

Returning Home: Women in Post-Conflict Societies

Naomi Cahn, Dina Haynes, and Fionnuala Ní Aoláin *

Societies that have just emerged from conflict face enormous pressures as they transition away from war. In the early days after formal hostilities have ceased, in countries ranging from the Congo to Bosnia, Liberia to East Timor, populations and infrastructure are in disarray. Not only have people been displaced from their homes, but, typically, health clinics, schools, roads, businesses, and markets have deteriorated substantially or been destroyed. Moreover, many countries undergoing the post-conflict process were poor before the conflict even started; of the 20 poorest countries in the world, three-quarters experienced conflict during the last 20 years of the twentieth century.¹

While the focus is on humanitarian aid in the midst of and during the immediate aftermath, the focus turns to development-based activities for the longer-term.² The transition from short term reconstruction to longer term development, however, is not always smooth and has been subject to criticism, primarily due to the overlapping mandates of the organizations engaged in the work and the lack of expertise held by humanitarian organizations that begin engaging in reconstruction and even longer term

* Naomi Cahn is the John Theodore Fey Research Professor of Law, George Washington University Law School; Dina Haynes is Associate Professor of Law at New England Law | Boston and Director of the Immigration Law Project; and Fionnuala Ní Aoláin is Dorsey & Whitney Chair in Law, University of Minnesota Law School and Professor of Law and Director, Transitional Justice Institute, University of Ulster. We thank Margaret Johnson for her support of this project, and Jose Recio for his research assistance.

¹ See Hugh Waters, Brinnon Garrett, & Gilbert Burnham, *Rehabilitating Health Systems in Post-Conflict Situations*, in MAKING PEACE WORK: THE CHALLENGES OF SOCIAL AND ECONOMIC RECONSTRUCTION 200 (Tony Addison & Tilman Bruck eds., 2009).

² See generally TSJEARD BOUTA, GEORG FRERKS, AND IAN BANNON, GENDER, CONFLICT, AND DEVELOPMENT 117-119 (2005).

development work.³ To help establish both short and long-term security in a post-conflict society, it is critical to integrate development and transition processes; and development activities provide a significant opportunity (and mandate) to ensure that gender is central to the transitional process. Here we take gender centrality to be a first principle of response – namely planning, integrating and placing gender at the heart of the development response to conflict.

First, many of the post-conflict goals cannot be implemented when the population is starving, homeless, and mistrustful of government-sponsored services. Women constitute the overwhelming proportion of refugees displaced by war; of the more than 40 million people displaced by war, approximately 80% are women, children, and youth.⁴ Not responding to their specific needs to return home dooms the reconstruction process. Second, women are central to any socioeconomic recovery process. In many countries, the low level of women's education, their lack of power, and certain cultural dynamics hamper improvements in women's status and health as the country seeks to recover. For women, it too often turns out that the transformation is partial and exclusionary, and may frequently operate to cloak women's ongoing repression and inequality with the blessing of the rule of law and the operation of international donors. For example, men may determine whether their partners use family planning; and men are usually in charge of the family budget, determining how much is spent on nutritious foods and health items such as well-baby visits. Studies have shown that when women are in control of the

³ Ron Waldman, *Rebuilding Resources After Conflict: Lessons from East Timor and Afghanistan* (Overseas Development Institute 2003), available at: <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/728dcebad50f486085256dd5006fd68a>

⁴ Women's Refugee Commission, *Refugee Girls: The Invisible Faces of War 1* (2009), available at http://www.humansecuritygateway.com/documents/WRC_RefugeeGirls_InvisibleFacesOfWar.pdf.

finances these items are better funded. The lived experience of women in conflicted and post-authoritarian societies suggests that the terms “transition” and “postconflict” have much more territory to occupy than it has hitherto and that much work is needed to both ground and empirically quantify this fundamental difference of conceptualization.

The paper analyzes gender and development strategies in the post-conflict country, and the nexus between the two. It first looks at the need to integrate development and post-conflict, and then turns to an analysis of why gender matters. It then looks at development as both a short and long-term process, articulating a new model of “social services justice” to describe immediate needs as the country begins the peace stabilization process. We argue that social services justice should become a critical aspect of any transitional justice and post conflict reconstruction model, and it serves as a gender central bridge between humanitarian aid and long-term development. Social services justice serves as an “engendered” bridge between conflict and security, running the temporal spectrum from humanitarian relief through post conflict to longer term development, any of which is inclusive of transitional justice.

Social services justice is a necessary component of post conflict reconstruction and as part of early efforts at development, with two goals: 1) to respond to the daily needs of the population post-conflict, ranging from livelihoods to health to education; and 2) to expand the focus of justice and accountability mechanisms to account for the daily needs of those who have been victimized by the conflict and their visions of justice.. It makes gender central by grounding post-conflict needs in lived experiences and by responding to the daily realities of life in a post-conflict country, where formal accountability is often a distant dream.

Although “development” can be a term used too broadly and loosely (and may be undertaken by the wrong organizations at the wrong time), we too view development in a broad sense, and believe that development provides multiple opportunities for ensuring gender centrality through post-conflict societies. Drawing on the definition advanced by the UN Development Programme (UNDP), we take development as referring not just to economic growth, but also to fostering human capabilities by improving a country’s socioeconomic conditions.⁵ Indeed, the general concepts of development have expanded to include “measures to improve economic growth and distribution, but also measures that are seen to be related to the social, institutional, and political factors that could impinge on economic well-being.”⁶ However, our analysis goes beyond mere socioeconomic conditions in focusing our attention in on the benefits and problems of development when placing gender central.

The fields of development and of post-conflict reconstruction, already rather loosely defined, have historically organized their scope of work and timelines somewhat differently. Whether as a result of the lack of coherent parameters around each field or as a concerted recognition of the necessity to synthesize and harmonize their efforts, actors within each field are beginning to build on and towards each other.⁷ We have identified⁸

⁵ See UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2009 (2009), available at http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf; AMARTYA SEN, DEVELOPMENT AS FREEDOM (Anchor Books ed., 2000); Roger Duthie, *Introduction to TRANSITIONAL JUSTICE AND DEVELOPMENT: MAKING CONNECTIONS* (Pablo de Greiff & Roger Duthie eds., 2009).

⁶ *Id.* at 18.

⁷ See Pablo de Greiff, *Articulating the Links Between Transitional Justice and Development: Justice and Social Integration*, in *TRANSITIONAL JUSTICE AND DEVELOPMENT*, *supra* note 5, at 29, 31-32; Duthie, *supra* note 5, at 17-19 (Roger Duthie observes that development is the “processes whose most general aim is to improve the socioeconomic conditions of people”); Marcia E. Greenberg & Elaine Zuckerman, *The Gender Dimensions of Post-Conflict Reconstruction: The Challenges in Development Aid*, in *MAKING PEACE WORK*, *supra* note 1 at 101.

⁸ See *Women on the Frontlines* (chapter 3).

the disconnect and simultaneous overlap between these fields resulting from many factors. These include the complicated nature and messiness of the post-conflict process itself, the varying interests and motivations of donors, the desire of organizations to be “on the ground” first, the growing business of post conflict reconstruction, the interests and motivations of donor states in developing their own markets and entry points into transitioning countries, regional politics and so forth. In this paper, we add the overlap with development processes, goals and interests into the analytical frame. The field of development, more than transitional justice or post conflict reconstruction, has already begun to take gender into account in structural and policy oriented ways. Our comments, therefore, concentrate on building upon and advancing these strategies. .

A. Gender Centrality in Development: Engendering Short and Long Term Security

It is generally agreed that security and safety are an imperative for post-conflict societies. For both short and long-term security, it is critical to integrate development and post-conflict processes. Development activities provide a significant opportunity (and mandate) to ensure that gender is central to the transitional process. First, many post-conflict goals cannot be implemented, or even initiated, when the population is starving, homeless, and mistrustful of government-sponsored services. Consequently, the transition must confront this dilemma in the planning process, incorporating programs and objectives traditionally viewed as within the sphere and mandate of development institutions. This kind of structured approach to addressing structural inequities and opportunities is differentiated from humanitarian operations, which are also highly visible in conflicted and post-conflict societies, but whose goals are far more modest, utilitarian

and short-term. These broader programs and objectives range from building civil society organizations to providing education and health services to improving the physical infrastructure.

Second, women are central to any national recovery process, socioeconomic or otherwise, and especially so in societies which have been conflicted and violent. In many countries, the low level of women's education, their lack of power, and cultural obstacles to women's equality hamper improvements in women's status and health even as the country as a whole seeks to recover. For women, as discussed in the Introduction to this book, the transformation of a country from "conflicted" to "peaceful" is partial and exclusionary. The transition process itself may frequently operate to cloak women's ongoing repression and inequality, once the blessing of the rule of law and the operation of international donors has been bestowed upon it. For example, whether the country is in conflict or in recovery, men may determine whether their partners have access to or use family planning, and men are usually in charge of the family budget, determining how much is spent on nutritious foods and health items such as doctor visits.⁹ Studies have shown that when women are in control of the finances these needs are more highly prioritized. This would be true regardless of whether the country were in transition or not. The difference is that during the transition process, many more international donors are present. Theoretically, then, there is opportunity beyond generally available development opportunities, to harness the energy, good will, human capacity, laws and funding that come with post conflict reconstruction. Empirical evidence demonstrates that if women have influence over household decision-making, then they are more likely than men who

⁹ See The United Nations Children's Fund, *Equality In The Household*, in THE STATE OF THE WORLD'S CHILDREN 2007: WOMEN AND CHILDREN: THE DOUBLE DIVIDEND OF GENDER EQUALITY 16 (Patricia Moccia et al. eds., 2006), available at <http://www.unicef.org/sowc07/report/chapters.php>.

are similarly situated to promote their family's needs.¹⁰ Such knowledge takes on new significance in the post conflict reconstruction process when the state is transitioning. Micro-practices, at the household level, affect the macro levels of a society's socioeconomic development, and offer a solid foundation for a broader social, economic and political transformation.

The lived experience of women in conflicted and post-authoritarian societies suggests that the terms "transition" and "post-conflict" have much more territory to occupy than they have hitherto, and that much work is needed to both ground and empirically quantify this fundamental difference of conceptualization. A gender central reconstruction process, we argue, would ground security and the country's forward movement in the concrete developmental needs of the population, ranging broadly from treatment centers for sexual violence victims to maternal care clinics to building roads to training police officers. In transitional societies, macro-economic policies are often primarily focused on creating the conditions to open up markets to foreign inward investment. Instead, we believe that gender centrality could be wielded to transform these policies so that they are cognizant both of the need for a social security net to support the most vulnerable groups and the focus on the potentially detrimental effects of economic liberalization policies on women. Development, like post conflict reconstruction, must think beyond the market as the sole solution to building social and economic capital within a post-conflict state. Free market development is not the only

¹⁰ See Sonalde Desai & Kiersten Johnson, *Women's Decisionmaking and Child Health: Familial and Social Hierarchies*, in A FOCUS ON GENDER: COLLECTED PAPERS ON GENDER USING DHS DATA 55, 56 (Sunitor Kishor ed., 2005), available at http://www.measuredhs.com/pubs/pub_details.cfm?ID=547#dfiles; LISA C. SMITH ET AL., THE IMPORTANCE OF WOMEN'S STATUS FOR CHILD NUTRITION IN DEVELOPING COUNTRIES, 22 (2003), available at <http://www.ifpri.org/sites/default/files/publications/rr131.pdf>; The United Nations Children's Fund, *supra* note 9, at 23-24; NICHOLAS D. KRISTOF & SHERYL WUDUNN, HALF THE SKY: TURNING OPPRESSION INTO OPPORTUNITY FOR WOMEN WORLDWIDE (2009).

post conflict economic transitional solution, and its utility is far more limited than its champions would admit. Accepting the limits of the market in the context of deeply fractured societies is also a fundamental recognition by the international community that economic advancement may be a slow and that a long-term supportive presence will be necessary. This flies contrary to a concept of short-term commitments, and an easy fix approach. Self-evidently short-term market solutions do not generally work well for women.¹¹

B. The Differing Directions of Post-conflict and Development Fields

A post-conflict process will fail if it focuses only on separating the warring parties, on restoring earlier institutions, or even if only on rule of law reform along western democratic lines allied with market liberalization. Instead, the transition process must – somehow – manage the impact of the social injustices that often helped cause the conflict, and the high levels of violence that may accompany the end of the “official” war.¹² While conflicts are not caused by any one factor, some of the major causes are social and economic in nature, including poverty, inequalities between groups, and a disintegrating economy.¹³ The experience of socioeconomic inequality by outsider groups, those who are excluded based on religion, ethnicity, or other minority status, may serve as the powder keg that triggers the conflict. In turn, of course, war and conflict give rise to and exacerbate inequalities and poverty and demolish economies.

¹¹ See discussion on harms of market liberalization on women set forth in WOMEN ON THE FRONTLINES, supra note ___, and in Dina Haynes, *Lessons from Arizona Market: Neoliberalism, Democracy and Harms Towards Women*, U. PA. L. REV. (forthcoming Spring 2010).

¹² See Rama Mani, *Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development*, 2 INT’L J. TRANS. J. 253 (2008).

¹³ See, e.g., Frances Stewart, *Root Causes of Violence Conflict in Developing Countries*, 324 BRIT. MED. J. 342 (2002); Frances Stewart, *Policies toward Horizontal equities in Post-Conflict Reconstruction*, 6 (2005), available at <http://www.crise.ox.ac.uk/pubs/workingpaper7.pdf>.

Another difference between post conflict reconstruction and development lies with the people and organizations undertaking it, their goals and their motivations. Those engaging in post conflict reconstruction have often been present in the field since the early days after the formal cessation of hostilities and often were in the field during the armed conflict. Their “process” tends to be reactive – focused on addressing emergencies and putting out fires. This reactive mode may not be revised as the formal conflict phase concludes, and accordingly “emergency mode” extends far into the later stages of post conflict reconstruction, when its utility becomes minimal or even counterproductive.¹⁴ As a consequence, these first reactors may believe that they are dealing with “real” emergencies, requiring urgent emergency responses. In such a setting, development and “mere” women’s issues are not likely to be prioritized.¹⁵ One of the consequences of working in the post conflict “theatre,” employing military jargon on a daily basis, and reflexively reacting rather than planning, is that even years after the conflict, when there is less of a reason to be treating each problem as an emergency, and plenty of reason to be thoughtful in creating long term strategies, programs and plans, it is comfortable to continue to operate in reactive mode,¹⁶ and in this approach, women’s issues rarely end up being prioritized.

Nonetheless, the post conflict reconstruction arena, which has been primarily concerned with the immediate aftermath of war on issues such as disarming the combatants and war crimes accountability, is beginning to expand its coverage. It is

¹⁴ See Dina Haynes, *The Deus ex Machina Descends: The Laws, Priorities and Players Central to the International Administration of Post-Conflict Bosnia and Herzegovina*, in *DECONSTRUCTING THE RECONSTRUCTION* (Ashgate 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1016196.

¹⁵ Dina Haynes, *Lessons from Arizona Market: The Impact of Neoliberalism and the Free Market Mindset on Women in the Post Conflict Reconstruction Process* (April 27, 2009), http://law.ubalt.edu/downloads/law_downloads/Hayes.Arizona%20Market%204.pdf.

¹⁶ As argued in Haynes, *supra* note 14, at [redacted] [Haynes to fill in].

increasingly acknowledged that transitional justice, for instance, includes institutional reform, rule of law, constitution making and enforcement, and socio-economic distribution within its broader competence.¹⁷ Although conflict resolution, humanitarian aid, and development activities may each lead to different priorities, there is growing recognition in practice and in theory of the need for each to work together¹⁸ and of the interrelationship between each of these activities.

For example, the value of using a participatory approach, involving community empowerment, community support and capacity building, is a lesson from the development field that is becoming intrinsic to post-conflict reconstruction.¹⁹ This participatory approach means that in planning for societal rebuilding across its social, institutional and economic dimensions, affected communities are included from the outset in consultation about the form and practice of change. A participatory approach may require ingenuity, creativity, and patience in situations where funds are limited, the geography of the conflict area is vast, and ongoing security concerns may persist. Nonetheless we maintain its value and its potential to making long-term outcomes work. The benefits of the participatory approach would be substantially augmented if the international organizations and state supporting reconstruction were penalized in meaningful ways for ignoring the advice or views of local constituencies; relevant entities might also be rewarded with additional funding for such inclusiveness. These negative

¹⁷ See, e.g., Louise Arbour, *Economic and Social Justice for Societies in Transition*, 40 N.Y.U. J. INT'L L. & POL. 1, 26-27 (2007); UNITED NATIONS HUMAN RIGHTS COUNCIL, ANNUAL REPORT OF THE UNITED NATIONS HIGH COMM. OF HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL: ANALYTICAL STUDY ON HUMAN RIGHTS AND TRANSITIONAL JUSTICE (2009), available at <http://www.unhcr.org/refworld/category/REFERENCE/UNHRC/4a9d1be40.0.htm>.

¹⁸ See Gerd Junne & Willemijn Verkoren, *The Challenges of Postconflict Development*, in POST CONFLICT DEVELOPMENT: MEETING NEW CHALLENGES 1, 3-5 (Gerd Junne & Willemijn Verkoren eds., 2005).

¹⁹ See Patricia Lundy & Mark McGovern, *The Role of Community in Participatory Transitional Justice*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 108 (Kieran McEvoy & Lorna McGregor eds. 2008); Duthie, *supra* note 5, at 20-21.

or positive incentives are difficult to build into either pre-agreements or formal peace agreements, but we encourage innovative thinking about benchmarking and providing positive incentives to internationals to keep the local at the fore of its processes and implementation.

On the other hand, as outlined earlier, international military actors are also on the ground in the post conflict theatre. And there are real risks inherent in the expansion of mandates by the international military presence,²⁰ when it engages in humanitarian, post conflict and development work. For one, such expansionism rarely works to positive ends for women. Military structures and hierarchies, despite the increasing presence of women on the ground as peacekeepers and enforcers, are highly masculine and generally unaccommodating of the range of issues that women prioritize.²¹ The emphasis on security tends to give higher value to troop safety needs over female centered security concerns. The narrow focus on political gains and stabilization often works to prevent broader emphasis on social and economic redistribution. Iraq provides a cogent example of this skewed emphasis, with evidence that the military has been naïve about the consequences of a lack of attention to minimum social and economic needs on the ground. The lack of effectively guaranteed security since the invasion has meant that military actors continue to serve as the lead international actors in the transitional process. Risks in this situation include military actors overstepping their expertise and going beyond their formal mandate to begin engaging in post conflict reconstruction without a coherent strategy or particular expertise, and in engaging in the work motivated

²⁰ Leaving aside the role of militaries as *the lead* international transitional actors, as is the case in Iraq.

²¹ See Naomi Cahn and Fionnuala Ni Aolain, *Gender, Masculinities and Transition in Conflicted Societies*, __ New Engl. L. Rev. __ (forthcoming 2010).

by a desire to win over local support for military and peacekeeping efforts, rather than a desire to assess local needs and meet them.

At times, development driven institutions and bilateral state policy seems more adept at and interested in determining local needs, and understanding its importance to the successful outcome of a project. Consider, for instance, the cook-stove project in Darfur, in which engineers visited refugee camps, primarily occupied by women and children, and consulted with women and other refugee camp leaders concerning the need for an alternative to their existing stoves; the need resulting from the reality that over half of the families were missing meals because they did not have enough wood to cook their food, and women and girls were being sexually assaulted when they traveled distances to collect wood. Engineers developed a more fuel-efficient stove which does not solve all problems (it still requires wood, a valuable commodity, requiring that women find the wood), but the stoves are a much more efficient alternative, and respond to an articulated need by the local female population.²² This micro example provides us with cogent clues as to what kinds of material needs emerge from participatory forms of engagement with vulnerable communities in post-conflict societies. In this lies a broader lesson, that only by deep and practical engagement with the needs of the communities on the ground, and specifically to the voices of women, will advancements be made sufficient to ensure development agendas that are sustainable and transformative.

The transitional justice field has also come late to a recognition of these interrelationships, but it is evolving, including through inclusion of socio-economic rights

²² See, e.g., Darfur Cookstoves, <http://darfurstoves.lbl.gov/> (last visited Jan. 13, 2010); James F. Smith, *Efficient Wood Stoves Help Women of Darfur*, BOSTON.COM, June 3, 2009, http://www.boston.com/news/world/worldly_boston/2009/06/efficient_wood_stoves_help_dar_3.html.

and reparations.²³ In light of the post-conflict goals of peace, security, and healing, however, there are questions about whether mechanisms such as the ICC, reparations, or even truth commissions are critical to achieving these goals.²⁴ In a study undertaken in the eastern Congo to determine needs and priorities of locals in the transitional process, more than 2,600 people (half of the respondents were women) stated that their highest individual priorities were peace, security, and livelihood concerns, such as money, education, food, and health. The highest stated priorities for the government were peace, security, education, and development. For the international community, the named priorities were development, money, peace, and food.²⁵ Transitional justice, which has been historically premised on achieving accountability and underpinned by the notion of “punishing those responsible” was ranked as the 18th priority for individuals, the 12th for the government, and the 15th for the international community. The authors of this study concluded that “transitional justice must be integrated within a broader social, political and economic transition to provide for basic needs and protection.”²⁶ A similar survey in Uganda conducted shortly after a peace agreement was signed there, found that survey participants’ highest priorities were health (45%), peace, education, and livelihood issues, such as food and land, with justice, at 3%, as a much lower priority.²⁷ Indeed, when they were asked to consider what should be done for the victims of wartime violence, 60% of the respondents said that victims should be given financial compensation (51.8%) or

²³ See generally RUTH RUBIO-MARIN, *THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS* (2009).

²⁴ See Patrick Vinck & Phuong Pham, *Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC*, 2 INT’L J. TRANS. J. 398, 399 (2008).

²⁵ *Id.* at 403.

²⁶ *Id.* at 409.

²⁷ PHUONG PHAM, PATRICK VINCK, ERIC STOVER, ANDREW MOSS, MARIEKE WIERDA, & RICHARD BAILEY, *WHEN THE WAR ENDS: A POPULATION-BASED SURVEY ON ATTITUDES ABOUT PEACE, JUSTICE, AND SOCIAL RECONSTRUCTION IN NORTHERN UGANDA* 3, 22 (2007).

cattle and goats (8.2%), with only 1.7% indicating that victims should be given “justice.”²⁸

While we recognize the limitations of relying on only two studies, and recognize further the methodological limitations of these kinds of studies -- a problem common to a comprehensive analysis of the experiences of women in post-conflict settings -- the outcomes of these studies indicate the existence of a different set of priorities than has been assumed, suppositions upon which the entire basis of transitional justice, post conflict reconstruction and development work has been founded. This affirms our calls for reconceptualizing the premises upon which post conflict work is based..

Even as we accept the broader universalist arguments for and value of accountability, we view these mechanisms as successful only if they are tied to the long-term structural changes that meet peoples’ social, economic and repair needs on the ground. If such needs assessments were undertaken more routinely, across all fields of post conflict transitional work, then they could serve as the basis for post conflict efforts to recalibrate its priorities in a way that matches articulated needs.

Differing conceptions of what the post-conflict process is affects its relationship to development. If post-conflict refers only to disarmament and narrow definitions of security, then, while it may include some attention to civil and political issues, it will deem economic, social, and cultural issues to be extraneous to the core project. Instead, the justification for a broader understanding of post-conflict work stems from an examination of the impact of the conflict and the methods for achieving stability.

²⁸ *Id.* at 32-33.

Consequently, development and post-conflict work, in all of its manifestations, have numerous overlapping goals and concerns. Indeed, the connection between the two is quite clear because:

first, that the majority of armed conflicts today occur in countries at low levels of development. Poverty, inequality and underdevelopment may not in themselves cause armed conflict and human rights abuses, but they can be contributing or enabling factors. Second, armed conflict and authoritarianism, and the humanitarian disasters and massive human rights abuses that often accompany them, can have an immensely negative and long-lasting impact on a country's development. Third, and as a result, transitional justice frequently is pursued in a context of severely underdeveloped economic and social institutions, widespread scarcity of resources and myriad competing needs. At the same time, justice initiatives come with a number of costs, and so decision makers in transitional societies face dilemmas about where to allocate available resources.²⁹

Ensuring the interrelationship between development and post-conflict is critical – and inevitable. For example, disarmament, demobilization, and resettlement (DDR) must be integrated with democracy promotion, gender equality, and economic and social development in order to achieve the very goals that DDR sees itself as advancing. Indeed, at a more “global” level, there is general recognition that disarmament and development are linked (think “guns and butter” from basic economics courses),³⁰ and this recognition must inform ongoing post-conflict efforts.

Development in the immediate aftermath of war, which might first be viewed as inappropriate, untimely and encroaching on the mandate of other organizations, could actually serve as a bridge between conflict and security, running the temporal spectrum

²⁹ Roger Duthie, *Toward a Development-Sensitive Approach to Transitional Justice*, 2 INT’L J. TRANS. J. 292, 295 (2008).

³⁰ See, e.g., Douglas M. Costle, *Women and the Environment*, EPA Journal (Nov./Dec. 1978); David Koplow & Philip Schrag, *Carrying a Big Carrot: Linking Multilateral Disarmament and Development Assistance*, 91 COLUM. L. REV. 993 (1991); Lawrence R. Klein, *World Peace and Economic Prosperity*, in UNITED NATIONS DEPARTMENT OF DISARMAMENT AFFAIRS, SYMPOSIUM ON THE RELATIONSHIP BETWEEN DEVELOPMENT AND DISARMAMENT 1-2 (2004), available at <http://www.reliefweb.int/rw/lib.nsf/db900SID/LHON-69QDPP?OpenDocument>.

from humanitarian relief through post conflict to longer term development. If it is done well, and with social services justice rather than market development as its core mission.

B. Why gender matters in development:

Investing in women provides an enormous return.³¹ Accordingly, gender must be central to the ways in which the ending of violence is conceived, planned, and delivered. When it comes to reconstruction, investment in women makes a critical difference to achieving both short and longer-term sustainable peace and development. Conflict scrambles women's roles (positively and negatively) and fosters hyper-masculinity; a development focus may fundamentally assist with the difficulties of unscrambling such flux during the post-conflict process as civilians and combatants return to their families and must deal with the temporary role transformation, the shame of either having been a soldier or a sexual violence victim, and the extraordinary amounts of violence.

There are ample data on why women should be central to the development process. Consider how education, a typical development priority, has gendered implications. Getting more girls through school not only impacts directly on their own welfare, but also the welfare of other family members and the community. Research has shown that women with only a few years of primary education have better economic prospects, have fewer and healthier children, and are more likely in turn to ensure their own children go to school.³² Educated mothers immunize their children 50 per cent more often than mothers who are not educated, and their children have a 40 per cent higher

³¹ See, e.g., Kristof and WuDunn, *supra* note __, at xx.

³² See United Nations Development Programme et al., *Gender Equality and the Millennium Development Goals* (July 2003), available at http://www.mdgender.net/upload/tools/MDGender_leaflet.pdf.

survival rate.³³ Children whose mothers are not educated are more than twice as likely not to be in primary school than are children whose mothers attended primary school, and educating women improves their children's rates of survival and nutritional status.³⁴ Each of these outcomes, obviously, improves both the local community and the overall development of the country as a whole.

Moreover, women's economic empowerment makes a difference: increasing women's labor force participation and earnings is linked to reducing poverty and improving growth, benefiting not just the individual women, but the larger society.³⁵ Finally, states that do not protect women's rights are more likely to fail³⁶, and states that cannot secure women's rights and place in the post conflict world are not sustainable.

B. Social services justice as the integration of post conflict processes and development:

While criminal prosecutions and civil lawsuits are designed to ensure the responsibility and accountability of some perpetrators, the needs of victims go far beyond punishment. The focus of the accountability process is almost solely on the perpetrator; indeed, in criminal actions, the victim is not even a party to the proceedings but is called as a witness by the prosecution, who represents the public interest, not the interests of the victim.³⁷ Alternative forms of justice have broadened this focus, recognizing that the

³³ See Goal: Promote Gender Equality and Empower Women, UNICEF, <http://www.unicef.org/mdg/gender.html> (last visited Jan. 13, 2010).

³⁴ The United Nations Children's Fund, *supra* note 9, at 24.

³⁵ World Bank Group, *Gender Equality as Smart Economics: A World Bank Group Gender Action Plan 2* (2006), available at <http://siteresources.worldbank.org/INTGENDER/Resources/GAPNov2.pdf>.

³⁶ See, e.g., Naomi Cahn, *Women's Security/State Security*, in SECURITY: A MULTIDISCIPLINARY NORMATIVE APPROACH (Cecilia Bailliet ed. 2009) (chapter 11).

³⁷ Of course, this shows the perpetrator that the crime was committed against society, and relieves pressure on the victim. See C. Quince Hopkins et al., *Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities*, 23 ST. LOUIS U. PUB. L. REV. 289, 290 (2004) (“[A]s witnesses rather than parties in criminal cases, victims’ control over prosecution is limited; in fact, the traditional criminal justice system, at the urging of battered women’s advocates, affirmatively displaces battered women... in a noble effort to take on the primary responsibility of confronting batterers about their violence.”); Joan Meier, *The*

legal system must respond to both victims and perpetrators.

Perhaps the most significant forms of justice for women, however, include not just criminal and civil accountability (rights-based justice) but assistance of the kind traditionally associated with development. This assistance, which falls between humanitarian aid and development strategies, is more in the form of “healing” justice, because it focuses on providing critical social services to facilitate all aspects of post-conflict reconstruction.³⁸ Indeed, in some programs providing post-conflict reparations, this concept is being rolled into – albeit in very limited ways – the broader reparations strategy, particularly in the developing practices of communal reparations.³⁹ Healing justice, as part of reparation, goes part of the way towards doing what we advocate in a development context. Unfortunately, these are the very services that are often reduced and eliminated by international post conflict and development agencies when post conflict transition coincides with economic liberalism.

While other scholars have critically examined “rights-based” justice, we expand conceptions of international justice in the post-conflict setting to include social, economic, and development-based rights.⁴⁰ Justice here requires responding on an individual, community, and national level to atrocities committed against the population based on sex, ethnicity, or nationality, to provide social, economic, and development-

“Right” to a Disinterested Prosecutor of Criminal Contempt: Unpacking Public and Private Interests, 70 WASH. U. L.Q. 85, 110 (1992); MARTHA MINOW & NANCY L ROSENBLUM, BREAKING THE CYCLES OF HATRED: MEMORY, LAW, AND REPAIR 88 (Martha Minow & Nancy Rosenblum eds., 2002) (“legal proceedings in response to human rights violations have as their goal justice and not assistance to the aggrieved”).

³⁸ See Naomi Cahn, *Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence*, 1 STAN. J. CIV. RTS. & CIV. LIB. 217 (2005); Duthie, *supra* note 5 (referring to “social justice”).

³⁹ See Rubio-Marin, THE GENDER OF REPARATIONS, *supra* note 23.

⁴⁰ For example, the International Covenant on Economic, Social, and Cultural Rights, Arts. 6, 11, Jan. 3, 1976, 993 U.N.T.S. 3, recognizes the “right to work,” to “an adequate standard of living,” etc. See, e.g., Fionnuala Ni Aolain & E. Rooney, *Under Enforcement and Intersectionality: Gendered Aspects of Transition for Women*, 1 INT’L J. TRANS. J. 338 (2007).

based benefits. These services may not be directly linked to legal concepts of restitution or punishment for the crimes themselves, but they must be part of the reconstruction process post-conflict that provides remedy to the country from the damages inflicted by conflict.

Social services justice serves as a recognition that women's needs are not necessarily criminal accountability but, instead, resources that respond to their daily needs. In seeking redress for harms inflicted on them, women may be more interested in long-term health care. The services may range, for example, from HIV/Aids treatment (which may be traceable to crimes of sexual violence), to establishing schools in communities which have been most heavily targeted by violence during a conflict. The activities for which justice is sought may not be traceable to one individual or group but result from the conflict itself and address the conditions which created and facilitated communal violence. They may also result from the corruption and economic crimes that often accompany conflict.⁴¹ Justice, broadly defined, is part of an effort not just to compensate for past acts but also to deter future crimes. The basic argument is the importance of broader conceptions of post-conflict reconstruction, conceptions that require the integration of processes throughout the reconstruction period that range from justice to development to demobilizing to creating "democratic [or engendered] space."⁴²

Women face special problems in conflicts. The scale and scope of sexual violence⁴³ against women is almost incomprehensible in most of these conflicts.⁴⁴ Even

⁴¹ See Ruben Carranza, *Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?*, 2 INT'L J. TRANS. J. 310, 329 (2008); Duthie, *supra* note 5, at 17, 19-20.

⁴² As Wangari Maathai defines it, this is not necessarily democracy, but the space for people to exercise their rights, including the right to expression.

⁴³ For an overview of sexual violence issues, see Reproductive Health Response in Conflict Consortium, Gender Based Violence, <http://www.rhrc.org/resources/index.cfm?sector=gbv> (last visited Jan. 19, 2010).

in societies where women experience domestic and other forms of violence as a routine fixture in their lives, there is a normative break when the scale, intensity and forms of violence shatter accepted normative baselines, and render cultural and social restrictions on acceptable forms of behavior to women moot.⁴⁵ Establishing the procedures for restorative justice or civil and criminal trials is time-consuming. Before these forms of justice are activated, women's HIV may have become full-blown AIDS, their husbands may have married other women, they may have given birth to children born of rape, their reproductive capacities may be further compromised by lack of access to appropriate medical intervention, they may be scared to sell goods at market or work in the fields for fear of being raped en route – the list women's needs and fears post conflict is long. Social services justice focuses on the consequences and effects of the crime; because it is unrealistic for perpetrators to provide reparations directly to the victim, victims and communities need additional resources to heal the harm and to secure the peace. Social services may be provided by the community, by the government, non-governmental organizations, multilateral institutions, or other donors. Social services justice in this model requires a multi-sectoral approach that involves the community as well as health, legal, security, and the social services actors.⁴⁶ Importantly, many of the states emerging

⁴⁴ “An estimated half a million women were raped during the 1994 genocide in Rwanda. A staggering 50% of all women in Sierra Leone were subjected to sexual violence, including rape, torture and sexual slavery, according to a 2002 report by Physicians for Human Rights. In Liberia, an estimated 40 percent of all girls and women have fallen victim to abuse. During the war in Bosnia-Herzegovina in the 1990s, between 20,000 and 50,000 women were raped.” *Gender-Based Violence: A Silent, Vicious Epidemic*, in INTEGRATED REGIONAL INFORMATION NETWORKS, OUR BODIES - THEIR BATTLE GROUND: GENDER-BASED VIOLENCE IN CONFLICT ZONES 3 (Sep. 2004), available at <http://www.irinnews.org/webspecials/GBV/gbv-webspecial.PDF>.

⁴⁵ See Margaret Walker, *Gender and Violence in Focus: A Background for Gender Justice in Reparations*, in Rubio-Marin, THE GENDER OF REPARATIONS, *supra* note 23.

⁴⁶ See JEANNE WARD, IF NOT NOW, WHEN? ADDRESSING GENDER-BASED VIOLENCE IN REFUGEE, INTERNALLY DISPLACED, AND POST-CONFLICT SETTINGS 11 (April 2002), available at <http://www.rhrc.org/resources/gbv/gbvintro.pdf> (“best practices” for gender-based violence is now recognized as a “multisectoral model” which includes a variety of individuals, including teachers,

from communal violence are still bound by their international human rights treaty obligations, and we must be wary of thinking that the provision of basic needs in the social services is above and beyond what they may be already required to do by treaty. Yet, even here it is a useful tool to combine the modalities of both conflict, justice imperatives and reconstruction with the ambition and far-sightedness of participatory development approaches.

Ideally the provision of social services justice would be local but we accept that these actors can be internationals working independently or with local counterparts until local capacity is sufficient to provide the services. In fact, the capacity building model applied to provision of social services and development of social services frameworks would provide a profound link between post conflict reconstruction and longer term development, and belongs in every post conflict and development theatre as a practical means by which gender can be made central.

Specifically, social services justice can take the form of supplying medical kits to test for AIDS, establishing security patrols so that women can sell goods and produce at markets, providing micro-credit, or staffing health clinics so that they can provide medical, psychological, and legal services that help with the de-traumatization process while providing maternal care. Families may have been separated by the conflict, and children may need reunification services.⁴⁷

traditional birth attendants, nurses, microcredit banks, judges, police, and other military). On the need to address justice issues beyond the formal legal sector, see Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, WM. & MARY J. WOMEN & L., 335 (2005-2006); Rubio-Marin, THE GENDER OF REPARATIONS, *supra* note 23.

⁴⁷ See, e.g., International Rescue Committee, Separated Children (2009), available at <http://www.theirc.org/separated-children>

Social services justice expands the meaning of post-conflict justice to provide broader remedies for the consequences and effects of the conflict rather than a single-minded focus on criminal accountability or even the requirement of any quasi-legal process. Stable and safe societies are societies in which all persons, including women, have access to basic services that enable them to restore and then live out their daily lives with some hope for the future.

Addressing short-term developmental needs under the guise of social services justice accords with evolving standards of international law. For example, the Declaration on the Elimination of Violence Against Women urges states to provide services for women and their children, including “rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services facilities and programmes . . .and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.”⁴⁸ A recent Handbook published by the UN Division for the Advancement of Women compliments the treaty requirements and is also a useful tool providing a model framework for legislation in addressing violence against women based on existing treaty obligations by states “to enact, implement and monitor legislation addressing all forms of violence against women”.⁴⁹

Social service justice differs from restorative justice or the models of community justice that are developing in a number of post conflict societies, however, because it is not attached to a formal legal proceeding, although it shares their focus on responding to

⁴⁸ Declaration on the Elimination of Violence Against Women, U.N. Doc. A/RES/48/104 Art. 4(g) (Dec. 20, 1993).

⁴⁹ UNITED NATIONS, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN (2009).

crimes through involvement beyond the perpetrator and victim.⁵⁰ Of course, reparations are typically issued as part of a legal or quasi-legal process, and these processes may intersect with other traditional legal accountability systems. Reparations typically take the form of government-transferred aid⁵¹ and involve the provision of “material benefits for the devastation inflicted” based on a theory of compensation.⁵² As conceptions of reparations also expand, the dividing line between them and social services justice may inevitably narrow and blur.

As the conceptual basis for reparations expands, so too does the overlap with our concept of social services justice. For example, some scholars have suggested “national reparations programs” for victims of sexual violence, which could provide remedies ranging from direct monetary transfers to social services⁵³, such as providing scholarships for children of sexual violence victims. Others have suggested reparations take the form of micro-finance, thereby combining development goals with transitional justice goals.⁵⁴ Through microfinance, the recipients could also receive other services that are critical in a post-conflict society, ranging from health clinics to vocational training.

Reparations are, however, typically provided through legislation or directly by the

⁵⁰ See, e.g., Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL’Y 63, 83-92 (2002); Jeffrey Fagan & Victoria Malkin, *Problem Solving Courts and Therapeutic Jurisprudence: Theorizing Community Justice Through Community Courts*, 30 FORDHAM URB. L. J. 897 (2003). The community justice approach involves both individualized justice and restorative justice, as well as partnerships with social service agencies and government groups to develop community-based responses to crime.

⁵¹ Perpetrators may also make reparations for their offenses.

⁵² MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE 104 (2003). She provides examples of the types of reparations that witnesses before the South African TRC need, such as a death certificate, memorial parks named after an apartheid victim, or medical care. *Id.* at 105.

⁵³ See Naomi Cahn, *Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence*, 1 STAN. J. C.R. & C.L. 217, 244-45 (2005).

⁵⁴ See Anita Bernstein, *Tort Theory, Micro-Finance, and Gender Equality Convergent in Pecuniary Reparations*, in Rubio-Marin, THE GENDER OF REPARATIONS, *supra* note 23.

perpetrator to the victim.⁵⁵ They involve an acknowledgement of guilt together with an acceptance of responsibility. Social service justice (SSJ) may be administered and funded by entities with no connection to the crime. While SSJ necessarily includes possible reparations programs as longer-term remedies, or as possibilities when the perpetrators are known and accept responsibility, it is also concerned with the more immediate, and often desperate, status of the victims. As such, social services justice refers to the range of potential services, social, economic, medical, that can be provided to victims both short and long term outside of the box holding perpetrator and victim, and beyond attempts to measure the specific losses caused by the violence. For example, it could provide protection for women who may not have directly experienced sexual violence themselves, but who live in continuing fear of it. While social services justice draws legitimacy from the need for accountability, it also serves as an “engendered” bridge between conflict and security, running the temporal spectrum from humanitarian relief through post conflict to longer-term development, any of which is inclusive of transitional justice.

There are potential criticisms of social service justice that may undermine its effectiveness. First, social services justice may seek to ameliorate too many wrongs, some of which were not directly caused by the conflict. Because of its breadth, like restorative justice, social services justice can be an expensive proposition in compensating the victim, her family, and her community. Second, because aspects of

⁵⁵ Reparations is a “tort-based mode of redress whereby a wrong-doing group accepts legal responsibility and compensates victims for the damage it inflicted on them.” William C. Bradford, *Beyond Reparations: An American Indian Theory of Justice 1* (unpublished manuscript 2004), *available at* http://papers.ssrn.com/paper.taf?abstract_id=515231. Professor Bradford notes the ongoing debate raging in the United States over reparations talk, particularly for descendants of African-American slaves, where opponents of reparation challenge the link between the contemporary status of blacks and historical injustices. *See Note, Bridging the Color Line: The Power of African-American Reparations to Redirect America's Future*, 115 HARV. L. REV. 1689 (2002).

social services justice resemble development assistance, the social services may be emphasized at the expense of its justice and accountability aspects. Indeed, many post-conflict reconstruction programs are arguably also development programs.⁵⁶ Third, as with the other types of justice discussed earlier, its effectiveness depends on sensitive implementation. Finally, there is a danger that we see the ‘goods’ provided by social services justice as exceptional and as merely compensation to the community in general and perhaps by implication to specifically vulnerable victims. This may block a full appreciation of the range of existing human rights’ obligations to which a state, even one emerging from conflict is bound. Rights protection and service provision must not be viewed as exceptional at all but as a part of the compact involved in the ratification of treaties, including the International Covenant on Economic, Social and Cultural Rights which has 160 state parties.

These are legitimate criticisms that must be addressed as the concept is more fully developed in theory and in practice. Assuring that the framing principle is social services in the context of responsibility and accountability, and that implementation can be carefully supervised to assure that neither victims nor perpetrators believe that the services provide an alternative to other forms of justice or a form of impunity, then social services justice can aid transitional countries as they move away from conflict and towards development. Because it is based on the coordination and response of the different sectors concerned with prevention of and response to gender-based violence, it provides a useful model that can provide both immediate and long-term assistance. We propose applying the social services justice model not only in the context of achieving accountability and reparations goals, but as an engendered security tool, linking

⁵⁶ Greenberg & Zuckerman, *supra* note 7, at 14.

humanitarian relief, post conflict reconstruction, transitional justice and development by focusing on placing women in a position to reclaim or claim their place in society.

C. Long-term Development

Notwithstanding the need to focus on short-term humanitarian aid, the post-conflict time period is also the time to begin longer-term development projects that support the humanitarian assistance. As the state progresses and restores, there must also be a shift to full state ownership of economic and social development as part of its ordinary practice. Correspondingly, this points to the long term transformative effect of post-conflict societies on the organization of government and the provision of services.

Social services justice provides the link from the immediate aftermath of conflict to the longer-term reconstructive efforts. Projects begun as part of “social service justice” can provide the basis for these longer-term strategies, which involve, for example, making education accessible, promoting adequate livelihood support, building health care delivery, and ensuring an adequately-paid, trained, and appropriately-sized and well-trained civil service. Indeed as we argue above, the social service justice model can be used as the link to carry post conflict reconstruction into longer-term development, as a continuous model that may be calibrated in different ways and to different degrees in some phases over others. As the state progresses and is restored, there may be a need to move away from a specialized model to centralizing this approach through national government agencies and policy making. The shift here is to full state ownership of development objectives as part of its ordinary practice in emerging from conflict, pointing to the long term transformative effect of post-conflict societies on the

organization of government and the provision of services. Throughout this process, gender centrality is critical.

While we do not set out a comprehensive framework for gender-central development here, we provide an outline of various issues that should be considered, including education, health care, economic development, and the civil service.

a. education:

Education should be a priority during all stages of the transition process. As part of our analysis of how rights hierarchies must be upended to make gender central, education is a foundational principle. First, it helps to achieve the short term post conflict security and stability for which internationals are striving.⁵⁷ Second, it helps to establish equality of voice and rights that we argue are central to all post conflict endeavors. For example, literacy rates for women in most post-conflict countries are abysmally low, placing them at a disadvantage as actors in the public sphere. Conflict often disrupts the educational system, making it even more difficult for girls to complete their schooling. Education is crucial to post-conflict development, as education allows the country to achieve and sustain economic growth and democratic governance. A comprehensive developmental education policy would ensure new facilities in both urban and rural areas, with sensitivity to the language of instruction,⁵⁸ as well as to accessibility for boys and girls. Adult education is another critical component,⁵⁹ particularly given the disruptive

⁵⁷ See, e.g., Stef Jansen, “Home” and Return in the Foreign Intervention in Bosnia and Herzegovina: An Anthropological Critique, in Haynes, DECONSTRUCTING THE RECONSTRUCTION, *supra* note 14 (Illustrating how refugees and displaced persons are reluctant to return to their pre-war homes, not because those homes are destroyed, which is where the international community focused its efforts and money, but because they feared their children could not attend school at all or without harassment or physical harm, and that they would not be able to find work for the same reasons).

⁵⁸ See Wondem Asres Degu, *Reforming Education*, in POST CONFLICT DEVELOPMENT, *supra* note 18, at 129.

⁵⁹ See, e.g., Bouta, *supra* note **Error! Bookmark not defined.**, at xxvi, 112.

effect of conflict on the larger education system. While improving education is not a panacea – higher literacy rates in the former Yugoslavia and Northern Ireland did not prevent violence, for example, and education can also support a patriarchal and elitist system – it nonetheless provides the basis for enhancing economic opportunities and improving health.

Studies have shown that the family of an educated mother is healthier and more economically viable. Increasing the number of girls that complete primary education can make significant improvement in gender issues as well as enhance women’s social strength. When household resources are limited, there is a tendency to spend money on boys’ education rather than girls’. A family may prefer that a girl stay home to cultivate fields, collect water and firewood, cook, tend to younger siblings or be responsible for caring for the family elders rather than attend school. Even if a girl has the opportunity to go to school, the cultural and social constraints listed above mean that she is under great pressure not only to underperform but also to drop out. When taking steps to increase literacy, it is critical to ensure gender equity. Studies have repeatedly shown that educated women have fewer children and give more money to benefit their children than do similarly educated men. Hence, educating women benefits the family and the community.⁶⁰ Moreover, educating more women increases economic growth and generates more skilled workers.⁶¹

⁶⁰ See, e.g., Kristof, *supra* note 10 (citing a study that for each year of *primary education*, a girl is likely to have .26 fewer children).

⁶¹ Dina Abu-Ghaida & Stephan Klausen, *The Economic and Human Development Costs of Missing the Millennium Development Goal on Gender Equity* 9-10 (World Bank 2004), available at http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079934475/MDG_Gender_Equity.pdf.

Again while we wish to avoid the essentialized presumption that education for women will result in peaceful societies, the link we would make is that the greater the levels of economic equality and opportunity within the state, the less likely the overall resort to communal violence. Beyond the basic goal of enhancing literacy, education can provide a culturally mediating role by teaching understanding and acceptance of different ethnic groups and the development of a society-wide identity. Ensuring equal access for girls and women. Gender centrality might mean supporting home-based and community efforts, hiring women as teachers⁶², expanding the curriculum to include health and reproductive information⁶³, and providing incentives – perhaps even financial -- for girls to complete their schooling.

b. Health Care:

Conflicts can fundamentally affect health care and those fomenting conflict often purposely target health care infrastructure.⁶⁴ During conflict, 1) the health care infrastructure will, inevitably, be compromised, if not entirely destroyed; 2) the government may be unable to provide any funding; and 3) there may be few health care workers.⁶⁵ In East Timor, for example, more than one-third of all health care clinics were

⁶² See Bouta, *supra* note **Error! Bookmark not defined.**, at 119-121.

⁶³ One of the authors was involved in a post-conflict survey of youths' understanding of reproduction and their use of various birth control methods which found low levels of knowledge around these issues.

⁶⁴ One of the authors worked in Chad in 1989 when a UTA flight was bombed by Libyans (who had recently been warring with Chad over contested territory and natural resources). All on board were killed, and although the wife of the US Ambassador was on board, many speculate that the real target was all of the doctors in the country of Chad who were traveling to a conference in Paris. Needless to say, their deaths significantly set back the already minimal health care infrastructure by years.

⁶⁵ See, e.g., FLAVIO BUSTREO ET AL., IMPROVING CHILD HEALTH IN POST-CONFLICT COUNTRIES: CAN THE WORLD BANK CONTRIBUTE? 9 (2005), available at <http://siteresources.worldbank.org/INTCY/Resources/395766-1187899515414/ChildHealthPC.pdf>.

destroyed.⁶⁶ In Mozambique, 1,113 of the 1,171 primary health units were looted, forced to close, or destroyed.⁶⁷

Building a new health care system invariably depends on international organizations working with local groups. In East Timor, UN agencies worked with local health care providers to decide where to locate new facilities, and also provided salaries, ultimately resulting in a health care system that continues to function.⁶⁸

Changing health care may start with an emergency response, and then continue to address other needs. It involves concrete steps, working with the local community. And, of course, it has incredibly gendered needs and outcomes. Consider what the ICRC did in Central African Republic:

...we did an assessment to look at the issue of sexual violence against women and girls there. Within two weeks we had trained a core, about three or four key health care staff, on providing treatment to survivors of sexual assault.. .. it's a matter of putting that together and often working with health care workers on their attitudes and beliefs towards survivors. So within two weeks, we had set that up. We had set up a very basic referral system, right, between health care, the health care, the health clinic and those providing basic counseling, psycho-social support. By June 2007, we were seeing 30 women and girls a day that were coming to us and saying that they had been raped as a result of the conflict. Eight months later we had provided services to 1200, right We have to set up these psycho-social response services, extremely basic, but still . . . addressing the issue in such a way that women feel comfortable coming forward. We start to break the silence, and we certainly reduce the health consequences.⁶⁹

The organization astutely created a program that addressed the real needs of women and built capacity to increase that assistance. Other more generalized gendered needs exist, as well, not necessarily linked to conflict. Sierra Leone, for instance, has the highest

⁶⁶ Vanessa Van Schoor, *Reviving Health Care*, in POST CONFLICT DEVELOPMENT, *supra* note 18, at 147, 149.

⁶⁷ Between 1972 and 1980, Bustreo, *supra* note 65, at 11.

⁶⁸ Van Schoor, *supra* note 66, at 150-51, 160.

⁶⁹ Heidi Lehmann, *From Relief to Development: Gender-Based Violence Interventions in Conflict and Post-Conflict Contexts* (Lehmann ed., 2008), available at <http://www.wilsoncenter.org/events/docs/Lehmann%20Edited%20Transcript.pdf>.

maternal mortality rate (MMR) in the world, at 2100 per 100,000 live births, compared to the United States, where it is 1.⁷⁰ Beyond simple biology, women die in childbirth primarily because of inadequate health care structures, low levels of education, and low status.⁷¹ Though not linked directly to conflict, the post conflict moment can provide the opportunity and resources to improve these gendered health outcomes through a combination of legal change together with investment in education and the health system.

c. economic development:

As we think about economic development, often a priority for external states and organizations engaging with conflicted and post-conflict societies, we argue that the frame of reference ought to encompass wider reference and acceptance of the international dialogue and practice related to the right to development, which has clearly been articulated as a right premised on the grounds of no distinction on the basis of sex.⁷²

Conflict disrupts the economy and, as peace takes hold, the formal employment sector may have few jobs. As an example, consider what happened in Bosnia. In 1990, two years before the siege of Sarajevo, Bosnia had a GDP of \$11 billion and a per capita income of \$2,400; five years later, by the time of the cease fire, the GDP had fallen to \$2

⁷⁰ Kristof, *supra* note 10, at 98.

⁷¹ *Id.* at 113-116.

⁷² As the UN High Commissioner on Human Rights explains:

The right to development can be rooted in the provisions of the Charter of the United Nations, the Universal Declaration on Human Rights and the two International Human Rights Covenants. Through the United Nations Charter, Member States undertook to "promote social progress and better standards of life in larger freedom" and "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

billion and the per capita income was estimated to be \$500.⁷³ Moreover, only 20% of the population was employed, and they tended to work for government-related agencies (police, schools, or municipalities).⁷⁴ Among the 80% who were unemployed at the end of the war, some found work within international organizations. This resulted in a polarized economy and labor market, in which those who worked were employed either by either the local government or the international administrative government,⁷⁵ and it also created an economy that was dependent on the international presence rather than sustaining itself.

Sometimes, as we have acknowledged, women make gains during conflict, such as entering the formal labor sector for the first time. However, women, who may have assumed non-traditional jobs during the conflict typically lose those jobs and return to their traditional roles thereafter. Even with improved laws to protect their rights, women may lack the requisite knowledge and legal literacy to take advantage of their new status.⁷⁶

⁷³ Dina Haynes, *Lessons From Arizona Market*, U. PA. L. REV. (forthcoming) (citing The World Bank Group, “Reconstruction of Bosnia and Herzegovina: Priorities for Recovery and Growth,” *formerly at* <http://www.worldbank.org/html/extdr/extme/bhgen.html> (on file with author)).

⁷⁴ *Id.*

⁷⁵ *Id.* In an odd gender twist, many have noted that the majority of locals hired by international organizations (IO’s) tended to be women. This was because women tended to have more administrative or “secretarial” skills, but also because more had tended to study the social sciences, which were particularly sought after by IO’s, the UN and the military. This gender disparity in the types of jobs held by men (the majority of whom are men among high level positions within IO’s) and women (the majority of whom are administrative staff) creates the inflated potential for sexual harassment and extreme power disparity. For more on the gender disparity in hiring among IO’s. See Dina Haynes, *Ethics of International Civil Service: a Reflection on How the Care of UN Staff Impacts The Ability to Fulfill Their Role in “Harmonizing” the World*, HAMLINE J. INT’L L. (forthcoming). See also Rees, *supra* note _____ at 57 (stating that the international institutions in BiH were mainly staffed in their senior positions by men. In fact, one author recalls more than one meeting at which she and Rees were the only international women in senior positions at a table full of men, with local Bosnian women sitting in chairs around the edges of the walls, serving as administrative assistants)(Haynes).

⁷⁶ See, e.g., Greenberg & Zuckerman, *supra* note 7, at 108.

Gender-focused economic development, which recognizes that women are often excluded, either formally or through entrenched discriminatory practices, can take many forms; for example, ensuring credit, rebuilding infrastructure, and promoting businesses. Gender centrality might lead to a focus on rural roads so that farmers (primarily women) can bring their goods to a market or can travel to a health care center, rather than rebuilding larger-scale highways.⁷⁷ It involves training women and men to develop their own livelihood, and it requires changes in attitudes toward women working. In some parts of the world, microcredit has helped women begin businesses and work their way out of poverty, although the model has been less successful in Africa than in Asia.⁷⁸

There is a critique of economic empowerment which suggests that it can serve as a means of legitimating Western hegemonic notions of a market economy without confronting the underlying conditions of social inequality that cause women to be poor.⁷⁹ Indeed, a simple emphasis on employing women can result in cheap labor, labor exploitation or human trafficking. Instead, economic development policies must operate in tandem with other aspects of the development project that result in recognizing women's civil, political, social, and reproductive rights and capacities.

E. Conclusion

⁷⁷ *See Id.* at 101, 122-23.

⁷⁸ *See, e.g.*, Kristof, *supra* note 10, at 191.

⁷⁹ *See, e.g.*, Deborah M. Weissman, *Gender and Human Rights: Between Morals and Politics*, in GENDER EQUALITY: DIMENSIONS OF WOMEN'S CITIZENSHIP 409, 426 (Linda McClain & Joanna Grossman eds. 2009).

Development, particularly in the post conflict context, must embrace more than mere attempts to increase the income of beneficiaries.⁸⁰ While there is a correlation between good governance (a post conflict priority and stability indicator) and per capita income, a higher per capita income does not necessarily result in better country governance.⁸¹ On the other hand, ensuring development for the long haul includes placing social services justice into the legislative, executive and administrative mainstream, with the corresponding need to train and ensure competence and prevent corruption. Ultimately, development is critical to fostering sustainable peace and security. It is also critical to assisting women in development, capturing and securing gains they may have made during war or which they may have begun to access in the post conflict process. Development in the post-conflict context therefore requires the coordination of activities, civil society promotion, and security safeguards based on recognition of the population's broadest socioeconomic needs. We argue that these goals are best met, both for the society as a whole and for women in particular, through the social services justice model of post conflict development, bridging together post conflict reconstruction, transitional justice and development programs through a mutual prioritization of social services provision.

⁸⁰ New research shows that good governance results in improved development, but that increasing incomes does not, by itself, result in good governance. See Daniel Kaufmann & Aart Kraay, *Growth Without Governance*, 3 *ECONOMIA* 169, 210-11 (Fall 2002).

⁸¹ *Id.*