

## 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 infrastructures are in disarray.<sup>1</sup> Not only have people been displaced from their homes, but typically health clinics, schools, roads, businesses, and markets have deteriorated substantially or have been destroyed.<sup>2</sup> Moreover, many countries undergoing post-conflict processes were poor before the conflict started; of the twenty poorest countries in the world, three-quarters experienced conflict during the last twenty years of the twentieth century.<sup>3</sup>

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 long-term.<sup>4</sup> The transition from short-term reconstruction to long-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

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† This Article was presented as part of the 2010 University of Baltimore School of Law Feminist Legal Theory Conference. Naomi Cahn is the John Theodore Fey Research Professor of Law, George Washington University Law School; Dina Haynes is an Associate Professor of Law at New England Law | Boston and Director of the Immigration Law Project; and Fionnuala Ní Aoláin is the Dorsey & Whitney Chair in Law at the University of Minnesota Law School and a Professor of Law and Director of the Transitional Justice Institute at the University of Ulster. We thank Margaret Johnson for her support of this project, and José Recio for his research assistance.

1. P.B. Anand, *Infrastructure Development in Post-Conflict Reconstruction*, in MAKING PEACE WORK: THE CHALLENGES OF SOCIAL AND ECONOMIC RECONSTRUCTION 228, 233 (Tony Addison & Tilman Bruck eds., 2009).
2. *See id.* at 228–29.
3. Hugh Waters, Brinnon Garrett & Gilbert Burnham, *Rehabilitating Health Systems in Post-Conflict Situations*, in MAKING PEACE WORK: THE CHALLENGES OF SOCIAL AND ECONOMIC RECONSTRUCTION, *supra* note 1, at 200.
4. *See generally* TSJEARD BOUTA ET AL., GENDER, CONFLICT, AND DEVELOPMENT 117–19 (2005) (discussing the reactivation of gender-sensitive educational and health services during post-conflict periods).

engaging in reconstruction and thereafter long-term development work.<sup>5</sup> To help establish both short- and long-term security in a post-conflict society, it is critical to integrate development and transition processes. In this context it is useful to stress that 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 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 eighty percent are women, children, and youths.<sup>6</sup> Thus, returning to homes or providing meaningful alternatives where that is not possible is an imperative for many women. Not responding to women's specific needs to return home, and inter alia advancing their security, heavily prejudices the reconstruction process. Second, women are central to any socioeconomic recovery process.<sup>7</sup> In many countries, the low level of women's education, their lack of power, and deeply entrenched cultural dynamics hamper improvements in women's status, social capacity, and political opportunity as the transitioning country seeks to recover.<sup>8</sup> 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.<sup>9</sup> 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

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5. Ron Waldman, *Rebuilding Resources After Conflict*, HUMANITARIAN EXCHANGE MAGAZINE, July 2003, <http://www.odihpn.org/report.asp?ID=2567>.
  6. WOMEN'S REFUGEE COMM'N, REFUGEE GIRLS: THE INVISIBLE FACES OF WAR 1 (2009), [http://www.womensrefugeecommission.org/images/stories/ref\\_girls\\_FINAL.pdf](http://www.womensrefugeecommission.org/images/stories/ref_girls_FINAL.pdf).
  7. *See* CONCILIATION RESOURCES, THE SOCIO-ECONOMIC ACCORD: AGREEMENT ON SOCIAL AND ECONOMIC ASPECTS AND AGRARIAN SITUATION, <http://www.c-r.org/our-work/accord/guatemala/socio-economicaccord.php> (last visited Feb. 27, 2010).
  8. *See* Judith Gardam & Michelle Jarvis, *Women and Armed Conflict: The International Response to the Beijing Platform for Action*, 32 COLUM. HUM. RTS. L. REV. 1, 30 (2000).
  9. *See* Binaifer Nowrojee, *Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims*, 18 HARV. HUM. RTS. J. 85, 87 (2005).

visits.<sup>10</sup> Preliminary studies have indicated that when women are in control of family finances (or have access to their own incomes) these items are better funded.<sup>11</sup> 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 it has hitherto and that much work is needed to both ground and empirically quantify this fundamental difference of conceptualization.

This Article 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 strategies, and then turns to an analysis of why gender matters in both contexts.<sup>12</sup> It then examines development as both a short- and long-term process, articulating a new model of “social services justice” to describe immediate needs as the transitioning country begins the peace stabilization process.<sup>13</sup> 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 long-term development, any of which is inclusive of transitional justice. It is a key element of realizing gender centrality in post-conflict societies.

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 livelihood to health to education; and (2) to expand the focus of justice and accountability mechanisms to account for the core material needs of those whom the conflict has victimized and to articulate and implement their visions of justice.<sup>14</sup> It makes gender central by grounding post-conflict needs in lived experiences

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10. See THE UNITED NATIONS CHILDREN’S FUND, *Equality in the Household, in THE STATE OF THE WORLD’S CHILDREN 2007: THE DOUBLE DIVIDEND OF GENDER EQUALITY* 16, 21–29 (Patrice Moccia et al. eds., 2006), available at <http://www.unicef.org/sowc07/report/chapters.php>.

11. *Id.*

12. See *infra* Parts I–III.

13. See *infra* Part IV.

14. See *infra* text accompanying note 119.

and by responding to the daily realities of life in a post-conflict country where formal accountability is often a distant reality.<sup>15</sup>

Although “development” can be a term used too broadly and loosely (and organizations who are ill-equipped or badly mandated can undertake it 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.<sup>16</sup> Drawing on the definition advanced by the United Nations 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.<sup>17</sup> 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.”<sup>18</sup> However, our analysis goes beyond mere socioeconomic conditions by focusing our attention on the benefits and problems of development when gender is a central concern.

The fields of development and of post-conflict reconstruction, already rather loosely defined, have historically organized their scope of work and timelines somewhat differently.<sup>19</sup> 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.<sup>20</sup> We have identified the disconnect and simultaneous overlap

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15. BOUTA ET AL., *supra* note 4, at 111–18 (discussing gender and rehabilitating social services).

16. AMARTYA SEN, DEVELOPMENT AS FREEDOM 3 (1999).

17. *See* HUMAN DEVELOPMENT REPORT 2009, OVERCOMING BARRIERS: HUMAN MOBILITY AND DEVELOPMENT 14–16 (2009), *available at* [http://hdr.undp.org/en/media/HDR\\_2009\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf) (discussing the broad implications that mobility has on human development); SEN, *supra* note 16, at 14–15; Roger Duthie, *Introduction to TRANSITIONAL JUSTICE AND DEVELOPMENT: MAKING CONNECTIONS* 17, 18 (Pablo de Greiff & Roger Duthie eds., 2009) [hereinafter Duthie, *Introduction*].

18. Duthie, *Introduction*, *supra* note 17, at 18.

19. *See infra* Part II.

20. *See* Pablo de Greiff, *Articulating the Links Between Transitional Justice and Development: Justice and Social Integration*, in *TRANSITIONAL JUSTICE AND DEVELOPMENT*, *supra* note 17, at 28, 31–32; Duthie, *Introduction*, *supra* note 17, at 17–18 (observing that development refers to 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: THE CHALLENGES OF SOCIAL AND ECONOMIC RECONSTRUCTION*, *supra* note 1, at 101.

between these fields resulting from many factors<sup>21</sup>—beginning with the messiness inherent in the post-conflict transition and including the multiple interests of international donors and non-governmental organizations who want to establish the framework for change as well as regional politics.<sup>22</sup>

In this Article, we add the overlap with development processes, goals, and interests into the analytical frame. In many ways, the development field, even more than the transitional justice field, has already begun to take gender into account in policy development and structural implementation.<sup>23</sup> Our comments, therefore, concentrate on building upon and advancing these strategies.

#### I. GENDER CENTRALITY IN DEVELOPMENT: ENGENDERING SHORT- AND LONG-TERM SECURITY

Security and safety are imperative in post-conflict societies, and integrating development strategies in the post-conflict phase is a critical component in assuring long-term security.<sup>24</sup> First, many post-conflict goals cannot be implemented, or even initiated, when the population is starving, homeless, and mistrustful of government-sponsored services.<sup>25</sup> Consequently, the transition must confront this dilemma in the planning process, by 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 distinct 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.<sup>26</sup>

Second, women are central to any national recovery process, socioeconomic or otherwise, and especially so in societies which

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21. NAOMI CAHN, DINA HAYNES & FIONNUALA NÍ AOLÁIN, ON THE FRONTLINES: GENDER, WAR AND THE POST-CONFLICT PROCESS (forthcoming 2010) (manuscript at 459–60, on file with authors).

22. *Id.* (manuscript at 460).

23. *Id.*

24. *Id.*

25. See Sanam Naraghi Anderlini & Judy El-Bushra, *Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action, Post Conflict Reconstruction* 60 (2004), [http://www.huntalternatives.org/pages/87\\_inclusive\\_security\\_toolkit.cfm](http://www.huntalternatives.org/pages/87_inclusive_security_toolkit.cfm).

26. See *id.* at 51 (describing physical and institutional reconstruction).

have been conflicted and violent.<sup>27</sup> 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.<sup>28</sup> For women, the transformation of a country from "conflicted" to "peaceful" is partial and exclusionary.<sup>29</sup> The term "peaceful transition" is highly contested for women, as it assumes a linear movement from violence to non-violence, which is rarely the case for women in post-conflict societies. 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. As noted earlier, studies indicate that when women control family finances, or have independent access to financial means, these needs are more highly prioritized.<sup>30</sup> These outcomes are likely true regardless of whether the country is in transition or not.<sup>31</sup> The transition process is differentiated by the fact that many more international donors are present and the context of transition, with attendant legal and political reform, creates unique opportunities to address women's needs.<sup>32</sup> 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.<sup>33</sup> Knowledge related to gendered patterns in fiscal responsibility at the individual and community level takes on new significance in the post-conflict reconstruction process. Micro-practices, at the household level,

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27. *See id.* at 61 (identifying the leadership role taken by women during and post-conflict).
  28. *See id.* at 62 (describing the "uphill struggle" of women in male-dominated societies in accessing and benefitting from post-conflict aid).
  29. CAHN, HAYNES & NÍ AOLÁIN, *supra* note 21 (manuscript at 461).
  30. *See* THE UNITED NATIONS CHILDREN'S FUND, THE STATE OF THE WORLD'S CHILDREN 2007: WOMEN AND CHILDREN: THE DOUBLE DIVIDEND OF GENDER EQUALITY 16, 26 (Patricia Moccia et al. eds., 2006), *available at* <http://www.unicef.org/sowc07/docs/sowc07.pdf> [hereinafter THE UNITED NATIONS CHILDREN'S FUND].
  31. *See id.* at 6 (discussing the pervasiveness of gender stereotypes throughout the world).
  32. *See id.* at 86.
  33. *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/pdf/OD32/4.pdf>; NICHOLAS D. KRISTOF & SHERYL WUDUNN, HALF THE SKY: TURNING OPPRESSION INTO OPPORTUNITY FOR WOMEN WORLDWIDE 135 (2009); 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/rt131.pdf>; THE UNITED NATIONS CHILDREN'S FUND, *supra* note 30, at 23–24.

affect the macro levels of 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 until now, and that much work is needed to both ground and empirically quantify this fundamental difference of conceptualization.

A reconstruction process in which gender is central would ensure that the country’s forward movement is grounded in the concrete developmental requirements of the population. These needs range from health, such as treatment centers for sexual violence victims and maternal care clinics, to infrastructure, such as building roads, to physical and legal protection, such as training police officers. Development activities must also build social and economic capital within a post-conflict state. This includes recognizing that free market development is not the only post-conflict economic transitional solution. Indeed, accepting the limits of the market in the context of deeply fractured societies involves the fundamental recognition that the country’s economic growth may be slow and that a long-term supportive presence will be necessary.

## II. 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 or exacerbate the conflict, and the high levels of violence that may accompany the end of the “official” war.<sup>34</sup> 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.<sup>35</sup> The experience of socioeconomic

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

35. See, e.g., Frances Stewart, *Root Causes of Violence Conflict in Developing Countries*, 324 BRIT. MED. J. 342 (2002); Frances Stewart, *Policies Towards Horizontal Inequalities in Post-Conflict Reconstruction* 6 (Ctr. For Research on Inequality, Human Sec. & Ethnicity, Working Paper No. 7, 2005), available at <http://www.crise.ox.ac.uk/pubs/workingpaper7.pdf>.

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 while demolishing economies.

Another difference between post-conflict reconstruction and development lies with the people and organizations undertaking it, as well as 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 were often in the field during the armed conflict itself. Their “process” tends to be reactive—focused on addressing emergencies and putting out fires.<sup>36</sup> 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.<sup>37</sup> As a consequence, these first reactors may believe that they are dealing with “real” emergencies, requiring urgent emergency responses.<sup>38</sup> In such a setting, development and “mere” women’s issues are not likely to take priority.<sup>39</sup> “[O]ne of the consequences of working in the post-conflict ‘theatre,’ employing military jargon” on a daily basis, and reflexively reacting rather than planning, even years after the conflict, is that this sustains an apparent (but not necessarily real) need to continue to operate in reactive mode,<sup>40</sup> and in this approach, women’s issues rarely end up being prioritized. We suggest that, throughout the post-conflict process, there is less reason to treat each problem as an emergency and a necessity to be thoughtful in creating long-term strategies, programs, and plans.

Nonetheless, the post-conflict reconstruction arena, which has been primarily concerned with the immediate aftermath of war on issues

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36. See, e.g., Dina Francesca 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: HUMAN RIGHTS AND THE RULE OF LAW IN POST WAR BOSNIA AND HERZEGOVINA 3 (Dina Francesca Haynes ed., 2008), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1016196](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1016196) [hereinafter Haynes, *The Deus ex Machina*].

37. See *id.* at 3, 22.

38. Dina Francesca Haynes, *Lessons from Arizona Market: How Adherence to Neoliberalism and the Free Market Mindset Harms Women in the Post Conflict Reconstruction Process*, 158 U. PA. L. REV. (forthcoming 2010), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1395679](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1395679) [hereinafter Haynes, *Lessons from Arizona Market*].

39. *Id.*

40. *Id.*



such as disarming the combatants and war crimes accountability, is beginning to expand its coverage. Scholars increasingly acknowledge that transitional justice, for instance, includes institutional reform, rule of law, constitution making and enforcement, and socioeconomic distribution within its broader competence.<sup>41</sup> 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 together and of the interrelationship between each of these activities and discourses.<sup>42</sup>

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.<sup>43</sup> Such participatory approaches mean 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 the state supporting reconstruction were penalized in meaningful ways for ignoring the advice or views of local constituencies (including women); relevant entities might also be rewarded with additional funding for such inclusiveness (which might highlight or prioritize gender). These negative or positive incentives are difficult to build into either pre-agreements or formal peace agreements, but we encourage innovative thinking about benchmarking and providing

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41. 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); HUMAN RIGHTS COUNCIL, UNITED NATIONS, ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL: ANALYTICAL STUDY ON HUMAN RIGHTS AND TRANSITIONAL JUSTICE 4 (2009), available at <http://www.unhcr.org/refworld/docid/4a9d1be40.html>.
  42. See Gerd Junne & Willemijn Verkoren, *The Challenges of Postconflict Development*, in *POSTCONFLICT DEVELOPMENT: MEETING NEW CHALLENGES* 1, 3–5 (Gerd Junne & Willemijn Verkoren eds., 2005).
  43. 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* 99, 109–10 (Kieran McEvoy & Lorna McGregor eds., 2008); Duthie, *Introduction*, *supra* note 17, at 20–21.

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.<sup>44</sup> And there are real risks inherent in the expansion of mandates by the international military presence<sup>45</sup> when it engages in humanitarian, post-conflict, and development work.<sup>46</sup> For one, such expansionism rarely impacts women positively. 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 frequently prioritize.<sup>47</sup> The emphasis on security tends to give higher value to troop safety needs over female-centered security concerns.<sup>48</sup> The narrow focus on political gains and stabilization often works to prevent broader emphasis on social and economic redistribution.<sup>49</sup> 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, impacting both security in real terms and the needs of the population.<sup>50</sup> 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.<sup>51</sup> Risks in this situation include military actors going beyond their formal mandate to begin engaging in post-conflict reconstruction without a coherent strategy or particular expertise, and in engaging in work motivated by a desire to win over local support for military and peacekeeping efforts, rather than a desire to assess local needs and meet them.<sup>52</sup>

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44. See *supra* notes 36–37 and accompanying text.

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

46. *Striking the Appropriate Balance: The Defense Department's Expanding Role in Foreign Assistance Before the H. Foreign Affairs Comm.*, 111th CONG. 6 (2009) (statement of Nancy Lindborg, President, Mercy Corps).

47. See Naomi Cahn & Fionnuala Ní Aoláin, *Hirsch Lecture: Gender, Masculinities and Transition in Conflicted Societies*, 44 NEW ENG. L. REV. (forthcoming 2010) (examining how “hyper” masculinity functions in the post-conflict peace-building attempts and how it affects women).

48. CHERYL BERNARD ET AL., *WOMEN AND NATION-BUILDING 2* (2008).

49. Kathleen Weekley, *The National or the Social? Problems of Nation-Building in Post-World War II Philippines*, 27 THIRD WORLD Q. 85, 85 (2006).

50. See James Glanz & T. Christian Miller, *Official History Spotlights Iraq Rebuilding Blunders*, N.Y. TIMES, Dec. 14, 2008, at A1.

51. See Haynes, *Lessons from Arizona Market*, *supra* note 38.

52. See *id.*

At times, development driven institutions and bilateral state policy seem more adept at and interested in determining local needs, and understanding their importance to the successful outcome of a project.<sup>53</sup> Consider, for instance, the cook-stove project in Darfur.<sup>54</sup> Here, engineers visited refugee camps, primarily occupied by women and children, and consulted with women 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 long distances to collect wood.<sup>55</sup> Engineers then developed a more fuel-efficient stove which does not solve all of the security and materials 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.<sup>56</sup> This micro example provides cogent clues as to what kinds of material needs emerge from participatory forms of engagement with vulnerable communities in post-conflict societies. Here 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 societies advance sufficiently to ensure development agendas that are sustainable and transformative.

The transitional justice field has also come late to recognition of these interrelationships, but it is evolving through the inclusion of socioeconomic rights and reparations in its discourse and practices.<sup>57</sup> In light of the post-conflict goals of peace, security, and reconciliation, however, there are unresolved questions as to whether mechanisms such as the International Criminal Court, reparations, or even truth commissions are instrumental to achieving these goals or what the interrelationships between criminal accountability and these

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53. *See id.*

54. Darfur Cookstoves, <http://darfurstoves.lbl.gov/> (last visited Feb. 27, 2010).

55. Darfur Cookstoves, *The Benefits of a Fuel-Efficient Stove*, <http://darfurstoves.lbl.gov/benefits.html> (last visited Feb. 27, 2010).

56. *See id.*; James F. Smith, *Efficient Wood Stoves Help Darfur Women*, June 3, 2009, [http://www.boston.com/news/world/worldly\\_boston/2009/06/efficient\\_wood\\_stoves\\_help\\_dar\\_3.html](http://www.boston.com/news/world/worldly_boston/2009/06/efficient_wood_stoves_help_dar_3.html).

57. *See generally* Ruth Rubio-Marin, THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS 2–4, 16–17 (Ruth Rubio-Marin ed., 2009) (describing how the transnational justice community is incorporating concepts of socio-economic rights and reparations).

goals might be.<sup>58</sup> 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 whom were women) stated that their highest individual priorities were peace, security, and livelihood concerns, such as money, education, food, and health.<sup>59</sup> The highest stated priorities for the government were peace, security, education, and development.<sup>60</sup> For the international community, the named priorities were development, money, peace, and food.<sup>61</sup> Transitional justice, which has been historically premised on achieving accountability and underpinned by the notion of “punish[ing] those responsible” was ranked as the eighteenth priority for individuals, the twelfth for the government, and the fifteenth for the international community.<sup>62</sup> 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.”<sup>63</sup> 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.<sup>64</sup> 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 compensation (financial compensation (51.8%) or cattle and goats (8.2%)), with only 1.7% indicating that victims should be given “justice.”<sup>65</sup>

While we recognize the limitations of relying on only two studies, and acknowledge 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 inquiries 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

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

59. *Id.* at 401.

60. *See id.* at 403 tbl.1.

61. *See id.*

62. *See id.*

63. *Id.* at 409.

64. PHUONG PHAM ET AL., WHEN THE WAR ENDS: A POPULATION-BASED SURVEY ON ATTITUDES ABOUT PEACE, JUSTICE, AND SOCIAL RECONSTRUCTION IN NORTHERN UGANDA 22 fig.3 (2007).

65. *Id.* at 32–33 tbl.11.

work has been founded. This affirms our calls for reconceptualizing the premises upon which post-conflict work is based.

Even as we accept the universal 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 people's social, economic, and repair needs on the ground. If such need 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 constitutes affects its relationship to development. If the post-conflict phase refers only to disarmament and narrow definitions of military led 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 of reconstruction. 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. 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:

[F]irst, [] 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.<sup>66</sup>

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 socioeconomic development in order to achieve the very goals that DDR sees itself

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66. Roger Duthie, *Toward a Development-Sensitive Approach to Transitional Justice*, 2 INT'L J. TRANSITIONAL JUST. 292, 295 (2008).

as advancing.<sup>67</sup> Indeed, at a more “global” level, there is general recognition that disarmament and development are linked (think “guns and butter” from basic economics courses),<sup>68</sup> 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 from humanitarian relief through post-conflict to long-term development. If it is done well, and with social services justice rather than market development as its core mission, then transformative outcomes may follow.

### III. WHY GENDER MATTERS IN DEVELOPMENT

Investing in women provides an enormous return.<sup>69</sup> 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 long-term sustainable peace and development. Since conflict scrambles women’s roles (positively and negatively) and often operates to foster hyper-masculinity, a development focus may fundamentally assist with the difficulties of disentangling such flux during the post-conflict process. This may be a critical intervention as civilians and combatants return to their families and 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 which have permeated all aspects of a conflicted society.<sup>70</sup>

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67. See OFFICE OF THE SPECIAL ADVISOR ON AFRICA, UNITED NATIONS, *Introduction to “DDR AND TRANSITIONAL JUSTICE”: TRANSITIONAL JUSTICE AND DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION IN AFRICA 2* (2007), available at <http://www.un.org/africa/osaa/speeches/ddr%20and%20tj%20in%20africa%20-%20english.pdf>.

68. See, e.g., 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 SYMPOSIUM ON THE RELATIONSHIP BETWEEN DISARMAMENT AND DEVELOPMENT 1, 1–2 (2004), available at <http://www.reliefweb.int/rw/lib.nsf/db900SID/LHON-69QDPP>.

69. See KRISTOF AND WUDUNN, *supra* note 33, at 238–39 (providing examples of countries and companies prospering by utilizing the strengths of women).

70. UNITED NATIONS AGENCY INTERNATIONAL DEVELOPMENT, WOMEN & CONFLICT: AN INTRODUCTORY GUIDE FOR PROGRAMMING (2007), <http://pdf.usaid.gov/pdf/docs/FNA/DJ/33pdf>.

There is ample data to support why women should be central to the development process.<sup>71</sup> Consider how education, a typical development priority, has gendered implications.<sup>72</sup> Getting more girls through school not only impacts directly their own welfare, but also the welfare of other family members and the community.<sup>73</sup> “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.”<sup>74</sup> Mothers who have received an education have their children immunized fifty percent more frequently than uneducated mothers, and the survival rate of children of educated mothers is fifty percent higher.<sup>75</sup> 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.<sup>76</sup> Each of these outcomes improves both the local community and the overall development of the country as a whole. Attention to the development of social capital (whether education, health, or economic independence) is particularly necessary in post-conflict societies where social infrastructures may have been destroyed, and reconstruction and international funding provides a unique opportunity to rebuild. In doing so, not only is there a general investment in social goods to the benefit of a post-conflict society, but there is also the means to undo some of the gender hierarchies and limitations that may have previously defined women’s status and potential.

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

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71. See GENDER EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS 1 (2003), available at [http://www.mdgender.net/upload/tools/MDGender\\_leaflet.pdf](http://www.mdgender.net/upload/tools/MDGender_leaflet.pdf).
  72. See KRISTOF & WUDUNN, *supra* note 33, at 170 (stating that education as a form of development is essential for women as a whole to contribute meaningfully in society).
  73. *Id.*
  74. See GENDER EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS, *supra* note 71, at 2.
  75. See UNICEF, *Goal: Promote Gender Equality and Empower Women*, <http://www.unicef.org/mdg/gender.html> (last visited Feb. 27, 2010).
  76. THE UNITED NATIONS CHILDREN’S FUND, *supra* note 30, at 16, 24 (citing LISA C. SMITH ET AL., THE IMPORTANCE OF WOMEN’S STATUS FOR CHILD NUTRITION IN DEVELOPING COUNTRIES 127–28 (Int’l Food Policy Research Inst. 2003)).

individual women, but the larger society.<sup>77</sup> Finally, states that do not protect women's rights are more likely to fail,<sup>78</sup> and states that cannot secure women's rights and place in the post-conflict world are not sustainable.<sup>79</sup>

#### IV. 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 most post-conflict accountability processes 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.<sup>80</sup> Alternative forms of justice have broadened this focus, recognizing that the legal system must respond to both victims and perpetrators.<sup>81</sup>

Perhaps the most significant forms of justice for women 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

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77. 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>.

78. *See, e.g.*, Naomi Cahn, *Women's Security/State Security*, in SECURITY: A MULTIDISCIPLINARY NORMATIVE APPROACH 261, 266 (Cecilia Bailliet ed. 2009).

79. *See* Inés Alberdi, Executive Dir., United Nations Dev. Fund for Women, *Int'l Colloquium on Women's Empowerment, Leadership, Sec.: A Call to Action: Accountability to Women in All Aspects of Conflict Prevention, Peacebuilding and Recovery* (Mar. 7, 2009), *available at* [http://www.unifem.org/news\\_event/story\\_detail.php?StoryID=845](http://www.unifem.org/news_event/story_detail.php?StoryID=845).

80. 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 “Right” to a Disinterested Prosecutor of Criminal Contempt: Unpacking Public and Private Interests*, 70 WASH. U. L.Q. 85, 110 (1992); Nancy L. Rosenblum, *Justice and the Experience of Injustice*, in MARTHA MINOW, *BREAKING THE CYCLES OF HATRED: MEMORY, LAW, AND REPAIR* 77, 88 (Nancy Rosenblum ed., 2002) (“[L]egal proceedings in response to human rights violations have as their goal justice and not assistance to the aggrieved.”).

81. *See* Hopkins, *supra* note 80, at 304–10 (illustrating evidence of restorative justice success).



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.<sup>82</sup> 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.<sup>83</sup> 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 liberal economic mandates.

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.<sup>84</sup> 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-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 post-conflict reconstruction process that provides a broader remedy to the country from the damages inflicted by conflict.

Social services justice serves as a recognition that women’s needs are not necessarily satisfied or met by criminal accountability but, instead, require resources that respond to their daily needs. For example, in seeking redress for sexual harms inflicted on them, women may be more interested in long-term health care than criminal punishment. 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

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82. See Naomi Cahn, *Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence*, 1 STAN. J. CIV. RTS. & CIV. LIB. 217, 220 & n.9, 221–22 (2005) [hereinafter Cahn, *Beyond Retribution*]; see generally Duthie, *Introduction*, *supra* note 17 (referring to “social justice”).

83. See RUBIO-MARIN, *supra* note 57, at 381–84.

84. Covenant on Economic, Social, and Cultural Rights, arts. VI, XI, Jan. 3, 1976, 993 U.N.T.S. 3 (recognizing the “right to work,” and to “an adequate standard of living”); see, e.g., Fionnuala Ní Aoláin & Eilish Rooney, *Underenforcement and Intersectionality: Gendered Aspects of Transition for Women*, 1 INT’L J. TRANSITIONAL JUST. 338, 338–39 (2007).

result from the conflict itself and address the conditions which created and facilitated communal violence.<sup>85</sup> They may also result from the corruption and economic crimes that often accompany conflict.<sup>86</sup> Justice, broadly defined, is part of an effort not just to compensate for past acts but also to deter future crimes.<sup>87</sup> The basic argument requires broader conceptions of post-conflict reconstruction, conceptions that require the integration of processes throughout the reconstruction period. These processes can include justice, development, demobilization, and the creation of “democratic [or engendered] space.”<sup>88</sup>

Women face special problems in conflicts.<sup>89</sup> The scale and scope of sexual violence<sup>90</sup> against women is almost incomprehensible in most of these conflicts.<sup>91</sup> Even 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

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85. See IRIN, OUR BODIES—THEIR BATTLE GROUND: GENDER-BASED VIOLENCE IN CONFLICT ZONES 3 (Sept. 2004), <http://www.irinnews.org/pdf/in-depth/GBV-IRIN-In-Depth.pdf> [hereinafter OUR BODIES—THEIR BATTLE GROUND].
86. See Ruben Carranza, *Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?*, 2 INT’L J. TRANSITIONAL JUST. 310, 329 (2008); Duthie, *Introduction*, *supra* note 17, at 17, 19–20.
87. See CRAIG KAUFFMAN, TRANSITIONAL JUSTICE IN GUATEMALA: LINKING THE PAST AND THE FUTURE, 3–4 (2005), <http://www.isa-south.org/2005%/20Miami%20Papers-files/Craig-Kauffman.pdf>.
88. See, e.g., Robert K. Hitchcock, *Emerging Africa: Democracy, Development and Environmental Change*, PRAIRIE FIRE NEWSPAPER, July 2008, <http://www.prairiefirenewspaper.com/2008/07/emerging-africa>. As Wangari Maathai defines it, this is not necessarily democracy, but the space for people to exercise their rights, including the right to expression. See WANGARI MAATHAI ON VOICE OF AMERICA, THE GREEN BELT MOVEMENT, <http://greenbeltmovement.org/a.php?id=105&t=p> (last visited Feb. 15, 2010).
89. See generally REPRODUCTIVE HEALTH RESPONSE IN CONFLICT CONSORTIUM, GENDER-BASED VIOLENCE, <http://www.rhc.org/resources/index.cfm?sector-gbv> (last visited Feb. 27, 2010) (providing an overview of sexual violence issues).
90. See *id.*
91. “An estimated half a million women were raped during the 1994 genocide in Rwanda. A staggering [fifty percent] 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 [forty] 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.” OUR BODIES—THEIR BATTLE GROUND, *supra* note 85, at 3.

moot.<sup>92</sup> 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 of 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, communities and victims need additional resources to heal the harm and to secure the peace. The community, the government, non-governmental organizations, multilateral institutions, or other donors may provide social services.<sup>93</sup> In this model, social services justice requires a multi-sectoral approach that involves the community as well as health, legal, security, and the social services actors.<sup>94</sup> Importantly, many of the states emerging 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 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 international actors can work independently or with local counterparts until local capacity is sufficient to provide the services. In fact, the capacity building model applied to a provision

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92. See Margaret Urban Walker, *Gender and Violence in Focus: A Background for Gender Justice in Reparations*, in *THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS*, *supra* note 57, at 18, 29–30.

93. See JEANNE WARD, *IF NOT NOW, WHEN? ADDRESSING GENDER-BASED VIOLENCE IN REFUGEE, INTERNALLY DISPLACED, AND POST-CONFLICT SETTINGS II* (Apr. 2002), <http://www.rhrc.org/resources/gbv/gbvintor.pdf>.

94. See *id.* (arguing that the “best practice” for preventing and responding to gender-based violence is now recognized as a “multisectoral model” which includes a variety of individuals, including teachers, traditional birth attendants, nurses, microcredit banks, judges, police, and other military individuals). On the need to address justice issues beyond the formal legal sector, see Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 *WM. & MARY J. WOMEN & L.* 335 (2005–2006).

of social services and development of social services frameworks would provide a profound link between post-conflict reconstruction and long-term development, and belongs in every post-conflict and development theatre as a practical means by which gender can be made a central focus.

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.<sup>95</sup> Families may have been separated by the conflict, and children may need reunification services.<sup>96</sup>

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.<sup>97</sup> Stable and safe societies are those 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 United Nations 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, counselling, and health and social services facilities and programmes . . . and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.”<sup>98</sup> A recent handbook published by the United Nations Division for the Advancement of Women compliments the declaration’s requirements and provides a model framework for legislation to address violence against women based on existing treaty obligations by states “to enact, implement

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95. See WARD, *supra* note 93, at 11–12.

96. See, e.g., INTERNATIONAL RESCUE COMMITTEE, SEPARATED CHILDREN (2009), <http://www.theirc.org/separated-children>.

97. See Jeffrey Fagan & Victoria Malkin, *Theorizing Community Justice Through Community Courts*, 30 FORDHAM URB. L.J. 897, 905–08 (2003).

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

and monitor legislation addressing all forms of violence against women.”<sup>99</sup>

Social services justice differs from restorative justice or the models of community justice that are developing in a number of post-conflict societies. We note that it is not attached to a formal legal proceeding, although it shares their focus on responding to crimes through involvement beyond the perpetrator and victim.<sup>100</sup> 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.<sup>101</sup> Reparations typically take the form of government-transferred aid<sup>102</sup> and involve the provision of “material benefits . . . for the devastation inflicted” based on a theory of compensation.<sup>103</sup>

As conceptions of reparations also expand, the dividing line between reparations and social services justice will inevitably narrow and blur. This causes 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 services, such as providing scholarships for children of sexual violence victims.”<sup>104</sup> Others have suggested reparations take the form of micro-finance, thereby combining developmental goals with transitional justice goals.<sup>105</sup> Through micro-finance, the recipients

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99. DIVISION FOR THE ADVANCEMENT OF WOMEN, UNITED NATIONS, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN I (2009).

100. *See, e.g.*, Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL’Y 63, 83–92 (2002); Fagan & Malkin, *supra* note 97, at 897–901. 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.

101. *See* Ronald C. Slye, *International Law, Human Rights Beneficiaries, and South Africa: Some Thoughts on the Utility of International Human Rights Law*, 2 CHI. J. INT’L L. 59, 73–74 (2001).

102. Perpetrators may also make reparations for their offenses.

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

104. *See* Cahn, *Beyond Retribution*, *supra* note 82, at 248.

105. *See* Anita Bernstein, *Pecuniary Reparations Following National Crisis: A Convergence of Tort Theory, Micro-Finance, and Gender*, 31 U. PA. J. INT’L ECON. L. 1, 4 (2009).

could also receive other services that are critical in a post-conflict society, ranging from health clinics to vocational training.<sup>106</sup>

Reparations are, however, typically provided through legislation or directly by the perpetrator to the victim.<sup>107</sup> They involve an acknowledgement of guilt together with an acceptance of responsibility. “Social services justice [SSJ] may be administered and funded by entities with no connection to the crime.”<sup>108</sup> While social services justice necessarily includes possible reparations programs as long-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, and 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 long-term development, any of which is inclusive of transitional justice.<sup>109</sup>

We acknowledge that there are potential criticisms of social services 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.<sup>110</sup> Because of its breadth, like restorative justice, social services justice can be an expensive proposition in compensating the victim, her family, and

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106. *Id.* at 28.

107. Reparation is “a tort-based mode of redress whereby a wrongdoing group accepts legal responsibility and compensates victims for the damage it inflicted upon them.” William C. Bradford, *Beyond Reparations: An American Indian Theory of Justice*, 66 OHIO ST. L.J. 1, 3 (2005). 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 id.*; *see generally* Note, *Bridging the Color Line: The Power of African-American Reparations to Redirect America’s Future*, 115 HARV. L. REV. 1689, 1710 (2002) (discussing the debate over reparations for slavery).

108. Cahn, *Beyond Retribution*, *supra* note 82, at 249.

109. *See id.*

110. *Id.*

her community.<sup>111</sup> It may also be subject to some of the critiques that have emerged concerning restorative justice and gender, in which the involvement and focus on community can be detrimental rather than supportive of women's needs. Second, because aspects of social services justice resemble development assistance, the social services may be emphasized at the expense of its justice and accountability aspects.<sup>112</sup> Indeed, many post-conflict reconstruction programs are arguably also development programs.<sup>113</sup> Third, as with the other types of justice discussed earlier, its effectiveness depends on sensitive implementation.<sup>114</sup> 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.<sup>115</sup> 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.<sup>116</sup>

These are legitimate criticisms that must be addressed as the concept is more fully developed in theory and in practice. Social services justice can only aid transitional countries as they move away from conflict and towards development if it assures that the framing principle is social services in the context of responsibility and accountability. Moreover, implementation must 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. 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

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111. *Id.*

112. *Id.*

113. *Id.* (citing Greenberg & Zuckerman, *supra* note 20, at 14).

114. *Id.*

115. See Charles Philpott & Rhodri C. Williams, *The Dayton Dialectic: The Significance of the Property Deprivation and Repossession in the Context of Ethnic Cleansing*, in *DECONSTRUCTING THE RECONSTRUCTION: HUMAN RIGHTS AND RULE OF LAW IN POSTWAR BOSNIA AND HERZEGOVINA*, *supra* note 36, at 157–60.

116. Public Statement, Amnesty International, United Nations: States Urged to Nominate Independent, Qualified Candidates for the Committee on Economic, Social and Cultural Rights (Nov. 20, 2009), <http://www.amnesty.org/en/library/asset/IOR40/014/2009/en/3b3f1430-1066-4822-a3a4-56c7818a6025/ior400142009en.pdf>.

social services justice model not only in the context of achieving accountability and reparations goals, but as an engendered security tool, linking humanitarian relief, post-conflict reconstruction, transitional justice and development by focusing on placing women in a position to claim or reclaim their place in society.

## V. LONG-TERM DEVELOPMENT

Notwithstanding the need to focus on short-term humanitarian aid, the post-conflict time period is also the time to begin long-term development projects that support 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 long-term reconstructive efforts. Projects begun as part of “social services justice” can provide the basis for these long-term strategies, which involve, for example, making education accessible, promoting adequate livelihood support, building health care delivery, and ensuring an adequately-paid, appropriately-sized, and well-trained civil service.<sup>117</sup> Indeed as we argue above, the social services justice model can be used as the link to carry post-conflict reconstruction into long-term development as a continuous model that may be calibrated in different ways and to different degrees in some phases over others.<sup>118</sup> 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 civil service.

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117. *See, e.g.*, Strategy for the Gendered Empowerment of Gambian Women, 2007–2011, [http://www.gm.undp.org/rtable/gender\\_empow\\_rtc.pdf](http://www.gm.undp.org/rtable/gender_empow_rtc.pdf) (last visited Feb. 27, 2010).

118. *See supra* Part IV.



### A. Education

Education should be a priority during all stages of the transition process. Education is a foundational principle of our analysis of how rights hierarchies must be upended to make gender central. First, education helps to achieve the short-term post-conflict security and stability for which internationals are striving.<sup>119</sup> Second, it helps to establish equality of voice and rights that we argue are central to all post-conflict endeavors.<sup>120</sup> For example, literacy rates among women in most post-conflict countries are abysmally low, placing them at a disadvantage as actors in the public sphere.<sup>121</sup> Conflict often disrupts the educational system, making it even more difficult for girls to complete their schooling.<sup>122</sup> Third, education is crucial to post-conflict development, as education allows the country to achieve and sustain economic growth and democratic governance. It is one of the most important mechanisms to develop social capital and mobility. A comprehensive developmental education policy would ensure new facilities in both urban and rural areas, with sensitivity to the language of instruction,<sup>123</sup> as well as to accessibility for boys and girls. Adult education is another critical component,<sup>124</sup> particularly given the disruptive effect of conflict on the larger education system. While improving education is not a panacea—higher literacy rates in Lebanon did not prevent violence,<sup>125</sup> for example, and education can also support a patriarchal and elitist system—it nonetheless provides the basis for enhancing economic opportunities and improving health.

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119. See, e.g., Stef Jansen, “Home” and Return in the Foreign Intervention in Bosnia and Herzegovina: An Anthropological Critique, in DECONSTRUCTING THE RECONSTRUCTION: HUMAN RIGHTS AND RULE OF LAW IN POSTWAR BOSNIA AND HERZEGOVINA, *supra* note 36, at 29, 48 (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, but because they feared their return would increase the “precariousness” of their lives, including matters of education for themselves and for their children).

120. See BOUTA ET AL., *supra* note 4, at 114.

121. See, e.g., Kathleen A. King, *Representation of Women: Constitutional Legislative Quotas in Rwanda and Uganda*, 1 CHARLESTON L. REV. 217, 225–26 (2007) (using Rwanda as an example and indicating that the literacy rate of Rwandan women (47%) is considerably lower than that of Rwandan men (58.1%).)

122. BOUTA ET AL., *supra* note 4, at 113–14.

123. See Wondem Asres Degu, *Reforming Education, in POST CONFLICT DEVELOPMENT: MEETING NEW CHALLENGES*, *supra* note 42, at 129, 131–32.

124. BOUTA ET AL., *supra* note 4, at xxvi, 112.

125. See KRISTOF & WUDUNN, *supra* note 33, at 170.

Studies have shown that the family of an educated mother is healthier and more economically viable.<sup>126</sup> Increasing the number of girls that complete primary education can significantly improve 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'.<sup>127</sup> Based on long-entrenched customary and social norms, 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.<sup>128</sup> 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.<sup>129</sup> 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.<sup>130</sup> Hence, educating women benefits the family and the community.<sup>131</sup> Moreover, educating more women increases economic growth and generates more skilled workers.<sup>132</sup>

While we should avoid the essentialized presumption that education for women will result in peaceful societies, there is a link between greater levels of economic equality and opportunity within the state and the decreased likelihood of 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. Gender-centrality might mean supporting home-based and community efforts, hiring women as teachers,<sup>133</sup> expanding the curriculum to include health and reproductive information,<sup>134</sup> and

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126. See THE UNITED NATIONS CHILDREN'S FUND, *supra* note 30, at viii, 2.

127. See *id.* at viii, 3-4, 7-8.

128. See *id.* at 7.

129. See *id.*

130. See KRISTOF & WUDUNN, *supra* note 33, at 135, 171.

131. See THE UNITED NATIONS CHILDREN'S FUND, *supra* note 30, at viii; see also KRISTOF & WUDUNN, *supra* note 33 (citing a study finding that for each additional year of *primary education* received, a girl is likely to have 0.26 fewer children).

132. DINA ABU-GHAIDA & STEPHAN KLASSEN, 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/MDG\\_Gender\\_Equity.pdf](http://siteresources.worldbank.org/EDUCATION/Resources/MDG_Gender_Equity.pdf).

133. See BOUTA ET AL., *supra* note 4, at 112, 119.

134. One of the authors was involved in conducting a post-conflict survey, which revealed that youths lack understanding of the reproduction process and knowledge of the various methods of birth control available.

providing incentives—perhaps even financial—for girls to complete their schooling.

### *B. Healthcare*

Conflicts can fundamentally affect healthcare, and those fomenting conflict often purposely target healthcare infrastructure.<sup>135</sup> During conflict, (1) the healthcare infrastructure will inevitably be weakened, if not entirely destroyed; (2) the government may be unable to provide any funding; and (3) there may be few healthcare workers.<sup>136</sup> In East Timor, for example, more than one-third of all healthcare clinics were destroyed.<sup>137</sup> In Mozambique, 1113 of the 1171 primary health units were looted, forced to close, or destroyed.<sup>138</sup>

Building a new healthcare system and ensuring its success invariably depends on international organizations working with local groups. In East Timor, UN agencies worked with local healthcare providers to decide where to locate new facilities and provided salaries for healthcare workers, ultimately resulting in a healthcare system that continues to function albeit with ongoing challenges.<sup>139</sup>

Changing healthcare may start with an emergency response, and then continue to address other needs. It involves concrete steps, working with the local communities, and has incredibly gendered needs and outcomes. Consider the approach of the International Committee of the Red Cross in Central African Republic:

[W]e 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. . . . [I]t's a matter of putting that together and often

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135. 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 U.S. 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.

136. *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/ChildHealthPC.pdf>.

137. Vanessa van Schoor, *Reviving Health Care, in* POST CONFLICT DEVELOPMENT: MEETING NEW CHALLENGES, *supra* note 42, at 147, 149.

138. *See* BUSTREO, *supra* note 136, at 11 (occurring between the years 1982 and 1990).

139. *See* van Schoor, *supra* note 137, at 150–51, 160.

working with health care workers on their attitudes and beliefs towards survivors.<sup>140</sup>

The organization astutely created a program that addressed the real needs of women and built capacity to increase that assistance.<sup>141</sup> Other more generalized gendered needs also exist, which are not necessarily linked to conflict. Sierra Leone, for instance, has the highest maternal mortality rate (MMR) in the world, at 2100 deaths per 100,000 live births, compared to the United States, where it is 1 death per 100,000 live births.<sup>142</sup> Beyond simple biology, women die in childbirth primarily because of inadequate healthcare structures, low levels of education, and low status.<sup>143</sup> Though not linked directly to conflict, the post-conflict environment can provide the opportunity and resources to improve these gendered health outcomes through a combination of legal change and investment in education and the health system. In this way, the post-conflict period provides not only the capacity to address the immediate legacies of war, but also to address directly and indirectly gendered hierarchies, exclusions, and discrimination experienced by women.

### *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 should encompass wider acceptance of the international dialogue and practice related to the right to development. The right to development has clearly been articulated as a right premised on the grounds of no distinction on the basis of sex.<sup>144</sup>

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140. HEIDI LEHMANN, FROM RELIEF TO DEVELOPMENT: GENDER-BASED VIOLENCE INTERVENTIONS IN CONFLICT AND POST-CONFLICT CONTEXTS (June 4, 2008), *available at* <http://www.wilsoncenter.org/events/docs/Lehmann%20Edited%20Transcript.pdf>.

141. *See id.*

142. KRISTOF & WUDUNN, *supra* note 33, at 98.

143. *See id.* at 113–16.

144. 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

Conflict disrupts the economy and, as peace takes hold, the formal employment sector may have few jobs and other economic opportunities. As an example, consider some of the features of post-conflict Bosnia. In 1990, two years before the siege of Sarajevo, Bosnia had a gross domestic product (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 billion and the per capita income was estimated to be \$500.<sup>145</sup> Moreover, only 20% of the population was employed, and they tended to work for government-related agencies (police, schools, or municipalities).<sup>146</sup> Among the 80% who were unemployed at the end of the war, some found work within international organizations.<sup>147</sup> This resulted in a polarized economy and labor market, in which those who worked were employed either by the local government or the international administrative government,<sup>148</sup> and it also created an economy that was dependent on the international presence rather than sustaining itself.<sup>149</sup> We recognize that in the aftermath of war there are no quick or easy solutions to “fixing” crippled economics, and that distortions due to international presence are inevitable, at least in the short-run. However, we caution that the failure to recognize the dependency pathways and to miss the opportunities to promote domestic economic productivity may create a long-term dysfunctional environment.

Sometimes, as we have acknowledged, women make gains during conflict, such as entering the formal labor sector for the first time.<sup>150</sup> However, women who have assumed non-traditional jobs during the conflict may also lose those jobs and return to their traditional roles

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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.”

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, DEVELOPMENT - RIGHT TO DEVELOPMENT, <http://www2.ohchr.org/english/issues/development/right/index.htm> (last visited Feb. 27, 2010).

145. Haynes, *The Deus ex Machina*, *supra* note 36; World Bank Group, Bosnia & Herzegovina: Country Profile 2009, <http://www.worldbank.org> (follow “Countries” hyperlink; then follow “Bosnia & Herzegovina” hyperlink; then follow “Country Overview” hyperlink).

146. Haynes, *The Deus ex Machina*, *supra* note 36.

147. *Id.*

148. *Id.*

149. *Id.* at 2–3.

150. *See id.*

thereafter.<sup>151</sup> Thus, conflict related economic opportunities may be highly transient for women, and the post-conflict process may simply regress women's gains. Post-conflict rule of law reforms resulting in improved laws to protect women's rights, may not have as much traction as we might assume in such contexts. They may, in practice be undercut as women may lack the requisite knowledge and legal literacy to take advantage of their new formal legal status and protections.<sup>152</sup> They may also in practice be subject to significant under-enforcement.<sup>153</sup>

Gender-focused economic development, which recognizes that women are often excluded, either formally or through entrenched discriminatory practices, can take many forms, for example, by ensuring credit, rebuilding infrastructure, and promoting businesses.<sup>154</sup> Gender centrality might lead to a focus on rural roads rather than rebuilding larger-scale highways, so that farmers (primarily women) can bring their goods to a market or can travel to a healthcare center.<sup>155</sup> It involves training women and men to develop their own livelihood, and it requires profound changes in social 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.<sup>156</sup>

We acknowledge the critique of economic empowerment which suggests that it can serve as a means of legitimizing Western hegemonic notions of a market economy without confronting the underlying conditions of social inequality that cause women to be poor.<sup>157</sup> Indeed, a simple emphasis on employing women can result in cheap labor, labor exploitation, or human trafficking.<sup>158</sup> We take this as a genuine and important backdrop to the proposals we advance. Instead, economic development policies must operate in tandem with other aspects of the development project that result in

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151. See Greenberg & Zuckerman, *supra* note 20, at 122.

152. See, e.g., *id.* at 108.

153. FIONNUALA NÍ AOLAÍN, GENDERED UNDER-ENFORCEMENT IN THE TRANSITIONAL JUSTICE CONTEXT IN GENDER IN TRANSITIONAL JUSTICE (forthcoming 2010).

154. See *id.* at 112.

155. See *id.* at 122–23.

156. See, e.g., KRISTOF & WUDUNN, *supra* note 33, at 191.

157. See, e.g., Deborah M. Weissman, *Gender and Human Rights: Between Morals and Politics*, in GENDER EQUALITY: DIMENSIONS OF WOMEN'S CITIZENSHIP 409, 425–26 (Linda C. McClain & Joanna L. Grossman eds., 2009).

158. See *id.* at 426–27.

recognizing women's civil, political, social, and reproductive rights and capacities.

## VI. CONCLUSION

Development, particularly in the post-conflict context, must embrace more than mere attempts to increase the income of beneficiaries.<sup>159</sup> 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 nor gendered governance.<sup>160</sup> 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 provisions.

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159. 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).

160. *Id.* at 169.