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False Dichotomies of Transitional Justice: Gender, Conflict and Combatants in Colombia

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ABSTRACT¹

In Colombia's decades-long armed conflict, between one-fourth to one-third of combatants are women. This paper addresses the problem of reintegrating female combatants in Colombia's violent conflict into civil society after they have left armed groups. It argues that many transitional justice mechanisms rely on the notion that certain dichotomies exist between an era of conflict and a post-conflict era. Reflecting on the experiences of female combatants, this paper exposes those dichotomies as inaccurate reflections of the realities of many individuals affected by conflict. In doing so, it aims to synthesize contemporary feminist scholarly work on transitional justice with detailed research on gender in Colombia. This paper traces the evolution of feminist thinking on transitional justice mechanisms: a first generation focused on developing international criminal law to recognize the special character of sex crimes against women; a second generation was concerned that women in post-conflict societies may not consider that sexual violence is the most serious harm that they suffer, when compared to the murder of their children or the destruction of their communities; and finally, a third generation of scholars now caution that women during conflicts often, paradoxically, experience greater autonomy and less domestic violence than the post-conflict status quo. It then contributes to the existing feminist scholarship on transitional justice by examining the additional complication of women who may have suffered the horrors of conflict, but who have also been perpetrators of some of these horrors. Utilizing detailed research on the experiences of both Colombian women and men, it critiques transitional justice approaches from a gender-oriented perspective, and seeks to imagine what a gender-inclusive strategy might look like in Colombia.

KEYWORDS: Colombia; gender; guerrilla fighting; transitional justice

RESUMEN

Entre un cuarto y un tercio de los combatientes en el prolongado y violento conflicto armado en Colombia son mujeres. Este artículo aborda el problema de la reintegración de las mujeres combatientes en la sociedad civil después de que dejan los grupos armados. El documento sostiene que muchos mecanismos de justicia transicional dependen de la noción de que existen ciertas dicotomías entre una era de conflicto y otra de post-conflicto. En una reflexión sobre las experiencias de estas mujeres combatientes, este ensayo demuestra que dichas dicotomías son un reflejo impreciso de las realidades de muchos individuos afectados por el conflicto. Al hacerlo, pretende sintetizar el trabajo académico feminista contemporáneo sobre justicia transicional con una investigación detallada sobre género en Colombia. Este artículo traza la evolución del pensamiento feminista sobre mecanismos de justicia transicional: una primera generación centrada en el desarrollo del derecho penal internacional para reconocer el carácter especial de los crímenes sexuales contra mujeres; una segunda generación preocupada del hecho de que a las mujeres en sociedades de post-conflicto no les parezca que la violencia sexual es lo

¹ Shana Tabak, Visiting Associate Professor of Clinical Law and Friedman Fellow, The George Washington University Law School, International Human Rights Clinic. I first drafted this working paper under the supervision of Professor David Luban, to whom I am indebted for his encouragement and inspired scholarship. I am also grateful to Georgetown University Law Center for sponsoring my participation at the conference "Taking Stock of Transitional Justice" at Oxford University, at which I presented an early version of this paper in June 2009.

peor que les puede pasar, si se compara con el asesinato de sus hijos o la destrucción de sus comunidades; y, finalmente, una tercera generación de académicos advierten ahora de manera paradójica que las mujeres a menudo experimentan una mayor autonomía y menos violencia doméstica durante los conflictos que en el status quo del post-conflicto. Este trabajo contribuye a la investigación feminista sobre justicia transicional al examinar las complicaciones adicionales que experimentan las mujeres que han padecido el horror del conflicto, pero que también han sido perpetradoras de parte de este horror. Utilizando una investigación detallada sobre las experiencias de mujeres y hombres colombianos, el texto critica los enfoques de la justicia transicional desde una perspectiva de género y pretende imaginar cómo sería una estrategia de inclusión de género en Colombia.

PALABRAS-LLAVE: Colombia; género; luchas de guerrilla; justicia transicional

Introduction

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Introduction

A British freelance journalist has come to Colombia to cover the forty-year long civil war there, 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 is secretive about her life, but after months pass, eventually reveals that she is a member of the paramilitaries. She claims to have joined because she came from a poor family and felt she had no other option. Friends warn the journalist that his girlfriend is one of the most feared assassins the "paras," but he knows how difficult her life has been and refuses to believe them. Finally he confronts Lorena one evening as she cleans her pistol. 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 a 5-year old daughter to be cared for by her grandmother.²

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, who is doubtlessly a perpetrator of violence, 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?

In Colombia it is estimated that over one out of every four combatants is female.³ It is a conflict in which some political violence is highly sexualized, and in which women's bodies become both targets of violence and also weapons of violence. The situation in Colombia challenges transitional justice mechanisms and human rights law to grapple with 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 paper, 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 conflict in society in general that is instrumental to broader conversations about transitional

² La Semana, *Amor asesino*, March 20, 2008, (Author's translation)
http://www.semana.com/wf_InfoArticulo.aspx?IdArt=110374.

³ AMNESTY INTERNATIONAL, *COLOMBIA: SCARRED BODIES, HIDDEN CRIMES, SEXUAL VIOLENCE AGAINST WOMEN IN THE ARMED CONFLICT*, October 13, 2004, available at <http://www.amnesty.org/en/library/info/AMR23/040/2004>.

justice. In this paper I briefly examines 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 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.⁴ 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.

Section I of this essay introduces the concept of transitional justice as a mechanism of accountability for human rights violations. Section II outlines three progressive approaches to feminist critique of transitional justice initiatives. It then examines in detail the most recent body of critical feminist scholarship and highlights some of the gender biases found in mainstream approaches transitional justice. Section III provides a brief overview of the Colombian conflict, and of female combatants there. It then explores how the theories elaborated upon in Section II may or may not apply to the situation of these women. Section IV briefly reviews 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, this paper will focus only particular elements of this law that have special resonance in the lives of women combatants. And Section V, recognizing that the endeavor of transitional justice is necessarily an imperfect science, imagines what a gender-inclusive strategy might look like in Colombia.

I. 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.⁵ 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, including: truth and reconciliation commissions, prosecutions (international or domestic), victim reparations, vetting or lustration (banning perpetrators from public office), or amnesty (either blanket or individualized). In addition to these practices, reliance has grown over recent decades on the practice of reconstruction, specifically through the disarmament, demobilization

⁴ MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 165-198 (1998).

⁵ LOUIS BICKFORD, *TRANSITIONAL JUSTICE, ENCYCLOPEDIA OF GENOCIDE AND CRIMES AGAINST HUMANITY* 3 1045-7, (2004) (explaining that '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').

and reintegration of combatants or “DDR” processes. Most scholars distinguish DDR from Transitional Justice, and view the two as separate processes. The former is concerned primarily with former combatants, is implemented during or immediately after conflict, and is concerned with security alone, whereas the latter incorporates wider spectrum of individuals, may take years to implement after conflict, and is concerned with accountability, truth-seeking and redress for past wrongs.⁶ Despite these differences, both processes are oriented toward long-term objectives of reconciliation, stability and peace, and increasing numbers of scholars and practitioners argue that the two processes must be implemented in coordination.⁷ Because of its current and future relevance within the Colombian process, this paper addresses DDR as well as other transitional justice mechanisms.

The origins of the modern era of transitional justice are commonly traced to the Nuremberg 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.⁸ A central tenet of most transitional justice mechanisms is that they are implemented during a finite period spanning two subsequent governments,⁹ as a country transitions from one regime to another. 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.¹⁰ 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.¹¹ Application 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.

⁶ UN DDR and Transitional Justice 6.20, Level 6 Linkages with other Processes, *available at*:

<http://www.unddr.org/iddrs/06/20.php>

⁷ For a representative sampling of this perspective, *see* Ibid; Kimberly Theidon, *Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia*, INT’L J. TRANSITIONAL JUST. 66 (2007); Sergio Jaramillo, Yaneth Giha and Paula Torres, THE INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, *Transitional Justice and DDR: The Case of Colombia*, June 2009, *available at*:

<http://www.ictj.org/en/research/projects/ddr/country-cases/2379.html>

⁸ Ruti Tietel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 69-70 (2003).

⁹ RUTI TIETEL, TRANSITIONAL JUSTICE, 2000. It should be noted that the conflict in Colombia takes a different shape; there has been no transition from one abusive regime to a second regime seeking accountability. I adopt a broader interpretation of what the term “transitional justice” implies, which includes not only regime transition but also efforts by a government, such as Colombia’s, to seek accountability for past and ongoing violence.

¹⁰ Vasuki Nesiah, *Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagion Workshop on Gender and Transitional Justice*, 15 COLUM. J. GENDER & L. 799, 801-802 (2006).

¹¹ 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*, INT’L J. TRANSITIONAL JUST. 23 (2007); *see also* Fionnuala Ní Aoláin, *Political Violence and Gender During Times of Transition*, 15 COLUM. J. GENDER & L. 829 (2006).

Instead, theorists who prefer an analysis that is more gender-aware frequently criticize these emphases.

An examination of the theoretical intersections between gender theory and transitional justice reveals three approaches. The first approach is a non-feminist one; it makes no explicit acknowledgment of issues that uniquely affect women and men, neither does it 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.¹² 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, killed, or had property destroyed.

A second approach to transitional justice is one that is explicitly feminist, and as such, criticizes a 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 prominence of the civil and political scheme and transposes it onto the crimes that most affect women. In the examples offered above, this approach would understand the female victim's abuse in prison as explicitly gender-related, and categorize the crime as such in legal terms. With regard to the civilian massacre, this second approach would highlight women who had suffered rape or sexual violence and would categorize 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 paper I refer to this emerging body of scholarship as the gender-oriented approach to transitional justice. These gender-oriented theorists examine how conflict affects both men and women, consider 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.¹³ This theoretical approach also attempts to complicate how the notion of truth is conceptualized,¹⁴ the presumption of "women as victims,"¹⁵ and the impact of gender on men.¹⁶

This paper 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 explicitly contemplated by these theorists: the situation of female combatants. 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 addition, in grappling with the complicated role that female combatants play within and after conflict, the very nature of conflict and its intersection with gender constructs may indeed require reconsideration.

¹² 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.

¹³ Elish Rooney, *Engendering transitional justice: Questions of Absence and Silence*, INT'L J. TRANSITIONAL JUST., 173 (2007).

¹⁴ Fionnula Ní Aoláin & Catherine Turner, *Gender, Truth and Transition*, 16 UCLA WOMEN'S L.J. 229 (2007).

¹⁵ Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L. 335 (2006).

¹⁶ Brandon Hamber, *Masculinity and Transitional Justice: An Exploratory Essay*, INT'L J. TRANSITIONAL JUST. 376 (2007).

A gender-oriented critique of transitional justice reveals numerous important problems that can arise if the transition to post-conflict is not done with an eye toward gender implications. These criticisms converge around three central themes, each of which I classify as “false dichotomies” inherent in the approach of many transitional justice programs. I will further examine three of these dichotomies below, each of which presents unique challenges if they are to be overcome in the endeavor of implementing transitional justice: (A) the false dichotomy between the “pre” conflict era, 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.

Each of these themes is explored here because they provide critical backdrop of general concerns regarding 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 the “Pre” and the “Post” Conflict

A central theme that unites many feminist critics is unease with the concept of 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”?¹⁷ Inherent in the word “transition” is the implication of a shift from a male-defined political violence to a liberal democratic framework.¹⁸ 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, these mechanisms may simply reassert and cement the male-oriented relationships that lead to the conflict in the first place.¹⁹ War is oftentimes compartmentalized into two discrete phases, yet this division does not accurately reflect that underlying social continuums of violence and gender roles may exist on a continuum running through society. Vasuki Nesiiah argues that the temptation to draw a clean line between the pre-conflict and the post-conflict must be overcome; it is false to believe that either women or men experience the pre and post as a sharp binary opposition.²⁰

One consequence of reconceptualizing war outside of the boxes of pre and post also demands that scholars revisit the distinction between the “front line” that affects soldiers, and the “homefront” in which civilians reside.²¹ Increasingly, wars take place not only on a battlefield, but permeate into the hearts of communities, transforming the lives of soldiers and civilians alike. 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.

¹⁷ Bell & O’Rourke *supra* note 11. *See also* Chris Coulter, BUSH WIVES AND GIRL SOLDIERS: WOMEN’S LIVES THROUGH WAR AND PEACE IN SIERRA LEONE, 2009. Coulter indicates 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. (p. 7-8).

¹⁸ *Id.*

¹⁹ Ní Aoláin *supra* note 11.

²⁰ Nesiiah *supra* note 10.

²¹ Anthropological research focused 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 generally* Coulter, *supra* note 17.

A deeper layer of this critique chips away further at the transitional dichotomy of pre-and post. Despite the political end of a conflict, women may perceive their situations to worsen *after* conflict has reached its peak, than during the conflict itself. 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 unless efforts are made to modify it. 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 in left home to fight in the Maoist conflict, for example, their wives discovered opportunities to farm and plow their own land, and to assume public positions in a local district council. These women indicated that they were grateful that they no longer suffered domestic abuse that dominated their marriages.²² A similar trend occurred in the U.S. during WWII as Rosie the Riveter called upon women to contribute publically to the war effort by working outside the home. For some women, the end of conflict brings a return to the expected gender roles, and even 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, while re-ordering the public sphere.²³

Breaking down the theoretical wall between the “pre” and the “post” is a useful exercise from multiple scholarly perspectives. Legal scholars who promote an “Ordinary Justice” approach to transitional justice also advance the proposition that the pre/post dichotomy of transitional justice is a false one.²⁴ This theory undermines any predictions of an idealist “peace” that transitional justice may bring. Because there are regular periods of social division and transition even in established democracies, these theorists attempt to explode the notion that transitional justice is a “distinctive topic presenting distinctive set of moral and justice dilemmas.”²⁵ 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 actors, important findings of other disciplines can be incorporated as well to promote a more gender aware transitional justice schema. 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.²⁶ This framework, however, may not be accustomed to in-depth examination of societal or cultural systems of meaning. Other disciplines, such as anthropology and sociology, might be better suited to this task, as they are specifically dedicated to understanding the complexity of social processes. 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 as typified by a legal approach.

²² Rita Manchanda, *Ambivalent Gains in South Asian Conflicts*, in *THE AFTERMATH: WOMEN IN POST-CONFLICT TRANSFORMATION* 99, 117 (Sheila Meintjes, Anu Pillay & Meredith Turshen, ed., 2001).

²³ Ní Aoláin *supra* note 11; *see also* Megan MacKenzie, *Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone*, 18 *Security Studies*, 241-261, 2009 whose 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.

²⁴ *See generally* Eric A. Posner & Adrian Vermeule, *Transitional Justice as Ordinary Justice*, 117 *HARV. L. REV.* 761 (2004); *see also* Bell & O'Rourke *supra* note 10 at 13 (evaluating the relevance of other theories of transitional justice from a feminist perspective).

²⁵ *Id.* at 763-764.

²⁶ Coulter, *supra* note 17 at 8.

Another concern that arises in considering the position of women within transitional justice programs is the tendency to assume that all women share the same needs and benefit from the same solutions. This tendency has been described as “essentializing” women, who are then grouped as a homogeneous category in order to meet their needs post-conflict.²⁷ This is problematic due to its negation of a multi-layered, diverse experience for women within conflict. The debate surrounding essentialization presents the paradox of whether it is preferable to specifically protect women’s needs and risk marginalizing them (“side-streaming” 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”).²⁸ 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 distinguished, conceptually the term “human” may become equated with “male.” Gender mainstreaming, according to Hilary Charlesworth, is at once, “too broad and too narrow.”²⁹ It is too narrow because it neglects the distinct struggles that men and women face in and after conflict. 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.³⁰

The diversity of female experience is also underrepresented in many treaties and transitional justice implementing measures that explicitly attempt to include women. Security Council Resolution 1325 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.”³¹ Although inclusion of women is an important starting point, this approach risks the assumption that the 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.³² It risks falling into the conceptual trap of essentializing the ‘woman’ who is absent,³³ assuming that any woman can represent all women. Inclusion of women as proposed by S.C. Res. 1325 is no guarantee that the interests of all women will be represented.

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.³⁴ Transitional justice mechanisms tend to focus on how rights have been abused publicly, rather

²⁷ Ratna Kapur, *The Tragedy of Victimization Rhetoric*, in *Feminist Legal Studies, Critical Concepts in Law* (p163-203) edited by Joanne Conaghan, (2009).

²⁸ Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM. RTS. J. 1 (2005).

²⁹ *Id.*

³⁰ Julie Mertus, *Improving the status of Women in the Wake of War: Overcoming Structural Obstacles*, 41 COLUM. J. TRANSNAT’L L. 541 (2003).

³¹ United Nations Security Council *supra* note **Error! Bookmark not defined.**

³² Hilary Charlesworth, *The Hidden Gender of International Law*, 16 TEMP. INT’L & COMP. L. J. 93 (2002).

³³ Fionnuala Ní Aoláin & Eilish Rooney, *Underenforcement and Intersectionality: Gendered Aspects of Transition for Women*, INT’L J. TRANSITIONAL JUST. 3,2 pp. 338-354 (2007).

³⁴ *See generally* CAROLE PATEMAN, *THE SEXUAL CONTRACT*, 1988. Pateman describes 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 .

than privately. Reconciliation is approached in a very public manner, whether through trials, truth commissions or amnesty hearings. 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.³⁵

One area in which the dichotomy between public and private is particularly striking is in the realm of sexual violence against women. Until the end of 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. During times of political crisis, women's bodies are often transformed into battlegrounds for competing ideologies.³⁶ 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.³⁷ They bear the burden of conflict when they are the heads of displaced families, when they lose loved ones who may also be a source of financial support, or when they are directly targeted as victims of violence in conflict.³⁸

As various human rights instruments were adopted over the last century, the problem of violence against women remained unaddressed until relatively recently. The Convention for the Elimination of All forms of Discrimination Against Women (CEDAW)³⁹, adopted in 1979, does not address violence against women, but instead focused on issues of discrimination and equality. The issue did not gain prominence until international networks of feminists demanded an end to impunity for violations of sexual violence during times of war.⁴⁰ Women's groups from the global north and the global south alike coalesced around this mission,⁴¹ 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.⁴² In 1995 the UN Conference on Women in Beijing declared violence against women to be one of the convention's dominant issues of concern.⁴³ This cursory historical review of the rise of importance of violence against women demonstrates just how radical these demands were at the time. The increase of the attention paid to sexual violence against women was a sea change in the spectrum of human rights and huge triumph for women's rights advocates internationally.

Following this hard-fought feminist victory, some of the subsequent generation of feminist theorists have rejected the categorization of sexual violence as the singular human rights issue facing women. Now that human rights law recognizes violence against women as a major rights-category, these theorists stress that the human rights community must also understand that

³⁵ Ní Aoláin *supra* note 8.

³⁶ Kelly D. Askin, *The Quest for Post-Conflict Gender Justice*, 41 COLUM. J. TRANSNAT'L L. 509 (2003).

³⁷ *Id.*

³⁸ Askin *supra* note 23.

³⁹ Convention for the Elimination of All forms of Discrimination Against Women, G.A. Res. 34/180, UN Doc. A/34/46 (1980).

⁴⁰ The issue of violence against women was first publicly discussed in an international forum in 1976 at the First International Tribunal on Crimes Against Women in Brussels. See Keck & Sikkink *supra* note 3, at 168-169.

⁴¹ Elisabeth Friedman, *Women's Human Rights: The Emergence of a Movement*, in WOMEN AND HUMAN RIGHTS: AN AGENDA FOR CHANGE, 24, 24 (Julie Peters & Andres Wolper ed., 1994).

⁴² Charlotte Bunch, *Women's Rights as Human Rights: Toward a Revision of Human Rights*, 12 HUMAN RIGHTS QUARTERLY 486, 490 (1990).

⁴³ 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.

this is not the sole means by which women suffer abuse during times of armed conflict.⁴⁴ 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 private sexual violence. It may also marginalize socioeconomic issues, such as access to health care, or gendered aspects of displacement, which some women may find has more of a daily influence on their lives. 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.⁴⁵ This trend risks ghettoizing domestic sexual abuse into a separate realm, unrelated to sexual violence that occurs publicly. 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.⁴⁶ Yet it is difficult to establish a “third-world consensus” regarding which issues are of primary import to women in the developing world.⁴⁷ As futile and useless as it might be to create a hierarchy of abuses that women experience, if nothing else, these highly divergent perspectives serve as reminders that no uniformity of experience can be assumed among women in conflict.

It is important to acknowledge that huge leaps forward have been made with regard to international recognition of sexual violence, most prominently through UN Security Council Resolution 1325,⁴⁸ which recognizes the disproportionate impact of war on women. Despite the significance of this resolution, it falls vulnerable to the criticism that its focus on sexual violence neglects other essential economic and social needs that women and communities during conflict may view as more pressing concerns.⁴⁹

The public / private dichotomy is similarly problematic with regard to the implications of public testimony during mechanisms such as Truth and Reconciliation Commissions.⁵⁰ Many public truth commissions encourage female victims to testify about the crime 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 truth commission, 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, “the forms of accountability sought in the post-conflict/post-regime environment reflect the gender biases that manifest in the prior context.”⁵¹ Although a post-conflict regime may attempt to overcome a societal bias directed at women who have experienced sexual violation, occasionally the method that utilized to accomplish this goal may only reinforce the pre-conflict gender bias.

The public nature of truth commissions may result in exclusions of women’s experiences that reflect a longstanding human rights hierarchy of privileging the more “public” political and

⁴⁴ Nesiah *supra* note 7.

⁴⁵ Bell & O’Rourke *supra* note 11.

⁴⁶ *Id.*

⁴⁷ See Nesiah *supra* note 7 (referencing Afghan women who were interviewed about the effects of sexual violence and who preferred to discuss challenges of feeding their families); *but see* Sikkink *supra* note 3 (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).

⁴⁸ 40 S.C. Res. 1325, U.N. Doc. S/RES/1325 (October 21, 2000).

⁴⁹ Ni Auloun *supra* note 8.

⁵⁰ 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 14;

⁵¹ Ní Aoláin *supra* note 11, at 830-831.

civil rights over “private” economic and social rights. Research demonstrates that some women have been frustrated with their experiences testifying in such settings.⁵² Women explain that although they were asked repeatedly to testify about public crimes including sexual violence, the abuses that most dramatically affected their lives were those that occurred in the private sphere, such as domestic violence, the loss of loved ones, displacement, or conflict-induced poverty. 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. The predominance of the public sphere in transitional justice efforts, therefore, may sideline women’s 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.⁵³ This is problematic because, while women’s human rights violations should not be ignored, the equation of female identity as a victim denies women a broader and more nuanced role within society. Transitional justice seeks accountability for the (usually) female victims of this 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 head of a household caring for several children. This tendency to equate women and victims 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 also be victims of human rights abuse.

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.⁵⁴ 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 women 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 Pauline Nyiramasuhuko, the former Minister of Family and Women’s Affairs of Rwanda who has been charged with rape as a crime against humanity at the International Criminal Tribunal for Rwanda.⁵⁵ Nyiramasuhuko was most notoriously accused of inciting and overseeing the mass rape of the women of the town of Butare

⁵² *Id.*

⁵³ Nesiiah *supra* note 10. See also Chris Coulter, Feminist Review, *Female Fighters in the Sierra Leone War: Challenging the Assumptions?* at 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.”

⁵⁴ WOMEN WAGING PEACE & THE COMISION COLOMBIANA DE JURISITAS, COLOMBIA, PREPARING FOR PEACE: THE CRITICAL ROLE OF WOMEN IN COLOMBIA (2004).

⁵⁵ Peter Landesman, *The Minister of Rape: How Could a Woman Incite Rwanda's Sex-Crime Genocide?*, N.Y. TIMES MAG., Sept. 15, 2002, at 82; see also Askin *supra* note **Error! Bookmark not defined..**

in 1994. 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.⁵⁶

As reassessment of women's roles within conflict becomes necessary, so to do men's roles demand closer examination.⁵⁷ 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."⁵⁸ 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.⁵⁹ 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 oppression of Serbs. 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 this 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 victim-hood onto the conflict at hand, leading him to participate in these crimes.⁶⁰ 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 victim-hood – that propel them to take up arms.⁶¹ Depending on the situation, both men and women may identify as victims, perpetrators, or fall somewhere in between. The tendency to categorize women as victims resorts to essentialization of women, and interestingly, feminists, in their struggle to raise awareness of issues facing some women, are also guilty of these over-generalizations.⁶² 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

⁵⁶ 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*, Col. J. Gen. & Law (2004).

⁵⁷ Hamber *supra* note 16.

⁵⁸ *Id.* at 379.

⁵⁹ 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 A WOMEN AND WAR READER 50-63 (Lois Ann Lorentzen & Jennifer Turpin ed., 1998); see also Theidon, *supra* note 7.

⁶⁰ *Id.* Enloe at 58.

⁶¹ Theidon *supra* note 59.

⁶² See Kapur, *infra* note 25 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.

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,⁶³ this paper examines some of the gender-related attributes of Colombia's conflict. In particular, it highlights the role of the estimated thirty to forty percent of Colombia's combatants who are female.⁶⁴ 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, challenging the way in which both genders are involved in and affected by conflict. I focus on the conflict in Colombia as the primary paradigm for evaluating the relevance of gender-critical theories of transitional justice. I intend to demonstrate that lessons learned with regard to the way that gender affects both men and women during and after conflict are applicable to multiple conflict situations worldwide, including those in which there are no female combatants.

I first offer a brief synopsis of the war 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 affect the development of conflict, and further, how they might be treated in post-conflict era. I argue that the very existence of female combatants challenges some of our traditional conceptions about gender and armed conflict.

A) Overview of the Colombian Conflict

Colombia's armed conflict has lasted longer than any other in the Western Hemisphere. It has internally displaced nearly 4 million people, second only to the conflict in the Sudan.⁶⁵ During much of this time, the conflict has caused the deaths of over 700 civilians each month.⁶⁶

The backdrop of the current conflict was a period called La Violencia (1948-1953) when two political parties competed for political supremacy. 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). The FARC advocates for social protection for lower classes, agricultural reform, and local autonomy. FARC promotes its mission through guerilla warfare consisting of conquest of territory, kidnappings, and occasional direct combat with government troops. In response to a perceived incapacity or unwillingness of the government to

⁶³ 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 9, (indicating "what is deemed just (in a transitional justice context) is contingent on and informed by prior injustices").

⁶⁴ See HUMAN RIGHTS WATCH, YOU'LL LEARN NOT TO CRY: CHILD COMBATANTS IN COLOMBIA, September 2003 <http://www.hrw.org/reports/2003/colombia0903/index.htm>. Human Rights Watch indicates that it is not able to guarantee accuracy of the figures offered by any of their sources, as there is no precise data on the numbers of females and children involved in conflict in Colombia.

⁶⁵ INTERNAL DISPLACEMENT MONITORING GROUP, INTERNAL DISPLACEMENT, GLOBAL OVERVIEW OF TRENDS, 2007, (2008) [http://www.internal-displacement.org/8025708F004CE90B/\(httpPages\)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000](http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000).

⁶⁶ 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, 196 (Cynthia J. Arnson ed., 1999).

protect its citizens adequately, various paramilitary groups formed, which have sporadically benefited from state sponsorship. 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. Since the mid-1980's the FARC has also supported its revolutionary efforts with revenue from narcotics sales.

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. Current President Alvaro Uribe has taken a hard line with the FARC and refused to negotiate. Uribe has, however, engaged 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 armed political groups in Colombia have utilized female fighters.⁶⁷ Although the paramilitaries do include some women among their ranks, the guerillas are much more predominately female; of the FARC⁶⁸, between twenty-five and fifty percent are female.⁶⁹ Although the FARC's senior command is all men, several women have become "comandantes," comparable to the rank of officer.⁷⁰ 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."⁷¹ 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, yet this decision is often perceived as being the best of a dismal array of alternatives for poor women with few options, rather than a statement of idealism.⁷²

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 have made claims to revolution, or that seek liberation from colonial or repressive regimes, it is not uncommon to find a high percentage of female participation.⁷³ These women exemplify attempts to leave the private sphere of the

⁶⁷ Human Rights Watch *supra* note 64.

⁶⁸ Great discrepancy exists between the number of FARC combatants according to FARC and according to the government. See Jeremy McDermott *Colombia's Rebels: A Fading Force?* (February 1, 2008), available at <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); see also Gary Leech, Interview with FARC Commander Raul Reyes, (July 12, 2007), available at <http://www.colombiajournal.org/colombia259.htm>, (citing an interview with FARC commander Raul Reyes who claims to have 18,000 active members).

⁶⁹ Human Rights Watch *supra* note 64; see also UNIFEM (United Nations Development Fund for Women) Gender Profile of the Conflict in Colombia, (2004) available at: www.womenwarpeace.org

⁷⁰ Jeremy McDermott, *Colombia's Female Fighting Force*, BBC News, (January 4, 2002), available at <http://new.bbc.co.uk/2/hi/americas/1742217.stm>.

⁷¹ Keith Stanski, *Terrorism, Gender and Ideology: A Case Study of Women who Join the Revolutionary Armed Forces of Colombia (FARC) in THE MAKING OF A TERRORIST: RECRUITMENT, TRAINING AND ROOT CAUSES*, 136-150 (James J.F. Forest, Praeger Security International ed, 2006).

⁷² Human Rights Watch *supra* note 59.

⁷³ Women have participated in irregular forces of countries including: Colombia, Nicaragua, El Salvador, Eritrea, Nepal, Mexico, Cuba, Sri Lanka, Kosovo, Sierra Leone, Uganda, Vietnam, Mozambique, Eritrea, Angola, Liberia,

home in which women are typically associated, and to enter the public world of armed combat. Many of these groups have made claims – on the surface – to 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.

Within armed groups, the degree to which men and women achieve equality varies by region. In some forces women train and fight combat missions with the men. Despite this, it is invariably the women in the rebel camp who cook and clean.⁷⁴ Though it may appear inconsistent, many of the groups that recruit women as fighters are also the worse perpetrators of sexual violence against civilian women. One 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.”⁷⁵ 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)⁷⁶ 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 reproductive abuse; (4) women are objects of social control exerted by guerilla groups over conflict regions.

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. The report fails to address women who join combat willingly. Although the final conclusions of the human rights organizations are important, they ignore the precarious role of these women fighters.⁷⁷ 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 seventy and eighty percent of Colombian women experience sexual violence in their lives.⁷⁸ 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 understanding conflict in Colombia. In turn, transitional justice mechanisms that address the

South Africa, Peru, Palestinian fighters in Lebanon and Israeli-Occupied Territories. See 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); see generally, THE AFTERMATH: WOMEN IN POST-CONFLICT TRANSFORMATION, (Sheila Meintjes, Anu Pillay, & Meredith Turshen ed., 2001).

⁷⁴ Sandra Jordan, *Girls go to War as Colombia’s Frontline Killers*, THE OBSERVER, (July 14, 2002), available at <http://www.guardian.co.uk/world/2002/jul/14/sandrajordan.theobserver>.

⁷⁵ MATT HOBSON, SAVE THE CHILDREN, FORGOTTEN CASUALTIES OF WAR: GIRLS IN ARMED CONFLICT 1 (2005), at 6.

⁷⁶ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, VIOLENCE AND DISCRIMINATION AGAINST WOMEN IN THE ARMED CONFLICT IN COLOMBIA, Oct. 18, 2006 <http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm>.

⁷⁷ MacKenzie, *supra* note 22. 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.

⁷⁸ Amnesty International *supra* note 3, at 12.

needs of female combatants must interrogate what it means to be both a woman and a soldier in Colombia, and furthermore, shed light on the fact that other gender dynamics may be perilously ignored within post-conflict mechanisms.

1) **False Dichotomy between “Pre” and “Post” conflict: Sexualization of Conflict Violence**

“Young man, are you bored?”⁷⁹

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 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. Unless transitional justice mechanisms explicitly take these dynamics into account, gender ideals will not change on their own, and may remain identical in the post-conflict era as they were during conflict itself. Colombian society reveals a phenomenon explained by Kimberly Theidon as “militarized masculinity,”⁸⁰ 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 a relationship with one of 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.⁸¹

In Colombia, women are targeted 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. 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.⁸² 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. 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

⁷⁹ *Id.*

⁸⁰ Theidon *supra* note 55, at 76. See also Coulter, *supra* note 17, at 14. Coulter argues, based on her 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.”

⁸¹ See generally Theidon *supra* note 55.

⁸² Inter-American Commission on Human Rights *supra* note 76, at 18.

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.*⁸³

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.⁸⁴ Guerillas often place particular emphasis on adherence to antiquated, and or formal gender roles. Men are prohibited from wearing long hair or earrings. Women are required to dress modestly, are forbidden from baring their legs or stomachs, and are banned from sexual relationships outside of marriage. Homosexuality and prostitution are deemed irreconcilable with traditional social structure and are banned. Women are forbidden from using birth control or from having abortions.⁸⁵ These rigid social controls reflect gender roles as they “should” be, and are 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. 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.

Unfortunately, oftentimes an end to conflict does not bring an end to violence against women. In Colombia, one study revealed that in domestic violence was endemic in seven out of ten households headed by a reintegrated combatant.⁸⁶ This post-conflict increase in domestic violence is a phenomena that occurs throughout the world, as was reported in a 2002 UNIFEM study on the relationship between women and conflict.⁸⁷ 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.”⁸⁸ 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. Without concrete efforts to modify the ways in which ex-combatants conceptualize sexuality and violence, the training and ideology

⁸³ Mrs. Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, *Report of the Special Rapporteur on Violence Against Women, Causes and consequences: Mission to Colombia (1-7 November 2001)*, ¶ 42 U.N. Doc. E/CN.4/2002/83/Add. 3, (March 11, 2002).

⁸⁴ Amnesty International *supra* note 2.

⁸⁵ *Id.*; Theidon *supra* note 55.

⁸⁶ *En 7 de Cada 10 Hogares de reinsertados Hay Violencia*, El Tiempo, March 31, 2008, available at: <http://www.eltiempo.com/archivo/documento/MAM-2880037>.

⁸⁷ 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* (2002), available at: http://www.unifem.org/materials/item_detail.php?ProductID=17.

⁸⁸ *Id.* at 14

about gender roles that men and women receive during wartime will endure in the post-conflict era.

2) Female Combatants: Transitioning between the public and private

Woefully little research has been published on why women join armed combat groups.⁸⁹ The research that is available indicates that feminism was definitely an influence in many cases, primarily because it caused 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.⁹⁰ 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 are not available in traditional civilian life.⁹¹ According to the International Labor Organization, women in Liberia joined 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.”⁹² In Colombia, a former girl combatants 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.”⁹³

Whether women remain at home with their families or join the combatants, their sexual lives are often controlled within 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 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 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.⁹⁴ One woman reported that she visited a FARC nurse to monitor her pregnancy and learned later that her fetus

⁸⁹ KAREN KAMPWIRTH, *WOMEN AND GUERRILLA MOVEMENTS: NICARAGUA, EL SALVADOR, CHIAPAS, CUBA*, 2002. There are some notable exceptions to this trend, and in recent years more scholars have turned their attention to this topic. See for example La Fundacion Mujer y Futuro, *Haciendo Memoria, Dejando Rastros: Encuentros con mujeres excombatientes en el Noroiente de Colombia*, 2004, on file with author.

⁹⁰ See Gunhild Schwitalla & Luisa Maria Dietrich, *Demobilization of Female ex-combatants in Colombia*, FORCED MIGRATION REVIEW, 58 (2007); see also Caterina Chantal Arena, *Development of Women Combatant Roles in Contemporary Armed Conflict: The Case of Colombia*, Mediterranean Journal of Human Rights, Vol. II, Number 1, 2007

⁹¹ Chantal Arena *Id.* at 82.

⁹² International Labor Organization, *Girl-combatants: Women warriors fight their way back into Liberian Society*, in 54 WORLD OF WORK 8-11, (2005), http://www.ilo.org/wow/Articles/lang--en/WCMS_081362/index.htm.

⁹³ Keith Stanski, *Terrorism, Gender, and Ideology: A Case Study of Women who Join the Revolutionary Armed Forces of Colombia (FARC) in THE MAKING OF A TERRORIST: RECRUITMENT, TRAINING, AND ROOT CAUSES* 141, 141 (James J.F. Forest ed., 2006).

⁹⁴ Amnesty International *supra* note 2, at 27. But *cf* Fundacion Mujer y Futuro *supra* note 73 at 160. This report’s interviews with former female combatants relays a somewhat different picture of the male- female relations among combatants, describing it as one of 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 1990’s and did not include FARC members.

had been aborted.⁹⁵ The refusal to abort a pregnancy is one of the most common explanations that demobilized women offer for their decision to abandon the guerillas. Interviews with demobilized women whose ideals led them to join the movement indicated that they often left disillusioned.⁹⁶ 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 or fighting.⁹⁷ These experiences of women in combat units tend to indicate that although it appears that they have crossed a barrier between the realm of the public and of the private, that barrier may only have been temporarily crossed. A strong societal division between public and private still exists.

3) Victims and Perpetrators: Why Colombians become Combatants

As the presence of female combatants undermines the concept of women as purely victims, it also demands a redefinition of what it means to be a victim at all. 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 women cannot be classified unilaterally as victims, men's roles within conflict also demand greater interrogation.⁹⁸

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 mystique and intrigue of a life dedicated to revolutionary struggle.⁹⁹ Human Rights 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.¹⁰⁰ In addition to these considerations, it is notable that sixty-five percent of those who enter are minors at the time that they join. Former soldiers reflect that they were highly impressionable when they joined and didn't fully understand the choices that they made.¹⁰¹ 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 personal financial gain associated with the struggle, and that 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, young people are subjected to dominant gender constructs of militarized society in which expectations for male and female behavior have developed.¹⁰² When they lack

⁹⁵ Stanski *supra* note 93, at 148. Stanski quotes 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."

⁹⁶ Schwitalla & Dietrich *supra* note 90.

⁹⁷ Chantal Arena, *supra* note 81.

⁹⁸ See Enloe, *supra* note 58: "As 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 the men under the category of 'militia fighters.'"

⁹⁹ Stanski *supra* note 83.

¹⁰⁰ Human Rights Watch *supra* note 64.

¹⁰¹ Thiedon *supra* note 55.

¹⁰² *Id.*

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 to traditional capital might use his physical body as the only capital available to him, resulting in his joining the guerilla.¹⁰³ 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 men's decision to take up arms. Kimberly 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."¹⁰⁴ Cultural ideas of masculinity and femininity within the context of war mutually reinforce one another in Colombia, as they do in other war zones.¹⁰⁵

The highly gendered experiences of women and men undermine mainstream transitional justice's inclination to group individuals as victims or as perpetrators. Recognizing the failings 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 arrived at organically.¹⁰⁶ 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."¹⁰⁷ This term encompasses the diversity of experiences within an entire rural community, and was more suitable than simply using the word "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 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.¹⁰⁸ 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. 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

¹⁰³ Kimberly Theidon, *Reconstructing Masculinities: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia*, 31 *Human Rights Quarterly* 1-34 (2009).

¹⁰⁴ *Id.*

¹⁰⁵ Enloe *supra* note 58.

¹⁰⁶ 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 (2006).

¹⁰⁷ Author's translation.

¹⁰⁸ Ní Aoláin & Rooney *supra* note 41.

peaceful resolution and a just one.¹⁰⁹ 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. Beginning in 2002, Uribe's government began negotiations with the paramilitaries. This process led to the adoption of the Peace and Justice Law, which was approved by the Colombian Congress in 2005 as Law 975.¹¹⁰ This law represents an attempt to implement transitional justice mechanisms in a situation that, because the fighting still continues, is actually a "pre-post conflict"¹¹¹ context.

The Peace and Justice Law lays out the parameters of Colombia's Disarmament, Demobilization and Reintegration (DDR) program for paramilitaries. DDR has been attempted throughout the world in post-conflict settings and aims to facilitate the decentralization and disbanding the members of armed groups and to enable ex-combatants to transition back into society through achieving economic and social self-sufficiency.¹¹² Law 975's version of DDR offers most rank-and-file combatants the promise of amnesty and a comprehensive reintegration package in return for laying down their weapons; under the law paramilitary leaders who have committed exceptional crimes are prosecuted at special courts and are promised drastically reduced sentences in exchange for full disclosure of crimes.¹¹³ This law has come 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.¹¹⁴

It is beyond the scope of this paper 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. Female combatants have abandoned the FARC, yet as of now, there is no officially mandated program for them as part of Colombian law. 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. Additionally, post-conflict strategies that regard gender dynamics is

¹⁰⁹ Laplante & Theidon *supra* note 106.

¹¹⁰ Ley de Justicia y Paz, Law No. 975, July 25, 2005, [45.980] Diario Oficial [hereinafter Justice and Peace Law], available at http://www.fiscalia.gov.co/justiciapaz/Normativa/LEY_975_250705.html.

¹¹¹ Theidon *supra* note 55, at 1.

¹¹² Schwitalla & Dietrich *supra* note 90.

¹¹³ According to the International Federation for Human Rights, of the combatants who have demobilized under the Justice and Peace Law, 8% are standing trial and offering testimony for abuses committed, and 92% received automatic and complete amnesty. See INTERNATIONAL FEDERATION FOR HUMAN RIGHTS, PARAMILITARY DEMOBILIZATION IN COLOMBIA: ON THE ROAD TO THE INTERNATIONAL CRIMINAL COURT (May 17, 2007), http://www.fidh.org/spip.php?article4760&var_recherche=Colombia.

¹¹⁴ Criticism of the law culminated in 2007 when a consortium of 105 human rights groups and victim's groups challenged the constitutionality of Law 975 in Colombia's Constitutional Court. See Proceso D-6032, Acción de inconstitucionalidad contra la ley 975 de 2005 (Col.). The court upheld the law in general terms yet declared certain articles to be unconstitutional, resulting in stronger protection of victims' rights. See INTERNATIONAL CRISIS GROUP, COLOMBIA: TOWARDS PEACE AND JUSTICE?, LATIN AMERICA REPORT N°16, (March 2006), <http://www.crisisgroup.org/home/index.cfm?id=4020>; see also INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, BRIEF ON PEACE AND JUSTICE LAW PRESENTED TO CONSTITUTIONAL COURT, (Jan 16, 2007), available at <http://www.ictj.org/en/where/region2/514.html>.

critical because of the high number of women in the FARC 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. In particular, Article 41 provides general guidance that women's issues should be considered in implementation of the law.¹¹⁵ The law also mandates creation of a National Commission of Reparation and Reconciliation, which is to consist of five individuals, of whom at least two must be women.¹¹⁶ Both of these attempts to integrate a 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."¹¹⁷ The law specifies that women should be included on a national commission, yet offers no indication of how exactly this should occur. It also risks placing these women in the position of being expected to speak on behalf of all women.

The Justice and Peace Law also mandates a demobilization process for combatants. According to the law, combatants may demobilize either as individuals or as a collective group of fighters. There are no specific accommodations for female fighters.¹¹⁸ 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. 10,000 paramilitaries demobilized individually, and ten percent of the individual demobilizations were female.¹¹⁹ These numbers reflect that thousands of paramilitary women have demobilized with no gender-specific support.

In Colombia women who have demobilized under the Justice and Peace Law face numerous problems that are not faced by male demobilized combatants.¹²⁰ 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.¹²¹ 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 of former fellow combatants whom they left behind in the ranks. Demobilization programs with no special accommodation for women without support systems are destined to fail these women, many of whom face challenges finding employment as women, particularly if they have child-caring duties as well.

Although the attitude toward sexual activity between combatants varies, some women invariably become pregnant while they are enlisted. This causes 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. Without special attention to these considerations,

¹¹⁵ Justice and Peace Law *supra* note 110. 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."

¹¹⁶ *Id.* at Article 50.

¹¹⁷ Charlesworth *supra* note **Error! Bookmark not defined.**

¹¹⁸ Justice and Peace Law *supra* note 98, at Articles 10 – 31.

¹¹⁹ Schwitalla & Dietrich *supra* note 81.

¹²⁰ *Id.*

¹²¹ *Id.*

women may enter shelters alongside the same men with whom they served, or who may have sexually violated them. The DDR process provides no services for these young, single, displaced mothers who lack other support networks.

Women ex-fighters face similar struggles globally due to specific needs and complicated personal situations that men do not encounter. Some Ugandan girls fought, became pregnant, and abandoned their units all before reaching their twelfth birthdays. These girls must care for babies, often with no family support. For these adolescents, for example, the requirement placed on ex-combatants to attend school as a pre-condition for participation in a DDR program is unimaginable due to other demands on their time.¹²²

Another difficulty of the post-conflict reconstruction era for female combatants is that in taking up arms in a violent conflict, often they have broken cultural stereotypes regarding women's behavior. Once a woman makes this departure from the private sphere to the public one, it may be difficult for her to remain there once the fighting is over. Women who fight as combatants have shattered their home communities' perceptions of gender roles, and are often likely to face discrimination as a result and are not accepted within much of traditional society.

Because the DDR process began relatively recently, detailed empirical research on Colombian female combatants' responses to demobilization is lacking. Although societal constructs regarding gender vary greatly across the globe, resistance to shifting norms regarding women's roles in society is a theme that arises in most contexts. Despite the instrumental contribution of women as fighters, the men in many liberation movements expect women to maintain the cultural and familial elements of society. Their "natural" feminine roles are romanticized: as mothers, supporters of their men, or "keepers of the hearth."¹²³

One anthropological study that examined the experience of female fighters from Mozambique who participated in the FRELIMO independence movement is particularly useful because it was conducted two decades after women put down their arms.¹²⁴ Although a demobilization process occurred, it took no special consideration of female combatants and the difficulties that face 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."¹²⁵ 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.¹²⁶ 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"¹²⁷ 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.

¹²² United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Uganda: Former Girl Soldiers Bring Hope to their Peers*, Nov. 9, 2007, available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-78VR6U?OpenDocument>.

¹²³ 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 ed., 2001).

¹²⁴ Harry G. West, *Girls with Guns: Narrating the Experience of War of FRELIMO's "Female Detachment"* *ANTHROPOLOGICAL QUARTERLY*, Edition 27, 180 (2004).

¹²⁵ See *id.* at 183, citing BARRY MUNSLOW, *MOZAMBIQUE: THE REVOLUTION AND ITS ORIGINS* (1983).

¹²⁶ *Id.*

¹²⁷ *Id.*

Liberian women who took up arms also struggled with re-integration after abandoning traditional roles as women.¹²⁸ 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. Amidst uncertainty about what DDR programs entailed, these women expressed hesitance to enroll. They also expressed great frustration with their society. Many had joined combat because it appeared to be a means to counter oppression of women and to flaunt gender roles. To their disappointment, they have discovered that sexism in their society was more firmly entrenched than they had realized. 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."¹²⁹

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 dependants.¹³⁰ The UN has also released several briefing papers on potential solutions to some of these problems, but they continue to be endemic to the demobilization process in Colombia.¹³¹ Despite these UN efforts, Colombia has not made any specific effort to accommodate women soldiers.¹³²

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.¹³³ 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. It fails to consider a situation in which a person is simultaneously a victim and a perpetrator.

V. Conceptualizing a Vision of Gender-Inclusive Transitional Justice

A feminist 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, impossible task.¹³⁴ 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 space to engage with complications in distinguishing who are the victims and who are perpetrators.¹³⁵ 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.

¹²⁸ International Labor Organization *supra* note 92 (citing Ellen, the leader of a group of young female combatants).

¹²⁹ *Id.*

¹³⁰ United Nations Security Council *supra* note 34, at paragraph 13, which states, for example, that DDR programs should address the needs of the dependants of all ex-combatants.

¹³¹ The Department for Disarmament Affairs in collaboration with the Office of the Special Adviser on Gender Issues and the Advancement of Women United Nations, GENDER PERSPECTIVES ON DISARMAMENT, DEMOBILIZATION AND REINTEGRATION, (March, 2001), <http://disarmament.un.org/gender/note4.htm>.

¹³² ICTJ *supra* note 7, at 15.

¹³³ See generally International Crisis Group *supra* note 114.

¹³⁴ Teitel *supra* note 9, at 34.

¹³⁵ Nesiiah *supra* note 10.

The incorporation of transitional justice from below is one important method for addressing gender within conflict.¹³⁶ This means that mechanisms are implemented not only on an international and domestic level, but that they are also community based. Organizing on a community 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. 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 a the state and international levels.¹³⁷ Turner and Ní Aoláin's recommendation that any truth commission should include women of diverse experiences and background is a useful strategy for any transitional justice mechanism,¹³⁸ in that inclusion of diversity of experience is essential.

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 combatants. Of the 72,500 combatants that demobilized, only 4,751 (6.5 %) were women. It is unknown exactly how many women were fighters, yet it is widely accepted that only a small percentage of female fighters were demobilized.¹³⁹ 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; insurance of women's health and childcare facilities; and recognition that women may not have access to financial institutions (if money is distributed in the DDR process). 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.

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.¹⁴⁰ One means to address competing needs of different sectors might include parallel structures of transitional justice mechanisms. For example, truth commissions can be implemented side-by-side with criminal hearings, and need not be mutually exclusive.

Finally, although this paper 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

¹³⁶ Theidon *supra* note 55.

¹³⁷ Julie Mertus, *Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles*, 41 COLUM. J. TRANSNAT'L L. 541 (2003).

¹³⁸ Ní Aoláin & Turner *supra* note 14.

¹³⁹ Coulter, *supra* note 17, at 155.

¹⁴⁰ See Jose Arvelo, *International Law and Conflict Resolution in Columbia: Balancing Peace and Justice in the Paramilitary Demobilization Process*, 37 GEO. J. INT'L L. 411, 414 (2006).

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 paper?¹⁴¹ Had she not been murdered, how should the law have accounted for her crimes? Difficult life circumstances drove her to join combat, yet it is difficult to make the argument that these circumstances constituted duress and should exonerate her from 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 because they feel they have no other choice. Were Colombia to implicate all who bore some degree of guilt, the country might be faced with imprisoning 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 crucial 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 endeavors 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.

¹⁴¹ La Semana *supra* note 2.