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Women's Rights After War on Paper: An Analysis of Legal Discourse

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In 2003, Rwanda instituted a new constitution and brought in a spate of laws to advance the rights of women. More than forty laws were introduced between 2003 and 2019. These laws covered areas ranging from electoral representation to land reform to bolster the economic and social standing of women in Rwandan society. The government hailed gender parity as a path to enduring democratic peace. Since then, many scholars have studied the implementation of these laws and whether they have led to real gains for women.¹ In the wake of the Fourth World Conference on Women in Beijing in 1995 and the institution of United Nations Security Council Resolution (UNSCR) 1325, the Women, Peace, and Security Agenda,² many countries rushed to show that they support women's rights and equality, especially countries rebuilding during or after conflict. A number of other countries of focus in our Women's Rights After War project, like Rwanda, are lauded (to different degrees) as international examples for their gender-progressive legislation instituted as an antidote to future conflict.

While the other contributions in this forum focus on substantive issues around the implementation of women's rights reforms, this article examines the reforms themselves. I question the framing of the laws – the words, their meaning, and the underlying logic behind them – and consider whether they are as progressive as claimed. I argue that in the process of packaging a specific version of rights, the language used in the laws entrench existing inequalities, codify, and structure harm in a way that then becomes reinforced through their implementation. By focusing not only on what the laws say, but also on what they do not, I argue that most only provide a veneer of progressive politics, circumscribing possibilities of transformative change at the outset. While my paper

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¹ Jennie E. Burnet, "Rwanda: Women's Political Representation and Its Consequences," in *The Palgrave Handbook of Women's Political Rights*, ed. Susan Franceschet, Mona Lena Krook, and Netina Tan (London: Palgrave Macmillan, 2019), 563–76; Burnet, "Sorting and Suffering: Social Classification in Post-Genocide Rwanda," in *Gendering Ethnicity in African Women's Lives*, ed. Jan Shetler (Madison: University of Wisconsin Press, 2015), 206–30; Burnet, "Women's Empowerment and Cultural Change in Rwanda," in *The Impact of Quotas on Women's Descriptive, Substantive, and Symbolic Representation*, ed. Susan Franceschet, Mona Lena Krook, and Jennifer Piscopo (Oxford: Oxford University Press, 2012), 190–207; Timothy Longman, "Limitations to Political Reform: The Undemocratic Nature of Transition in Rwanda," in *Remaking Rwanda: State Building and Human Rights after Mass Violence*, ed. Lars Waldorf and Scott Straus (Madison: University of Wisconsin Press, 2011), 25–47; Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge: Cambridge University Press, 2017); Marie E. Berry, *War, Women, and Power: From Violence to Mobilization in Rwanda and Bosnia-Herzegovina* (Cambridge: Cambridge University Press, 2018).

² UNSCR 1325 or the Women, Peace, and Security Agenda was passed in 2000 and reaffirms the important role of women in promoting international peace and security through peacebuilding, peacekeeping, peace negotiations, and humanitarian response. It encourages UN member countries to improve and promote women in important decision-making roles.

covers only a fraction of the larger discourse on women's rights, it provides an analysis of the laws at face value, as well as how they can create exclusionary and harmful circumstances for the women they are designed to help, even as they simultaneously act as important starting points for women's rights.

To build this analysis, I first outline literature that touches on how legal language is imbued with power and therefore not only reflects the social world it is embedded in but also acts upon the world in real terms. Extending this outline, I use the writings of feminist and critical legal scholars to point out how legal language marks and reiterates the subordinate position of marginalized people in society, even when it is seemingly progressive. Using this literature as my starting point, I turn to my analysis of original datasets developed by the Women's Rights After War project which account for all national-level laws instituted to bolster gender equality in war-affected countries such as Colombia, Nepal, Rwanda, Bosnia, Iraq, and Sri Lanka. Instead of analysing the laws one-by-one, I compare laws across the countries and provide thematic evidence to bolster my argument that the language of women's rights actually structures harm in these societies and entrenches existing inequalities. If the words of the laws reveal the reiteration of harm to some communities, the words that do not exist at all reveal the intentions of the state that instituted the laws.³ Because the laws are unable to provide concrete measures for healing, justice, and societal transformation, they allow a hegemonic status quo to continue. I conclude by pointing out how the discourse produced by the laws then promotes their irregular implementation in our project countries.

Literature Review

The politics of language has been long debated in linguistics, sociology, gender studies, and legal studies. Early linguistic analyses on language viewed it as a formal system with grammatical structure and syntax that provided a medium for communication.⁴ A second group of scholars, the instrumentalists, emerged to counter this binary and argue that language was not just about pure information but was only useful as a tool to further social ends – to demarcate communities and provide a common medium to achieve social cohesion.⁵ I utilize an integrationist approach, which combines both perspectives to account for the symbiotic relationship between language and society.

The integrationist literature argued that language was a “structure-in-use,” where language as a social structure interacts with other social structures like states, capital, gender, race, and class.⁶ Not only is this an interactive relationship, it is also mutually constitutive because there is a feedback loop between the language used and the social structures and relationships that are cited. Legal language, in particular, is incredibly powerful because it is where social relationships, authority, and language intersect.⁷

³ Robert M. Cover, “The Supreme Court, 1982 Term,” *Harvard Law Review* 97, no. 1 (1983): 1–306, <https://doi.org/10.2307/1340787>.

⁴ Martin Kusch, *Language as Calculus vs Language as Universal Medium*, Vol. 207 (Dordrecht: Kluwer Academic, 1989); Elizabeth Mertz, “Legal Language: Pragmatics, Poetics, and Social Power,” *Annual Review of Anthropology* 23, no. 1 (1994): 435–55.

⁵ Mertz, “Legal Language.”

⁶ *Ibid.*

⁷ *Ibid.*

Legal language is both discourse and action because it is able to enact real change in the world and therefore is imbued with power.⁸

Laws are considered to be non-negotiable, neutral, and the standard from which to judge behaviour. Any transgressions from the laws are criminalized and subject to the arbitrary violence of states.⁹ However, the power of legal language is not so straightforward. Legal language has different forms and characteristics because it does not operate in a vacuum in the social world. The normative construction of laws is shaped by shared mainstream interpretations and narratives that are often rooted in harms themselves.¹⁰ They can normalize and entrench systemic biases like sexism, racism, casteism, and so on.¹¹ Laws are often gendered, raced, and classed because these predominant social structures are still very prominent in the social world.¹² Feminist and decolonial legal scholars have pointed to how legal language can discursively reiterate patriarchal structures like the heteronormative family, capitalist structures like unpaid care work, and colonial structures through colonial legal maxims that bring further harm to already marginalized people.¹³ And often, when laws hold entities like the state accountable for harms like human rights violations, they can also reiterate the powers of the state in seeking redressal for these harms and strengthen other harmful regulations.¹⁴ Therefore, while laws are vital tools to provide for initial protections towards marginalized groups like women, they can also create unintended harms.

Data and Methods

I draw on original datasets created by the Women's Rights After War team on all national-level laws and legislations that promote women's rights in six countries that were in protracted conflict in the last three decades. Our researchers from Colombia, Nepal, Rwanda, Bosnia, Iraq, and Sri Lanka utilized government documents, parliamentary and legal proceedings, newspaper reports, international treaty documents, and national action plans to collate an exhaustive list of laws in five areas of interest: political quotas, civil and family law reform, criminal law reform, economic reform, and National Action Plans adopted from international laws and treaties. In each dataset, we record the laws, the years that they came into effect, the mechanisms through which they were adopted, the potential civil society organizations that advocated for their adoption, and the changes the laws brought into effect. These were verified by our in-country research partner organizations

⁸ Michel Foucault, *The History of Sexuality: The Will to Knowledge* (London: Penguin, 1998); Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton, NJ: Princeton University Press, 2000).

⁹ Cover, "The Supreme Court."

¹⁰ Ibid.

¹¹ Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law* (Ithaca, NY: Cornell University Press, 1991).

¹² Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence," *Signs: Journal of Women in Culture and Society* 8, no. 4 (1983): 635–58; MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1994); Carol Smart, "The Woman of Legal Discourse," *Social & Legal Studies* 1, no. 1 (1992): 29–44.

¹³ Merry, *Colonizing Hawai'i*; Merry, "Transnational Human Rights and Local Activism: Mapping the Middle," *American Anthropologist* 108, no. 1 (2006): 38–51; Ann Scales, *Legal Feminism: Activism, Lawyering, and Legal Theory* (New York: New York University Press, 2006); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, New Paperback Edition, Princeton Studies in Culture/Power/History (Princeton, NJ: Princeton University Press, 2018).

¹⁴ Merry, "Transnational Human Rights."

from each of the respective countries. Although there might be laws or policies instituted at the subnational level in the six countries, we do not focus on them because the project aimed to study the top-down effects of national and overarching legal mechanisms that seek to empower women and further gender equality. Therefore, the datasets are comprised only of nationally-mandated mechanisms that might have a subnational component to their implementation.

Defining the Women

The laws in focus across all six countries aim to bolster the status of women in economic, political, and social spheres. Though none of the laws officially define the category called “women” that they accord the rights to, the category is defined in the process of its use through these legal mechanisms. Feminist scholars have pointed to the way in which legal discourse is often able to construct a unidimensional category of “woman” and construct a “woman of legal discourse.”¹⁵ This “woman of legal discourse” is often static, painted in monolithic terms, through which their subordination in society is maintained. Scholars have argued that this is not always the case and that women who encounter these laws often challenge and negotiate with this monolithic portrayal and the laws that are imposed upon them on a day-to-day basis in both direct and subversive ways.¹⁶ However, this resistance does not preclude the fact that a mainstream image of “woman” becomes institutionalized discursively through the state and its authority, by virtue of the laws as they are written. This process has wide-ranging implications for how the laws are interpreted. This institutionalization further stresses differences along gender lines and typecasts women into their gender roles, creating a “paradox” that Wendy Brown describes as only mitigating their subordination instead of resolving it.¹⁷

Such an institutionalization is apparent in Nepal, where laws governing land succession and adoption of surnames define women only in relation to their role in the family. For example, women can only inherit land as daughters, granddaughters, wives, widows, mothers, or sisters – in terms of the relationship to the male members in the family. Women are provided with benefits like tax exemptions on land if they are widows.¹⁸ In Kurdistan, couples in the Kurdistan Regional Government are incentivized monetarily to marry¹⁹ and the wife’s grounds for divorce are much more restricted than their male counterparts.

Such examples show how these seemingly progressive laws that aim to provide social security to women often do so through the institution of a heteronormative family. These laws keep the role of women as wives, mothers, and daughters of men intact when ostensibly providing for them. This creates a cleavage between women who are integrated in traditional familial relations and women who are not. Not only are the latter category, such as unmarried women or women in non-traditional familial setups, excluded from

¹⁵ Smart, “The Woman of Legal Discourse.”

¹⁶ Lila Abu-Lughod, ed., *Remaking Women: Feminism and Modernity in the Middle East*, Princeton Studies in Culture/Power/History (Princeton, NJ: Princeton University Press, 1998); Abu-Lughod, *Writing Women’s Worlds: Bedouin Stories* (Berkeley: University of California Press, 1993); Paul Starr, “Social Categories and Claims in the Liberal State,” *Social Research: An International Quarterly* 59 (1992): 263–96.

¹⁷ “Suffering Rights as Paradoxes,” *Constellations* 7, no. 2 (2000): 208–29.

¹⁸ Nepal Land Reform Act 2021 BS.

¹⁹ Kurdistan Regional Government Law 17 on Marriage Fund.

the narrative, but the women who are included are only there on contingent terms. Women are incentivized to enter into and remain in their traditional patriarchal roles within the family to be secure and benefit from the state. Such laws therefore institutionalize images of women who cannot exist outside the bounds of traditional patriarchal arrangements and reiterate their often subordinated position within the household. They also preclude the possibility of alternative and radical ways of inhabiting non-heteronormative, queer, or community-based bodies or lifestyles.²⁰ Gender non-conforming, queer people, or butch women who deviate from being a “perfect woman” are not only omitted from the discourse of these rights but also from the protections they offer because they do not fit within the boundaries defined by the laws.²¹ These dynamics are especially pronounced in the aftermath of war when traditional families have splintered.²²

Which Women?

Some of the biggest sweeping changes in providing for women’s rights in our six countries have been focused on increasing their presence in political office. This is often codified in the constitution and laws through provisions for gender-based quotas. In all the six countries, a certain amount of seats are reserved at either the national or subnational level for women. This is seen as a way for women, who were hitherto a marginalized group in mainstream politics, to gain a level footing with their male counterparts, while ostensibly improving the democratic credentials of the state or ruling regime. Scholarship on the impact of gender quotas range from identifying the positive effects they have on improving women’s political participation²³ to how they do not bring about any substantive change in women’s conditions,²⁴ to how they are often co-opted by other powerful actors in detrimental ways to women themselves.²⁵ Almost all of this scholarship on gender quotas assess their substantive impact. For the rest of this section, I examine how gender quota laws, even prior to implementation, can discursively construct and reiterate existing inequalities.

Gender quota laws in the six countries, as they exist on paper, are structured in two primary ways. In the first, seats are reserved for women at the national or subnational

²⁰ Amanda Lock Swarr, *Sex in Transition: Remaking Gender and Race in South Africa* (Albany: State University of New York Press, 2012).

²¹ Melanie Judge, “Queer at 25: A Critical Perspective on Queerness, Politics and Futures,” *Journal of Asian and African Studies* 56, no. 1 (2021): 120–34; Pumla Dineo Gqola, “How the ‘Cult of Femininity’ and Violent Masculinities Support Endemic Gender Based Violence in Contemporary South Africa,” *African Identities* 5, no. 1 (2007): 111–24; Dianne Otto, “Queering Gender [Identity] in International Law,” *Nordic Journal of Human Rights* 33, no. 4 (2015): 299–318.

²² Jeannie Annan and Moriah Brier, “The Risk of Return: Intimate Partner Violence in Northern Uganda’s Armed Conflict,” *Social Science & Medicine* 70, no. 1 (January 2010): 152–9; Lucy Fiske and Rita Shackel, “Gender, Poverty and Violence: Transitional Justice Responses to Converging Processes of Domination of Women in Eastern DRC, Northern Uganda and Kenya,” *Women’s Studies International Forum* 51 (2015): 110–17.

²³ Karen Celis, “Substantive Representation of Women: The Representation of Women’s Interests and the Impact of Descriptive Representation in the Belgian Parliament (1900–1979),” *Journal of Women, Politics & Policy* 28, no. 2 (2006): 85–114; Manon Tremblay, “Do Female MPs Substantively Represent Women? A Study of Legislative Behaviour in Canada’s 35th Parliament,” *Canadian Journal of Political Science* 31, no. 3 (1998): 435–65.

²⁴ Berry, *War, Women, and Power*.

²⁵ Marie E. Berry and Milli Lake, “Women’s Rights After War: On Gender Interventions and Enduring Hierarchies,” *Annual Review of Law and Social Science* 17, no. 1 (2021): 459–81; Daniela Donno and Anne-Kathrin Kreft, “Authoritarian Institutions and Women’s Rights,” *Comparative Political Studies* 52, no. 5 (2019): 720–53.

level. This is evident in Iraq, which provides for twenty-five per cent of seats in the Council of Representatives to Iraqi women, or in Sri Lanka where twenty-five per cent of seats in local government have to be won by women. In the second case, women have reserved space on candidate and party lists and parties are only eligible to take part in the elections if they meet the gender quota criteria. In Colombia, thirty per cent of the electoral list must comprise of women and in Bosnia this has to be forty per cent. In both types of quota representation, women are mostly taken as a singular category and are representative primarily of their gender instead of their interconnected and intersectional identities comprising class, caste, race, and so on.²⁶ All the countries in our project, like most countries in the world, are pluralistic societies comprising people with varied caste, class, race, and ethnic backgrounds. Though the Colombian state officially only recognizes three ethnic groups, there are over 900 ethnic groups.²⁷ In Nepal, where caste and class play a major divisive role, there are over 125 caste and ethnic groups.²⁸

The laws discursively privilege the identity of “woman” over other identities like race, caste, or class that might impact women’s everyday experiences in significant ways. By providing for a blanket category of “women,” these laws ignore the very differing realities of women from different social groups. Women’s intersectional identities are more than just identity markers that define them.²⁹ They have the ability to shape the material realities of women who have differing privileges, access to resources, and who experience oppression differently.³⁰

In Sri Lanka, for example, Tamil women working in the tea plantations are structurally and subjectively in a more precarious position than Tamil women in the North and the East, who in turn are in a more precarious position than Sinhala women in the rest of the country.³¹ The women Tamil workers in the Hill Country, who were brought as indentured labourers to work on tea plantations during British rule, are central to the economic growth and transnational standing of Sri Lanka. At the same time, they have no ownership to the land they work on and are dispossessed of their labour, in addition to the structural marginalization they face as minority women from marginalized castes.³² Only in Nepal is there a specific consideration to women who are from Dalit and other marginalized backgrounds. Even here, this consideration is inconsistent, where quotas on candidate lists provide specifically for Dalit and indigenous women, but the actual seats reserved at the national or local level have no such provision catering to women from multiple marginal identities.

By presenting women as an overarching and all-encompassing category without any differentiation, the laws allow women who are located within the intersection of multiple oppressive identities to fall through the cracks. This creates room for the laws to be co-

²⁶ Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” University of Chicago Legal Forum (1989): 31.

²⁷ Departamento Administrativo Nacional de Estadística (DANE), “Censo Nacional de Población y Vivienda,” DANE – Información para Todos, 2018, <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/censo-nacional-de-poblacion-y-vivienda-2018>.

²⁸ Central Bureau of Statistics (CBS), “Population Census 2021,” Government of Nepal (Kathmandu, Nepal: Central Bureau of Statistics, 2021), <https://censusnepal.cbs.gov.np/Home/Details?tpid=5&tfsid=17>.

²⁹ Crenshaw, “Demarginalizing the Intersection.”

³⁰ Patricia Hill Collins, *Intersectionality as Critical Social Theory* (Durham, NC: Duke University Press, 2019).

³¹ Mythri Jegathesan, *Tea and Solidarity: Tamil Women and Work in Postwar Sri Lanka, Decolonizing Feminisms* (Seattle: University of Washington Press, 2019).

³² Jegathesan, *Tea and Solidarity*.

opted by privileged and powerful women who then go on to represent all the women of the country even as their experiences might not be truly reflective of the actual societal dynamics in the country. It also allows for the consolidation of ethnic or class domination in powerful positions under the guise of women's inclusion in politics. This dynamic is apparent in Rwanda, where the majority of women elected to the parliament are allied with the ruling Rwandan Patriotic Front and thereby overwhelmingly represent the Tutsi minority community in parliament. Such laws, instead of repairing and providing justice to historical marginalization, actually go on to reproduce the same inequalities that kept women from varied backgrounds from accessing power. The implicit privileging of certain identities and the erasure of others in the laws' implementation reinforces legacies of inequality that often find their roots in colonial subjugation. Laws therefore not only create new boundaries of inclusion and exclusion but also make invisible existing historical differences.

Incentives and Punishments

All the six countries in the focus of our study have experienced or continue to experience major protracted conflict. Unlike other contexts where laws for women's rights are introduced in times of relative calm, the instability created by war is often a focus within the laws themselves. Laws to promote women's rights and gender equality are often heralded as a special concession and recognition of the unique experience that women faced during the war. For example, in Colombia, the Constitutional Court even established that providing for electoral quotas for women was a form of "reparations and compensation" to women's historic marginalization in the country.³³ These laws are therefore seen as a mechanism through which the state can make up for the harms that women face in conflict and outside of it. In our project countries, this aim to correct past harm is often deployed in women's rights laws through incentives or punishments.

Certain laws work to provide incentives to different actors if they follow through on implementing mandated stipulations. For example, revised laws to promote women's ownership of land in Nepal³⁴ provide for a fifty per cent tax exemption on land registration if the land is transferred to a female family member. In Colombia, if electoral lists have women candidates who win, political parties receive monetary incentives. Though laws like these aim to provide more opportunities for women, they can also end up making women a middle link to reach a different goal. Women are inadvertently constructed through the laws as an instrument to reach a specified tax redemption or increased funds instead of advocating for women's rights as a beneficial and transformative end in and of itself. This provides room for actors motivated by capital or conservative political interests to strategically instrumentalize women in order to push forth agendas beyond women's rights.³⁵

While incentive-based laws promoting women's rights are one side of the story, a spate of punitive laws is the other. These are laws that try to enforce women's safety, well-being, and freedom from different kinds of violence through the threat of punishment. Punitive

³³ Judicial review C-490 of 2011 of Law 1475 on the electoral quota to review electoral quotas for women.

³⁴ Financial Act 2062 BS of 2015 states that there is a fifty per cent tax exemption on land registration when transferring land within three generations of daughter or granddaughter.

³⁵ Berry and Lake, "Women's Rights After War."

laws are most visible in relation to sexual and reproductive rights or in relation to violence towards women. For example, in Rwanda, abortion is still illegal unless in the case of rape, incest, or danger to the life of the pregnant woman. If women undergo abortion on their own terms, they are subject to jail time. This forces women to seek traditional methods of obtaining an abortion. Studies show that thousands of Rwandan women face severe medical complications or even death after improperly induced abortions each year.³⁶ Countless scholarship point to how illegalizing and punishing women for abortion is inherently violent, given that it strips away their bodily autonomy³⁷ and individual right to decide their futures,³⁸ and given the precarious position in which women who cannot access safe abortion are placed.³⁹

Similarly, punitive measures are often the only solution to punish perpetrators of sexual violence. In Nepal, perpetrators of sexual violence are subject to varying years of imprisonment based on the age of the victim. However, relying only on punitive legal mechanisms uphold the belief that they can solely deter further offenders. This has been disproved countless times, and women often face violence in ways that do not make it to police complaints or courts. One of our interlocutors in Nepal spoke to us about the case of a Dalit woman in Janakpur who was assaulted outside a public toilet. However, because her assaulter was from a higher caste and had contacts within the police, she was unwilling to report the crime because of the backlash it could create for her and her family.⁴⁰

Even when women are able to access available legal mechanisms, these mechanisms and environments often create more hostility for women, especially women from marginalized backgrounds. In Colombia, a social worker from Meta told us about how difficult it is for women to register as a victim in the Registro Único de Víctimas (Unique Registry of Victims). Women have to prove their victimhood to five or six different institutions to receive a certificate that qualifies them as displaced or as victims of sexual violence. This difficulty is compounded by the fact that the perpetrators they are reporting about can belong to any of the groups who are still in power – the Colombian Army, the FARC, or other paramilitary groups.⁴¹

Moreover, there is an assumption that taking action against this one spectacular instance of violence that the laws target is enough to provide justice to women. However, women face different layers of violence, often as a continuum, across multiple temporal and spatial settings.⁴² And inherent to this idea of retribution is that violence by

³⁶ Paulin Basinga, Ann M. Moore, Susheela Singh, Lisa Remez, Francine Birungi, and Laetitia Nyirazinyoye, *Unintended Pregnancy and Induced Abortion in Rwanda* (Rwanda: Guttmacher Institute, 2013).

³⁷ Judith Jarvis Thomson, "A Defense of Abortion," in *Biomedical Ethics and the Law*, ed. James M. Humber and Robert F. Almeder (Boston, MA: Springer US, 1976), 39–54; Laurence H. Tribe, *Abortion: The Clash of Absolutes* (New York: Norton, 1992).

³⁸ Amanda Jean Stevenson, "The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant," *Demography* 58, no. 6 (2021): 2019–28; Elise Andaya and Joanna Mishtal, "The Erosion of Rights to Abortion Care in the United States: A Call for a Renewed Anthropological Engagement with the Politics of Abortion: Erosion of Rights to Abortion Care in the United States," *Medical Anthropology Quarterly* 31, no. 1 (2017): 40–59.

³⁹ Faye D. Ginsburg, *Contested Lives: The Abortion Debate in an American Community*, updated with new intro. (Berkeley: University of California Press, 1998); Andrea Veltman and Mark Piper, ed., *Autonomy, Oppression, and Gender* (Oxford: Oxford University Press, 2014).

⁴⁰ Interview with community organizer, Kathmandu, November 2019.

⁴¹ Interview with social worker, Bogotá, March 2021.

⁴² Cynthia Cockburn, "The Continuum of Violence: A Gender Perspective on War and Peace," in *Sites of Violence: Gender and Conflict Zones*, ed. Wenona Giles and Jennifer Hyndman (Los Angeles: University of California Press, 2004).

the state in terms of punishments like imprisonment or death makes up for the violence meted out by an individual and is enough to provide closure to the victims. However, this is hardly the case.

Victims often require more than retribution and look towards healing. In Colombia, women's rights activists in Cartagena point out that the central government was only focused on acknowledging that someone is a victim and registering them in the Registry of Victims. They describe how,

... later, whenever they (the government) feel it's appropriate, they will receive compensation, meaning, they will give them monetary resources. But it's not a lot. Then, each territory, each territorial government, like the mayors, governors should provide the rest of the services, like health, education ...

These activists also note how a lack of economic opportunity for women and the lack of respect for women's rights within Colombian society impacts the way victims navigate laws. In most of our project countries, there are actually no other legal provisions for restitution, healing, reparations, or measures toward bringing cultural shifts against patriarchy and violence. This lack implies that the pinnacle of institutional work by the state to make up for the violence that women face is to deal with a limited number of cases through the criminal justice system, rather than working towards more holistic and substantial transformation.

Therefore, the women's rights reforms under our investigation serve either to pave the way for other benefits, creating new incentive structures for their instrumentalization by political actors, or create a situation where their lack of implementation invokes fear and punishment. While the laws promote women's rights and provide for some women to experience empowerment from their historical marginalization, they are only a starting point when we consider women's justice as the end goal.

Conclusion: The Empty Spaces

The above analysis calls attention to a number of key insights. The first is that laws as they are presented on paper are often able to create a narrative about women and women's rights regardless of how they might be implemented. Their language, and the ways they delimit boundaries of inclusion and exclusion, reveals both the intentions of the state and the larger dynamics of the societies in which they are embedded. At the same time, they are also able to inform the way concepts like women's rights, violence, and even women are discursively constructed and embedded in war-affected societies. Secondly, they show the limitations of existing legal frameworks in providing for women's rights. Though many of these laws are lauded for their progressive approach to women's rights, I have highlighted how they can create new hierarchies of citizenship, new terrain for inclusion and exclusion, and reinforce existing inequalities in their lived experience.⁴³ From circumscribing who "women" even are, to which women get to be reflected and represented in the laws, to how their rights are envisioned in a limited way, legal frameworks can mask the fissures and instability that they portend to remedy in fragile, war-affected contexts.

⁴³ Natasha Behl, *Gendered Citizenship: Understanding Gendered Violence in Democratic India* (Oxford: Oxford University Press, 2019).

Most of this article focuses on what is actually present in the legal and constitutional frameworks cobbled together during and after war. As I conclude, however, I would like to focus on what is missing from these frameworks: the empty spaces. Most of the “post-war”⁴⁴ periods in our countries are reminiscent of the periods before conflict – increased authoritarianism and surveillance in Rwanda and Sri Lanka, violent curbing of dissent in Colombia, a rise in ethnic hatred and divisive rhetoric in Bosnia, and increased economic instability in Sri Lanka and Nepal. Existing frameworks only attempt to create space in the existing setup by including women to a system that is already deeply flawed and implicated in the emergence of the past conflict, instead of creating new systems on the whole. This is where considering the empty spaces in existing frameworks becomes key. The biggest empty spaces are around repair, healing, and structural transformation. These are themes that, though not present in legal maxims, are extremely valuable in rebuilding lives, communities, and societies deeply scarred by war.

These empty spaces are often pointed out by our interlocutors – women and community activists who are working daily on the ground to transform lives affected by the conflict. Most of our interlocutors argue that compensations or prosecutions do not bring them the closure they seek. Women whose husbands were disappeared during the war in Sri Lanka are now community activists who question the utility of prosecutions to the goal of justice. One such activist from Pasikuda told us,

I don't want prosecutions. I don't need prosecutions. I am ok with amnesty. But I need to know; I need information. I need to know what happened. To my husband because my son is now 12 years old. And he doesn't know what has happened. He see the picture of his father that is hanging in the house, but he doesn't know what happened to him.

These women stress the importance of information, transparency, and accountability to the process of justice, something that they do not necessarily obtain from the laws themselves.

In this process of searching for justice, many women note how community has been pivotal to their healing. Women who lost male members in their household either to death or enforced disappearance have to now be primary breadwinners and also caretakers for themselves and their families in ways they did not have to before, and also advocate to find and account for the missing family member. They band together with other women in similar situations to theirs through this advocacy work and form communities that become extended families. L, an activist in Cartagena, Colombia, spoke to us about being forcibly displaced from her home to the city after the conflict:

So all of these burdens that we, the women, have on our shoulders increase our responsibilities and when we realized, for example, that there were not very many opportunities for us, we were also the ones that led the way and decided to get organized, decided to figure out what we were going to do in a city where we were completely helpless and we didn't have the support of our families or of anyone else, we started looking for ways to survive in this unfamiliar situation.

⁴⁴ I use “post-war” because many of the countries in question have only had peace agreements or power-sharing agreements to signal the end of one type of conflict but are still subject to many other kinds of internal wars.

Healing was therefore ensuring that their material needs were met in ways that sustained them by forming connections with each other. As one of our interlocuters in Sri Lanka noted,

There is a conversation about providing victims reparations in the form of money. But this is just to shut us up, because once a family agreed to accept the payment, they have to close the case. So it basically means that the state will not do anything further.

This shows that the laws by themselves do not bring about transformative change in women's lives.⁴⁵ Laws sometimes mask empty spaces that women see as central to their transformation, healing, and repair after the violence they have experienced in the conflict. Not only do they have the capacity to further marginalize some women and entrench inequalities already present, but they can also present the idea that the work of the state ends with the institution of laws. However, as the women in our countries note, there is a lot more they require to reach fully liveable lives. This fact forces us to contend with the question: are laws during and after conflict necessarily the only frame-work to reimagine women's place in societies if they themselves are representative of the structure that creates and maintains harm?

Notes on Contributor

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⁴⁵ Berry and Lake, "Women's Rights After War"; Michael McCann, "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Social Science* 2, no. 1 (2006): 17–38.