conflict has forced young girls and young men into difficult situations with limited options. Both men and women cite similar reasons for voluntarily joining armed groups: lack of education, lack of opportunity, dedication to political cause, interest in the mystique and intrigue of a life dedicated to revolutionary struggle.<sup>141</sup> Human Rights

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138. LELIÈVRE AUSSEL ET AL., *supra* note 129, at 215.

139. Chantal Arena, *supra* note 132.

140. See Enloe, *supra* note 77, at 53, for a discussion of the role of men within the conflict in Bosnia, arguing, "[A]s soon as we start making the experience of Bosnians problematically gendered, we no longer can subsume all women under the sprawling canopy of 'victims' nor all men under the category of 'militia fighters.'" In addition, there is a rich and evolving body of literature that addresses masculinities and conflict. *E.g.*, THE POST-WAR MOMENT: MILITARIES, MASCULINITIES AND INTERNATIONAL PEACEKEEPING, BOSNIA AND THE NETHERLANDS (Cynthia Cockburn & Dubravka Zarkov eds., 2002); JOSHUA S. GOLDSTEIN, WAR AND GENDER (2001).

141. Stanski *supra* note 90, at 140–43; *see also* Herrera & Porch, *supra* note 122, at 614 (indicating FARC's soldiers are "overwhelmingly rural, frequently



Watch indicates that the choice to join the irregular military forces is more an indication of dismal life choices for young Colombians than a reflection of dedication to revolutionary ideals.<sup>142</sup> In addition to these considerations, it is notable that sixty-five percent of those who enter are minors at the time that they join.<sup>143</sup> Former soldiers reflect that they were highly impressionable when they joined and did not fully understand the choices that they made. Upon demobilizing, many indicate that they deserted because they were tired of fighting and tired of the lifestyle. Some expressed bitterness and a sense of “engaño,” a Spanish term indicating that one feels he has been duped and, consequently, taken advantage of. Foot soldiers complain that commanders only care about the personal financial gain associated with the struggle, and that the young recruits are exploited to do the dirty work.

In addition to being victims of economic and political circumstances that may push them to join armed groups, both young men and women are subjected to the dominant gender constructs of a militarized society in which expectations for male and female behavior have developed.<sup>144</sup> When they lack traditional civilian symbols of success (such as education, housing, material goods, legal income), men may seek out other ways to express and establish their masculinity through non-traditional means. Additionally, a young man without access

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illiterate or barely educated, heavily Indigenous or Afro-Colombian, and young”).

142. HUMAN RIGHTS WATCH, *supra* note 2, at 36 (noting that “poverty, deprivation, underemployment, a truncated schooling, lack of affection and family support, parental ill-treatment and insecurity” are push factors, while “promises of money . . . thoughts of an easier life, a thirst for adventure, the desire for a gun and a uniform, and simple curiosity” are pull factors).

143. Thiedon, *supra* note 8, at 75.

144. *Id.* at 81. See generally Ní Aoláin et al., *supra* note 71, at 17–18 (“[Boy soldiers] are typically inculcated into cultures whose normative underlay is based on the suppression of emotion. The perceived success of a boy’s development (for himself and his family) will be the expression of strength both physical and emotional and the rejection of weakness . . . . The transmission of intergenerational expectations compounds the entrenchment of stratified gender roles, and can nullify any attempts to advance gender equality and the loosening of gendered expectations around caring and parenting for women. The core point is that conflicted societies can mummify highly gendered role expectations for men and for women from early childhood in ways that are quantifiably more intense than in societies not experiencing communal violence.”).

to traditional capital might use his physical body as the only capital available to him, resulting in his joining the guerilla.<sup>145</sup> For a young Colombian man with few other options, taking up arms may be the only way of proving himself in a society in which the economy is an economy of war.

Conversations with Colombia's demilitarized combatants reveal the highly gendered motivations behind the decision to take up arms. Theidon interviewed young men who explained that joining the paramilitaries "allowed them to 'feel like a big man in the streets of their barrios,' to 'go out with the prettiest young women,' and to 'dress well,' privileges they insist would not have been possible if they weren't carrying a gun."<sup>146</sup> Cultural ideas of masculinity and femininity in the context of war mutually reinforce one another in Colombia, as they do in other war zones.<sup>147</sup> Women also experience a variety of gender-related rationales for joining. One young woman who joined the FARC stated that she did so because she "saw these women in uniform, with rifles looking very beautiful."<sup>148</sup> Others explicitly are attracted by the FARC's claim to have created a gender-neutral organization.<sup>149</sup> Whether the aspirations of men and women who become combatants are fulfilled or not, it is clear that a multiplicity of factors propels them to join the fighting, complicating our understanding of them as either victims who have been forced to join, or perpetrators who willingly do so out of cold-blooded desire to fight.

The highly gendered experiences of women and men undermine mainstream transitional justice's inclination to identify individuals as either victims or as perpetrators. Recognizing the limitations of the victim/perpetrator model, one alternative framework that can be used to understand the various roles at play in these conflicts is one that Peruvian peasants

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145. Kimberly Theidon, *Reconstructing Masculinities: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia*, 31 HUM. RTS Q. 1, 23 (2009).

146. Theidon, *supra* note 8, at 76.

147. See, e.g., Enloe, *supra* note 77 (focusing on one man to explain how nationalism and the conflict in the Balkans became engendered).

148. Herrera & Porch, *supra* note 122, at 616.

149. *Id.* at n.15 (translating Estatuto de las Fuerzas Armadas Revolucionarias de Colombia Ejercito Del Pueblo (FARC-EP), art. 8/G (undated) ("The duties and rights in the FARC-EP are equal for all of its members without petit bourgeois inequality")).

arrived at organically.<sup>150</sup> In describing the ways in which their lives had been forever changed by the guerilla warfare that had ravaged the countryside, they referred to themselves as “los afectados,” or, “those who have been affected.”<sup>151</sup> This term encompassed the diversity of experiences within an entire rural community, and was more suitable than using the descriptor “victim” for those who were killed, raped or displaced. Some people joined the guerilla, some were terrorized by the guerilla, some were related to victims or to combatants, but all members of the community were affected by the political turmoil that dominated their lives.

The influence that gender has on men as well as on women should be an integral part of any transitional justice strategy in Colombia. Transitional justice does more than seek justice for human rights abuses of the past. It necessarily implicates the social elements, actors and norms that brought about the violations in the first place. Therefore, transitional justice has the potential to reconstruct a society, which has necessary implications for gender roles.<sup>152</sup> Social norms equating masculinity with military power need to be considered in a society that attempts to review how it arrived at its current level of abuse and violence. Women can also play a significant role in societies that embrace hyper-masculinity; Theidon’s anthropological work documents this as women, ingrained in a society that idealizes men who are militant, may seek the social capital of dating men who are “macho” and who represent a masculine ideal.<sup>153</sup> Additionally, in her complicated attempts to overcome gender-based hierarchies in society, a female combatant may, as Herrera and Porch explain, be required by the FARC to “become what she is not to succeed in the organization, to surrender her identity as a woman.”<sup>154</sup> Transitional

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150. Lisa J. Laplante & Kimberly Theidon, *Transitional Justice in Times of Conflict: Colombia’s Ley de Justicia y Paz*, 28 MICH. J. INT’L L. 49, 50 n.4 (2006).

151. *Id.*

152. See Ní Aoláin & Rooney, *supra* note 62, at 338–54 (describing a “broader notion of redistributive justice in transition,” encompassing “recognition of structural inequalities and exclusions, and their intersectional impact on women’s potential to participate as equals in a transitional society”).

153. See Theidon, *supra* note 8, at 76 (noting that women “seek out these ‘gran hombres’ (big men) as desirable partners in an economy of war”).

154. Herrera & Porch, *supra* note 122, at 628.

justice mechanisms must address this dynamic, since although female combatants may have sought to break down gender roles as fighters, when they no longer occupy this role, they may have broken down gender roles to such an extent that they are no longer able to be perceived, even by their compatriots in the struggle, as women. This situation thus denies them the capacity to exist at the intersection of both their identities as women and as soldiers.<sup>155</sup> Normative gender constructs of a militarized society in conflict, like Colombia's, may position men and women uniquely depending on their gender, but both groups are victimized and left with few options as a result of the limitations of these roles.

#### IV. EFFECTS OF TRANSITIONAL JUSTICE ON COLOMBIAN FEMALE COMBATANTS

As early as 1953, Colombian administrations began to make efforts to resolve conflict and to pursue peace with various armed groups, first with the left-wing guerillas and later with the right-wing paramilitaries. All have grappled to find the appropriate balance between achieving a peaceful resolution and a just one.<sup>156</sup> After the multiple failures to secure peace with the guerillas suffered by previous administrations, President Uribe was elected on the promise of taking a hard-line approach to the FARC.<sup>157</sup> Beginning in 2002, Uribe's government began negotiations with the paramilitaries.<sup>158</sup> This process led to the adoption of the Peace and Justice Law, which was approved by the Colombian Congress in 2005 as Law 975.<sup>159</sup> The law represents an attempt to implement tran-

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155. Intersectionality refers to the feminist theory seeking to examine how multiple intersecting categories of identity may interact on multiple and often simultaneous levels. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991) (applying "intersectionality as a way of framing the various interactions of race and gender in the context of violence against women of color"). For a further discussion on the role of intersectionality within conflict, see Ní Aoláin & Rooney, *supra* note 62, 340–43.

156. Laplante & Theidon, *supra* note 150, at 51–52.

157. Marc Lifsher, *Colombia's New Leader Vows to Vanquish Guerrillas*, WALL ST. J., May 28, 2002, at A14.

158. Juan Forero, *Colombian Rightists Declare Cease-Fire as Prelude to Talks*, N.Y. TIMES, Nov. 30, 2002, at A4.

159. L. 975, Julio 25, 2005, DIARIO OFICIAL [D.O.] (Colom.) [hereinafter Justice and Peace Law].

sitional justice mechanisms in a situation that, because the fighting still continues, is actually a “pre-post conflict”<sup>160</sup> context.

This section will describe some of the initial approaches that the Colombian government has taken in its efforts to implement both transitional justice programs as well as DDR programs for combatants, and will then describe some of the ways in which these efforts may fall short for female combatants. I argue that these short-comings of transitional justice in Colombia can be understood as a result of an over-reliance on the three false dichotomies of transitional justice laid out above. Furthermore, as the example of female combatants demonstrates that these programs are not fully accomplishing their goal of reordering society and paving the way for a more peaceful future, it also demands consideration of the extent to which transitional justice may simply reaffirm societal structures that pre-exist conflict.

The Peace and Justice Law lays out the parameters of Colombia’s Disarmament, Demobilization and Reintegration (DDR) program for paramilitaries.<sup>161</sup> DDR has been attempted throughout the world in post-conflict settings and aims to facilitate the decentralization and disbanding of members of armed groups and to enable ex-combatants to transition back into society through achieving economic and social self-sufficiency.<sup>162</sup> Under previous Colombian law, most rank-and-file combatants are promised amnesty and a comprehensive reintegration package in return for laying down their weapons.<sup>163</sup> The Peace and Justice law applies to less than ten percent of the more than 30,000 paramilitary leaders who have demobilized since 2002, targeting those individuals who have committed exceptional crimes, who are prosecuted at special courts, and are promised drastically reduced sentences in exchange for full disclosure of crimes.<sup>164</sup> This law has come

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160. Laplante & Theidon, *supra* note 150, at 51.

161. Justice and Peace Law, *supra* note 159.

162. CARAMES ET AL., *supra* note 5, at 20, 23.

163. *Colombia’s Peace and Justice Law*, CENTER FOR J. & ACCOUNTABILITY <http://www.cja.org/article.php?id=863> (last visited Nov. 10, 2011).

164. Justice and Peace Law, *supra* note 159, art. 3, 29. According to the International Federation for Human Rights, of the combatants who have demobilized under the Justice and Peace Law, eight percent are standing trial and offering testimony for abuses committed, and ninety-two percent re-

under attack from human rights groups who argue that it guarantees impunity for some of the worst human rights offenders because testimonies are not sufficiently transparent to the public, too many criminals are offered amnesty, and because it undermines the victims' rights to truth, justice, and reparation.<sup>165</sup> In the wake of this criticism, human rights groups brought a challenge to the law at the Colombian Constitutional Court.<sup>166</sup> The Court struck down parts of the law as unconstitutional, resulting in stronger protection of victims' rights, but upheld the law in general terms.<sup>167</sup>

It is beyond the scope of this article to present an exhaustive review of the Justice and Peace Law and its capacity for transitional justice. Yet an examination of the ways in which this law has failed to account for female combatants in Colombia reveals some of the deficiencies with regard to considering gender in this strategy. Thus far, in Colombia no agreement has been signed with the FARC, and therefore the lessons learned in Colombia have only been applicable thus far to small numbers of women from the paramilitaries. Some female combatants have abandoned the FARC, yet as of now, there is no officially mandated program for them. Moving forward, an analysis of the successes and failures of DDR and transitional justice programs with regard to gender will be crucial in light of the many ways that gender and conflict intersect in Colombia. These considerations are ever more crucial taking into consideration the high number of women in the FARC

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ceived automatic and complete amnesty. INT'L FED'N FOR HUMAN RIGHTS, PARAMILITARY DEMOBILIZATION IN COLOMBIA: ON THE ROAD TO THE INTERNATIONAL CRIMINAL COURT (2007), available at [http://www.fidh.org/IMG/article\\_PDF/article\\_a4760.pdf](http://www.fidh.org/IMG/article_PDF/article_a4760.pdf). Laplante & Theidon supra note 150 at 79–80.

165. INT'L CRISIS GRP., LATIN AMERICA REPORT NO.16, COLOMBIA: TOWARDS PEACE AND JUSTICE? I (2006), available at <http://www.crisisgroup.org/en/regions/latin-america-caribbean/andes/colombia/016-colombia-towards-peace-and-justice.aspx>; Press Release, Int'l Ctr. for Transitional Justice, Brief on Peace and Justice Law Presented to Constitutional Court (Jan 16, 2007) (on file with author).

166. Criticism of the law culminated in 2006 when a consortium of 105 human rights groups and victims groups challenged the constitutionality of Law 975 in Colombia's Constitutional Court. See Corte Constitucional [C.C.][Constitutional Court], Sala Plena mayo 18 2006, Sentencia C-370/06, Gaceta de la Corte Constitucional [G.C.C.] (Colom.), available at <http://www.fiscalia.gov.co/justiciapaz/Documentos/SentenciaC-370.pdf>, (describing the original petition).

167. *Id.* at 374–78.

guerilla forces who have yet to demobilize. A gender-oriented strategy that anticipates the needs of both women and men may indeed be persuasive in convincing combatants that they have the support they need in order to demobilize.

The text of the Justice and Peace Law, for example, reflects a gender mainstreaming approach and attempts to bring women from the private to the public sphere by incorporating consideration of gender into the all human rights norms discussed, and all elements of transitional justice contemplated. In particular, article 41 of the Peace and Justice Law provides general guidance that “the special needs of women” should be considered in implementation of the law.<sup>168</sup> The law also mandates creation of the Comisión Nacional de Reparación y Reconciliación (National Commission of Reparation and Reconciliation or NCRR), which is to consist of five individuals, of whom at least two must be women.<sup>169</sup> Both of these attempts to integrate gender into elements of the law reflect consideration that women may be overlooked if not specifically addressed. Yet these articles provide perfect example of Hilary Charlesworth’s critique that this approach is at once “too broad and too narrow.”<sup>170</sup> The law specifies that women should be included on a national commission, yet offers no indication of how exactly this should occur.<sup>171</sup> It therefore risks placing these two women in the position of being expected to speak on behalf of all women.

The Justice and Peace Law mandates a demobilization process for paramilitary combatants, yet there are no specific accommodations for female fighters.<sup>172</sup> This failing of the Peace and Justice Law is in direct contradiction of Security

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168. Justice and Peace Law, *supra* note 159, art. 41. Article 41 law states, “Attention to special needs: The judicial organs as well as the technical support agencies and the Procurator General’s Judicial Office for Justice and Peace shall be mindful of the special needs of women, children, the elderly, and the disabled to ensure their participation in the proceeding.” *Id.* (author’s translation).

169. *Id.* art. 50.

170. Charlesworth, *supra* note 21, at 13.

171. The relevant text of article 50 of the Justice and Peace Law reads, “The President of the Republic shall designate as members of this commission five people, of which a minimum of two must be women.” Justice and Peace Law, *supra* note 159, art. 50 (author’s translation).

172. The demobilization process is described in articles 10–31 of the Justice and Peace Law. Within these articles of the law, there is no gender



Council Resolution 1325's requirement that DDR programs should strive to explicitly consider the needs of male and female combatants.<sup>173</sup> The law allows combatants to demobilize either as individuals or as a collective group of fighters. According to government statistics, 41,000 paramilitaries that have demobilized thus far. Of these, 31,000 did so collectively (through a group's agreement with the government), and six percent of the collective demobilizations were females. Ten thousand paramilitaries demobilized individually, and fourteen percent of the individual demobilizations were female.<sup>174</sup> These numbers reflect that thousands of paramilitary women have demobilized with no gender-specific support.

The failure of Colombia's DDR programs to consider the specific needs of female combatants appears to reflect a reliance on the assumption that men occupy the position of combatants or perpetrators, leaving women to occupy the position of victims. Yet, in DDR programs, gender-specific support is crucial to the long-term success of programs for women because of the numerous problems women encounter that male demobilized combatants do not typically encounter.<sup>175</sup> For example, women who have left their homes to join combat often originate from areas dominated by the FARC, making a return to their home community after deserting impossible. Women who demobilize come from thirty-one of Colombia's thirty-two departments, and generally come from small towns in rural areas, yet eighty-five percent chose to resettle in the anonymity of large urban areas.<sup>176</sup> Although a return to their home regions and families might provide substantial economic and social support, many of these women resettle far from their families to avoid reprisals by former fellow combatants whom they left behind in the ranks. Thus, women who may have little

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specific language regarding the potentially different needs of female and male combatants. *Id.* art. 10–31.

173. *See id.* art. 10–31 (detailing demobilization without addressing needs of male and female combatants); *see also* S.C. Res. 1325, *supra* note 57, ¶ 13 (“[The U.N. e]ncourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants.”).

174. Schwitalla & Dietrich, *supra* note 132, at 58.

175. *Id.*

176. *Id.*

education or training other than that they received in combat may be left with no prospects for survival. Furthermore, they may require gender specific accommodations, such as protection from abusive partners, gynecological care, or skills and training programs that are matched to the life experiences of women, who may have had fewer educational or professional opportunities than their male counterparts.<sup>177</sup> Without special attention to considerations such as these, women may enter shelters alongside the same men with whom they served, or who may have sexually violated them. Demobilization programs with no special accommodation for women without support systems are destined to fail these women.

In addition to these challenges, parenthood, and in particular, motherhood, often complicates the DDR process. Although the attitude toward sexual activity between combatants varies, some women invariably become pregnant while they are enlisted. Interviews with female ex-combatants reflect a widespread understanding of, and agreement with, the prohibition against pregnancy, which may undermine morale and dedication to the guerilla.<sup>178</sup> Despite support of these ideals, women who desert their units are primarily driven by the desire to have a stable family life, and the desire to have children, or by the reality that they have become pregnant.<sup>179</sup> These desires cause some Colombian women to demobilize individually, as they are not permitted to have children and would otherwise be forced to abort. Once they have demobilized and are pregnant or accompanied by small children, they require neo-natal or child-care. Complications due to motherhood demand that DDR programs are gender aware; in Uganda, for example, some girls fought, became pregnant, and abandoned their units all before reaching their twelfth birthdays. For these adolescents, the requirement placed on ex-combatants to attend school as a pre-condition for participation in a Ugandan DDR program was unimaginable due to other demands on their time.<sup>180</sup> Similar challenges face Colombian

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177. Dietrich Ortega, *supra* note 20, at 164.

178. Herrera & Porch, *supra* note 122, at 625 (citing one former female combatant as saying, "A child undermines the morale of the guerrilla, who abandons the love of the revolution for the love (of the child)").

179. *Id.* at 626–27.

180. Press Release, U. N. Office of the Special Representative of the Secretary-General for Children & Armed Conflict, Former Girl Soldiers Bring

women who have become mothers during their time in combat. DDR processes must provide tailored services for these young, single, displaced mothers who lack other support networks.

Another difficulty facing female combatants during the post-conflict reconstruction era is that in taking up arms in a violent conflict, often they have broken cultural stereotypes regarding women's behavior, which is certainly true in the context of Colombia. Once a woman departs from the private sphere to the public one, it may be difficult for her to remain there once the fighting is over.<sup>181</sup> Despite the ideals that may propel woman to join a fighting unit, these groups (and society at large) may still rely on a hyper-masculine vision of military power that does not allow for women to take on these roles. Interviews with Colombian women reveal that, despite having deserted, many women take pride in having made a contribution to their country.<sup>182</sup> Many also take pride in having asserted their agency to affect their life experience, and are empowered by these events.<sup>183</sup> Yet this perception and the shift in mind-set that may accompany it are rarely accepted by society at large. Women who fight as combatants have shattered their home communities' perceptions of gender roles, and are often likely to face discrimination and may not be accepted within traditional society.<sup>184</sup>

For these reasons, the experience for female combatants during the "post-conflict" era and with accompanying transitional justice programs may be one of disempowerment, and disillusion, hence complicating the notion that difficulties for women end once the conflict itself ends. Although societal constructs regarding gender vary greatly across the globe, some level of resistance to shifting norms regarding women's roles in society is a theme that arises in nearly every context in which women have fought. Despite the instrumental contribution of women as fighters, many liberation movements expect women to maintain the cultural and familial elements of soci-

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Hope to Their Peers (Nov. 9, 2007), <http://www.un.org/children/conflict/english/pr/2007-11-09171.html>.

181. Dietrich Ortega, *supra* note 20, at 165 (noting that gender flexibility during the conflict gains are rarely translated into post-conflict gains).

182. Herrera & Porch, *supra* note 122 at 612.

183. See Dietrich Ortega, *supra* note 20, at 162.

184. Herrera & Porch, *supra* note 122, at 626–27.

ety. Their “natural” feminine roles are romanticized: as mothers, supporters of their men, or “keepers of the hearth.”<sup>185</sup> If they transgress these ideals, they may be stigmatized in society. These gender-related stigmas can pose additional challenges for women as they attempt to reintegrate into their communities, which are compounded by the stigma that all combatants who have participated in violent acts already face through reintegration. For example, one anthropological study focused on the experience of female fighters from Mozambique who participated in the FRELIMO independence movement, interviewing these women two decades after they put down their arms.<sup>186</sup> There, demobilization processes occurred, yet took no special consideration of female combatants and the difficulties that faced them as they reintegrated into a patriarchal society after assuming traditionally “male” roles. During combat, when women began to frequently appear with guns slung over their shoulders, the elders of villages complained to guerilla leaders that this presented “an unacceptable challenge to ‘traditional’ societal relationships.”<sup>187</sup> Women explained that, after the war ended, they felt abandoned by the movement. Any pretense of gender equality was apparently only due to the exigencies of wartime, and these women were ultimately socially ostracized.<sup>188</sup> Even the guerilla men with whom they had fought refused to view them as equals; one ex-combatant was told by a former lover that she was too “feisty and independent”<sup>189</sup> to continue a relationship, reflecting that patriarchy and sexism remained endemic to the private sphere, even if their temporary upheaval in the public sphere led to the country’s liberation. Although the DDR process in Colombia is relatively new, and empirical research is lacking on the subjective experiences of women who have attempted to reintegrate, the Mozambique experience serves as a cautionary tale for Colombia, should Colom-

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185. Sondra Hale, *Liberated but Not Free: Women in Post-War Eritrea*, in *THE AFTERMATH: WOMEN IN POST-CONFLICT TRANSFORMATION*, 122, 125 (Sheila Meintjes, Anu Pillay, & Meredith Turshen eds., 2001).

186. Harry G. West, *Girls with Guns: Narrating the Experience of War of FRELIMO’s “Female Detachment”*, 27 *ANTHROPOLOGICAL Q.*, 180, 180 (2004).

187. *Id.* at 183 (citing BARRY MUNSLOW, *MOZAMBIQUE: THE REVOLUTION AND ITS ORIGINS* (1983)).

188. *Id.* at 189–90.

189. *Id.* at 190.

bia neglect to consider the additional challenges of women in DDR.

The role that truth and reconciliation commissions may play in Colombia is also relevant, considering the existence of the National Commission for Reparation and Reconciliation (CNRR). Part of this group's mandate includes the creation of a Historical Memory Commission, which is meant to incorporate women's stories into the history of the conflict, as well as a Transversal Unit for Gender and Specific Populations, intended to mainstream gender into all CNRR activities.<sup>190</sup> Truth and Reconciliation Commissions may be problematic for women who have served as combatants, as they "have tended to operate on narrowly defined and mutually exclusive categories of victims and perpetrators."<sup>191</sup> There may also tend to be a focus on women as victims. This may have broader implications for a post-conflict society, including that it may promote stereotypical notions of women as peaceful, and may obscure the roles that women have played in promoting violence.<sup>192</sup> Dietrich Ortega, however, highlights the important ways in which truth and reconciliation commissions may offer an important opportunity to recast the stories of individuals in a more complex and nuanced way than other transitional justice mechanisms may allow.<sup>193</sup> Unfortunately, although cases such as Timor-Leste, Haiti, and Sierra Leone offered examples of commissions that took concrete efforts to build capacity on gender issues,<sup>194</sup> these efforts prioritized female victims over female combatants,<sup>195</sup> thus reflecting their incapacity to encompass the realities of individuals who may exist within both categories of victim and perpetrator.

Liberia provides another cautionary tale of what may transpire in Colombia if no special consideration is provided to

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190. CARLA KOPPELL & JONATHAN TALBOT, STRENGTHENING COLOMBIA'S TRANSITIONAL JUSTICE PROCESS BY ENGAGING WOMEN 1, 3 (2011).

191. Dietrich Ortega, *supra* note 20, at 168.

192. *Id.* at 171.

193. *Id.* at 161.

194. *Id.* at 170.

195. *Id.* For a discussion of the ways in which institutions may implicitly funnel women into the "victim" category, see Fiona C. Ross, *Women and the Politics of Identity: Voices in the South African Truth and Reconciliation Commission*, in *VIOLENCE AND BELONGING: THE QUEST FOR IDENTITY IN POST-COLONIAL AFRICA* 195 (Vigdis Broch-Due ed., 2005).

female ex-combatants, and if transitional justice and DDR programs simply reinforce these false assumptions about the role of women in conflict. Liberian women who took up arms also struggled with re-integration after abandoning traditional roles as women.<sup>196</sup> One ex-general, who fought as part of a group of insurgents against Charles Taylor's government, still sees herself as responsible for her female soldiers.<sup>197</sup> Amidst uncertainty about what DDR programs entailed, these women expressed hesitance to enroll.<sup>198</sup> They also expressed great frustration with their society.<sup>199</sup> Many had joined combat because it appeared to be a means to counter oppression of women and to flaunt gender roles.<sup>200</sup> To their disappointment, they discovered that sexism in their society was more firmly entrenched than they had realized. In that case, transitional justice mechanisms served only to reinforce the sexism and gendered norms about women in society, rather than to challenge them and pave the way for a broader and more complex understanding of women's identities. One woman who led a forty-woman unit explained, "We first were fighting men with our guns, now we have given up our guns, but we still have to fight men, this time with our pens. That's what I try to tell my girls now."<sup>201</sup>

The United Nations has made a concerted effort to address challenges facing demobilized female fighters. Security Council Resolution 1325 addresses the unique needs of female and male ex-combatants and their dependents.<sup>202</sup> The UN has also released briefing papers on potential solutions to some of these challenges. These solutions may include very simplistic yet non-obvious and non-trivial proposals, such as ensuring that both women's and men's clothing is offered in a benefits package. They may require more complex ones as well, such as addressing varying types of psychological and post-traumatic syndromes that may manifest differently for men and women, incorporating the involvement of women's

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196. Int'l Labor Org., *supra* note 133, at 9 (citing Ex-General Ellen, the leader of a group of young female combatants).

197. *Id.*

198. *Id.* at 10.

199. *Id.*

200. *Id.* at 9.

201. *Id.* (quoting Ex-General Ellen).

202. S.C. Res. 1325, *supra* note 57, at ¶ 13.

community groups, or providing support for various conflict related disabilities or substance abuse problems that may affect men and women in distinct manners.<sup>203</sup> Despite these UN efforts to raise awareness on the role that gender plays in DDR, Colombia has not yet made any specific effort to accommodate women soldiers.<sup>204</sup>

In addition to mandating the demobilization of combatants, the Justice and Peace Law also addresses compensation for victims of human rights abuses. Broader concerns regarding the insufficiency of these means have already been elaborately reported on elsewhere.<sup>205</sup> The law provides reparations for victims and DDR for perpetrators. But if a woman, for example, was raped by a member of the paramilitaries, and then joined the guerrilla in order to seek revenge against her rapist, the law is not able to accommodate her experience. One female combatant was interviewed as explaining that, three years after deserting the guerrilla, she is still trying to reconcile her role there: "they did me harm, but I also did harm . . . So you become a victim and a victimizer."<sup>206</sup> The law in Colombia must seek to encompass the realities of women such as this combatant, who simultaneously identify as both a victim and a perpetrator.

#### V. CONCLUSION: CONCEPTUALIZING A VISION OF GENDER-INCLUSIVE TRANSITIONAL JUSTICE

A gender-oriented analysis of transitional justice recognizes the inherent shortcomings with implementing *any* post-conflict measures. Any measure to rebuild a society after conflict is necessarily an imperfect, incomplete task.<sup>207</sup> Theoretical critiques reveal inherent flaws and inadequacies of the process as it is implemented in various societies. On-the-ground practitioners, often distanced from theory, are faced with an imperative to act and may not have the time or institutional

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203. See U.N. Dep't for Disarmament Affairs, *Gender Perspectives on Disarmament, Demobilization and Reintegration*, (March 2001) (discussing gendered approaches to disarmament).

204. JARAMILLO ET AL., *supra* note 8, at 16.

205. E.g., INT'L CRISIS GRP. *supra* note 165, at 11–14.

206. Nadja Drost, *To Win the War, Colombia Needs Female Fighters to Lay Down Their Arms*, GLOBAL POST (June 1, 2011), <http://www.globalpost.com/dispatch/news/regions/americas/colombia/110525/farc-female-guerrillas>.

207. Teitel, *supra* note 9, at 76.



space to engage with complications in distinguishing who are the victims and who are perpetrators.<sup>208</sup> This gap between theory and practice is evident, as many of the scholars who write about gender and transitional justice fail to answer the most difficult question: What might a genuinely feminist version of transitional justice look like? I suggest that incorporation of a gender-critique of transitional justice hinges on sacrificing some of the idealism endemic to this field.

If a primary aim of transitional justice is to truly re-legitimize the state and prevent the re-occurrence of violence, it is crucial, argues Pablo DeGreiff, to implement transitional justice measures in a way that reinforces their relationships with other initiatives that seek to provide recognition and build civic trust.<sup>209</sup> Therefore, an inter-related, holistic approach to transitional justice is important, but it must also actively resist simply re-cementing societal relationships that laid the groundwork for conflict in the first place. Although they are not the only elements of society relevant to conflict, normative conceptions of gender, as well as hyper-masculinity and hetero-normativity, have been demonstrated to play a role in fomenting conflict, as discussed throughout this article. If these gender norms and hierarchies are part of what leads to conflict, it is crucial that transitional justice challenge them. This article highlights three false dichotomies with regard to the role that gender plays in conflict, and argues that in order for transitional justice mechanisms to truly succeed, scholars and practitioners must develop creative, gender-aware strategies to overcome these dichotomies.

The incorporation of transitional justice from below may offer one important method for addressing gender within conflict.<sup>210</sup> This might mean that mechanisms are implemented not only on an international and domestic level, but that they are also community based.<sup>211</sup> Organizing on a community

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208. Nesiiah, *supra* note 11, at 801.

209. Pablo de Greiff, *Establishing Links Between DDR and Reparations, in DISARMING THE PAST*, *supra* note 6, at 146.

210. See Theidon, *supra* note 8 (discussing DDR within a local-level transitional justice framework).

211. It is important to recognize, however, the concern that feminists articulate regarding utilizing the community as the primary source of reordering a society, in that communities may potentially represent patriarchal or traditional voice in defining the membership and values of the "commu-

level can promote awareness of issues that face former soldiers, can spark public examination of male and female gender roles, or can inspire consideration of why families reject rather than support their daughters who have been raped.<sup>212</sup> In Colombia, this might occur through supporting the numerous grassroots women's organizations that already advocate for peace, and by bringing them into policy decisions at the state and international levels. Turner and Ní Aoláin's claim that any truth commission should include women of diverse experiences and background is a useful strategy for any transitional justice mechanism,<sup>213</sup> in that inclusion of diversity of experience is essential.

Another lesson learned regarding inclusion of gender considerations, if the dichotomy between conflict and post-conflict is a false one, is that the scope of transitional justice programs may need to encompass more activity than previously thought. This calls for a more broad-based, holistic approach to transitional justice that is capable of recognizing the diversity and complexity of experiences that women and men experience before, during and after conflict. One way in which this might be approached is to pursue means of other forms of justice, such as "social services justice" that may not involve legal mechanisms, but may address some of the social and economic harms that women and men may experience as more serious than other forms of violations.<sup>214</sup>

Specific modifications should also be made with regard to the DDR process in order to accommodate female combatants' unique needs. The DDR program in Sierra Leone, for example, suffered from low participation of female combat-

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nity." For a broader discussion of these concerns regarding "bottom-up" transitional justice, see Catherine O'Rourke, *The Shifting Signifier of "Community" in Transitional Justice: A Feminist Analysis*, 23 WIS. J.L. GEND. & SOC'Y 269 (2008).

212. Julie Mertus, *supra* note 21, at 550–54.

213. Ní Aoláin & Turner, *supra* note 17, at 243 (stating that women's diverse roles during conflict could allow them to make significant contributions to peace processes).

214. Thanks to Naomi Cahn for alerting me to the terminology of "social services justice," which focuses on the social, economic, medical, and psychological components of providing justice to victims. See Naomi Cahn, *Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence*, 1 STAN. J. C.R. & C.L. 217, 247–49 (2005) (describing "social services justice" as a more holistic, gender-sensitive form of transitional justice).

ants. Of the 72,500 combatants that demobilized, only 4,751 (6.5%) were women.<sup>215</sup> It is unknown exactly how many women were fighters, yet it is widely accepted that only a small percentage of female fighters were demobilized.<sup>216</sup> Although this DDR process was widely regarded as a success by the UN and as a model for future DDR programs, the low numbers of female participation indicates that the program may have failed many of its intended beneficiaries. Improvements for other future programs might include: specific programs aimed at supporting women in the long term, programming that recognizes that demobilized women may mother children toward whom they have ambivalent feelings because of the identity of father; elimination of gender stereotyping in skill and job training in DDR programs; or insurance of women's health and childcare facilities. If money is distributed in a DDR process, it is crucial to recognize that women and men may not have identical access to financial institutions, requiring increased protection and security for women's new economic opportunities that may arise in a post-conflict era. In Colombia, especially considering the high number of women who have yet to demobilize from the FARC, changes such as these could radically improve women's chances for self-sufficiency after disarming, and could incentivize demobilization among women.

Not only must DDR programs consider such specific considerations for women, but other transitional justice mechanisms are intimately connected to these concepts of ensuring that both men's and women's needs are met. Scholars and practitioners are increasingly aware of the important overlap between DDR and transitional justice.<sup>217</sup> This potential for cross-pollination offers benefits both for men and for women, and in particular, the reintegration phase of DDR may be a particularly good time to coordinate with transitional justice, since transitional justice mechanisms may significantly assist with reintegration into communities.<sup>218</sup> For example, as indicated above, DDR may make accommodations to make sure

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215. Coulter, *supra* note 22, at 155.

216. *Id.*

217. *See, e.g.*, Waldorf, *supra* note 6 (arguing that both transitional justice and DDR could benefit from greater linkages and coordination).

218. *Id.* at 17; Theidon, *supra* note 8, at 67.

that women receive financial benefits of a demobilization program, but then as a government implements a broader transitional justice schema, true access to these financial benefits may require evaluation of laws to ensure that women have the legal structures that allow them to exert control over their financial resources.

Transitional justice in Colombia must also take caution in considering how programs employ definitions of actors in conflict. As discussed above, the distinction commonly employed by transitional justice mechanisms between victims and perpetrators may not always benefit individuals who do not clearly identify as one or the other, which may represent a majority of a conflict-ridden society. Megan MacKenzie highlights that by sidelining women and girl soldiers as “sex-slaves” or “porters” rather than as “combatants,” the Sierra Leone DDR program did a disservice to these women who, regardless of whether they physically fought in combat, were marginalized by their communities who primarily identified them as combatants.<sup>219</sup> Thus, by ignoring the role that these women played and by encouraging them simply to return to their “normal places” in the community, DDR programs failed to offer them the support needed and stripped them of any new roles or positions of authority they may have held during the conflict. These failings meant that a valuable opportunity to rethink or reshape gender stereotypes and hierarchies was missed. The definition of the term “combatants” is also relevant if gender is ignored—even in the case of conventional conflicts with well-organized armies, the boundary between combatants and non-combatants is often porous.<sup>220</sup>

As argued throughout this article, it is imperative that the scope of inquiry into gender roles be broadened as transitional justice is implemented. An examination of the role of women in conflict offers insights into ways that transitional justice could be improved for women, but in order to create effective policy interventions for women, strategies that reflect the complicated and shifting realities on the ground for both women and men are required. The various roles that men ex-

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219. Mackenzie, *supra* note 22, at 252, 257 (describing the failure of DDR programs to recognize women as combatants and communities’ stigmatization of women combatants).

220. de Greiff, *supra* note 209, at 139.

perience during conflict demand that transitional justice programs aimed at men are called into question as well. Although programming that takes into account women's diverse experiences is a major emphasis of this article, perhaps the true test of whether transitional justice incorporates gender is the degree to which it can take into account the diversity of men's experiences during conflict. The social, economic and political problem solving that inherently occurs during an era of transitional justice must seek to understand and potentially dismantle the ways in which men may inherit notions of the role of violence in society, what is "masculine," and how they as individuals seek to identify themselves in this context.

Some examples of initiatives aimed at altering the perception of men's role with conflict might include those that acknowledge the difficulty that a society, and men themselves, may have in recognizing the victimization of men and boys as combatants.<sup>221</sup> Support is needed for men who, in leaving their position as combatants, have lost their primary group identity as men, and coming from backgrounds with little educational or professional opportunity, may be left without a sense of their role within or contribution to society. Community organizations and non-profits with expertise in this area may be beneficial in offering support and role models in this arena. Male-specific support may also be useful for men who have witnessed sexual violence, who have suffered sexual abuse themselves, or who may reject a hetero-normative concept of sexuality.

It is crucial that domestic and international actors acknowledge the specificity of each post-conflict context, and that domestic political challenges unique to each context can complicate transitional justice measures. For example, the Colombian Congress debated numerous approaches to transitional justice, each of which was located in a different spot along the spectrum of the "peace versus justice" debate.<sup>222</sup> One means to address competing needs of different sectors might include parallel structures of transitional justice mecha-

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221. See Ní Aoláin et al., *supra* note 71, for an extensive discussion of this question.

222. José E. Arvelo, *International Law and Conflict Resolution in Colombia: Balancing Peace and Justice in the Paramilitary Demobilization Process*, 37 GEO. J. INT'L L. 411, 413-14, 428 (2006).

nisms. For example, truth commissions can be implemented side-by-side with criminal hearings, and need not be mutually exclusive.

Finally, although this article is limited to a discussion of transitional justice mechanisms such as trials, truth commissions and DDR programs, it is also important to consider a variety of alternative mediums for post-conflict reconstruction that typically fall outside the ambit of transitional justice. In order to ensure that gender-related injustices and abuses within society are not perpetuated as a society is rebuilt in a post-conflict era, it is crucial that societies invest in long-term development of rule of law and institution building from a gender-aware perspective, as well as implementing short-term transitional justice mechanisms with an eye toward the important role that gender inherently plays in conflict.

Had some of these mechanisms been in place, how might Colombia's justice system have approached Lorena, the paramilitary assassin described at the beginning of this article?<sup>223</sup> Had she not been murdered, how should the law have accounted for her crimes? Difficult life circumstances drove her to join combat, but it is difficult to argue that these circumstances constituted duress and should exonerate her from the crime of having murdered dozens of people in cold blood. Yet in Colombia, Lorena is not alone. Thousands of other women and men have participated in combat and committed atrocious violations of human rights, and many have done so due to a variety of complicated motives. Were Colombia to implicate all who bore some degree of guilt, the country might be faced with the imprisonment or condemnation of entire communities of people.

Transitional justice mechanisms offer no ideal solution for a combatant in Lorena's position, both a perpetrator of violence and also a victim of it. When abuse has occurred, a country must draw the line between looking backward to seek accountability for the past, while simultaneously looking forward. This demands a vision that smart, well-conceptualized transitions from violence to peace will prevent such atrocities from reoccurring. As the challenges raised by Colombian female combatants demonstrate, gender inclusiveness is a cru-

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223. *Amor Asesino*, *supra* note 1.

cial element if transitional justice mechanisms hope to make society more decent and just.

In post-conflict settings, accountability should be carried out with an eye toward remedying basic injustices of society, rather than perpetuating them. Practitioners and scholars must be cognizant of the way in which gender is instrumental to any transitional justice endeavor that seeks to fundamentally reshape a society where violent conflict has occurred. Both domestic and international actors, therefore, working in post-conflict contexts must strive to address gender dynamics and consider the way in which men's and women's proscribed roles may contribute to conflict. Failing this, the endeavor of transitional justice risks reinforcing gendered norms that offer men and women limited options in post-conflict societies. Despite the tragedies that have often occurred during conflict, an era in which transitional justice is being implemented provides an opportunity to transform the origins of conflict. To engage in this process without considering the underlying gender dynamics that perpetuate conflict ignores crucial components of these societies, and undermines any aspiration of achieving either transition or justice for women and for men.