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EXPOSING THE GENDERED MYTH OF POST CONFLICT TRANSITION: THE TRANSFORMATIVE POWER OF ECONOMIC AND SOCIAL RIGHTS

MADELEINE REES* AND CHRISTINE CHINKIN**

Post conflict transition has become an industry, with a plethora of states, NGOs, experts, institutes, academics and U.N. bodies, all seeking to find the right formula to effect real and sustainable peace where previously there has been none. It is valuable and important, nevertheless, to note that “more than [fifty] percent of peace agreements fail within the first five years of signature.”¹ The evidence is clear: transitions are not working.

In this essay we seek to explain and deconstruct some of the terminology applied to post conflict situations by briefly looking at concepts of “gender equality” participation, political economy, neo-liberalism, and transformation. We then show how human rights and in particular economic, social and cultural rights, which are vital to the organization of the international system but increasingly ignored in practice, can be used to support a theory of change.

The concept of transitional justice² has evolved as a way of describing how a society can move from one space, of conflict

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1. See, e.g., *Gender, War, and Peacebuilding*, UNITED STATES INSTITUTE OF PEACE (Sept. 26, 2012), <http://www.usip.org/publications/gender-war-and-peacebuilding>; *Preventing Conflict, Transforming Justice, Securing the Peace Global Study on the Implementation of Security Council 1325* (2015) at 40 <http://wps.unwomen.org/~media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf>. [Hereinafter *Global Study*] (“More than half of peace processes that reach an outcome lapse back into conflict within the first five years.”).

2. See generally RUTI TEITEL, *TRANSITIONAL JUSTICE* (2000).

and forms of internal oppression, to one of non-conflict, governed by the rule of law, human rights, and democracy. It has become largely synonymous with a set of objectives for social reconstruction and reform and the corresponding “tools” necessary to achieve these goals. Processes can include political reform through elections; seeking accountability for past wrongs through truth commissions and formal and informal justice systems; methods for assessing the facts and implementing reparations including through non-pecuniary means such as memorialization;³ and economic development through free market principles. These mechanisms have all been developed and finessed over time and to a greater or lesser extent applied to many so-called post conflict societies.⁴

The question remains: have these approaches actually created the basis for establishing sustainable peace, understood as more than just the absence of armed conflict? There have undoubtedly been some transitional justice successes—Rwanda⁵ and the introduction of gender quotas⁶ for example—but

3. See Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, ¶ 19, U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013) [hereinafter *General Recommendation 30*] (“Transitional justice mechanisms are established with the aim of addressing the legacy of human rights abuses, dealing with the root causes of the conflict, facilitating the transition from conflict to democratic governance, institutionalizing the State machinery designed to protect and advance fundamental human rights and freedoms, delivering justice and ensuring accountability for all violations of human rights and humanitarian law and ensuring their non-repetition.”).

4. Post conflict is particularly a misnomer for women. *Id.* (“For most women in post-conflict environments, the violence does not stop with the official ceasefire or the signing of the peace agreement and often increases in the post-conflict setting.”).

5. See Women’s Int’l League for Peace & Freedom [WILPF], Summary Report, Commission on the Status of Women (CSW) 56: Women, Peace and Security Perspective, at 12 (Apr. 3, 2012), <http://www.peacewomen.org/sites/default/files/finalsummarycsw56.pdf> (“One of the panelists made the comment that Rwanda should be seen as a model for post-conflict development in terms of its national policies on gender and the advancement of women since the new constitution[’]s implementation and the implementation of a National Action Plan . . .”).

6. See, e.g., Drude Dahlerup, *Increasing Women’s Political Representation: New Trends in Gender Quotas*, in *WOMEN IN PARLIAMENT: BEYOND NUMBERS 141* (Int’l Inst. for Democracy & Electoral Assistance ed., 2005) (“Quotas present one such mechanism to increase, and safeguard, women’s presence in parliaments and are now being introduced all over the world.”); see also Rohini

overall there is little evidence that there has been comprehensive “success” or that the basis for sustainable peace has been laid by the peace agreements adopted. Such peace agreements often just institutionalize the competing forces, pay lip service to reform, and merely freeze the public violence. On the whole, peace transitions are not working. We argue that the time is right for the replacement of the formulaic approach to transitional justice by a more radical concept, that of transformative justice, which has gender relations at its center.

Academic research and analysis of different conflicts and peace processes, consultations with civil society as well as direct involvement with women from conflict-affected areas have all influenced this change of emphasis. It is also reflected in the conclusions and recommendations of the *Global Study on the Implementation of United Nations Security Council Resolution 1325*⁷ launched at the U.N. Security Council in October 2015. This change is based on a realization that root causes of conflict are more profound than those addressed in peace negotiations⁸ or Security Council resolutions. Along with the local context are other causative factors that are entrenched in the international system, including issues of gender, the constructs of masculinities shaped and perpetuated by conflict, patriarchy, militarism and violence, the political economy of war, and the impact of neo-liberalism. All are inter-linked and impact how the post conflict society is envisioned, structured, and managed.

In 1948 the Universal Declaration of Human Rights (UDHR), following the Charter of the United Nations, was to be the bedrock of national and international law and policy. The place of human rights was reaffirmed at the World Con-

Pande & Deanna Ford, *Gender Quotas and Female Leadership: A Review* (World Bank World Dev. Report, Background Paper, 2011), <http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Pande-Gender-Quotas-April-2011.pdf> (discussing the use of quotas to increase the representation of women in political leadership).

7. *Global Study*, *supra* note 1.

8. See Lisa Davis, *Sexual Violence, the Syrian Conflict, and the Way Forward: Syrian Women's Inclusion in the Peace Process*, 46 Sw. U. L. Rev. (forthcoming 2016) (exploring the peace process in Syria).

ference on Human Rights in Vienna in 1993.⁹ Dates will be debated, but essentially since 9/11 that international consensus has been thrown asunder. The ensuing war on terror has left untold human suffering and, by way of collateral damage, undermined the hard won rights guaranteed in multiple national, regional, and international human rights instruments, underpinned by mechanisms. The politicization of human rights has rendered the U.N. system subservient to the politics of war, counter-terrorism and extremism, and profit seeking, overwhelming the imperatives of sustainable peace. There is a compelling need to reassess the knowledge and instruments at our disposal and to reassert the primacy of human rights to effect changes to our current disorder.

Terminology has also changed since the original concept of sex-based discrimination prohibited by the UDHR, the recognition of women's rights as human rights in Vienna, the Beijing Platform for Action,¹⁰ and even since 2000 and the first Security Council Resolution on Women Peace and Security—the famed UNSC resolution 1325. One of the major shifts in nomenclature is that of gender equality in lieu of nondiscrimination. Gender equality is now the language of choice in addressing issues of equality between men and women. But we need to interrogate it. Gender is a social construct, based on biology but determined by the roles that are traditionally assigned to and played by men and women. This begs the question: how, and indeed, is it possible, to reach equality of social roles? Too often gender equality means no more than the inclusion of women in, *inter alia*, decision-making, peacekeeping operations, peacemaking, and post conflict reconstruction: a numbers game based on the conventional binary of men and women with the vague hope that adding a few women to such processes will induce change. It does not challenge the inher-

9. See *World Conference on Human Rights, 14–25 June 1993, Vienna, Austria*, U.N. OFFICE OF THE HIGH COMM'R ON HUMAN RIGHTS [OHCHR], <http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx> (last visited Oct. 1, 2015) (“[M]ark[ing] the beginning of a renewed effort to strengthen and further implement the body of human rights instruments that have been painstakingly constructed on the foundation of the Universal Declaration of Human Rights since 1948.”).

10. See *Fourth World Conference on Women, Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20, annex I–II (Oct. 17, 1995) [hereinafter *Beijing Platform for Action*].

ent sex discrimination nor achieve the required transformation. Gender equality requires a reassessment of those stereotyped roles and values. It would ultimately erode the very concept of the biological distinction and therefore the discrimination which flows from that, including, discrimination based on grounds of intersex, transgender, and sexuality. It is unlikely that states had the intention to replace the binary women and men with a wider, inclusive understanding of 'gender' when the United Nations launched campaigns for gender equality, but this should be the logical interpretation of gender equality. Human rights law, *de jure* if not *de facto*, predated the United Nations campaigns, anticipating 'gender equality' by demanding an end to all forms of discrimination. Our challenge is how to understand gender equality and make sure it can be implemented in a context in which there is a great deal of ignorance and opposition.

Resolution 1325 on Women, Peace and Security, adopted by the Security Council in 2000 but inspired by civil society, offered a nascent promise of transformation. That Resolution was based upon the language of the Beijing Platform for Action, on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and human rights more broadly, opening up the space for civil society to maximize the Resolution's potential. There is no U.N. Security Council Resolution more quoted, relied upon, or used as a rallying cry than U.N. Security Council Resolution 1325.¹¹ Its basic premises are: participation, prevention, protection, peace building, and development. All are relevant to the before, during, and post conflict space and all are to be worked upon concurrently, as one leads to the other no matter which is taken as the entry point.¹²

Meaningful participation is perhaps the key entry point for transformation. Conflict resolution has been dictated by a binary narrative of bringing together the warring factions, mainly men, and representing specific power interests. This despite the evidence that the one consistent factor in enduring peace is the active presence of women throughout the process, as required by U.N. Security Council Resolution 1325 and

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

12. This is recognised by the CEDAW Committee its *General Recommendation 30*, *supra* note 3.

its follow-up resolutions. However, this is ignored by most international mediators and in particular by the U.N. Department of Political Affairs, and the U.N. Department of Peacekeeping Operations (DPKO), which is particularly reflective of the failure to challenge patriarchal norms and values.¹³ The current response of mediators to demands for inclusion of women is to facilitate their presence as advisors or observers, neither of which can be seriously considered as providing an equal participatory role or influence. This is not to cast women as ‘natural’ peacemakers but to assert that inclusivity and diversity are logical. In conflict, the reality is that there is a relative minority who support violence as a means of resolving societal differences, but that minority is rewarded in the processes of both conflict and peace. The nonviolent masses who provide alternatives are always the ones dictated to by the minority. The constituency for transformative change lies with the majority; providing the mechanisms and means for them to play that role must be a basic premise of the post conflict engagement.

There is now sufficient research to point clearly to the nexus between political economy and gender relations as causal in the build up to conflict, or to its avoidance.¹⁴ Put simply, an analysis of the structures of power—ownership of and access to land, property and resources, access to tools, education, paid employment, positions of authority in the economy, governance and state institutions, and the media—who has it, who uses it, and how, shows that men dominate power structures. Across all such structures, it is clear that there is an overwhelming dominance of men. When other categories protected from discrimination are added a more complex picture is produced whereby some women because of their social, economic, class, racial, or ethnic status are better placed than some men. However, gender is a defining factor when it comes to control and exercise of power within each category. This is patriarchy: a political system that upholds and perpetuates artificially constructed “masculine” values. It does not work well

13. See, e.g., Nadine Puechguirbal, *Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents*, 17 INT’L PEACEKEEPING 172, 184 (2010) (analyzing S.C. Res. 1325 with respect to gender and the patriarchy).

14. See JACQUI TRUE, *THE POLITICAL ECONOMY OF VIOLENCE AGAINST WOMEN* (2012); see also CYNTHIA COCKBURN, *GENDER RELATIONS AS CAUSAL IN MILITARIZATION AND WAR* 139–57 (2010).

for most people. It enables a relatively small number of men to use privilege and power to exert authority over other men. To survive, it needs a particular form of masculine identity and the support of women encouraging men to identify with it.

In the build up to conflict, the patriarchy remodels the male into a warrior with heroic status and access to women. It silences non-violent males by challenging their manhood and loyalty to the defining unit (the state, ethnic or religious group), labeling them homosexuals, cowards, or “women.” Women are enlisted in cultivating that narrative. The same narrative reduces women in conflict to victims, ignoring their agency and excluding them from the peace processes as having no relevant input to make. In short, whatever the reality of conflict and violence, it almost always serves to recreate the traditional and conservative power structures that facilitated conflict in the first place. Few, if any, peace agreements recognize or address the patriarchy and thus fail to prevent its perpetuation post conflict. But these dynamics are a social and cultural construct, which can be changed like any other.

What is additionally problematic is how the patriarchy is fed by, and has fed into, neo-liberalism. Analysis of how neo-liberalism works demonstrates the prevalence of an economic ideology that is reflective of patriarchy and the omniscience (and normalization) that this particular doctrine has achieved. There is now some research that suggests that feminism and other oppositional forces are in fact, slowly but surely, being coopted by neo-liberal ideology. We argue that even a cursory glance at what happens in post conflict states shows the prevalence of neo-liberalism. From Bosnia to Ukraine, the Democratic Republic of the Congo to Liberia, transitional justice is hampered by the forces of the free market combined with austerity, which are the guiding principles of international financial institutions. Not much has actually changed in practice despite changes in nomenclature, since the horrors of structural readjustment were exposed.¹⁵ This is particularly damaging in states coming out of conflict where the support of the international community is crucial. If it is the wrong sort of support it institutionalizes the causes of conflict, disempowers those who would be the drivers of change, and either freezes an intolerable

15. Elisabeth Prügl, *Neoliberalising Feminism*, 20 *New Political Economy* (2015) 614-631.

ble status quo (as in Bosnia and Herzegovina, Kosovo, Liberia, Ukraine, and Georgia) or sets the scene for the next round of protest and conflict.

If peace is the end game, which it must be, then the inclusion of those who have been excluded in creating and prosecuting the conflict and who want its end is fundamental. This is the alternative to the binary narrative of competing masculinities that sustains violence. It is vital to create the conditions in which participation is possible so that the dramatic shift can take place. The problem is not intractable. The simple key is to apply human rights law, focusing on economic and social rights, to transitional justice.

In the following section we look at human rights law as a transformative roadmap for states and the multinational peace-building system in post-conflict reconstruction. An inclusive approach challenges the narrative of women as victims and men as both perpetrators of crimes of violence and women's protectors.¹⁶

Lip service is paid to human rights in peace agreements. Indeed, human rights are often a central part of the text and core to internal constitutional arrangements.¹⁷ But this rarely extends to the incorporation of economic and social rights into the agreements.¹⁸ Arrangements for economic development are left to international financial institutions, donors' conferences, and foreign investors.¹⁹ These arrangements are pursued according to current neo-liberal assumptions (such as

16. This labelling narrative is implicit in the Security Council resolutions on Women, Peace and Security; e.g. S.C. Res. 1820, (June 19, 2008) (noting "that women and girls are particularly targeted by the use of sexual violence" and demanding "that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls . . . training troops on the categorical prohibition of all forms of sexual violence against civilians").

17. See CHRISTINE BELL, *PEACE AGREEMENTS AND HUMAN RIGHTS I* (2000).

18. See generally Christine Chinkin, *The Protection of Economic, Social and Cultural Rights Post-Conflict* (2007), http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf.

19. See U.N. Secretary-General, *Women, Peace and Security*, ¶ 25, U.N. Doc. S/2015/716 (Sept. 17, 2015) ("[L]arge-scale foreign investments in the aftermath of conflict tend to focus on infrastructure, markets, extractive industries and commercial agriculture, areas where women are traditionally under-represented.").

privatization and austerity) and not as an integral part of the peace package.

Although transitional justice is formally understood within the United Nations as “the full range of processes and mechanisms”²⁰ available for redressing the past and looking to the future, economic and social rights are typically discounted as part of such post conflict redress. Transitional justice is limited by its focus on “large-scale past abuses,”²¹ understood as violations of civil and political rights and therefore fails to recognise the need also to address gross violations of economic, social, and cultural rights associated with conflict.²² Yet inequalities in the distribution of economic and social rights often constitute part of the root causes of conflict.²³ Without the empowerment provided by equal access to and delivery of economic and social rights through national legal frameworks, in accordance with international standards, there can be no social²⁴ or transformative justice. Nor can traditional transitional justice programs achieve protection of basic civil and political rights. For instance, it seems to us to be evident that without access to their economic and social entitlements, survivors of and witnesses to wartime atrocities are less likely to be able participate in court proceedings, or truth commissions, thereby denying access to justice and sustaining perpetrator impunity. The same is true for participation in peace processes and the political, institutional, and social structures for reconstruction. Such participation would be a luxury for those lacking, for instance, adequate food, shelter, and employment. This in turn lessens the likelihood of achieving the sought-after stability and human security post conflict (including food, health, gender, and physical security). Economic and social

20. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 8, U.N. Doc S/2004/616 (Aug. 23, 2004).

21. *Id.*

22. Louise Arbour, *Economic and Social Justice for Societies in Transition*, 40 N.Y.U. J. INT'L L. & POL. 1, 5 (2007).

23. *See generally* U.N. OFFICE OF THE HIGH COMM'R ON HUMAN RIGHTS [OHCHR], TRANSITIONAL JUSTICE AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS, U.N. Doc. HR/PUB/13/5, U.N. Sales No. E.14.XIV.3 (2014).

24. Louise Arbour defined “social justice” as “minimum legal standards guaranteeing substantive equality . . . in the fulfilment of the idea of freedom from want.” Arbour, *supra* note 22, at 1 n.10.

rights are needed to transform transitional justice into substantive, long lasting justice.

The problem is that economic and social rights have long been regarded, especially in the global North and thus by those who are lead players in many peace processes, as non-justiciable and supported by only weak enforcement and monitoring mechanisms.²⁵ Access to appropriate and affordable health services, housing, education, social security, and employment are regarded as “benefits,” or as services that may, even should, be provided by the state or by NGOs, but not as entitlements with corollary state obligations. The myth of their non-justiciability has been broken by the jurisprudence of constitutional courts in South Africa, Colombia, the Philippines, and elsewhere,²⁶ and by the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR)²⁷ in May 2008.

The importance of economic and social rights postconflict is supported by the decision of the Grand Chamber of the European Court of Human Rights in *M.S.S. v. Belgium and Greece*.²⁸ The Court focused on the vulnerabilities of particular groups (in that case asylum seekers) and found vulnerability is established upon past experience, insecurity, and trauma.²⁹ The Court emphasized the state’s international obligations to guarantee certain material conditions including accommodation, food, clothing, and other essential economic and social goods guaranteed by economic and social rights. However, the Court did not describe the obligations as economic and social rights because such rights are not explicitly included in the European Convention on Human Rights. It nevertheless found violations of Article 3 of the Convention (prohibiting

25. Yuval Shany *Stuck in a Moment in Time: The International Justiciability of Economic, Social and Cultural Rights* in DAPHNE BARAK-EREZ AND AEYAL GROSS, *EXPLORING SOCIAL RIGHTS BETWEEN THEORY AND PRACTICE* 77, 77-78 (2007).

26. OLIVIER DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW* 742 (2010); Aoife Nolan et al., *Leading Cases on Economic, Social and Cultural Rights: Summaries* 32, 42–50 (Ctr. on Housing Rights & Evictions (COHRE), Working Paper No. 4, 2006), http://www.un.org/kg/index2.php?option=com_resource&task=show_file&id=3842.

27. G.A. Res. 63/117, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, (Dec. 10, 2008).

28. *M.S.S. v. Belgium & Greece*, 2011-I Eur. Ct. H.R. 121 (2011).

29. *Id.* at 178, 185.

torture and inhuman or degrading treatment) against both Greece and Belgium.³⁰ This has particular impact for women. It is increasingly recognized that transitional justice processes must include accountability for the commission of crimes committed against women, including crimes of sexual violence.³¹ But many women are in a position of vulnerability post conflict caused through the commission of war crimes and crimes against humanity against them, displacement, the continued operation of the predatory political economy, and the constructions of femininity that render them “passive and victims.” This is not to say that women are vulnerable per se, or that vulnerability is static. Rather, it emphasizes the importance of compliance with existing international obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the CESCRC as a means of ensuring post conflict and transformative justice. Denial of economic and social rights reduces accountability and undermines the realization of participatory democracy and the achievement of full citizenship for women.³²

This argument is supported by the CEDAW Committee, which has made a strong statement of the continuing vulnerability of women survivors of sexual violence in conflict.³³ In its 2006 Concluding Comments to Bosnia and Herzegovina the Committee noted the lack of any “coherent strategy” to support these women who have “only limited or no access to health insurance and financial benefits . . . or specific health services relating to their traumatic experiences.”³⁴ It urged the state “to explicitly recognize and adequately protect women who were civilian victims of sexual violence during the armed conflict . . . so that their rights and entitlements are guaran-

30. *Id.* at 185, 209-10.

31. *See, e.g.*, S.C. Res. 1325, *supra* note 11, ¶ 11 (“Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls.”).

32. *See* Comm. on Econ., Social & Cultural Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, ¶ 14, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005).

33. *See, e.g.*, *General Recommendation 30*, *supra* note 3, ¶ 19.

34. Comm. on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina*, ¶ 37, U.N. Doc. CEDAW/C/BIH/CO/3 (June 2, 2006).

teed in the entire State party at a level comparable to that applicable to military victims of war.”³⁵

Seven years later, the CEDAW Committee reiterated its deep concern at the slow rate of prosecutions of perpetrators of sexual violence, and the “[l]ong delays in adopting measures to address the needs of a large number of women victimized by the conflict,” including “inadequate and unequal access to compensation, support and rehabilitation measures . . . sustained psychological and medical support as well as financial and social benefits, which are regulated differently in the entities.”³⁶ Such concern about those made vulnerable by conflict is echoed by the Committee on Economic, Social and Cultural Rights, which has also urged Bosnia and Herzegovina to legislate to accord “wartime victims of sexual violence the recognition and status of an eligible category of persons for social protection and various forms of social assistance as deemed necessary.”³⁷ In another conflict-affected state, Sri Lanka, the CESCR Committee has also noted the adverse conditions of resettlement of internally displaced persons who often lack basic shelter, access to sanitation and water, and livelihood opportunities.³⁸

In addressing states’ obligations under the CESCR, the CESCR Committee made clear the need for states to ensure “minimum essential levels of each of the rights” so that where a “significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education” there is a *prima facie* case of breach of the Covenant.³⁹ Further the obligation of non-discrimination is not subject to progressive

35. *Id.* ¶ 38.

36. Comm. on the Elimination of Discrimination Against Women, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Bosnia and Herzegovina*, ¶ 9(c), (f), U.N. Doc. CEDAW/C/BIH/CO/4-5 (July 30, 2013).

37. Comm. on Econ., Social & Cultural Rights, *Concluding Observations on the Second Periodic Report of Bosnia and Herzegovina*, ¶ 23, U.N. Doc. E/C.12/BIH/CO/2 (Nov. 29, 2013).

38. Comm. on Econ., Social & Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, ¶ 29, U.N. Doc. E/C.12/LKA/CO/2-4 (Dec. 9, 2010), paras 28-9.

39. Comm. On Econ., Social & Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, ¶ 10, U.N. Doc. E/1991/23 (Jan. 1, 1991).

realization⁴⁰ but is an obligation of immediate effect.⁴¹ In order to achieve substantive equality, recourse may require temporary special measures,⁴² including with respect to delivery of economic and social rights. Equal access to economic and social rights allows for economic redistribution and decreases women's vulnerabilities by facilitating their economic empowerment. This in turn challenges the prevailing masculinities constructed by conflict. This is also in line with CEDAW Article 5, which requires states to modify social practices which are based on the inferiority of either sex or stereotypical roles for women or men.⁴³ The CEDAW Committee has also linked women's economic empowerment to post conflict strategies for economic recovery that "promote gender equality as a necessary pre-condition for a sustainable post-conflict economy" and which "target women working in both the formal and the informal employment sectors."⁴⁴ The need for women's participation is not limited to the "prevention, management, and resolution of conflict"⁴⁵ but also in the design, implementation, and monitoring of post conflict programs.⁴⁶

Human rights law requires the delivery of reparations.⁴⁷ Reparations are both necessary post-conflict and are preventive as a key to breaking the cycle of violence. Reparations must go beyond the payment of compensation, to offer protection, support, and rehabilitation services for survivors of vio-

40. International Covenant on Economic, Social and Cultural Rights, art. 2, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, (*entered into force* Jan. 3, 1976) [hereinafter ICESCR].

41. *Id.* art 2(1); see also Comm. On Econ., Social & Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, ¶ 10, U.N. Doc. E/1991/23 (Jan. 1, 1991), paras 1 and 5.

42. *General Comment No. 16, supra* note 32, ¶ 15. See also Convention on the Elimination of All Forms of Discrimination against Women, art. 4, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13, 20 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].

43. CEDAW, *supra* note 42, art 5 ("States shall take appropriate measures to eliminate stereotyping, prejudices and discriminatory cultural practices.").

44. See *General Recommendation 30, supra* note 3, ¶ 52(b).

45. S.C. Res. 1325, *supra* note 11, ¶ 1.

46. *General Recommendation 30, supra* note 3, para 81 (e).

47. See, e.g., G.A. Res. 60/147, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005).

lence. Other non-judicial measures are public apologies and memorials, but these “are not . . . substitutes for investigations into and prosecutions of perpetrators” of wartime crimes,⁴⁸ or for guarantees of economic and social rights. Further, reparations offer the opportunity to redress “pre-existing inequalities, injustices, prejudices and biases or other societal perceptions and practices that enabled violations to occur, including discrimination against women and girls.”⁴⁹ Like economic and social rights, reparations may be transformative as a mechanism for thorough measures of redistributive justice, which should target structural disadvantage.

The importance of women’s participation in reparations discussions and processes cannot be overestimated. Without the participation of women and girls from different contexts, initiatives are more likely to reflect men’s experience of violence and their concerns, priorities, and needs regarding redress. Additionally, without such participation, an opportunity is missed for victims to gain a sense of agency that may, in and of itself, be an important form of rehabilitation, especially when victims come to perceive themselves as actors of social change.⁵⁰ Guarantees of non-repetition are particularly transformative as they require states to confront gender inequality as an underlying structural cause of the violence. Other “transformative reparations” include “land restitution, coupled with land redistribution, and access to credit, skills and means to transform that land into a source of livelihood.”⁵¹ States would then need to address the necessary legal and institutional reforms and changes in mindset required to redress inequality.⁵²

As set out above, human rights bodies, academics, practitioners, and activists have identified most of what is necessary to achieve transformation. But, there is a problem; we write

48. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 33 on Women’s Access to Justice*, ¶ 19(f), U.N. Doc. CEDAW/C/GC/33 (July 23, 2015).

49. Rashida Manjoo (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *First Rep. on Violence Against Women, Its Causes and Consequences*, Summary, U.N. Doc. A/HRC/14/22 (Apr. 19, 2010).

50. *Global Study*, *supra* note 1, at 115-119. See generally Ruth Rubio-Marin (ed.) *THE GENDER OF REPARATIONS: UNSETTLING GENDER HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS* (2009).

51. *Global Study*, *supra* note 1, at 115.

52. *Id.* ¶ 23.

about law as if it is actually respected by state parties. Is it realistic or naïve to assert legal principles in the face of neo-liberalism, militarization, and the failures of the United Nations? The constellation of forces opposed to human rights does not render the primacy of human rights redundant. On the contrary, the opposition means there is a greater need to assert human rights. To state the obvious: many recent wars have their origins in human rights claims which have been violently repressed. Surely the long term solution therefore lies in human rights realization.

Realization must start with inclusivity in peace processes, and in particular, the cessation of the U.N. Secretariat's reluctance to uphold its mandate. As it relates to women, adherence to the U.N. Security Council Resolutions that insist on participation is essential. Participation identifies the crucial demands of those who did not take up arms and who have knowledge of what is needed at the community level to end conflict. Much of that input will relate to basic issues of how society is organized, how needs can be met, and what is needed to achieve the transition to sustainable peace, as well as input fundamental to the future organization of the state.

The state will be organized in accordance with its Constitution, hence protection through the inclusion of economic and social rights in any nascent Constitution is vital. South Africa's Constitution is an example of such inclusion which, made economic and social rights justiciable,⁵³ and hence offered recourse to law for enforcement. In Portugal, protection in the Constitution enabled a degree of mitigation from some of the worst ravages of austerity.⁵⁴ Absent Constitutional protection there has to be reliance on the promulgation and adoption of specific laws, which cannot be guaranteed and could be subject to international pressure, or national political machination.

Within the inclusion of economic and social rights should be a clear obligation for gender equality not just as numbers, but as a real statement on fundamental changes within political economy and gender. This requires economic change. As stated above, transition provides the opportunity and obligation for targeting structural disadvantage. Conflict and vio-

53. S. Afr. Const., 1996 art. 26, 27, 29.

54. Portuguese Const., 2005, Title III.

lence impede economic development and most post conflict states need international financial support.⁵⁵ There is an obvious need for budgetary support for fundamental activities such as health care, education, and social welfare, but this support should also be designed to provide sufficient funds to address conflict-related violations over a number of years, reducing over time as the situation normalizes.

The list of all the areas that are implicated in such an approach is beyond the scope of this article, but how to ensure progressive realization of these rights is a fundamental obligation of the state and must predominate in their negotiations with the international financial institutions and donors.

Such support should include an approach to reparations. The simple application of economic and social rights to how international financial institutions conduct their support in post conflict states would lead to fundamental change and a reversal, or at least mitigation, of neo-liberal conditions. One single transformative approach would be to provide financial support for reparations. This is not to absolve the state, which would remain responsible for repayment. However, a lump sum individual financial compensation would kick start the economy; have the potential, with good development support, to target the structural disadvantage, particularly from a gender perspective; and could also address some of the serious consequences of conflict such as environmental degradation and its restoration, including reforestation. The possibilities are endless and contextual.

Achieving sustainable peace after conflict is inherently one of the most difficult of human endeavors. It requires an ability to be objective, reconcile, and overcome the horror and violence of war. It is for this reason that law, drawn up in calmer times, which has evolved to include new social, economic, and cultural understandings, is best placed to guide national and international actors towards a truly sustainable peace based on the transformation of all that caused violent conflict. Not easy, but not a chimera either.

55. World Bank [WB], *World Development Report 2011 Conflict, Security and Development*, 372 (2011), http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf.