

BEYOND PASSIVE VICTIMHOOD: THE NARRATIVE AND REALITY OF WOMEN IN TRANSITIONAL JUSTICE

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“Alongside the specific harms they suffer, we must also recognize the immense contribution that women have made to the struggle for truth and justice . . . ”

—David Tolbert, ICTJ¹

I. INTRODUCTION

By definition, transitional justice mechanisms are invoked at a time of societal upheaval: something terrible has just ended and communities are trying to rebuild. In these times of change and reformation, domestic and international actors work together to pursue truth, justice, reparations, and guarantees of non-recurrence. Recent decades have seen significant growth in this field as the international community seeks to respond to and encourage sustainable change in a growing variety of post-conflict societies.

One group has had a particularly difficult struggle to make their voices heard in transitional contexts: women. Throughout history, women have been either entirely absent from or severely underrepresented in transitional justice processes.² The active role that women play in transitional justice in practice has largely been under-explored, despite its pivotal importance.³ The international community has begun

1. David Tolbert, *Enforced Disappearances: Justice for the Disappeared Has a Woman’s Face*, INT’L CENT. FOR TRANSITIONAL JUST. (Aug. 30, 2013), <https://www.ictj.org/news/justice-disappeared-has-woman%E2%80%99s-face> (emphasis added).

2. See ICTJ, *Gender, and Transitional Justice*, INT’L CENT. FOR TRANSITIONAL JUST. (Oct. 2010), <https://www.ictj.org/sites/default/files/ICTJ-Global-Gender-Justice-2010-English.pdf>.

3. See Annika Björkdahl & Johanna Mannergren Selimovic, *Gendering Agency in Transitional Justice*, 46 SECURITY DIALOGUE 165, 168 (2015).

to respond to this gap and the last fifteen years have seen the beginning of a shift in transitional justice to better incorporate women, at least at a theoretical level. This shift rests on two key points: that transitional justice mechanisms offer important opportunities for women to participate in and influence the peace building process, and that the inclusion of women can have a significant positive impact on the prospects for peace and justice.⁴ Indeed, some have now recognized that the inclusion and equality of women is an important factor for sustainable peace in general.⁵

One of the key moments in this slow but marked recognition was the passing of the United Nations Security Council Resolution 1325 in 2000.⁶ The Resolution represented the first time that the United Nations recognized the issue of women in transitional justice, and in it the United Nations reaffirmed the importance of women's participation in both the prevention and resolution of conflict and in peace-building.⁷ Other international transitional justice actors have followed the United Nations' lead. For example, in a 2010 report, the International Center for Transitional Justice (ICTJ) highlighted that the participation of women and victims in the shaping and implementation of transitional justice policies is "[c]ritical to achieving gender justice" in post-conflict societies.⁸ Leaders at the United Nations have continued to reinforce and strengthen the position established in Resolution 1325, with Secretary-General Ban Ki-Moon stressing in 2015 that "[w]omen's leadership and the protection of women's rights should always be at the forefront—and never an afterthought—in promoting international peace and security."⁹

Resolution 1325 represented an important moment in the recognition of women in transitional justice, but the practical manifestation of that recognition has lagged behind the limited theoretical gains that the Resolution represented. Women

4. *ICTJ, Gender, and Transitional Justice*, *supra* note 2.

5. RADHIKA COOMARASWAMY, U.N. WOMEN, PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325, 28 (2015).

6. S.C. Res. 1325 (Oct. 31, 2000).

7. *Id.*

8. *ICTJ, Gender, and Transitional Justice*, *supra* note 2.

9. COOMARASWAMY, *supra* note 5, at 4.

have consistently remained lesser participants in transitional justice processes and policies.¹⁰ Although Resolution 1325 has had a positive impact, women are still underrepresented in transitional justice processes, and their inclusion has often either been limited to or focused on passive victimhood. This slow and limited growth has led some to assert that, in transitional justice contexts, the issue of female agency “is more often than not merely used as a convenient theoretical catchword” and that there has been “no sustained effort to unpack the blurry concept of agency and look closer at what women actually do as agentive subjects.”¹¹ While this assessment represents a more extreme perspective, the lack of active female participation in many transitional justice contexts, and the lack of recognition when that participation occurs, is troubling. If women are to be brought to the “transitional justice table,” they must be affirmed as full, active participants, rather than symbolic participants or merely reminders of their victimization.

Although they have largely gone unrecognized by decision-makers and international actors, women can be strong agents of change in transitional justice contexts.¹² The reality is that women, who frequently make up more than fifty percent of the population in post-conflict societies, play a very significant role in peace-building and transitional justice while simultaneously addressing the basic survival needs of their families and communities.¹³ As this paper will discuss, there is a significant positive impact when women are involved in transitional justice mechanisms, not just for women, but for the entire post-conflict community as well as the international justice system writ-large.¹⁴

10. Monica McWilliams & Avila Kilmurray, *From the Global to the Local: Grounding UNSCR 1325 on Women, Peace and Security in Post Conflict Policy Making*, 51 WOMEN'S STUDIES INT'L FORUM 128, 130 (2015).

11. Björkdahl & Selimovic, *supra* note 3, at 168.

12. *Id.* at 166.

13. JULIE MERTUS & OLJA HOCEVAR VAN WELY, WOMEN'S PARTICIPATION IN THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY): TRANSITIONAL JUSTICE FOR BOSNIA AND HERZEGOVINA, at v (Sanam Naraghi Anderlini ed., 2004).

14. *Id.* at vii (indicating that “the inclusion of women and gender expertise at the ICTY has been vital not only for the prosecution of crimes committed against women, but also for the broader pursuit of justice and the advancement of international law.”).

The international community plays an unquestionably large role in transitional justice, and therefore has a responsibility to establish systems that are just and reflect human rights.¹⁵ This responsibility is especially important since transitional justice periods present key opportunities for societal change: transitions are times of flexibility in a society, where inequalities can be reduced and human rights can be pushed to the fore.¹⁶ The international community should leverage the flexibility of transitional periods to move beyond the objective of individual redress to address larger issues of inequality and injustice that gave rise to the conflict in the first place.¹⁷ In particular, the international community should use these critical opportunities to address gendered hierarchies and “encourage wider social change through changing the asymmetrical relationships that were present prior to the conflict, or were shaped and consolidated during it.”¹⁸ This broader recognition is exceptionally necessary for women, who are routinely minimized to their gender (i.e. seen only *as women*), with a propensity towards victimization in conflict and post-conflict contexts.¹⁹ In the absence of such efforts, transitional justice has the potential to effect only limited change, if not contribute to a worsening status quo. As an active participant in the transitional justice process, the international community shares the burden of shaping how transitional justice projects are run.

The lack of progress in harnessing this capacity for human rights change, particularly for women, is a major fail-

15. See Fionnuala Ní Aoláin, *Women, Security and the Patriarchy of Internationalized Transitional Justice*, 31 HUM. RTS. Q. 1055, 1057 (2009).

16. See Kris Brown & Fionnuala Ní Aoláin, *Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change*, 9 INT'L J. TRANSITIONAL JUST. 127, 134 (2015). (“[P]ostconflict contexts present the possibility of entirely new conditions and systems of governance, and governance programs provide the possibility of radical transformation regarding the place of women in the society’s political processes.”).

17. NAHLA VALJI, U.N. WOMEN, A WINDOW OF OPPORTUNITY: MAKING TRANSITIONAL JUSTICE WORK FOR WOMEN, at 1 (2012).

18. Björkdahl & Selimovic, *supra* note 3, at 178.

19. See Erin Baines, *Gender, Responsibility, and the Grey Zone: Considerations for Transitional Justice*, 10 J. HUM. RTS. 477, 486 (2011) (articulating the experiences of demobilized female LRA soldiers).

ing on the part of the international community.²⁰ By not addressing patterns that exclude women in transitional justice, the international community “[fails] to effect meaningful political and legal transformation for women in situations where profound social and political change is negotiated.”²¹ Given the far-reaching impact women can have on their societies, it is not only women who are disadvantaged when the international community fails to include women during transitional justice periods, but their entire communities. Ban Ki-Moon has recognized this point, and in 2015 stressed that “[a]ny reforms must include gender equality and women’s leadership as central ingredients.”²²

This Note seeks to contribute to the critical gap in understanding between the theory and practice of involving women in transitional justice. It challenges dominant trends, both theoretical and practical, and provides context for the nascent theoretical shift of women as agents of change with concrete examples of women engaging in various parts of transitional justice processes. These examples represent extraordinary circumstances where women were able to mobilize and impact their communities in times of transition. This Note proceeds in three main parts. First, it discusses the theoretical and practical *status quo* relating to women in post-conflict and transitional justice contexts. Next, it goes on to challenge the established narrative through examining cases of female agency at various points in the transitional justice process. Finally, this Note explores reasons for the disconnect between theory and reality and will propose ways to change the dominant narrative and improve women’s agency on the ground.

When women are able to engage in transitional justice processes, the benefits are undeniable. However, they are often unable to participate due to a variety of factors. The examples investigated in this paper are notable because they are exceptional: they represent moments where women—with or without the help of their government and the international community—stood up and actively participated in transitional justice in their societies, and their societies recognized and

20. Lori Handrahan, *Conflict, Gender, Ethnicity and Post-Conflict Reconstruction*, 35 SECURITY DIALOGUE 429, 441 (2004).

21. Aoláin, *supra* note 15, at 1056–57.

22. COOMARASWAMY, *supra* note 5, at 4.

clearly benefited from that participation. However, one must remember that these examples are outliers of the general trend. For most women in most post-conflict societies participation is limited, and recognition even more elusive.

II. THE NARRATIVE: THE STATUS QUO OF WOMEN IN CONFLICT AND POST-CONFLICT SOCIETIES

Historically, women have been either entirely absent from, or minimally involved in, transitional justice processes. Where women are involved, their role is traditionally limited to that of a special class of victim, at most seen as representatives for “women’s issues” in the society.²³ While there has been some theoretical shifting since Resolution 1325, the change is too limited and does not fully recognize the importance of the agency women can display in post-conflict and transitional societies.

There is an important connection between the limits placed on women due to stereotypes and cultural norms and the realities for how women engage in their communities. This is particularly true in transitional societies.²⁴ Women generally experience different levels of agency and control than men, and these gendered dynamics are exacerbated during conflict.²⁵ Conflict, by both its nature and history, has typically been a male-dominated space.²⁶ Gender norms are increasingly articulated during conflict, with strong expectations of stereotypical gender behaviors.²⁷ Perhaps as a continuation of that dynamic, early peace processes and transitional justice mechanisms largely ignored women.²⁸

Gender agency is to a large degree attached to “preconceived notions of ‘appropriate gendered behaviours’ . . . where

23. Björkdahl & Selimovic, *supra* note 3, at 172.

24. See, e.g., JOHN MUTAMBA & JEANNE IZABILIZA, NAT’L UNITY AND RECONCILIATION COMM’N, THE ROLE OF WOMEN IN RECONCILIATION AND PEACE BUILDING IN RWANDA: TEN YEARS AFTER GENOCIDE: 1994-2004; CONTRIBUTIONS, CHALLENGES AND WAY FORWARD 33–36 (2005) (noting this as a limit within the Rwandan context); see also Björkdahl & Selimovic, *supra* note 3, at 172.

25. Baines, *supra* note 19, at 481; see also Brown & Aoláin, *supra* note 16, at 134.

26. Baines, *supra* note 19, at 481; Brown & Aoláin, *supra* note 16, at 134.

27. Baines, *supra* note 19, at 482.

28. Brown & Aoláin, *supra* note 16, at 134.

men are usually considered 'active and autonomous agents, but women are not.'"²⁹ One manifestation of this double standard is the fact that women are routinely reduced to their gender (i.e. seen only for their womanhood) in post-conflict societies.³⁰

Narrative plays a critical role in these dynamics with significant implications for transitional justice work. While the recent theoretical changes should be acknowledged, the change thus far is too limited. The reality on the ground, which continues to lag far behind recent theoretical gains, indicates that more support is needed. It is therefore important to critically analyze the reality for women in transitional justice.

A. *Women Are Often Absent from the Dialogue*

History unfortunately shows that, more often than not, women have been overlooked or underestimated—if not completely ignored—during transitional justice processes in their communities.³¹ This can in part be attributed to the gendered nature of conflict and the impact that has on post-conflict settings.³² Conflict traditionally promotes a militarized, violent, masculine paradigm.³³ These dynamics often remain in place as the community works through transition, with serious implications for women.³⁴ One practical implication is the continued high threat of violence and asymmetrical power dynamics (and a frequent *increase* in domestic violence) that becomes a defining feature of women's post-conflict experiences.³⁵

29. Björkdahl & Selimovic, *supra* note 3, at 170 (quoting JUDITH KEEGAN GARDINER, PROVOKING AGENTS: GENDER AND AGENCY IN THEORY AND PRACTICE 2 (1995)).

30. See Baines, *supra* note 19, at 486 (finding that women held captive by the Lord's Resistance Army were alienated by their communities, upon their release, for their participation as "wives," rather than their participation as fighters).

31. MERTUS & VAN WELY, *supra* note 13, at v.

32. See Baines, *supra* note 19, at 483.

33. *Id.* at 481.

34. *Id.* at 483; Brown & Aoláin, *supra* note 16, at 134 ("The political and economic direction the emerging state takes will be heavily influenced by its previous form, the influence of its elites and its prewar and wartime power structure.").

35. McWilliams & Kilmurray, *supra* note 10, at 130-131; Björkdahl & Selimovic, *supra* note 3, at 178 n.2 (citing U.N. Secretary-General, *Conflict-related Sexual Violence*, ¶67, U.N. Doc. A/66/657-S/2012/33 (Jan. 13, 2012)).

Conflict has a perverse gender impact on women. It is both a highly gendered and a highly permissive time in a society. The gendered pragmatics of war (i.e. men typically leaving their communities to fight) “tend[] to break down patriarchal structures, and women gain, as an unintended consequence, freedom, responsibility and worth.”³⁶ However, this flexibility typically changes once the men return, and women are once again forced into more limited gender roles. This is also true for transitional processes, where women are often “left out of post-conflict development plans and decisions by both international and national male leaders, and told to return to their ‘normal’ activities, those of the private citizen largely concerned with domestic life.”³⁷ Women are (unintentionally) empowered during conflict, but that power is taken away from them again as the situation normalizes and the community—usually led by men—moves into the transitional period.

The trend on the ground of excluding women marks a troublesome departure from the theoretical progress since Resolution 1325 in 2000. A 2015 U.N. Women report highlighted that only fifty-four states have formulated national action plans for the inclusion of women in peace-building as encouraged by the United Nations and that many of these plans did not contain concrete implementation mechanisms.³⁸ U.N. Women had previously conducted a report in 2012 assessing the impact of Resolution 1325 that found that of the 585 peace agreements that had been negotiated since 1990, only ninety-two—or sixteen percent—contained any reference to woman and gender whatsoever.³⁹

The lag between high-level rhetoric espoused at the United Nations and local implementation is striking. In 2010

36. Handrahan, *supra* note 20, at 436; *see also* Björkdahl & Selimovic, *supra* note 3, at 175 (“A gendered reading of peace processes over time reveals how the space for women’s agency often expands during times of upheaval when embedded power structures shift and adapt to new demands and decrease as peace is negotiated.”).

37. Handrahan, *supra* note 20, at 441; *see also* Brown & Aoláin, *supra* note 16, at 129 (noting that “in many transitional sites uneven but widespread patterns of regression in terms of women’s claims and participation are discernable.”); Björkdahl & Selimovic, *supra* note 3, at 167 (discussing the experience of this trend in Bosnia and Herzegovina).

38. COOMARASWAMY, *supra* note 5, at 14.

39. McWilliams & Kilmurray, *supra* note 10, at 128.

the ICTJ reported that, despite increased international attention on women during conflict, “the transitional justice field remains largely gender-blind” and that theoretical advances in the international community (such as Resolution 1325) had not been “mirrored by the coherent integration of gender-justice concerns in transitional justice initiatives . . . despite some ad-hoc efforts to integrate gender-awareness” into transitional justice processes.⁴⁰ These conclusions are echoed today, with women strikingly still absent from transitional justice initiatives.⁴¹ Phumzile Mlambo-Ngcuha, the U.N. Under-Secretary-General and Executive Director of U.N. Women, has called this gap “crippling.”⁴² She highlights in the 2015 U.N. Women report that “[w]e struggle to bridge the declared intent of international policymaking and the reality of domestic action in the many corners of the world where [R]esolution 1325 is most needed.”⁴³

One reason proposed for this lag is the lack of recognition and understanding of much of the work women do, as their impact is largely in the private sphere, outside formal mechanisms (such as court processes) that transitional justice as an industry has traditionally focused on.⁴⁴ Indeed, the 2015 U.N. Women study notes that “[w]omen have always participated in peace negotiations and peacebuilding, but always at the informal level and rarely visible to the formal peacemakers and keepers of peace.”⁴⁵ More cynical commentators propose that women’s issues are ‘hidden’ as part of theorizations of nationalism, including theories of ‘armed patriarchy.’⁴⁶ Others suppose that this trend might be symptomatic of male-dominated leadership, not only at the domestic level, but deeply ingrained (and unquestioned) at the international level as well.⁴⁷

40. *ICTJ, Gender, and Transitional Justice*, *supra* note 2, at 1.

41. COOMARASWAMY, *supra* note 5, at 14.

42. *Id.* at 5.

43. *Id.*

44. Björkdahl & Selimovic, *supra* note 3, at 172–74; *see also* McWilliams & Kilmurray, *supra* note 10, at 131.

45. COOMARASWAMY, *supra* note 5, at 40.

46. Brown & Aoláin, *supra* note 16, at 129.

47. Aoláin, *supra* note 15, at 1057; Handrahan, *supra* note 20, at 436 (citing *ARMS TO FIGHT, ARMS TO PROTECT* (Olivia Bennet et al. eds., 1995)).

Regardless of the reasons for the limited recognition, the slow reflection in practice of these theoretical gains is concerning, and the international community should be doing more to address this issue. This is especially true given the direct consequences, both for women as a sub-group and for the community as a whole, for post-conflict development when women are omitted from these processes.⁴⁸

B. *When Women Are Included, They Are Relegated
to Passive Victimhood*

Although women are somewhat more likely to be included in transitional justice mechanisms today, they are often still relegated to symbolic and temporary participation, with limited substantive impact.⁴⁹ When included, women are typically stripped of their agency and portrayed as “passive victims” with “little regard . . . given to their actual and potential roles in fostering security.”⁵⁰ Whatever influential capacity women are able to engage in has the additional hurdle of potential resistance due to cultural norms.⁵¹

U.N. Resolution 1325, the United Nations’ first recognition of the importance of women in transitional justice and peace-building, was an undeniably important step forward for the inclusion of women in transitional justice and peace-building. The Resolution was designed to “accord women a sense of agency rather than victimhood.”⁵² Significantly, the Resolution stressed “the importance of [women’s] equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.”⁵³ The Resolution urges member states to increase the representation of women at all levels in national, regional, and international institutions.⁵⁴ However, even the Resolution itself focuses on the needs and special protections necessary for women in post-conflict societies, with only three of the preambular paragraphs discussing the effi-

48. Aoláin, *supra* note 15, at 1078 (Indicating that excluding women has “an evident impact on the measures that are adopted to respond to the perceived seriousness and scale of a state’s human rights record”).

49. COOMARASWAMY, *supra* note 5, at 14–15.

50. MERTUS & VAN WELY, *supra* note 13, at v.

51. COOMARASWAMY, *supra* note 5, at 15.

52. McWilliams & Kilmurray, *supra* note 10, at 133.

53. S.C. Res. 1325, *supra* note 6, at 1.

54. *Id.* ¶ 1.

cacy of women in transitional justice and the importance of their involvement for sustainable peace.⁵⁵ Similarly, the rhetoric in the Resolution regarding the proposed “gender perspective” that should be incorporated into peace-building work focuses more on the victimhood and protection aspects of including women in peace processes, as opposed to the efficacy and value of involving women for the sake of international justice as a whole.⁵⁶

Other international transitional justice actors have also had a propensity to focus conversations about women in transitional justice on oppression and gender-based violence, limiting discussion of empowerment of women and acknowledgment of their potential to positively contribute to transitional justice.⁵⁷ This framing of women as victims is particularly visible in formal transitional justice spaces such as judicial proceedings. Court proceedings are notorious for being perpetrator-centered and are frequently criticized for their treatment of victim-witnesses.⁵⁸ This dynamic is exceptionally damaging for women, as court proceedings frequently provide a gendered script for women as ‘women-as-victims’ that further entrenches the woman’s victimization while neglecting and muting her individual experience.⁵⁹

One key success regarding women in transitional justice has been the adoption of a “comprehensive normative framework with regard to sexual violence in conflict” by the international community.⁶⁰ However, the fact that this represents one of the most significant successes in this realm speaks precisely to the point argued in this Note: that the victimhood of women is prioritized while their agency is minimized. Although

55. *Id.* at 1–2.

56. *Id.* ¶ 8 (citing three aspects of a “gender perspective” as a) special needs of women and girls, b) measures to support local women’s peace initiatives and involving women in all implementation mechanisms, and c) measures that ensure the protection and respect for human rights of women and girls).

57. See, e.g., *Gender Justice*, INT’L CENT. FOR TRANSITIONAL JUST., <https://www.ictj.org/our-work/transitional-justice-issues/gender-justice>, (last visited Dec. 4, 2015).

58. Janine Natalya Clark, *Transitional Justice as Recognition: An Analysis of the Women’s Court in Sarajevo*, 10 INT’L J. TRANSITIONAL JUST. 67, 70–71 (2016).

59. *Id.* at 71; Björkdahl & Selimovic, *supra* note 3, at 172.

60. COOMARASWAMY, *supra* note 5, at 13.

this development is important for protection concerns, it does not go far enough to recognize the full personhood and active nature of women in post-conflict societies. Additionally, it should be noted that, although a comprehensive normative framework has been created, there have been, in fact, very few actual sexual violence prosecutions.⁶¹ While there could be a deterrence argument here, many claim that this proposed impact has not been seen on the ground.⁶² This principle-implementation gap could indicate that perhaps even the “victory” of the establishment of this comprehensive normative framework is over-celebrated.

C. *Recent Recognition of Women-Specific Concerns is Laudable, but More Must Be Done*

Recognizing the victimhood of women in conflict is in and of itself a good thing, and it is important not to dismiss the value of the changes that have taken place since 2000. It is equally important, however, to recognize the limitations of these developments.

Despite the concerns discussed in the previous section, Resolution 1325 has over time prioritized and provided a platform for the importance of women’s considerations and active participation in peace-building and security, and change has started to occur.⁶³ Women are significantly more likely to feature in transitional justice plans today than in 1990, with current estimates of twenty-seven percent of peace agreements referencing women post-Resolution 1325.⁶⁴ Another key development is that it is now essentially undisputed that vulnerability and insecurity are heightened for women in post-conflict settings, and that this reality must be reflected in international requirements for transitional justice plans.⁶⁵ This recognition is an important first step, since it is impossible to expect women to participate in transitional justice and peace-building if meaningful security is lacking for them.⁶⁶ As one scholar explains:

61. *Id.* at 14.

62. *Id.*

63. *Id.* at 4.

64. *Id.* at 14.

65. See e.g., Handrahan, *supra* note 20, at 435.

66. McWilliams & Kilmurray, *supra* note 10, at 130.

[A]t the simplest level, if it is not physically safe for women to [engage in transitional justice processes] by virtue of an insecure physical environment (and the barriers to women in this context will be higher than for men), then the absence of security will affect the narrative that emerges from the process.⁶⁷

Security concerns for women in transitional periods are often exacerbated by societal factors such as increased rates of insecurity and severity of domestic violence that often manifest in post-conflict societies.⁶⁸ Thus, it would be a mistake to deny the importance of the unique concerns facing women in transitional societies, and the international community's recognition of these concerns is laudable.

Women do suffer significantly—often disproportionately—during conflict, and transitional justice processes recognize and account for that.⁶⁹ The problem, rather, is the *over-emphasis* on the victimhood of women, limiting their ability to be seen as active agents of change in transitional justice. While physical protection concerns are important, and one should not deny the unique struggles women and girls face in transitional societies, the conversation cannot end there. The ICTJ has recognized that, despite transitional justice mechanisms' attempts to be more innovative in their approach to gender issues, "*these mechanisms continue to fail victims . . . in large part because the current discourse on gender and transitional justice needs to be broadened to better address the full range of gendered experiences of conflict.*"⁷⁰ The limitation of the current discourse is also reflected at the theoretical level, as much of the scholarship on the inclusion of women in transitional justice focuses on them as victims, particularly of sexual violence.⁷¹

67. Aoláin, *supra* note 15, at 1069 (noting lack of safety for women when testifying before post-conflict courts or tribunals).

68. Björkdahl & Selimovic, *supra* note 3, at 175; Baines, *supra* note 19, at 481; McWilliams & Kilmurray, *supra* note 10, at 131.

69. See S.C. Res. 1325, *supra* note 6.

70. ICTJ, *Gender, and Transitional Justice*, *supra* note 2 (emphasis added) (quoting Helen Scanlon & Kelli Muddell, *Gender and Transitional Justice in Africa: Progress and Prospects*, 9 AFR. J. ON CONFLICT RESOL., no. 2, 2009, at 9, 9).

71. Brown & Aoláin, *supra* note 16, at 129.

The international community's burden in addressing women's active participation in transitional justice is particularly heavy given local gender-normative dynamics in many transitional societies. While there has been criticism leveraged at the international community regarding its own gender equity issues,⁷² the current overshadowing of victimhood is not necessarily solely the fault of the international community. Indeed, the exclusion of women in transitional justice mechanisms across the globe speaks to the larger nature of conflict and dynamics in post-conflict societies.⁷³ One telling example of this dynamic comes from a study of reintegrated former Lord's Resistance Army (LRA) combatants in northern Uganda. In this study, women who had been combatants for the LRA were ostracized once they returned home, not for their actions as combatants or the atrocities they took part in, but rather for the fact that they had been wives of LRA commanders.⁷⁴ Instead of being held accountable for things they actually did (combat and other atrocities), they were instead ostracized and punished for their gendered, passive role of being taken as wives.⁷⁵ Even regarding questions of accountability, these women were robbed of their agency.⁷⁶

While women's increasing inclusion in transitional justice processes represents significant progress, the current focus on women as victims perpetuates their victimhood, as opposed to recognizing their complete personhood.⁷⁷ A significant hurdle here is shifting the narrative to recognize women as strong transitional justice actors. Narrative is very important for the lived agency of an individual, and the power of narrative regarding women in post-conflict societies has had clear impacts on what women are able to do and what spaces they are able to

72. See Handrahan, *supra* note 20, at 436 (noting the refusal by the international development community to consider gender issues in post-conflict resolution).

73. COOMARASWAMY, *supra* note 5, at 47 (indicating that women's inclusion in transitional justice mechanisms is "often contested, rarely a natural and unforced element of proceedings, and mostly initiated and achieved via concerted pressure and lobbying by women's organizations within the country.").

74. Baines, *supra* note 19, at 482–83.

75. *Id.* at 486.

76. *Id.*

77. Clark, *supra* note 58, at 71.

work in.⁷⁸ A study conducted by the Rwandan National Unity and Reconciliation Commission (NURC) highlights the importance of broadening societal understandings and expectations of women in order to facilitate their involvement in transitional justice and to benefit the country as a whole.⁷⁹

The portrayal of women as victims is common in post-conflict societies, but it is only one part of the story. Importantly, focusing only on the needs and risks of women perpetuates women's victimhood, robs them of their agency, and has great implications for how they function in transitional societies. The framing of women within transitional justice must incorporate women as more than just victims and recognize their unique and powerful capacity to effect change in their societies.⁸⁰

While it must be recognized that this trend has improved since the passage of Resolution 1325, gender considerations largely remain markedly absent in transitional justice contexts.⁸¹ It is important to take these gains and reinforce the positive impact of women for the larger community, to begin to change the narrative to recognize a woman's full personhood, as opposed to relegating her to victimhood. The international community must strengthen its theoretical and rhetorical anchoring of women as important *active* participants in transitional justice, as well as engage in initiatives to close the principle-implementation gap between theory and practice in this context.

The continued non-inclusion of women from the majority of formal peace-building and transitional processes indicates that the international community must do more. It is extremely important to remain cognizant of gender issues in

78. MUTAMBA & IZABILIZA, *supra* note 24, at 9, 14, 17-18 (explaining how the Rwandan government noted the need to actively empower women and did so building on traditional narratives about the power of women).

79. *Id.* at 17 ("Women in Rwanda have been portrayed as the primary victims of violence and conflict . . . [I]t is imperative to examine the role of women as agents of peace in the peace building process.").

80. See Baines, *supra* note 19, at 483 (noting that failure to recognize "[t]he complexity of [the] victim-perpetrator status" of women who return from the LRA is problematic for the process of reintegration); McWilliams & Kilmurray, *supra* note 10, at 133-134 (calling for an increased consideration of women and women's capacity and security needs in transitional contexts).

81. Aoláin, *supra* note 15, at 1057.

transitional justice, and all actors must rethink some of the traditional gender assumptions that determine the way women have typically been viewed in transitional justice contexts in order to empower them to play an active role in their societies. The four exceptional examples that follow highlight the potential for women's efficacy in various parts of the transitional justice process.

III. THE REALITY: WOMEN ARE POWERFUL AGENTS DURING ALL STAGES OF TRANSITIONAL JUSTICE

Despite its ubiquity, women as agents of change in transitional justice is an often over-looked and neglected issue.⁸² Upon closer examination, there are numerous examples of women exhibiting transformative, critical, and creative agency across various transitional contexts,⁸³ and it becomes clear that women play extremely significant—though often unrecognized—roles in post-conflict societies when they can. In fact, narratives emerging in many transitional justice societies “suggest that women have an expansive notion of what and where transformation is required.”⁸⁴ Examples of women's activism traditionally come in the form of an upswell from civil society—women who were tired of their situation and rose up to demand change.⁸⁵

Transitional periods are times of flexibility for communities. In many transitional societies, women make up more than half of the population and actively engage in peace building.⁸⁶ Additionally, they are predominantly responsible for addressing the basic survival needs of their families and the victims in

82. Björkdahl & Selimovic, *supra* note 3, at 165.

83. *Id.* at 166 (highlighting women's creative engagement with the ICTY). See generally COOMARASWAMY, *supra* note 5, at 40-53.

84. Aoláin, *supra* note 15, at 1084.

85. See COOMARASWAMY, *supra* note 5, at 47 (indicating that usually the inclusion of women comes from “concerted pressure and lobbying by women's organizations within the country, rather than by the conflict parties, the mediators, or the organizers of the negotiations.”).

86. MUTAMBA & IZABILIZA, *supra* note 24, at 17 (indicating that post the 1994 genocide, women made up 52% of the population in Rwanda, and that 35% of the households in the country were female-headed).

their communities.⁸⁷ Women also frequently proactively take steps to address injustices that formal processes neglect.⁸⁸

Unfortunately, the important work that women engage in has gone unrecognized throughout most of history. The examples that follow are notable because they are outliers: they have been globally recognized as great successes and have had clear impact on the formation of their society post-conflict. It is important to recognize these initiatives and to foster systems that will further encourage positive, gender-conscious engagement. If the international community is to give women the proper respect and equality they deserve in transitional justice processes, they must see women for all that they are—peacemakers, truth-seekers, integral parts of the international justice system, and agents of reconciliation and transition.

A. *Women as Peace-Makers: The Women's Movement in Liberia*

The Liberian context provides a moving example for the groundbreaking role women can play in the fight for peace. After fourteen years of suffering through the civil war in Liberia, Leymah Gbowee brought the women of Liberia together under the Women in Peacebuilding Network (WIPNET), a force that proved critical in the country's struggle for peace. WIPNET staged public marches advocating for peace and security starting in 1991, and intensified its efforts after the 1996 peace agreement failed in 1997.⁸⁹ WIPNET further gained traction as "objective intermediaries" in the peace process after they were able to locate and organize meetings between the rebels and President Taylor.⁹⁰ As the brutality of the war increased, the women of Liberia became more proactive, directly confronting and engaging with the rebels throughout the country—a move that was "instrumental in moving the disarmament process forward."⁹¹ In one particularly dramatic moment during the second round of peace negotiations, WIPNET members surrounded the peace-negotiation building

87. McWilliams & Kilmurray, *supra* note 10, at 130; MERTUS & VAN WELY, *supra* note 13, at v.

88. Björkdahl & Selimovic, *supra* note 3, at 171.

89. Dorina Bekoe & Christina Parajon, *Women's Role in Liberia's Reconstruction*, U.S. INST. PEACE (May 1, 2007), <http://www.usip.org/publications/women-s-role-in-liberia-s-reconstruction>.

90. *Id.*

91. *Id.*

to force leaders to stay in the room and negotiate until an agreement was made.⁹²

The women's movement was also integral to the implementation of the peace agreement that was signed in 2003. WIPNET met with women across the country and acted as a conduit to disseminate information about the peace process to the public.⁹³ Having established itself as an important force during the peace process, WIPNET continued to be active during the implementation of the peace agreement. The women readily recognized that "peace is a process, it is not an event" and were determined to be a part of that process to ensure the security of their country.⁹⁴

One particularly telling episode centered around the disarmament process in 2003. WIPNET was adamant that they should be involved in the disarmament process, as they had witnessed Liberian disarmament processes in the past.⁹⁵ They were shut out by the United Nations, whose military force (UNMIL) used "western expertise" to coordinate the process in 2003.⁹⁶ After the first attempt by UNMIL to demobilize the rebel fighters dissolved into chaos, the women issued a statement highlighting all the errors made by the United Nations.⁹⁷

The women were ultimately pivotal actors in the demobilization campaigns. They were able to operate differently from the major international actors and were able to connect personally with the rebel fighters and persuade them—as their mothers and wives—to surrender their arms.⁹⁸ The women of Liberia leveraged the power they had as locals, as mothers, and as wives to make change in their society.⁹⁹ Although there are other examples of women engaging at this stage of peace-building with varying success, the example of the women of Liberia represents a movement that was singularly successful in bringing about change to their communities.

92. COOMARASWAMY, *supra* note 5, at 40.

93. Bekoe & Parajon, *supra* note 90.

94. PRAY THE DEVIL BACK TO HELL. (Fork Films 2008), at 1:00.

95. *Id.* at 1:01-1:02.

96. *Id.* at 1:02.

97. *Id.* at 1:03.

98. *Id.* at 1:03-1:04.

99. *Id.* at 1:05 (documenting WIPNET's role in Liberia's 2005 democratic elections, which resulted in the election of Ellen Johnson Sirleaf, the continent's first female head of state).

B. *Women as Truth-Seekers: Las Madres and Las Abuelas de Plaza de Mayo*

Forced disappearance is a common tactic used by repressive regimes throughout the world. While forced disappearances typically target men more than women, "the burden of seeking the truth in these cases most often falls on women, as does the quest for justice."¹⁰⁰ One of the strongest examples of women at the front line of this search for truth in transitional justice are *las Madres* and *las Abuelas de Plaza de Mayo* in Argentina.¹⁰¹ *Las Madres* and *las Abuelas* are grassroots civil society organizations in that have called for accountability of the government's actions with regards to the forced disappearances during the "Dirty War".¹⁰² These groups of women, tired of silence and unable to passively accept the government's party line on their missing loved ones, organized and protested, demanding answers.¹⁰³ *Las Madres* began marching in the Plaza de Mayo to protest of the government's refusal to disclose the whereabouts of *los Desaparecidos* (the Disappeared) in the wake of Argentina's "Dirty War," and continue to advocate on their behalf today. *Las Abuelas de Plaza de Mayo* have focused their efforts on the search for the stolen children who were born to *los Desaparecidos*.¹⁰⁴ *Las Abuelas* pushed the legislature to adopt a law to help identify the stolen children and to bring these cases of abduction "into the light."¹⁰⁵ Their advocacy efforts have resulted in the identification of over one hundred stolen grandchildren, though an estimated four hundred cases remain unsolved.¹⁰⁶ The *Abuelas* were recognized for their work by UNESCO and in 2010 received the Félix Houphouët-

100. Tolbert, *supra* note 1.

101. *Id.*

102. *History of Abuelas de Plaza de Mayo*, ABUELAS DE PLAZA DE MAYO, <http://www.abuelas.org.ar/idiomas/english/history.htm> (last visited Apr. 14, 2016); *Las Historia de las Madres de Plaza de Mayo* [*History of the Mothers of the Plaza de Mayo*], ASOCIACIÓN MADRES DE PLAZA DE MAYO (Arg.), <http://www.madres.org/navegar/nav.php?idsitio=5&idcat=906&idindex=173> (last visited Feb. 10, 2016).

103. *Historia de las Madres de Plaza de Mayo*, *supra* note 102; *History of Abuelas de Plaza de Mayo*, *supra* note 102.

104. *History of Abuelas de Plaza de Mayo*, *supra* note 102.

105. Al Jazeera English, *Lost and Found*, YouTube (Aug. 17, 2010), <https://www.youtube.com/watch?v=f5ZhfmmpYz4>.

106. *Id.*

Boigny Peace Prize for their “tireless battle . . . for human rights, justice and peace.”¹⁰⁷

While there have been many women’s groups that have protested both throughout the region and the world, *las Madres* and *las Abuelas* have gained almost unparalleled international recognition for their work in the quest for truth regarding Argentina’s Dirty War and are still a civil society force in Argentina today.

C. *Women Advocates of International Justice: ICTY & Bosnia and Herzegovina*

Bosnia and Herzegovina and the International Criminal Tribunal for the Former Yugoslavia (ICTY) provide a particularly strong example of gendered agency and bottom-up transitional justice.¹⁰⁸ Women’s groups have been important in both the creation and implementation of the ICTY in the former Yugoslavia. Some have said that the court’s very existence is due in large part to women’s rights advocates from both within and outside of the country.¹⁰⁹ These groups “viewed [an international criminal tribunal] as essential for addressing human rights violations and violence, and for providing mechanisms for justice and reconciliation” and orchestrated a major push for the creation of the court.¹¹⁰ The influence of women’s human rights activists on the functioning of the court, including the inclusion of sexual violence as a grave violation of international law, has been significantly documented.¹¹¹

Women’s organizations have also played an important role in the community outside of the court. Since its creation, the ICTY has been plagued with criticism of the disconnection between local and international elements. Women’s groups have filled that intermediary gap by playing a critical role for witness support and identification, as well as initiating reconciliation within local communities.¹¹²

107. *Félix Houphouët-Boigny Peace Prize 2010 Prizewinner*, UNESCO (Sept. 14, 2011), <http://www.unesco.org/new/en/houphouet-boigny-peace-prize/award/prizewinners/2010-prizewinner/>.

108. Björkdahl & Selimovic, *supra* note 3, at 166.

109. MERTUS & VAN WELY, *supra* note 13, at vii.

110. *Id.*

111. *Id.* at vii–viii.

112. *Id.*

One striking example of the creative agency exercised by women in this context was the creation of the “Women’s Court”. Women’s organizations in Bosnia and Herzegovina mobilized to create the “Women’s Court” in 2015 in response to limitations of both the ICTY and domestic courts to fully address women.¹¹³ This four-day event provided space for women to tell their stories of experiences of the war on their terms.¹¹⁴ This “court” was formed to counteract the further victimization of women who had participated in the ICTY, enabling them to recognize their own resilience and fortitude for having *survived*, as opposed to focusing on a factual account of their victimization.¹¹⁵ The project did this by actively shifting the role of women from victims and sources of information to “agents and interpreters of history.”¹¹⁶ Such creative agency, a major resource that can be engaged during transitional justice periods, “can be exercised in a manner that unsettles conventional boundaries of women’s agency, takes place in novel spaces and questions predetermined roles of women while opening up new possibilities for women’s agency.”¹¹⁷ It was leveraged by the women of Bosnia and Herzegovina to provide space for women’s narratives, and could be similarly used in other transitional contexts to address issues outside of traditional transitional justice mechanisms.

D. *Women as Agents of Reconciliation and Transformation: Rwanda*

Rwanda provides a compelling illustration of the potential in post-conflict communities where women are empowered and called upon to make serious and active contributions to peace and development. The post-genocide period of Rwandan history has been characterized by a major shift in gender roles both within and outside the political realm. After the genocide in 1994, up to seventy percent of the adult population in Rwanda was female, due to the fact that most men had either been killed in the genocide, were in prison, or had

113. Clark, *supra* note 58, at 68.

114. *Id.*

115. *Id.* at 72.

116. *Id.* at 68.

117. Björkdahl & Selimovic, *supra* note 3, at 171.

fled the country.¹¹⁸ Women thus had to take on roles traditionally carried out by men, and many institutions had to be rebuilt from scratch.¹¹⁹ Today thirty-four percent of households in Rwanda are female-led, and women routinely perform non-traditional roles such as decision-making, managing financial resources, building houses and roads.¹²⁰ Women have become a strong political force as well—today Rwanda boasts sixty-four percent female representation in Parliament, the highest in the world.¹²¹

Some have pointed to official narrative as a key reason for the significant gains made by women in Rwanda post-genocide. The Rwandan government built on positive gendered narratives already in place by actively promoting gender equality and women's empowerment, even including a constitutional requirement for gender equality in political spaces.¹²² Supporters are quick to note that President Kagame has long highlighted the importance of women in rebuilding society, framing women's rights as human rights.¹²³ Additionally, the Rwandan government has put several measures in place to ensure that women are fully able to participate in political decisions that impact their lives, including appointing women to positions of leadership and responsibility in all levels of society.¹²⁴ The women that were originally appointed to these positions of power have had the ability to both advocate for women at the government level, as well as mobilize them at the community level.¹²⁵

Analysis of transitional justice initiatives by the Rwandan government has similarly been framed through a women's efficacy lens, focusing first on women's contribution and then, as a secondary matter, addressing the identified limitations to wo-

118. Swanee Hunt, *The Rise of Rwanda's Women: Rebuilding and Reuniting a Nation*, FOREIGN AFF. (May/June 2014), <https://www.foreignaffairs.com/articles/rwanda/2014-03-30/rise-rwandas-women>.

119. MUTAMBA & IZABILIZA, *supra* note 24, at 9–10.

120. *Id.* at 15.

121. Hunt, *supra* note 118.

122. MUTAMBA & IZABILIZA, *supra* note 24, at 11–12.

123. *See* Hunt, *supra* note 118.

124. *Id.*; MUTAMBA & IZABILIZA, *supra* note 24, at 13.

125. *Id.* at 13–14.

men's impact and risks they face.¹²⁶ In its report on transitional justice in Rwanda, the National Unity and Reconciliation Commission (NURC) highlights the importance of understanding "the *unique potential* Rwandan women have . . . in their endeavours to contribute to national reconciliation and peace building."¹²⁷ The study found that "women's contribution to peace and reconciliation has been . . . unprecedented. At the grassroots level women's various initiatives . . . have opened up windows of opportunity for rebuilding trust among families and reconciling former enemies."¹²⁸ The report contends that women, if empowered to significantly participate in their communities, can have a strong influence on peace and reconciliation.¹²⁹

One particularly notable space where women have flourished is in reconciliation projects. Women have often spearheaded socio-economic development initiatives through NGOs, cooperatives, and associations, and this has frequently been used "as an entry point" to peace-building and reconciliation.¹³⁰ In fact, women have dominated income-generating reconciliation activities in rural areas, with some projects, such as the "Cows of Peace" project, exhibiting exceptional success.¹³¹ This new form of engagement has shifted societal expectations about women and produced tangible changes in their communities.¹³²

It is important to note that there may be other forces at play in this dynamic. While major strides have undeniably taken place, some question the actual impact of these allegedly landmark changes, and suggest that Kagame's rhetoric may have alternative motives.¹³³ It should also be recognized that

126. See, e.g., *id.* (the NURC report on the role of women in reconciliation is structured in precisely this manner, with the findings first highlighting contributions and gains by women in Rwanda before addressing limitations and obstacles).

127. *Id.* at 2 (emphasis added).

128. *Id.* at 7.

129. *Id.* at 14.

130. *Id.* at 26.

131. *Cow for Peace*, CHRISTIAN ACTION FOR RECONCILIATION & SOC. ASSISTANCE, <http://www.carsaministry.org/cow-for-peace.html> (last visited Feb. 10, 2016).

132. MUTAMBA & IZABILIZA, *supra* note 24, at 26.

133. Alexandra Topping, *Rwanda's Women Make Strides Toward Equality 20 Years After the Genocide*, THE GUARDIAN (Apr. 7, 2014, 5:13 AM), <http://www>

women were originally well-situated in Rwandan society to take on new roles, as strong, positive attitudes towards women can be traced back to before the genocide, where women had been seen as “the most credible agents of peace, supporters and nurturers of life.”¹³⁴ However, the numbers are striking, and it is undeniable that the situation in Rwanda has progressed significantly over the last twenty years—especially for women.

IV. WHAT HAPPENS WHEN WOMEN ARE INCLUDED

While the above examples have been highlighted because of their exceptional nature, they point to the potential for women’s agency in transitional societies more broadly. Research shows that “participation of women at all levels [of the peace-building process] is key to the operational effectiveness, success and sustainability of peace processes and peacebuilding efforts.”¹³⁵ It is important to explore the lessons from these successful examples to identify and support women’s agency in other transitional contexts.

A. *Women Are Powerful Actors in Transitional Justice, Not Just for Themselves, but for the Larger Community*

1. *Women See and Do Things that Men Do Not*

Men and women experience conflict and post-conflict situations differently.¹³⁶ This is due to both lived experiences during conflict as well as broader cultural gender expectations. Conflict traditionally promotes a militarized, violent masculinity paradigm that has different impacts for both men and women, with significant repercussions felt in the society as it moves to a post-conflict context.¹³⁷ As one scholar has said, “Because of differences in lived experiences, social roles, and other gender-based distinctions, women view the world through a different lens than men. Women witnesses also *liter-*

.theguardian.com/global-development/2014/apr/07/rwanda-women-empowered-impooverished (critics of Kagame have claimed that gender-based violence remains common and Kagame’s claim of the apparent empowerment of women is merely a PR attempt).

134. MUTAMBA & IZABILIZA, *supra* note 24, at 9.

135. COOMARASWAMY, *supra* note 5, at 15.

136. Handrahan, *supra* note 20, at 429.

137. Baines, *supra* note 19, at 481; Brown & Aoláin, *supra* note 16, at 134.

ally [see] things that men [do] not.”¹³⁸ Critically, this means that women have a different perspective of transitional justice and what needs to happen. Because of their different experiences of conflict, women often “have different views on what peace means and how peace building should proceed.”¹³⁹ This can have a significant impact for truth-seeking, truth-telling, and larger questions about where assistance is needed most. The differences in societal expectations about what men and women can do can be leveraged by women to facilitate aspects of peace-building that men cannot. These differences allow women to cross dividing lines more easily, to work as neutral “peace-makers,” and to bridge formal and informal spaces.

a. *Women Can Cross Ethnic and Religious Dividing Lines More Easily Than Men*

Women are frequently the first to reach across societal divisions and to begin processes of reconciliation.¹⁴⁰ In Bosnia and Herzegovina, for example, “women’s organizations were at the forefront of building interethnic bridges [after the war] . . . mobilizing inter-ethnically around issues concerning war rape, care for widows and orphans, and other social issues.”¹⁴¹ Similarly, in a study regarding reconciliation in Northern Ireland, women quickly recognized the importance of cross-community and cross-border work to proactively understand commonalities and divisions still present in their society.¹⁴²

Some have argued that that one reason for this pattern is that women can focus on their shared experiences as women, reducing the significance of other identity factors and strengthening communal gender identity.¹⁴³ Regardless of the

138. MERTUS & VAN WELY, *supra* note 13, at viii.

139. McWilliams & Kilmurray, *supra* note 10, at 128.

140. See generally, CYNTHIA COCKBURN, *THE SPACE BETWEEN US: NEGOTIATING GENDER AND NATIONAL IDENTITIES IN CONFLICT* (1998) (discussing women’s projects that reached across ethnic and religious division in the highly polarized conflicts of Northern Ireland, Bosnia/Herzegovina, and Israel/Palestine).

141. Björkdahl & Selimovic, *supra* note 3, at 175.

142. McWilliams & Kilmurray, *supra* note 10, at 132.

143. See, e.g., Handrahan, *supra* note 20, at 439 (documenting experiences of female gender-based alliances around the world including Northern Ireland, Palestine, Bosnia and Herzegovina, Uganda, Somalia, Rwanda, Leba-

reason for this pattern, women's organizations can frequently be seen as trailblazers for peace-building in almost every conflict or post-conflict society. This potential, routinely ignored, should be capitalized on.¹⁴⁴ More research should be conducted in order to understand both why women are particularly adept at reaching across dividing lines and to determine how best to support women in these initiatives.

b. *Women Are More Easily Recognized as "Neutral Peace-Makers"*

Women are typically better positioned in their societies than men to occupy spaces as neutral peace-makers. While women's capacity to act as peace-makers is in many ways tied to gender paradigms, this stereotype has the benefit of according women a unique capacity to build peace. In Rwanda, for example, women – seen as the 'bearers of life' – were able to help communities "overcome prevailing life-destroying methods of dealing with human problems and conflicts."¹⁴⁵ Some have tied this power to the male-centric nature of conflict: "Since military conflicts and diplomacy, which have traditionally been exclusively orchestrated by men, have failed to be a reliable system to safeguard peace, the inclusion of women in all stages of the peace process [has been] imperative."¹⁴⁶ The NURC report assessing women's agency in post-genocide Rwanda explored the notion of women's approach to reconciliation as being similar to that of a family, and the restorative nature and expertise women have always played in the familial space, suggesting that this familial approach is translatable to the healing that must take place on a country-wide level as well.¹⁴⁷ In the Liberian context, one WIPNET member explained that "The men have been out there, they've made all the mistakes. They've brought war, they've brought poverty, they've brought suffering, and so the women were determined this time to make a difference."¹⁴⁸ The difference in gender expectations

non, Columbia, Nicaragua, Liberia, Somaliland, Sri Lanka, South Africa, and Argentina).

144. Handrahan, *supra* note 20, at 439. See generally *ARMS TO FIGHT, ARMS TO PROTECT: WOMEN SPEAK OUT ABOUT CONFLICT* (Olivia Bennet et al. eds., 1995).

145. MUTAMBA & IZABILIZA, *supra* note 24, at 18.

146. *Id.*

147. *Id.*

148. PRAY THE DEVIL BACK TO HELL, *supra* note 94, at 1:04-1:05.

and gender roles has, in many cases, provided a unique space for women to act as symbols of peace.

Typically, women are also especially well situated to assist with processes of demobilization, due to the traditional societal role discussed above and the fact that they are usually non-combatants. The women's peace movement in Liberia was able to successfully demobilize rebel soldiers after the United Nations was unable to successfully do so.¹⁴⁹ In Rwanda, women played a pivotal role in ending the insurgency in a similar way. Women "started a campaign of convincing their husbands and relatives to disassociate themselves from the insurgency and return peacefully to their families. . . . Women used different tactics to convince rebels to leave the insurgency [Including collaborating] with the government troops and negotiating [a] peaceful surrender."¹⁵⁰ Women have, throughout history, informally leveraged their position as mothers and wives to facilitate demobilization and demilitarization, though their efforts have largely been under-recognized by international transitional justice actors.

c. *Women Bridge Formal and Informal Systems*

Women have also played a key role of acting as a bridge between formal transitional justice mechanisms and the local population. This is another unique role that women can play, as much of their work takes place in the informal instead of the formal realm. In fact, women frequently do engage in this capacity by "[taking] actions in their own lives in order to redress those injustices to which formal programmes for accountability, acknowledgement, and reparations have failed to respond."¹⁵¹ This propensity to connect the formal and the informal can be seen in almost every example of women's participation in transitional justice, including in the contexts discussed above. For example, in the Liberian context, women acted as key mediators during the disarmament process, relaying information from the UN to local communities via radio, promising that the women were doing everything in their power to ensure that the process went as expected, and that

149. *Id.*

150. MUTAMBA & IZABILIZA, *supra* note 24, at 29.

151. Björkdahl & Selimovic, *supra* note 3, at 171.

the demobilized fighters would get their benefits.¹⁵² *Las Madres* and *las Abuelas* in Argentina have also served as a key link between resources and local populations. *Las Madres* now have their own university, and *las Abuelas* serve as an entry point for young people who seek potential answers about their families.¹⁵³ Women's groups in Bosnia and Herzegovina also routinely acted as a bridge between members of their community that wanted information about the ICTY.¹⁵⁴

2. *The Impact of Women's Involvement Is Felt Beyond Women's Issues*

It is important to remember that women's participation in transitional justice does not only impact the women of these communities. Studies have shown that by increasing the participation of women in transitional justice and peace-building systems, the entire system benefits.¹⁵⁵ Neglect of gendered patterns of abuse ultimately limits women's and men's access to justice.¹⁵⁶ Perhaps because of women's typical exclusion from more formal power structures and their own lived experiences, women tend to adopt more inclusive approaches towards security, often addressing economic and social issues that are otherwise ignored.¹⁵⁷ The care for victims within a community is often left to the women, and, as such, their empowerment can have real implications for the assistance they can provide to victim groups within their communities.¹⁵⁸ In Rwanda, for example, women expanded their traditional roles in new ways: childcare expanded to include caring for orphans; managing households grew to mean caring for widows as well; cleaning

152. PRAY THE DEVIL BACK TO HELL, *supra* note 94, at 1:03.

153. *History of Abuelas de Plaza de Mayo*, *supra* note 102; *Universidad Popular Madres de Plaza Mayo*, ASOCIACIÓN MADRES DE PLAZA DE MAYO, <http://www.madres.org/navegar/nav.php?idsito=2&idcat=470&idindex=29> (last visited Apr. 6, 2016).

154. MERTUS & VAN WELY, *supra* note 13, at vii.

155. *Id.* (indicating that "the inclusion of women and gender expertise at the ICTY has been vital not only for the prosecution of crimes committed against women, but also for the broader pursuit of justice and the advancement of international law.").

156. *ICTJ, Gender, and Transitional Justice*, *supra* note 2.

157. McWilliams & Kilmurray, *supra* note 10, at 132.

158. MERTUS & VAN WELY, *supra* note 13, at v; McWilliams & Kilmurray, *supra* note 10, at 130 (discussing the role of women as carers for victims).

and caring for the home encompassed construction.¹⁵⁹ When women are supported, the benefits are not only seen for women, but for the entire community through their increased ability to engage on behalf of others.

B. *The Limiting Impact of the Current Narrative*

It might be tempting to read the above examples and determine that women have plenty of agency in transitional justice settings and that the problem is solving itself. It bears reiteration that, while there are many examples of women trying to change their society for the better, the examples discussed above are striking because they are anomalies in their success and impact. The United Nations and other actors have recognized that more work is needed on these issues.¹⁶⁰ The potential for action exists, as can be seen by the examples discussed above, but the current narrative and structure of transitional justice schemes unjustly limits women's ability to participate and take leadership during these processes.

Even in these successful cases, narrative and societal expectations are extremely important. In the Rwandan study cited above, one of the main challenges to women's agency was negative gender stereotypes about what was and was not appropriate for a woman to do.¹⁶¹ This was noted despite a strong government narrative supporting women's efficacy. Similar assumptions exist across international contexts, and are often so deep-rooted that they are generally not questioned or even noticed, especially in formal transitional justice spaces.¹⁶² One place where these deeply-rooted narratives are seen is court proceedings, where women are particularly impacted by the perpetrator-centered nature of proceedings, and are typically limited by the women-as-victims narrative accorded to them before the court.¹⁶³ Erin Baines, examining the treatment of former LRA child soldiers, noted the marked difference in the treatment of former male child soldiers and female former child soldiers upon their return to their com-

159. Hunt, *supra* note 118.

160. COOMARASWAMY, *supra* note 5, at 13.

161. MUTAMBA & IZABILIZA, *supra* note 24, at 33–36.

162. Handrahan, *supra* note 20, at 432.

163. Björkdahl & Selimovic, *supra* note 3, at 172.

munities and attempt to reintegrate.¹⁶⁴ Her paper highlights the disparate treatment of returned women as victims (who must be sent to rehabilitation centers), compared with the treatment of returned men (who are treated as former fighters and funneled into demilitarization programs). The paper challenged the contention that both genders were equally important in their roles in the LRA, and illustrates that the disparate treatment (due in large part to gendered stereotypes) upon their return is problematic.¹⁶⁵ As she articulates, "If [the boy] is responsible for his role as commander, [the girl] is too, for as the 'wife' to the commander, she played a role just as important to the central operation of the LRA."¹⁶⁶ Much of the treatment of these two returned soldiers comes down to gender interpretation, deeply informed and often unquestioned by narrative and expectations. The disparate treatment of the two soldiers represents a clear example of how deeply ingrained problematic and limited gender norms and narratives can be.

Comparing formal involvement with the impact women have in the informal sector, the importance of reducing gendered stereotypes and expectations is clear. Women are routinely under-represented in formal transitional justice spaces. A recent study places women's participation in peace processes at nine percent.¹⁶⁷ As women work in informal spaces, they are able to do much more and actively engage in nontraditional agency, such as authorial agency in cultural space, which allows women to broaden and authenticate the narrative of their experiences of conflict.¹⁶⁸ Women operating in more informal spaces in Bosnia and Herzegovina were able to act as 'transformative agents' to lay the basis for important work that was developed throughout the post-conflict period in a way that was not possible in more formal spaces.¹⁶⁹ The current narrative does not accord women the full recognition they deserve for their actions contributing to sustainable peace and justice through both the formal and, more importantly, the informal sectors of their society. If the international com-

164. Baines, *supra* note 19, at 485.

165. *Id.*

166. *Id.*

167. COOMARASWAMY, *supra* note 5, at 14 (noting this is a "negligible" number).

168. Björkdahl & Selimovic, *supra* note 3, at 172-74.

169. *Id.* at 175.

munity is to support women's involvement in transitional justice, an important step is to remedy this narrative disparity and encourage the view of women as active agents of change in their communities.

V. RECOMMENDATIONS

Transitional contexts are by nature times of upheaval and change. As such, they are key times to revisit old norms and definitions of roles and expectations in society and can provide space for, or even demand, a transformation in identities and expectations.¹⁷⁰ This is especially true for women, whose agency space often expands during times of upheaval, as war "tends to break down patriarchal structures, and women gain, as an unintended consequence, freedom, responsibility and worth."¹⁷¹ Typically there is an expansion in the roles and freedoms of women during conflict periods, and these roles contract again to resemble pre-conflict roles as the situation stabilizes.¹⁷² It has been challenged that this regression back to patriarchal gender roles is partially caused by gender norms of the international development community, which exhibits its own form of "patriarchy-as-normal."¹⁷³ This allegation speaks to the need, espoused by Ban Ki-Moon, for the United Nations to become a role model for all actors to emulate in this field.¹⁷⁴

International transitional justice actors, who are intimately involved in these transitional times of states, have an obligation to ensure that the impact they have leads to just and human rights-centered results—a responsibility the industry has been slow to accept in practice.¹⁷⁵ As Phumzile Mlambo-Ngcuka notes at the beginning of the recent U.N. Women report, "We have an enormous responsibility to ensure that the normative framework spurred by resolution 1325 is not just

170. Handrahan, *supra* note 20, at 433.

171. *Id.* at 436; *see also*, Björkdahl & Selimovic, *supra* note 3, at 175.

172. Handrahan, *supra* note 20, at 436.

173. *Id.*

174. COOMARASWAMY, *supra* note 5, at 4.

175. *See* Handrahan, *supra* note 20, at 441 (discussing various international transitional programs that left out the issue of gender).

given periodic visibility and attention, but that it lies at the heart of the UN's work on peace and security."¹⁷⁶

While recent developments are laudable, the change thus far is limited and does not solve the issue of the limited narrative of women in transitional justice. Frequently, the inclusion of women is for the purpose of addressing specific gendered crimes or to address issues specific to women—language that is very limiting, highlighting women as individuals with extra needs, as opposed to participants in the transitional justice system with a unique set of agency traits. As the world continues to work with societies emerging from conflict, the international community must take the lessons learned thus far and leverage them to encourage women's agency in transitional spaces. In this endeavor, there are a few key recommendations that can be taken from the examples discussed above.

1. **The international community must recognize the importance of transitional periods in a country's history and use those moments to encourage positive gender expectations and dynamics.** This includes establishing a fair narrative and framing women as agents of change, as opposed to passive victims of situation. The international community must recognize the critical nature of the time of their involvement. They must use the opportunity presented in transitional times to address issues of prevailing gendered hierarchies and to encourage social change toward more respect for women and the acceptance of more autonomy for them, in these communities.¹⁷⁷
2. **Recognize current limitations.** The international community must provide the necessary safeguards and space for women to safely engage in activities that will shape their future in society. For example, international partners could be more explicit about requirements for women's participation in transitional justice processes and model these goals by including women within their own organizational structures.¹⁷⁸ Addition-

176. COOMARASWAMY, *supra* note 5, at 5.

177. See Björkdahl & Selimovic, *supra* note 3, at 178 (agreeing that transitional justice has the potential to contribute to the gender equality of a post-conflict community).

178. Aoláin, *supra* note 15, at 1082.

ally, the international justice system could accommodate a more victim-centered approach, or at a minimum greater care for victims in the current system.

3. **Create a more inclusive transitional justice space, recognizing the importance of 'informal' spaces.** This includes broadening valued places for transitional change and accepting non-traditional narratives of experience within those spaces. One simple way to create more inclusion would be the provision of space for and encouragement of women's voices, facilitating discourse and empowerment among women.¹⁷⁹ One possible avenue for this would be the encouragement of "creative leadership" by women in transitional spaces. The key issue is to move beyond the traditionally recognized "transitional justice spaces" as viewed through the judicial lens and to also support restorative, reparative, and socioeconomic mechanisms, such as those used in the Bosnia and Herzegovina context.¹⁸⁰

VI. CONCLUSION

In Resolution 1325, the United Nations recognized the importance of women in peace-building, conflict prevention and resolution. In that Resolution, the Security Council stressed "the need to increase [women's] role in decision-making with regard to conflict prevention and resolution."¹⁸¹ While those words provided a strong theoretical base for the inclusion of women in transitional justice, practice has been slow to incorporate this mandate.

When women have the opportunities to make change (and sometimes even in the absence of those opportunities), they do. In Liberia, women demanded "space at the table" and played a key role in the peace process. In Argentina, women mobilized and demanded to know the truth from their government in a way that had real and lasting impact for Argentine society. In the case of Bosnia and Herzegovina, women shifted from being "objects of rape and abuse during the war, [and] manifested themselves several years later as political agents

179. *Id.* at 1085.

180. Clark, *supra* note 58, at 67–68.

181. S.C. Res. 1325, *supra* note 6, at 1.

with creative and resourceful agency.”¹⁸² In Rwanda, women actively took a role in leadership at all levels of society, and have created structures to assist their fellow women and communities throughout the country.

Transitional justice mechanisms exist during critical moments in a society’s history. The field has as its goals truth, justice, reparations, and guarantees of non-recurrence. By operating at such a unique, flexible time in a country’s reformation, transitional justice mechanisms have incredible power to address key issues of gender inequality that have been historically pervasive. International transitional justice actors, who are intimately involved in these transitional times of states, have an obligation, therefore, to ensure that the impact they are having leads to just and human rights-centered results—a responsibility the industry has been slow to enforce.¹⁸³ The upheaval in society provides a unique opportunity to address issues of gender and agency, *if* transitional justice mechanisms take advantage of it. At these critical moments it is especially important to afford and recognize the agency women in these communities have—not just for themselves, but for their communities as a whole.

182. Björkdahl & Selimovic, *supra* note 3, at 176.

183. See Handrahan, *supra* note 20, at 441.

