

Reintegrating FARC's Female Combatants: The Challenges of Addressing Gender Binaries in Transitional Justice

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Against the backdrop of the 2016 Colombian plebiscite and the subsequent peace treaty, the female Revolutionary Armed Forces of Colombia/*Fuerzas Armadas Revolucionarias de Colombia* (FARC) face insurmountable obstacles in returning to civilian life. Long-standing gender disparity, largely amplified by socio-economic inequality, manifested with an estimated 40% female guerrilla membership. This article argues that the financial incentives, physical protection and sense of equality offered by FARC posed a strong lure to females who were otherwise at a natural disadvantage within Colombian society, resulting in a large number of female combatants facing gender-specific challenges now that FARC has formally ended their existence as an armed group. Whilst considering female victims of human rights (HR) violations, deeper consideration is given to the symbiotic and conflicting duality of a female who may fulfill the roles of both victim and abuser, and the inability of present transitional justice (TJ) mechanisms to approach and adequately address such a dyad.

Notwithstanding international humanitarian law (IHL) and international human rights law (IHRL) provisions to protect, secure and promote women's rights, IHRL's limited authority in the face of deep-rooted gender expectations in Colombia encumbers any potential success of social reintegration for

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female combatants. Shortcomings of the present TJ and disarmament, demobilisation and reintegration (DDR) programmes are scrutinised, and the evident lack of consideration of women's rights in a holistic sense are dissected, when analysing the reluctance to disturb established gender roles and deeply rooted cultural notions, which are ill-equipped to address women in the public sphere.

Assessing the present TJ and DDR mechanisms allows the article to highlight present crucial deficiencies. The inability to address the situation of female combatants, irrespective of whether they are a victim of human rights violations, demonstrates how ill-equipped current TJ and DDR mechanisms are in addressing the multi-faceted characteristics of females, and therefore discriminates against them on the basis of gender, in contravention of both IHL and IHRL.

Introduction

The protection of women's rights has established itself as an objective of wider movements for equality, with many civil society actors working to dismantle the well-established perception that women are perpetual victims in times of conflict.¹ Coupled with the mandate to recognise the fundamental role women play in both the private and public spheres, the United Nations (UN) Resolution 1325 of 2000 (Resolution 1325) has directed that women and their views are to be incorporated into all aspects of life, and at every stage of societal evolution.² This extends to peace processes and post-conflict reconstruction, in order to ensure women's full contribution to international peace and security (UN 2000). It, therefore, follows that women should be consulted throughout periods of Transitional Justice (TJ)—when a society is emerging from violence to stability (such as in the process of transitioning from a dictatorship to a democracy or a state of violent internal conflict to a peaceful

¹ Alam Mayesha, *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes* (Palgrave 2014) 26-33.

² UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325.

society³)—so that their views and unique experiences within family units and wider society are taken into consideration.⁴

Traditionally within TJ, women have been subject to a blanket perception: they are strictly seen as victims of human rights violations.⁵ This article does not refute that many women suffer during times of violent conflict, largely as a direct consequence of their gender, and often as a result of increased gender-based violence (GBV) in their private and public lives.⁶ However, historically this violence has not always been formally acknowledged: the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) emphasised gender discrimination, which hinders equality, but did not address violence against women. The UN Conference on Women in Beijing in 1995, however, explicitly put violence against women at the forefront of its undertaking. The subsequent resolution adopted by the UN, the Beijing Declaration, committed to advance gender equality globally, and specifically sought to eradicate all forms of violence against women and girls.⁷

This article turns to a specific remit: women who are perpetrators of rights violations within guerrilla groups in Colombia ('female combatants').⁸ This article specifically addresses female

³ Sabine Michalowski, *Corporate Accountability in the Context of Transitional Justice* (Routledge 2014) 115.

⁴ UN Women, *A Window of Opportunity: Making Transitional Justice Work for Women* (2nd edn, UN Women 2012)
<<http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf>> accessed 3 August 2018.

⁵ Lucy Hovil, *Gender, Transitional Justice, and Displacement: Challenges in Africa's Great Lakes Region* (ICTJ/Brookings 2012)
<<https://www.ictj.org/sites/default/files/ICTJ-Brookings-Displacement-Gender-Great-Lakes-CaseStudy-2012-English.pdf>> accessed 3 August 2018, 8.

⁶ United Nations, *Women, Peace and Security: Study submitted to the Secretary-General pursuant to Security Council resolution 1325* (United Nations 2002)
<www.un.org/womenwatch/daw/public/eWPS.pdf> accessed 3 August 2018, 7 and 27.

⁷ UN Women, *Beijing Declaration and Platform for Action, Beijing +5 Political declaration and Outcome* (UN Women 2015) 76.

⁸ For the avoidance of doubt, this article does not assert that all female combatants were previously victims of human rights violations prior to joining guerrilla groups.

combatants whose socio-economic and/or physical (including sexual) rights were violated prior to joining a guerrilla group given their niche positions as *both* victims and perpetrators: two roles normally approached by very distinct TJ mechanisms. This article argues that the present single-dimensional perception of women as victims is restrictive and inaccurate, and that such a uniform approach is ill-equipped to address the intricacies of female combatants. Furthermore, this oversimplification of complex entities in a complex narrative amounts to an inadequate starting position culminating in poor societal integration post-conflict, undermining the transition to a more stable and accountable society where all civilians are incorporated and included in collective progression.⁹ The shortcomings of such TJ restrictions have deep cultural roots in societal gender expectations ('gender binaries'), which disadvantage women before, during, and after conflict. The apprehensive position of evading address of such binaries undermines TJ efforts, and creates significant obstacles for human rights practitioners, third party TJ actors, and post-conflict communities. This article argues that more nuanced measures are needed to approach women who may be perpetrators and victims, given the very real interface of female combatants simultaneously fulfilling dual roles.

First, this article will scrutinise how women are presently incorporated into TJ as a result of well-established gender binaries and the consequential impact of a systematic view of women. Secondly, it will consider pre-conflict inequality and discrimination, in contravention of international human rights law (IHRL), which compounds in worsened conditions for women in times of conflict. Thirdly, it will assess how recruitment campaigns led by the left-wing guerrilla group Revolutionary Armed Forces of Colombia/*Fuerzas Armadas Revolucionarias de Colombia* (FARC) capitalised on the disadvantaged position of women, ultimately culminating in the enlistment of a significant number of female combatants, whose social reintegration is a topical matter of considerable significance to Colombia. Fourthly, this article will consider the motivation behind preserving gender binaries, and the consequent divergence between the benefits of retaining binaries and discriminatory practices against

⁹ UN Women (n 4).

women. Gender binary-imposed obstacles faced by human rights practitioners and TJ actors will be deliberated upon. Fifthly, it will then provide an overview of current measures, which do not fully address gender binaries, examining the strengths and weaknesses of such processes from gendered and non-gendered lenses with regard to female combatants. Arguments for female combatant incorporation in disarmament, demobilisation and reintegration (DDR) will be advanced on the basis of previous findings.

In conclusion, this article proposes reforms needed for transitioning states, TJ actors and communities in order to fulfil TJ objectives: this article argues that challenging gender binaries is inherent to the wider success of TJ endeavours concerning women, and necessary to render it fit for purpose for female combatants.

Transitional justice and the established role of women

As countries emerge from sustained periods of violent conflict and human rights violations, the transitional period poses a myriad of issues. Authors, including Hellsten, have proposed that 'transition' and 'justice' are two 'distinct and complex concepts' whose normative relationship 'remains unclear'.¹⁰ Nonetheless, the primary objectives of TJ are widely accepted to be the reconciliation of a fractured society whilst achieving accountability for past human rights violations.¹¹ This two-fold approach is laden with complexities in practice, often exacerbated by distrust of authorities, the intervention of third party actors, and logistical and financial restrictions.¹² A multi-track approach to TJ collectively addresses the various elements of such a transition, including: judicial and non-judicial mechanisms, reconciliation commissions, victim reparations, truth commissions, prosecutions, and amnesties.¹³ It has largely been

¹⁰ Sirrku Hellsten, *Transitional Justice and Aid* (United Nations University 2012) 3.

¹¹ Yasmin Sooka, 'Dealing with the Past and Transitional Justice: building peace through accountability' (2006) 88 *IRRC* 311, 313.

¹² Clara Sandoval, *Transitional Justice: Key Concepts, Processes and Challenges* (IDCR 2011) <http://repository.essex.ac.uk/4482/1/07_11.pdf> accessed 3 August 2018.

¹³ UN Women (n 4).

accepted that TJ must look both forwards and backwards in order to pave the way for a more just future at a crucial juncture for countries emerging from conflict.¹⁴ It has also been persuasively argued that TJ needs to look beyond legal scholarship, and seek to establish a practical framework that works for those who have lived through conflict and are in need of a stable society.¹⁵

Historically, TJ was a criminal justice approach founded in the Nuremberg trials which, over time, evolved to take a reconciliatory standpoint, which was then followed by the present, transformative approach.¹⁶ Whilst some argue that TJ should only look forward,¹⁷ there are powerful arguments for looking backwards and analysing the factors leading to a conflict in order to avoid a repeat of the same. Further, accountability offers beneficial by-products—the testifying process for conflict victims has been cited as ‘cathartic’, allowing for collective and public endorsement of political inclusion for all of society, in addition to supporting the narrative of dignity, and ensuring that a new political order is initiated.¹⁸ Truth commissions also provide an invaluable platform for victims to expose violations committed or facilitated by governments; bringing an additional layer of accountability to TJ.¹⁹

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¹⁴ Hellsten (n 10) 4.

¹⁵ Kieran McEvoy, ‘Letting go of Legalism: Developing a Thicker Version of Transitional Justice’ in Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below* (Hart 2008) 21.

¹⁶ Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8 IJTJ 339.

¹⁷ James McAdams, *Transitional Justice and the Rule of Law in New Democracies* (University of Notre Dame Press 1997) 3.

¹⁸ Ruti Teitel, *Transitional Justice* (OUP 2000) 82.

¹⁹ Associated counter-productivity to testifying must be acknowledged, for instance, publicly affirming being raped may restrict a female’s acceptance in traditional societies which view women and their perceived honour as ‘guardians of culture’. See Sooka (n 11) 318; Amani El Jack, *Gender and Armed Conflict: Overview Report* (IDS 2003) <<http://www.bridge.ids.ac.uk/sites/bridge.ids.ac.uk/files/reports/CEP-Conflict-Report.pdf>> accessed 3 August 2018, 11.

[E]xpressions like 'women love peace and men make war' are misleading ... women are usually excluded from the male-dominated political groups which take war-like decisions.²⁰

The normative expectations socially and culturally associated with a gender view and expect women to behave in a particular way, principally so in traditional patriarchal societies (as is largely customary of developing countries), where women are considered to fulfill the roles of mothers and caring figures; an exaggerated and blanket approach to gender-appropriate behavior.²¹ Patriarchal societies deem women as property or commodities for childrearing, and accordingly, subdued characteristics in women are looked upon favourably as they reinforce male-dominated societies. Furthermore, whilst war is seen as man-made, women are regarded as peace-seekers and mourners for conflict victims: both passive roles in comparison to males who are customarily expected to become soldiers.²² Women are rarely perceived to be figures of aggression or hostility as their femininity is 'commonly associated with weakness'; their positions limited to housewives and mothers.²³ Additionally, aggressive women are seen as exceptions to the rule.²⁴ Whilst these gender norms are broad propositions which see varying forms across different cultures, there is global consistency with respect to violent female criminals, who routinely gain notoriety and significant media coverage. This is reflective of a world seemingly astounded and aghast at violent female criminality. Increased media coverage is routinely allocated to women who have committed crimes of similar violent severity to males.²⁵

²⁰ Binta Mansaray, *Women against Weapons: A Leading Role for Women in Disarmament* (UNIDIR 2000) 144.

²¹ El Jack (n 19) 6.

²² Seema Shekhawat (eds), *Female Combatants in Conflict and Peace: Challenging Gender in Violence and Post-Conflict Reintegration* (Palgrave 2015) Introduction.

²³ Rashida Manjoo and Calleigh McRaith, 'Gender-Based Violence and Justice in Conflict and Post-Conflict Areas' (2011) 44 *Cornell Intl LJ* 11, 13.

²⁴ Gunhild Schwitalla and Luisa Maria Dietrich, 'Demobilisation of Female Combatants in Colombia' (2011) 27 *Forced Migration Rev* 58, 58-59.

²⁵ Katharine Quarmby, 'The women that kill, abuse and torture' (BBC, 2 June 2016) <<http://www.bbc.com/future/story/20160601-the-women-that-kill-abuse-and-torture>> accessed 3 August 2018.

Developed countries consistently perceive and approach women in developing countries as sidelined and helpless victims,²⁶ contributing to a sustained perception of women being powerless in less developed countries, who have experienced conflict: enforcing an established view of women before TJ actors approach post-conflict environments.

Consequently, these gender norms strengthen the general perception of women as conflict averse, particularly in traditional patriarchal societies, which portray female reluctance to challenge gender inequalities by way of submission and seeming acceptance of their secondary role in the public sphere—probably due to the futile nature of attempts to recalibrate entrenched and historic gender binaries. Such societies are likely to be apprehensive about affording or supporting women’s rights in the public sphere should it imply applicability of women’s rights in the private sphere; ultimately undermining men, and challenging the natural hierarchy of male dominance in the domestic setting. Many traditional societies consider domestic matters to be private and governed only by the male family head.²⁷ Nonetheless, UN Resolution 1325 has explicitly underscored the need to establish and reinforce the rights of women, both publicly and privately.

This article refutes gender terms ‘women’, ‘girls’ and ‘females’ as victim descriptive terminology by default. ‘Gender’ must be used less restrictedly and should act as a prompt to acknowledge that genders function within numerous positions, both stereotypical and in contradiction of well-established gender binaries, impacting upon both the private and public spheres. Following this, a juncture is reached where women may be *both* victims and perpetrators: how does one balance the rights and reparations accessible under TJ for and against a woman who has both suffered and inflicted rights violations? As argued above, accountability within TJ must be fulfilled in order to allow a society to heal, and to ensure human rights violations are not dismissed as a result of restrictive interpretations of gender. Excluding women from accountability measures creates an environment of positive

²⁶ Kalpana Wilson, ‘Race, Gender and Neoliberalism: Changing Visual Representations in Development’ (2011) 32 TWQ 315, 321.

²⁷ Cheri Kramarae and Dale Spender, *Routledge International Encyclopaedia of Women: Global Women’s Issues and Knowledge* (Routledge 2004) 1310.

discrimination, ultimately undermining genuine TJ accountability efforts and victim reparations measures. Further, the relationship between genders can be seriously challenged during times of armed conflict, providing an opportune moment to address any existing status quo and implement much needed change.²⁸ However, in order to achieve meaningful change, existing gender perceptions and power balances must be assessed thoroughly, including addressing those who do not fall into set categories (e.g. female combatants and male pacifists), and their experience of conflict times.²⁹ A comprehensive analysis must encompass the entire spectrum of each gender to avoid approaching a gender in a fixed manner so as to avoid neglecting experiences contrary to expectations.

Women's pre-conflict realities, and the exacerbation of rights abuses during conflict

Women are at a continuous detriment,³⁰ a statement true of Colombia, and even of countries where women's rights are widely recognised in law:³¹ financially, owing to reliance on men to work; through the culturally justified deprivation of education (in breach of Article 10 CEDAW) in anticipation of domestic responsibilities (indirectly giving rise to financial dependency); and physically, as they are often less able to counter violence. Sexual violence, of which women have long been the main target, has been recognised as a war crime and a crime against humanity, prosecutions which the International Criminal Court may pursue should countries be unable, or fail, to tackle.³² Outside times of conflict, there is already an imbalance in female representation in politics,

²⁸ Sooka (n 11) 313-314.

²⁹ Judy El-Bushra, *Gender in Peacebuilding: Taking Stock* (International Alert 2012) <http://www.international-alert.org/sites/default/files/Gender_TakingStock_EN_2012.pdf> accessed 3 August 2018, 7-11.

³⁰ Sooka (n 11) 328.

³¹ Hellsten (n 10) 16.

³² Rome Statute of the International Criminal Court (17 July 1998) UN Doc A/CONF.183/9 (Rome Statute).

society and government, from which developed states are not excluded.³³

Notwithstanding women's rights existing formally in national Colombian policies, slow realisation and 'structural challenges' have rendered gender equality an objective still to be desired.³⁴ Despite ambitions to increase the number of female candidates in elections (Law 1475), civil groups in Colombia tirelessly campaign to realise women's rights in more basic senses, such as only finding employment informally and suffering from social marginalisation.³⁵ Colombian women have consistently suffered from a lower status in Colombia, which is described as having 'a male political system and society',³⁶ clearly failing provisions within the International Covenant on Civil and Political Rights ('ICCPR'), which demands the equal right of men and women as subjects of IHRL (Article 3).³⁷ A 2005 report by the Inter-American Commission on Human Rights (IACHR) found that armed conflict greatly aggravated the physical threat to which Colombian women were already exposed in times of peace, given the prevalence of domestic violence and gender inequality.³⁸ The report also found inherent 'discriminatory socio-cultural patterns based on sex' and the numerous obstacles faced by women when seeking to access justice owing to institutional and cultural discrimination,³⁹

³³ UN Development Programme (UNDP), *Human Development Report 2002: Deepening democracy in a fragmented world* (OUP 2002) 17.

³⁴ Law 1475, 2011; Barb Maclaren and Jennifer Erin Salahub, 'Opinion: Gender Policy is Failing Women in Colombia' (*North-South Institute*, 2013) <<http://www.nsi-ins.ca/newsroom/gender-policy-is-failing-women-in-colombia/>> accessed 3 August 2018.

³⁵ Maclaren and Salahub, *ibid.*

³⁶ Sara Lisa Ørstavik and Andrés Lizcano, 'Colombia's Gender Problem' (*World Policy Blog*, 25 November 2013) <<http://www.worldpolicy.org/blog/2013/11/25/colombias-gender-problem>> accessed 3 August 2018.

³⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

³⁸ Inter-American Commission on Human Rights, *Violence and Discrimination Against Women in the Armed Conflict in Colombia: Executive Summary* (IACHR 2006) <<http://www.cidh.org/countryrep/colombiamujeres06eng/Executive%20Summary.htm>> accessed 3 August 2018.

³⁹ *ibid.*

clearly falling short of IHRL standards as provided for in CEDAW and the ICCPR. Tellingly, Colombia ranks 89th out of 188 countries on the UN Gender Inequality Index.⁴⁰

The perpetually disadvantaged position of women in society, including in Colombia, is only further reinforced during conflict when women are thrust into precarious economic states.⁴¹ Further, female vulnerability has been recognised in Article 76 of Protocol I, Geneva Conventions 1977 (Article 76), which considers the increased protection needed against GBV during periods of conflict. Article 76 states that women should be the 'object of special respect', stemming from explicit female vulnerability during conflict.⁴² Illustratively, vulnerability and further victimisation owing to GBV may give rise to physical and psychological ramifications such as unwanted pregnancies, gynaecological health problems and sexually transmitted diseases. Colombia itself has acknowledged the increased physical risk of systematic and targeted rape campaigns against women as a weapon in times of conflict, which led Colombia's senate to pass a bill recognising its capacity to amount to a crime against humanity during periods of conflict.⁴³

This article concurs with powerful arguments, made by authors such as Sooka,⁴⁴ that armed conflict intensifies pre-conflict gender inequalities owing to 'gender specific disadvantages experienced.'⁴⁵

⁴⁰ UNDP, *Human Development Reports: Gender Inequality Index* (UNDP 2015) <<http://hdr.undp.org/en/composite/GII>> accessed 3 August 2018.

⁴¹ Alice O'Keeffe, 'Jungle Fever' (*The Guardian*, 24 August 2008) <<https://www.theguardian.com/world/2008/aug/24/farc.colombia>> accessed 3 August 2018.

⁴² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1979) 1125 UNTS 3 (Protocol I, Geneva Conventions); Karima Bennouna, 'Do We Need New International Law to Protect Women in Armed Conflict' (2007) 38 Case W Res J Intl L 363, 368.

⁴³ Nicole Akoukou Thompson, 'Colombian Senate Passes Law to Protect Victims of Sexual Violence' (*Latin Post*, 29 May 2014) <<https://www.latinpost.com/articles/13663/20140529/colombian-senate-passes-law-protect-victims-sexual-violence.htm>> accessed 3 August 2018.

⁴⁴ Sooka (n 11) 322.

Colombia: How and why did FARC systematically recruit women?

Colombia experienced more than 50 years of conflict flowing from the 1948 civil war. Starting in approximately 1964, the four-sided Colombian conflict has seen continuous confrontation over territorial control between government, parliamentary forces, left-wing guerrillas, and organised criminal groups. Colombia's National Center of Historic Memory places the number of deaths since 1967 at 220,000.⁴⁶ Evolving from revolts among the poor, left-wing guerrilla groups developed significantly in the 1960s and were strongly opposed by right-wing paramilitary groups who declared independence from the military and political sphere in the 1990s over the complicity of public officials in collusion.⁴⁷

Murder, torture, kidnapping and extortion were rife and have led to Colombia being termed the 'murder and kidnapping capital of the world'.⁴⁸ Criminal activity, particularly in connection with the booming drug trade, has exacerbated societal problems.⁴⁹ The war has resulted in significant erosion of the rule of law.⁵⁰

FARC were a Marxist revolutionary guerrilla force engaged in armed struggle against the Colombian government, and were the world's longest-running guerrilla insurgency. As one of the world's richest guerrilla groups,

⁴⁵ Amnesty International, *Colombia: Hidden from Justice* (Amnesty International 2012)

<https://www.amnestyusa.org/sites/default/files/colombia_vaw_report_oct_4_embargoed.pdf> accessed 3 August 2018, 14.

⁴⁶ Danielle Renwick, 'FARC, ELN: Colombia's Left-Wing Guerrillas' (*Council on Foreign Relations*, 1 December 2014).

<https://www.files.ethz.ch/isn/186229/FARC,%20ELN_%20Colombia's%20Left-Wing%20Guerrillas.pdf>.

⁴⁷ International Center for Transitional Justice, *An Overview of Conflict in Colombia* (ICTJ 2009) <<https://www.ictj.org/sites/default/files/ICTJ-Colombia-Conflict-Facts-2009-English.pdf>> accessed 3 August 2018.

⁴⁸ Frida Ghitis, 'Colombia's Santos gambles on FARC talks' (*World Politics Review*, 6 September 2012) <<https://www.worldpoliticsreview.com/insights/13128/special-report-colombia-contemplates-a-new-normal>> accessed 3 August 2018.

⁴⁹ *ibid.*

⁵⁰ Anna Doyle, 'Colombia, conflict and the rule of law' (2010) 84 *Amicus Curiae* 14.

FARC attributed their wealth to a flourishing illegal drug trade,⁵¹ and impressive organisational structure to high aspirations: to 'overthrow the Colombian government and install a Marxist regime'.⁵² Following the rejected peace accord of 2016, the revised Colombian peace deal was signed on 24 November 2016,⁵³ and in June 2017 FARC officially ended their existence as an armed group.⁵⁴

Colombia's Justice and Peace Law 975 of 2005 ('Law 975')⁵⁵ sought to achieve accountability for Colombia's past atrocities. Established in 2005 by Congress, Law 975 sought to establish truths of conflict, reparations, and a measure of justice to victims of the armed conflict. In the same vein, Law 975 also sought to 'facilitate the reintegration of the members of illegal armed groups into civilian life' underpinned by powers to investigate, prosecute and punish those who prolonged the long-standing conflict.⁵⁶

In 2012, Law 1952 ('Law 1952') reformed Law 975 and sought robustly to address inefficiency within the already established TJ approach. Law 1952 established a new steer to be taken by investigators: to seek out systemic crimes and secure justice.⁵⁷ Measures of victim compensation were firmly established within Law

⁵¹ Geoffrey Ramsey, 'FARC "Earns \$2.4 to \$3.5 Billion" From Drugs' (*Insight Crime*, 24 October 2012) <<http://www.insightcrime.org/news-briefs/farc-earns-24-to-35-billion-drugs>> accessed 3 August 2018.

⁵² BBC, 'Profiles: Colombia's armed groups' (*BBC*, 29 August 2013) <<http://www.bbc.co.uk/news/world-latin-america-11400950>> accessed 3 August 2018.

⁵³ Sibylla Brodzinsky, 'Colombia signs historic peace deal with Farc' (*The Guardian*, 24 November 2016) <<https://www.theguardian.com/world/2016/nov/24/colombia-signs-historic-peace-deal-with-farc-rebels>> accessed 3 August 2018.

⁵⁴ Nicholas Casey and Joe Daniels, "'Goodbye, Weapons!' FARC disarmament in Colombia signals new era' (*The New York Times*, 27 June 2017). <https://www.nytimes.com/2017/06/27/world/americas/colombia-farc-rebels-disarmament.html> accessed 3 August 2018.

⁵⁵ The original law passed by Congress was subsequently modified by Constitutional Court rulings. See in particular Decision C-370 of 2006 of the Colombian Constitutional Court.

⁵⁶ Law 975, 2005 ('Justice and Peace Law').

⁵⁷ Law 1952, 2012.

1952, and a Victims' Unit was later enacted with Law 1448 in 2011 to quantify such damages owed to victims of human right violations.⁵⁸

Notwithstanding the present peace negotiations between the Colombian government and rebel groups, the situation in Colombia can still be considered turbulent, and remains very much alive and a priority to dismantle, owing to offshoots of FARC continuing to engage in armed conflict.⁵⁹ The long-standing nature of the conflict has posed, and continues to pose, significant obstacles to allocating resources to retrospective accountability for human rights violations. In an effort to address this, the Colombian senate approved a bill regulating the recently established TJ tribunal, the Special Jurisdiction for Peace/*Jurisdicción Especial para la Paz* (JEP), a post-conflict TJ system, which has been referred to as the 'backbone' of the peace agreement.⁶⁰

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*Without the women, the FARC would not be able to maintain such territorial domination*⁶¹

An estimated 40% of the 2015 figure of 8,000 FARC combatants were women.⁶² It is, therefore, staggering that gender has not been adequately considered up to this juncture given the proportion of female combatants who should be under the umbrella of TJ or DDR.

⁵⁸ Law 1448, 2011.

⁵⁹ Adriaan Alsema, 'Who are leading the FARC dissident groups and where' (*Colombia Reports*, 3 March 2018) <<https://colombiareports.com/leading-farc-dissident-groups/>> accessed 3 August 2018.

⁶⁰ Laura Ñiño Álvarez, 'The Special Jurisdiction For Peace in Colombia: Challenges and Opportunities for Accountability' (*Utrecht CALL*, 9 April 2018) <<http://blog.ucall.nl/index.php/2018/04/the-special-jurisdiction-for-peace-in-colombia-challenges-and-opportunities-for-accountability/>> accessed 3 August 2018.

⁶¹ Jeremy McDermott, 'Colombia's female fighting force' (*BBC*, 4 January 2002) <<http://news.bbc.co.uk/1/hi/world/americas/1742217.stm>> accessed 3 August 2018.

⁶² Jacqueline O'Neill, 'Engaging Women in Disarmament, Demobilization, Reintegration' (*Inclusive Security*, March 2015) <<https://www.inclusivesecurity.org/publication/engaging-women-in-disarmament-demobilization-and-reintegration-ddr-insights-for-colombia/>> accessed 3 August 2018, 2.

Female combatants existed at every layer of FARC: functioning as cooks, intelligence gatherers, snipers, and recruiters.⁶³ Female combatants undertook the same physical tasks as their male counterparts, and engaged in direct combat.⁶⁴ Female combatants were routinely reported to have carried out kidnappings, killings and the recruitment of child soldiers⁶⁵—clear and abhorrent violations of fundamental human rights. There is limited reporting on the FARC offshoots, which are continuing guerrilla activity despite FARC's disestablishment,⁶⁶ but it is highly probable that ex-FARC female combatants continue to engage in combative activity.

Incentives for women who became female combatants with FARC may have stemmed from a desire to obtain protection from GBV, and out of frustration from a lack of educational and social opportunities as a direct consequence of gender inequality.⁶⁷ Female combatants also joined FARC owing to an attraction to the gender egalitarian environment which could not be found in mainstream Colombian society.⁶⁸ Astutely aware of women's frustrations in Colombian society, FARC systematically targeted women with organised recruitment campaigns. Illustratively, young females were identified as impressionable and therefore preferable recruits, upon whom FARC found it considerably easier to impress their philosophy

⁶³ Anastasia Moloney, 'Can FARC's New Website on Female Rebel Fighters Improve on its Image?' (*Huffington Post*, 23 January 2014) <https://www.huffingtonpost.co.uk/anastasia-moloney/can-farcs-new-website-on_b_4180995.html> accessed 3 August 2018.

⁶⁴ McDermott (n 61).

⁶⁵ Kim Cragin and Sara Daly, *Women as Terrorists: Mothers, Recruiters and Martyrs* (Praeger 2009) 43.

⁶⁶ Thale Jenssen, '10 things threatening the peace in Colombia' (*Norwegian Refugee Council*, 21 March 2018) <<https://www.nrc.no/news/2018/march/10-things-threatening-the-peace-in-colombia/>> accessed 3 August 2018.

⁶⁷ Sandra Jordan, 'Girls go to war as Colombia's frontline killers' (*The Guardian*, 14 July 2002) <<https://www.theguardian.com/world/2002/jul/14/sandrajordan.theobserver>> accessed 3 August 2018.

⁶⁸ *ibid.*

and establish allegiance.⁶⁹ Reports cite civilians stating that they feared female combatants even more than their male counterparts owing to their 'ideological' commitment to FARC, suggesting female impressionability may have led to more perpetrators, who commit more serious acts of violence,⁷⁰ again, contradicting gender binaries.

FARC's substantial income from its drug trade allegedly generated \$500 million to \$1 billion annually, and allowed for powerful and impressive recruitment campaigns with displays of affluence reaching remote areas of Colombia.⁷¹ This held obvious attraction for women struggling to support their families in times of conflict, particularly in poorer and rural Colombia. Female economic dependency on the male head of the family can leave women vulnerable and obliged to secure an alternative means of both income and family protection when males leave home to engage in combat,⁷² problems FARC were able to target and solve.

Further, women who felt at risk of GBV or physical abuse (or have already experienced the same) were reported to be enticed by assurances of sexual protection from Colombian paramilitary groups,⁷³ with some groups advocating 'zero tolerance' towards rape,⁷⁴ providing 'a relative sense of security to a female'.⁷⁵ It is likely

⁶⁹ Rebecca Florey, 'The Reality of Colombia's Child Soldiers' (*Colombia Reports*, 17 February 2015) <<http://colombiareports.com/reality-colombias-child-soldiers/>> accessed 3 August 2018.

⁷⁰ Debra Killalea, 'Female rebel fighters in Colombia: The women soldiers leaving men terrified' (News.com, 3 February 2016) <<http://www.news.com.au/lifestyle/real-life/true-stories/female-rebel-fighters-in-colombia-the-women-soldiers-leaving-men-terrified/news-story/1ffe3581528e6d66294eec2864e2ca72>> accessed 3 August 2018.

⁷¹ Jenny Manrique, 'Colombia and the War in the Eyes of the FARC' (*Americas Quarterly*, 2014) <<http://www.americasquarterly.org/content/colombia-and-war-eyes-farc>> accessed 3 August 2018.

⁷² Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011) 85.

⁷³ Joelien Pretorius, *African Politics: Beyond the Third Wave of Democratisation* (Juta and Company 2008) 208.

⁷⁴ Whilst females sought refuge from sexual assault within guerrilla groups, the groups themselves do not necessarily offer protection from sexual advances from higher-ranking officials. Reports cite examples of underage sex, forced contraception and forced abortions. See Human Rights Watch, *You'll Learn Not to Cry* (Human

that women who suffered rape were drawn to this safeguard, feeding directly into the dual roles of abuser and the abused.

The lack of opportunity and physical security married to become potent lures for women who sought to improve their underclass position in society by way of physical and economic refuge. Female victims of human rights violations routinely cite joining FARC as a means to empower and protect themselves and their families from physical abuse and economical defenselessness,⁷⁶ with many reporting a feeling of helplessness at this new juncture in their lives. Such vulnerability increased the likelihood of accepting work and/or security propositions from guerrillas who offered financial and physical reassurance.⁷⁷

Furthermore, FARC membership also offered an elevated status in society, and consequently, improved prospects for a female combatant's family.⁷⁸ FARC, in turn, was said to have benefitted greatly from having female combatants: a mixed-gender army warded off feelings of 'homesickness' and allowed male soldiers to maintain female company, generating a sense of normality which added to the longevity of the guerrilla movement.⁷⁹ It is telling that approximately 40% of FARC was comprised of women but women only contributed to 20% of FARC's deserter figures; suggesting either their loyalty to FARC, or perversely, their sense of entrapment owing to lacking

Rights Watch 2003)

<<https://www.hrw.org/reports/2003/colombia0903/colombia0903.pdf>> accessed 3 August 2018, 9-10 and 56-59.

⁷⁵ Council on Hemispheric Affairs, 'FARC – Rebels with a cause?' (*Council on Hemispheric Affairs*, 6 July 2010) <<http://www.coha.org/farc---rebels-with-a-cause/>> accessed 3 August 2018.

⁷⁶ Killalea (n 70).

⁷⁷ Council on Hemispheric Affairs (n 75).

⁷⁸ Anna-Cat Brigida, 'What it's like to be a female guerrilla fighter in Colombia' (*Broadly*, 24 March 2016) <https://broadly.vice.com/en_us/article/what-its-like-to-be-a-female-guerrilla-fighter-in-colombia> accessed 3 August 2018.

⁷⁹ Nick Moroff, 'See the female fighters who strike fear in the hearts of Colombian troops' (*The Washington Post*, 31 January 2016) <<https://www.washingtonpost.com/news/worldviews/wp/2016/01/31/see-the-female-fighters-who-strike-fear-in-the-hearts-of-the-colombian-army/>> accessed 3 August 2018.

alternative opportunities or the prospect of escape, given how activity was strictly monitored internally within the ranks—both of which made them a better long-term investment for the guerrilla group.⁸⁰

Finally, senior FARC officials have stated that they consider themselves as being ‘the first victims’, and therefore, unable to ‘accept unilateral recognition as perpetrators’, strongly reinforcing the sentiment that guerrillas recognise the duality of victims and perpetrators;⁸¹ a notion likely to have been impressed on female combatants. One female FARC soldier succinctly stated ‘they [society] did me harm, but I also did harm. So you become a victim and a victimiser’.⁸² The duality of the experiences of female combatants could arguably be said to be an intentional product of FARC’s recruitment technique: exploiting victims of human rights violations and turning them into perpetrators of the same violations. The contagion effect of gender inequality is clear.

The conflict between the objectives of transitional justice and preservation of gender binaries

Pinpointing the precise reason for a lack of gender perspective within TJ is problematic given its emergence as a developing field, and the urgency—which may not allow for extensive labouring over engrained cultural notions and the associated gender binaries—with which TJ is commonly associated.⁸³

⁸⁰ Nadja Drost, ‘To win the war, Colombia needs female fighters to lay down their arms’ (*Global Post*, 1 June 2011) <<http://www.globalpost.com/dispatch/news/regions/americas/colombia/110525/farc-femal'e-erillas>> accessed 3 August 2018.

⁸¹ Manrique (n 71).

⁸² Nadja Drost, ‘Colombia using former women rebels in fight against FARC’ (*Deutsche Welle*, 18 March 2011) <<http://www.dw.com/en/colombia-using-former-women-rebels-in-fight-against-farc/a-14919856>> accessed 3 August 2018.

⁸³ Shana Tabak’s 2011 article on the same subject matter also considers the duality of the roles FARC’s female combatants occupy as victims and perpetrators. Although taking different areas of focus to the present article overall, both articles critique the oversimplification of women as perpetual victims and recommend DDR and transitional justice be holistically fused, as well as advocating for gender needs to be

Addressing human rights violations against women is often perceived to be an obstacle to achieving restorative justice, and seen as an impediment to leaving conflict periods behind.⁸⁴ In previous TJ approaches, individual accounts were only regarded as valuable collectively: accounts were amalgamated to understand behavioural trends at the painful cost of individual public testimony.⁸⁵ The complexity of addressing long-standing discriminatory views of women in the face of time restrictions, and the consequences of having to introduce gender equality in a reluctant society, may amount to too daunting a task for TJ actors, or may be subject to considerable resistance by male-led societies who regard gender equality as a Western approach which is simply unpalatable.⁸⁶ However, 'transitional histories are not simply fact-seeking in a vacuum but accounts that build on prior national narratives'.⁸⁷ In short, understanding behaviours of a culture and society—which undoubtedly extends to and includes gender binaries—is a prerequisite to avoiding a repeat of conflict.

Crucially, the perpetrators of violations against women are commonly men owing to well-established power imbalances produced by gender binaries. By pursuing accountability for violations against women, it is indirectly proclaimed that the men responsible for such rights violations within patriarchal societies will be prosecuted and punished. The hierarchy of such decisions may lead powerful individuals, normally men, who may have authorised such behaviour, to resist seeking accountability for violations against women. TJ prosecutions in relation to actions against women are, therefore, harder to achieve as the perpetrators are likely to be in positions of power and able to resist punitive measures fuelled by

genuinely considered within TJ. See Shana Tabak, 'False Dichotomies of Transitional Justice: Gender, Conflict and Combatants in Colombia' (2011) 44 *NYU J Intl Law & Pol* 103, 109.

⁸⁴ Hellsten (n 10) 19.

⁸⁵ Katherine Franke, 'Gendered Subjects of Transitional Justice' (2006) 15 *Colum J Gender & L* 813, 821.

⁸⁶ Hellsten (n 10) 19-20.

⁸⁷ Teitel (n 18) 113.

ambitions of self-preservation.⁸⁸ Where identifying and implementing disciplinary measures on those responsible for GBV and the violation of women's rights is seen as destabilising and a threat to the future of those in power, resistance will inevitably be met. However, the TJ process spearheads an authoritative position on the evolution between regimes, and must publicly address *all* aspects of past wrongdoings in order to lay a secure foundation of a new political order.⁸⁹

Furthermore, Western interveners are often accused of cultural ignorance and TJ actors habitually neglect women in order to gain traction with other objectives.⁹⁰ Overcompliance with patriarchal societies has been seen in Egypt and Kenya, where women's rights have been forfeited in favour of overriding objectives, reflecting how disposable women's rights are viewed in comparison to higher profile or aims considered as overriding by third party interveners.⁹¹ In this sense, women's rights may be seen as dispensable and be juxtaposed 'against the need for reconciliation in countries emerging from conflict', falling by the wayside in order to gain superficial justice—either strategically by those culpable, and paradoxically by those wishing to assist with a genuine TJ approach.⁹²

Entrenched gender binaries and the present stance of women being viewed strictly as victims, overlooking their role as perpetrators, creates an environment of positive discrimination within TJ. Whilst this may suggest that female combatants face easier reintegration into civilian society, as they may be omitted from formal sanctions, they often face severe stigma for breaking away from traditional gender expectations,⁹³ and can be shunned by their families and communities. Some female combatants prefer to hide their combatant pasts as a result of this stigma, and are therefore

⁸⁸ Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs Peace in Times of Transition* (Frank Cass 2004) 23.

⁸⁹ Teitel (n 18) 220.

⁹⁰ Hellsten (n 10) 19-20.

⁹¹ Sooka (n 11) 315.

⁹² Helen Scanlon, 'Militarization, Gender and Transitional Justice in Africa' (2008) 10 *Fem Afr* 31, 31.

⁹³ *ibid* 36.

prevented from joining the DDR process.⁹⁴ If they do rejoin society, they are expected to revert to domestic and ill-paid positions, which are likely to frustrate female combatants, who may have experienced quasi-gender equality and held positions of leadership.⁹⁵ Such frustration may increase the likelihood of rejoining an insurgency or turning to crime.⁹⁶

By overlooking the gender perspective, there is a tangible danger in deeming pre-conflict conditions as favourable on the pragmatic basis that they are easier to re-establish in comparison to a new post-conflict status quo, which could arguably take generations. Where women are at a detriment pre-conflict, a reversion to such conditions renders TJ efforts discriminatory to women, as TJ does not seek to reinforce patriarchal social structures—a worryingly plausible yet unwelcome outcome if pre-conflict conditions are considered a default starting position to which to revert. Equality and civil rights cannot be sacrificed for pre-existing cultural norms. It is important to note that some women may benefit from reverting to pre-conflict conditions, however this is not the case for all women. To avoid the danger of more vocal women setting the societal agenda for all women within defining periods of TJ, the experiences and wishes of women as a collective must be assessed.⁹⁷

Additionally, a superficial approach to gender may amount to an insincere TJ implementation. Illustratively, should a female combatant only be addressed as a perpetrator, she will be unfairly deprived of any appropriate remedies and support to which she is entitled as a victim. Furthermore, a female combatant may be deemed too multifaceted to approach, and could have both experiences rejected, leaving her dual roles unaddressed entirely. Lastly, a female combatant may be viewed as both a victim and a perpetrator in separate streams of TJ and DDR, and receive contradictory outcomes,

⁹⁴ Adriana Erthal Abdenur, 'In Colombia, Female Ex-Combatants Still Face Risk of Stigmatization' (*PassBlue*, 18 March 2018) <<http://www.passblue.com/2018/03/13/in-colombia-female-ex-soldiers-still-face-risk-of-stigmatization/>> accessed 3 August 2018.

⁹⁵ O'Keeffe (n 41).

⁹⁶ O'Neill (n 62) 6.

⁹⁷ Tabak (n 83) 117.

e.g. a prison sentence from a criminal track and financial support/reintegration provisions to return to civilian society from victim reparation funds—a conflicting, incompatible outcome which is logistically unmanageable to implement. The diverse realities of women in times of conflict must be recognised and approached in their entirety for subsequent endeavors to lay the foundation for a sustainably gender-equal society post-conflict.

Gender binaries, therefore, pose significant obstacles and left unexamined and unaddressed, undermine TJ efforts. Furthermore, IHRL explicitly requires the modification of ‘social and cultural patterns’ which allow for gender superiority making explicit reference to abolishing gender stereotypes (Article 5 CEDAW). The limited advance towards improvements in the circumstances faced by female combatants is telling of how ill-prepared existing mechanisms are to address complex female actors. In order to deconstruct the obstacles, it is necessary to understand the role gender and associated social expectations play in pre and post-conflict, as they are not distinct from wider discussions outlining TJ’s successful implementation. Given the proportion of female combatants in FARC and their poor disarmament and reintegration records to date, it is not an exaggeration to state that the addressing of gender binaries is integral to TJ endeavours as a whole. Further, IHRL requires those, whose rights under the ICCPR are breached, to have access to ‘an *effective* remedy’ (Article 2), which undoubtedly encompasses the impacts of the determined socio-economic positions justified by gender binaries.

Overall, times of political transition can and should be seen as ‘window[s] of opportunity for enhancing women’s access to justice, by allowing greater representation in the public sphere’.⁹⁸ However, as outlined above, it is probable that public challenges to both the private and public spheres of women’s rights will be resisted by conservative figures reluctant to challenge embedded gender roles and control practices exercised over women. Owing to the time and resource restrictions as stated above, TJ may prioritise plausible

⁹⁸ Scanlon (n 92) 33.

outcomes resulting in perceived and superficial overall harmony rather than genuine equality.

Optimising disarmament, demobilisation and reintegration processes for female combatants

In the Democratic Republic of Congo, for example, TJ courts have been established to deal solely with the violation of women's rights including the establishment of specialised GBV courts, which focus on crimes concerning sexual violence.⁹⁹ Arguments for distinct institutions for women range from the logistical (e.g. the sheer volume of GBV cases), to the necessary (e.g. the need for centralising appropriate expertise).¹⁰⁰ However, patriarchal societies often deem GBV to be a by-product of violent conflict, and recognise its use to disgrace women, thus posing an obstacle to social reintegration.¹⁰¹ Consequently, separating GBV matters from main TJ mechanisms has patriarchal justification rooted in the dismissal of women's rights, which may be regarded as collateral damage. Troublingly, other arguments for separating women's issues are the significant trepidations of 'corruption, lack of resources and capacity of the judiciary, poor coordination between involved state institutions, and the lack of security for lawyers pursuing cases of sexual violence in court'.¹⁰² Such obstacles may support the practical argument for separation, but separation circumvents addressing deeper culminating gender binary issues. GBV must be publicly addressed to

⁹⁹ Hellsten (n 10) 18.

¹⁰⁰ UN Women, *Improving Women's Access to Justice: Mapping UN Rule of Law Engagement* (UN Women 2014)
<<http://www.undp.org/content/dam/undp/library/gender/gender%20and%20governance/ImprovingWomensAccessToJustice-UNDP-UNWomen-Mapping.pdf>> accessed 3 August 2018, 39.

¹⁰¹ Olivia O'Bennett (eds), *Arms to Fights, Arms to Protect: Women Speak Out About Conflict* (Panos Publications 1995).

¹⁰² International Center for Transitional Justice, 'In Colombia, Women Affected by Conflict are Agents of Social Change' (ICTJ), 6 November 2014
<<https://www.ictj.org/news/colombia-women-affected-conflict-are-agents-social-change>> accessed 3 August 2018.

combat the 'patterns of violence men were indoctrinated in'.¹⁰³ Whilst arguably, independent dedicated mechanisms for women are likely to be better equipped for women's needs as reflected in higher conviction rates,¹⁰⁴ the separation of GBV from mainstream measures clearly indicates that women's rights are unconnected to societies' progress during TJ.¹⁰⁵ This implication detaches from the primary aim of creating a stable and renewed society post conflict, and is a dangerous message to convey to a society in transition and in need of addressing gender inequality. Above all, the separation indicates that women's rights are temporarily relevant, and designed to deliver powerful short-term 'punches' of justice, which may be impactful but are short lived; ultimately falling away when the orchestrating external actors withdraw, leaving behind a society which lacks genuine commitment to alter and remedy 'underlying structural injustices which maintain gender injustices'.¹⁰⁶ Distinguishing women's rights from TJ efforts divides women from a new society and reinforces a distinction of secondary citizens.¹⁰⁷ An integrated bespoke stream is needed to address the complexities of being either, or both, a victim and perpetrator of human rights violations for female combatants.

DDR is 'typically used to support former combatants as they return home, relinquish weapons, leave formal or informal military structures, and reintegrate socially and economically'.¹⁰⁸ Previous programmes show that females are more likely than male combatants to utilise government DDR programmes.¹⁰⁹ Illustratively, in 2003, the UN anticipated that 2,000 female combatants would enter Liberia's

¹⁰³ Anastasia Moloney, 'Breaking Colombia's silence over its war rape victims' (Thomson Reuters Foundation, 6 September 2013) <<http://news.trust.org//item/20130906064651-nyq9h/?source=search>> accessed 3 August 2018.

¹⁰⁴ Hellsten (n 10) 18.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.* 20.

¹⁰⁷ John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press 2001) 26.

¹⁰⁸ O'Neill (n 62) 2.

¹⁰⁹ O'Keeffe (n 41).

DDR programme: ultimately 22,000 enrolled,¹¹⁰ indicating the willingness of female combatants to turn to formal and specialised assistance when it is made available to them.

Despite sharing long-term peace and stability objectives with TJ, routinely being funded by the same sources and 'rely[ing] on partnerships with [the] same civil society organisations', DDR and TJ are two mechanisms that traditionally run separately.¹¹¹ The seemingly inexplicable distinction between the two is argued to be counter-productive, as human right practitioners argue the present overlap amounts to duplication of efforts and/or conflicting strategies undermining one another.¹¹² Given shared objectives, the dual approach is detrimental to the cohesion needed and wastes valuable resources.

DDR programmes provide reintegration packages to allow for civilian society assimilation, and therefore, appear appropriate for female combatants. However, reintegration packages must tailor to needs and offer support for each of the multiple aspects of a complex character.¹¹³ For female combatants, this extends to their physical, socio-economic and psychological makeup. Commended DDR packages offered to Afghan women in 2011 included domestic gas vouchers, educational support and staggered payments to avoid large lump sums being seized by the male head of household, ensuring that the intended recipients of the packages were reached.¹¹⁴ Female combatants must have their needs holistically assessed, such as gynaecological care necessities, protection from abusive partners, and counselling to dismantle aggression and violence to which they may

¹¹⁰ A possible indication of how female combatants are underestimated in their contribution to conflict. See Jacqueline O'Neill, 'Are Women the Key to Peace in Colombia?' (*Foreign Policy*, 20 April 2015) <<http://foreignpolicy.com/2015/04/20/are-women-the-key-to-peace-in-colombia-farc-talks/>> accessed 3 August 2018.

¹¹¹ Greedy and Robins (n 16) 24-27.

¹¹² O'Neill (n 62) 4.

¹¹³ Schwitalla and Dietrich (n 24).

¹¹⁴ O'Neill (n 62) 5.

have become desensitised.¹¹⁵ Additional needs will arise when female combatants are mothers, such as neonatal support and childcare.¹¹⁶ In the particular circumstance of maternal rights, there is considerable complexity presented: children have been taken by force or female combatants have had no option but to give them up. The psychological impact on both mother and child cannot be underestimated and the need to address fractured relationships between children and the women who, had it not been for guerrilla involvement, would be their primary caregivers, is substantial. The primary obstacle for the female combatant to exercising maternal rights is the distance between mother and child which requires bridging. Therefore, the initial hurdle to realising maternal rights is quite simply for the female combatant to return to where her children live: civilian life. DDR is consequently the most appropriate 'pre-prepared' mechanism to assist female combatants wishing to disarm and leave guerrillas. It does, however, require adjustment in order to develop an approach which is suitable for women in all their complexity.

Whilst DDR aims to recall weapons from the public sphere, it does not seek to address weapons used against women in the private sphere; restricting the overall reduction of GBV women face.¹¹⁷ However, effective DDR programmes for males indirectly benefit females: guns in homes increase the likelihood of domestic violence incidents resulting in fatalities. Successful disarmament programmes for males, therefore, safeguard women.¹¹⁸ It is thus paramount that DDR approaches both male and female combatants appropriately to contribute to the overall reduction of post-conflict violence.

¹¹⁵ Elisabeth Wood, 'Rape is Not Inevitable during War' (2010) 5 Yale J Intl Aff 161, 161.

¹¹⁶ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 12.

¹¹⁷ Tabak (n 83) 118-121.

¹¹⁸ O'Neill (n 62) 4.

Reforms needed: challenging gender binaries

Peace without justice is only a symbolic peace.

—Rigoberta Menchu, Nobel Peace Prize Laureate

Currently, TJ still ‘lacks a real understanding of a comprehensive gender approach’.¹¹⁹ Human rights practitioners and academics hold strong views on non-gendered and gendered approaches to TJ.¹²⁰ A non-gendered approach advocates the omission of gender and gender binaries from TJ processes, and calls for the equal application of civil and political rights in replacement of gender specific provisions.¹²¹ Illustratively, individuals in guerrilla groups would be uniformly approached for crimes collectively committed. Nonetheless, subsequent deliberation given to the personal circumstances of a perpetrator (in mitigation of crimes committed) cannot be dismissed entirely, and is inevitably something which gender could greatly influence. For instance, female combatants seeking protection after GBV could be considered differently to female combatants who joined out of economic frustration. In practice, disentangling the unequal stance of Colombian women within a non-gendered TJ approach would prove challenging.

Further, it has widely been reported that female combatants are subject to more measures of control and restrictions within the guerrillas than males,¹²² and may therefore act on orders from male superiors. Duress to commit acts of violence and human rights abuses could render them partially responsible in comparison to acts undertaken freely. It, therefore, appears illogical that a truly non-gendered approach would be objective, given the inherent role gender plays prior to and during conflict.

¹¹⁹ Lisa Yarwood, *Women and Transitional Justice: The Experience of Women as Participants* (Routledge 2013), 190.

¹²⁰ Beatrix Austin, *Advancing Conflict Transformation: The Berghof Handbook II* (Barbara Budrich Publishers 2011) 412.

¹²¹ Tabak (n 83) 110.

¹²² Human Rights Watch (n 74) 53.

Conversely, a gendered approach unequivocally demands that the vulnerabilities of women be at the forefront of TJ and for rights violations of women to be recognised as ‘explicitly gender-related’.¹²³ As established in this article, FARC’s economic strength and social authority exerted significant influence via recruitment campaigns, and in particular, the success they had recruiting women who suffered from disadvantaged socio-economic positions and physical vulnerability. This clearly underscores the indivisibility of socio-economic inequality stemming from gender binaries and the contagion impact sustained on women joining guerrillas. A holistic and genuinely gendered approach would consider the backdrop against which women may be disadvantaged pre-, during and post-conflict,¹²⁴ and address each in turn. Former FARC female combatants, civil society groups, and grassroots organisations have specified that a more complete approach to TJ is needed to maximise the chances of successful disarmament and reintegration needed to optimise sustainable peace.¹²⁵ The attraction of returning to guerrilla activity—which FARC offshoots offer—will be amplified for women, who have gained unconventional skills within FARC, and should be better utilised within legal parameters in a transitioned society.¹²⁶

Women who seek refuge from GBV must also have their experiences taken into consideration. Dismissing the root of successful female combatant recruitment undermines TJ objectives and would amount to an insincere approach to dismantling right-restrictive gender binaries, suggestive of an intent to overlook women’s realities and rights in submission of established

¹²³ Tabak (n 83) 100.

¹²⁴ Keith Orwin, ‘Justice in Transitional Societies: Has gender become a central issue?’ (2014) 2 *Queen’s Pol Rev* 167, 168-169.

¹²⁵ Gimena Sanchez-Garzoli, ‘Women are key to making peace last in war-torn Colombia’ (*WOLA*, 19 Jan 2016) <http://www.wola.org/commentary/women_are_key_to_making_peace_last_in_war_torn_colombia> accessed 3 August 2018.

¹²⁶ O’Neill (n 62) 6; Sruthi Gottpati, ‘Colombia’s female FARC fighters wage a new war, for gender parity’ (*IRIN News*, 7 September 2017) <<https://www.irinnews.org/feature/2017/09/07/colombia-s-female-farc-fighters-wage-new-war-gender-parity>> accessed 3 August 2018.

misogynistic societies. Patriarchal societies often deem the establishment of women's rights to be gained at the expense of men's—an imbalance of power which males of authority are unlikely to wish to alter. Advocates for women's rights are, therefore, likely to be seen as challenging gender binaries which presently favour men, and will accordingly face resistance for self-serving purposes.

Furthermore, cultural disposition—arguably a by-product of gender binaries—simply may not allow for female combatant reintegration in more traditional settings,¹²⁷ as female combatants have unforgivably breached cultural and gender stereotypes.¹²⁸ Reintegration may prove easier in larger cities, however, this neglects female combatants who wish to return to more rural origins, which may offer support in the form of families and communities. Whilst the allure of anonymity in cities has benefits, it may deprive female combatants of family support, and rather offers a distinct new existence undermining the purpose of genuine reintegration. From a socio-economic perspective, moving to a new city may expose a woman to significant financial difficulty as she faces higher urban costs whilst living alone. It would be remiss not to consider that the precarious economic position of women pre-conflict resulted in successful female combatant recruitment: to return women to the same circumstances would render them vulnerable to future victimisation.¹²⁹ Female FARC combatants have specifically voiced their unwillingness to return to Colombian society, which disadvantages women, after experiencing gender equality within the guerrilla group.¹³⁰ Females will face more obstacles to reintegration than males, and the issue of societal reintegration emphasises the need for reform to be broad in that the education of the community into which the females are to be assimilated is as vital, if not more so, as the assistance provided to the specific combatant.

¹²⁷ O'Keeffe (n 41).

¹²⁸ Scanlon (n 92) 36.

¹²⁹ Franke (n 85) 827.

¹³⁰ Kiran Stallone and Julia Zulver, 'The feminists of FARC' (*The Guardian*, 27 March 2017) <https://www.theguardian.com/lifeandstyle/2017/mar/27/feminists-farc-colombia-female-inequality> accessed 3 August 2018.

Combatant mothers must also be specifically addressed as female combatants have reported that their children are withheld from them even following disengagement from guerrilla groups. Such separation is justified by officials who state that former female combatants will be 'inadequate mothers' owing to 'subversive thinking' learnt whilst in the FARC:¹³¹ a distinct punishment which dismisses female combatants as women, and furthermore as mothers, clearly breaching IHRL.¹³²

There are cogent arguments for the need to address decisively gender binaries, as highlighted within the context of female combatants who present a juncture of being both women and perpetrators. As required by Resolution 1325, all women need to be represented within the TJ process, particularly those who are routinely underrepresented: indigenous and poorer women who often only have the limitations of grassroots voices. The lack of a gendered approach thus far is indicative of the hesitancy to approach deep-rooted gender binaries, conceivably owing to the impossibility felt by the magnitude as to the task or the sheer dismissal of the specific needs women have in male-controlled societies.

Conclusion

This article assesses how far pre-existing TJ approaches may address the complexities of female combatants in the FARC, and concludes that despite certain well-intentioned steps to promote and protect women's rights and disarm and reintegrate female combatants, efforts to date have fallen alarmingly short. The newly established JEP promisingly directs for a gender-sensitive approach whilst investigating and prosecuting violations of IHL and IHRL. Crucially, of the 38 JEP judges, 20 are female, reflecting a level of serious female inclusion not yet seen within TJ, and indicative of Colombia's

¹³¹ Margarita Rodriguez, 'Colombia's rebel mothers seeking lost children' (*BBC*, 5 August 2014) <<http://www.bbc.co.uk/news/magazine-28600850>> accessed 3 August 2018.

¹³² CEDAW (n 116) arts 5 and 16.

commitment to setting a gender-sensitive tone during this critical period.

However, given the aspiration of TJ, it is inevitable that at this juncture, existing mechanisms have proven flawed. Nonetheless, this article aims to resist the contemporary phenomenon of blanket criticism, but seeks to advocate a progressive and constructive evolution of appropriate TJ practices. This article simultaneously, but not in contradiction, advocates the following: whilst acknowledging many positive and practical aspects, the rejection of specialised female legal mechanisms; the rejection of a non-gendered approach; the development of a fully integrated gendered approach that addresses and controls gender binaries and their impact; and the optimisation of DDR and its integration with TJ, with particular reference to positive outcomes in programmes in Afghanistan and Liberia.

This article concludes that an ambitious TJ system, such as the JEP, cannot view women as collateral damage, but must seek to address, both individually and collectively, and from each end of the perspective, the myriad influences to which each combatant is or has been subject. Encapsulated in the female combatant are the manifestations of various factors: physical and mental health; family implications—including progeny, social, generational, historical, economic, political, sexual, violent, criminal and legal. The post-conflict era is rich in potential and is the optimum time to address gender binaries.¹³³ Using Colombia's post-ceasefire peace talks and the implementation of its gendered mandate, which pioneering TJ institutions are bound by, as an innovative cornerstone could potentially set the tone for the application of UN 1325 Resolution within the context of female combatants, and is an opportunity to be seized.

¹³³ Sooka (n 11) 313-314.