

# The Exclusivity of Inclusion: Global Construction of Vulnerable and Apolitical Victimhood in Peace Agreements

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## ABSTRACT<sup>∞</sup>

This article examines the articulation of commitments towards inclusion and victimhood agreed upon within peace processes. It builds on original and comprehensive empirical material to scrutinize provisions for victims' inclusion in all peace agreements signed from 1990 to 2016. In addition to methodological innovations, this approach offers a global picture and theoretical insights from intersectional, feminist and decolonial perspectives. The article finds that the conceptualizations of 'victimhood' and 'inclusion' are mostly gender and politically blind; inclusion efforts are often pursued without consideration for political and socio-cultural issues. Still within such conceptual ambiguity, qualifiers and types of efforts provided for inclusion produce the global construction of victimhood as vulnerable, innocent and apolitical. Such conceptual construction negates the complex and fluid political identity of victims; and reproduces sexist, heteronormative and subordinating binaries. The adopted language magnifies vulnerabilities within peace agreements, and provides for actions that do not create space for active participation within these institutional settings. This article contributes to the growing theoretical and policy discussions about inclusion by exposing the 'inclusion conundrum,' i.e., inevitable exclusivity – shaped by different forms of sexism, classism and racism – entailed in practices that inquire and decide which victims should be included. Building on these observations, I call for an ontological re-articulation of inclusion by reshaping transitional institutional responses that embrace fluidity rather than reproduce oppression exacerbated by violent conflicts.

**KEYWORDS:** Inclusion, intersectionality, peace agreements, peace processes, victims

## INTRODUCTION

International actors involved in peacebuilding are increasingly seeking to promote inclusive political settlements. Moral and normative commitments towards inclusive

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peace processes have become politically imperative.<sup>1</sup> Today there is limited policy contestation about this: inclusive processes are believed to lead to legitimate political settlements; inclusive and sustainable development is perceived as the most efficient way to prevent violent conflict. The 2018 'Pathways for Peace' report jointly published by the United Nations and the World Bank states 'Inclusive decision making is fundamental to sustaining peace at all levels, as are long-term policies to address economic, social, and political aspirations.'<sup>2</sup> Throughout the article, I deploy an intersectional scrutiny of commitments to inclusion in peace agreements and demonstrate exclusive effects of the global construction of victims as innocent, apolitical and vulnerable.

Specifically, I argue that 1) 'victimhood' and 'inclusion' are concepts that lack conceptual clarity; 2) as a political aim containing moral claims, inclusion efforts are often pursued without consideration for political and socio-cultural issues; 3) efforts to include victims within peace processes are often based on false binaries or fixed identifiers (such as gender, age, ethnicity group belonging and indisputable innocence) that consolidate a fixed perception of a heteronormative, vulnerable and apolitical victimhood; 4) such global conceptualization negates individuals' fluid political and social identities and is tainted by patriarchal and subordinating elements. In sum, the simplistic mantra of including victims will inevitably encounter ethical challenges with political effects, i.e., inclusion conundrums. The neglect of the fluid socio-political identities of people included in peace processes, peace agreements and accompanying transitional justice institutions entails and silences exclusionary functions of inclusion that might crystalize or reinforce existing power imbalances that inclusion efforts claim to address. This lack of conceptual clarity is not only a by-product of technocratic approaches to inclusion, it also becomes a useful tool to shielding political aims behind the veneer of inclusion.

The article is driven by three key research questions: How are 'victimhood' and 'inclusion' conceptually constructed in peace agreements? Does such global construction of inclusion entail exclusionary dimensions, and why? How do the social and political functions of such conceptualization of victimhood relate to the global inclusion agenda? In doing so, the article opens the black box of 'inclusion conundrums' by revisiting commitments towards inclusive peace. A term that I coined, 'inclusion conundrums,' refers to socio-political choices and their inevitable exclusive effects in enquiring and deciding who should be included.

Framed at the crossroads of feminist and decolonial perspectives, my intersectional analysis suggests that inclusion should not be about finding the right combination of actors, but about re-thinking normative frameworks that structurally exclude certain types of issues and the people affected by them. This article adopts an innovative research methodology based on a comprehensive qualitative analysis of the language related to victimhood and inclusion in the thousand peace agreements signed from 1990 to 2016 across 120 countries. Doing so, I provide an often-missing global overview across countries and conflicts.

- 1 Alex de Waal, 'Inclusion in Peacemaking: From Moral Claim to Political Fact,' in *The Fabric of Peace in Africa: Looking Beyond the State*, ed. Pamela Aall and Chester A. Crocker (Montreal: CIGI Press, 2017).
- 2 The report continues by underlining the importance of youth and women inclusion (United Nations and World Bank, 'Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict' 2018, v).

The first section of the article presents debates around the inclusion of victims in peace processes and transitional justice literature. Second, it details the methodological approach. The third section presents the global review that maps chronologically, geographically and thematically how victims have been addressed in 1518 peace agreements. The final section consolidates the theoretical contributions from intersectional perspectives. My contribution to the debates related to the inclusion agenda is not a call for a clearer definition, but a call for an ontological re-articulation of inclusion, i.e., rethinking the very core assumptions that create exclusion and negate fluid and inevitably political identifiers of people affected by violence.

### BRINGING VICTIMS TO THE TABLE: LITERATURE STATE OF THE ART AND THEORETICAL GAPS

The question of victims and their inclusion is central to several academic debates related to inclusive peace processes, and victim-centered transitional justice approaches in the fields of peace, development and socio-legal studies. This section provides an overview of the state of the art of the inclusion debate, as well as clarifying theoretically what I frame throughout the article as the different dimensions of the inclusion conundrums.

Resulting from elite deals in peace processes, peace agreements have frequently been criticized for excluding most of the constituency affected by these agreements. In response to such observations, peacebuilding scholars close to the peace and mediation policy environment gradually reached a consensus about the long-term positive effects of inclusion.<sup>3</sup> For instance, Nilsson argues peace agreements are more likely to prevail when more political parties and civil society groups are included in peace processes.<sup>4</sup> This simplistic claim suggests that by finding the right combination and ‘adding and stirring’ these new actors in peace talks and institutional settings inclusion can be achieved, while neglecting the socio-political and structural elements at stake. These optimistic claims towards inclusion and underlying research methodologies are increasingly being criticized.

Analyzing power-sharing settlements designed to address wider institutional inclusion and representation in peace agreements, Laura Wise discerns limited attention towards non-dominant minority groups, which could hinder the abilities of such groups ‘to hold parties to account’ or ‘water down earlier commitments to inclusive settlements.’<sup>5</sup> Documenting the propagation of commitments towards inclusion in peace and development policy settings, Jan Pospisil observes ‘a cascade of conceptual misunderstandings.’<sup>6</sup> Alex De Waal underlines that the hegemony of the inclusivity

3 E.g., David Lanz, ‘Who Gets a Seat at the Table? A Framework for Understanding the Dynamics of Inclusion and Exclusion in Peace Negotiations,’ *International Negotiation* 16(2) (2011): 275–295; Thania Paffenholz, ‘Civil Society and Peace Negotiations: Beyond the Inclusion–Exclusion Dichotomy,’ *Negotiation Journal* 30(1) (2014): 69–91.

4 Desirée Nilsson, ‘Anchoring the Peace: Civil Society Actors in Peace Accords and Durable Peace,’ *International Interactions* 38(2) (2012): 243–266. See also Paffenholz, ‘Inclusive Politics: Lessons from and for the New Deal,’ *Journal of Peacebuilding & Development* 10(1) (2015): 88–89.

5 Laura Wise, ‘Setting Aside the “Others”: Exclusion Amid Inclusion of Non-dominant Minorities in Peace Agreements,’ *Nationalism and Ethnic Politics* 24(3) (2018): 311–323, 319.

6 See e.g., Jan Pospisil, *Peace in Political Unsettling: Beyond Solving Conflict* (Cham: Palgrave Macmillan, 2019), Chapter 4 and 102–103.

norm has been instrumentalized by political protagonists and has meant that the tensions between efficacy and legitimacy in peace mediations have been dismissed.<sup>7</sup> Critical feminist scholars raise the disempowering effects of simplistic peacebuilding discourses if it just required to ‘add women and stir.’<sup>8</sup> Such tokenistic approaches to inclusion neglect patriarchal and intersectional dimensions<sup>9</sup> that shape how power inequalities operate and are reproduced across fluid gender, racial and class characteristics within these same settings that claim to address inclusion – feminist scholarship is further discussed in the following sections.

The transitional justice field has long debated how to bring victims into the institutional spaces in which transitional justice efforts are negotiated and implemented. These debates entail a broad spectrum of positions in relation to victims’ inclusion. Some legal and activist scholars perceive inclusion as an opportunity to address past violence, promote the rule of law and rehabilitate victims. Contributing to the consolidation of the rights of victims to truth, justice, reparations and non-repetition,<sup>10</sup> they advocate for victim-centered approaches.<sup>11</sup> Appointed in 2011, the first special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence affirmed that transitional justice measures cannot ‘happen on the backs of victims, without their meaningful participation’ and called for meaningful participation and consultation of victims.<sup>12</sup> As I argue throughout this article, rhetorical commitments are not matched consistently by actual practice. These global commitments contain no ontological reflection and limited insights on how to improve contemporary institutional approaches and their exclusionary effects.

In parallel, extensive theoretical research brings attention to the ‘gray zones’ of these principles. Among them, McEvoy and McConnachie observe that putting victims at the center of transitional justice processes assumes that victims constitute an entity separate from perpetrators. It also projects the idea of ‘good victims’ who deserve justice.<sup>13</sup> Such a binary ‘does not always chime with the lived experience of real

7 De Waal, *supra* n 1.

8 E.g., Maria Martin de Almagro ‘Producing Participants: Gender, Race, Class, and Women, Peace and Security,’ *Global Society* 32(4) (2017): 395–414, 402; Laura Shepherd, ‘Power and Authority in the Production of United Nations Security Council Resolution 1325,’ *International Studies Quarterly* 52(2) (2008): 383–404; Rahel Kunz, Henri Myrtilinen and Wening Udasmoro, ‘Preachers, Pirates and Peacebuilding: Examining Non-violent Hegemonic Masculinities in Aceh,’ *Asian Journal of Women’s Studies* 24(3) (2018): 299–320.

9 Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color,’ *Stanford Law Review* 43(6) (1990): 1241–1299. See also Mara Viveros Vigoya, ‘La interseccionalidad: Una Aproximación Situada a la Dominación,’ *Debate Feminista* 52 (2016): 1–17.

10 E.g., Diane F. Orentlicher, ‘Addressing Gross Human Rights Abuses: Punishment and Victim Compensation,’ *Studies in Transnational Legal Policy* 26 (1994): 425–475; UNSC, ‘Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political) – Final Report Prepared by Mr. Joint pursuant to Sub-Commission Decision 1996/119,’ 26 June 1997.

11 Juan E. Méndez, ‘Victims as Protagonists in Transitional Justice,’ *IJTT* 10(1) (2016): 1–5.

12 UN GA, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff,’ A/HRC/21/46, 9 August 2012, para. 54–56, 17. See also UN GA, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence,’ A/HRC/34/62, 27 December 2016; UN and WB, *supra* n 2.

13 Kieran McEvoy and Kirsten McConnachie, ‘Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy,’ *European Journal of Criminology* 9(5) (2012): 527–538.

people and excludes people who do not fit squarely.’<sup>14</sup> Girelli states that the process of defining and identifying victims is ‘a political act, which also inevitably implies a moral judgement, concerning the righteousness of one’s (often violent or illegal) acts and ideological stand.’<sup>15</sup> Bouris offers the concept of ‘the complex political victim’ to underline that victims are not just complex because of the false binary imposed on them but because of the complex processes through which they identify themselves and re-appropriate this victimized discourse.<sup>16</sup> Such theoretical discussions address implicitly exclusionary effects of inclusion without problematizing it. These contributions are still crucial to rethinking the inclusion of victims and the resulting conundrums: when victims are expected to be good, innocent, vulnerable and apolitical, it construes fixed and binary identities that neglect their lived experiences and agency.

Scholars undertaking empirical research on transitional justice analyze ethical issues related to inclusion: victims have been exploited through institutional processes for moral, pragmatic and political reasons. For example, survivors’ testimonies have been reformatted and censored to fit policy discourses that legitimize political transitions.<sup>17</sup> Examinations of the Truth and Reconciliation Commissions in South Africa and Sierra Leone conclude that immense efforts are required from participating victims to contribute to public accountability – too often without promised cathartic effects and material reparations.<sup>18</sup> The Guatemalan and South African cases illustrate how re-telling experiences of suffering might instigate trauma.<sup>19</sup> These nuanced analyses provide conceptual, epistemic and pragmatic suggestions to minimize the negative impacts of inclusion. Whilst recognizing important challenges, these authors do not reject the institutional format of the efforts they have scrutinized.

Critical legal scholars building on post-colonial perspectives directly engage with the political and ethical issues at stake with inclusion: ‘victim-centered’ endeavors entail appropriation, forced historical closure and disempowerment of victims in transitional justice.<sup>20</sup> Madlingozi<sup>21</sup> considers transitional justice experts ‘dint [their] geopolitical and institutional privilege’ when they appropriate themselves the right to

14 Kieran McEvoy and Kirsten McConnachie, ‘Victims and Transitional Justice: Voice, Agency and Blame,’ *Social & Legal Studies* 22(4) (2013): 494–495.

15 Giada Girelli, *Understanding Transitional Justice* (Cham: Springer, 2017), 14.

16 Erica Bouris, *Complex political victims*. (Bloomfield: Kumarian Press, 2007), 82.

17 E.g., Brittine French, ‘Technologies of Telling: Discourse, Transparency, and Erasure in Guatemalan Truth Commission Testimony,’ *Journal of Human Rights* 8(1) (2009): 92–109; Annelies Verdoolaege, ‘The Debate on Truth and Reconciliation: A Survey of Literature on the South African Truth and Reconciliation Commission,’ *Journal of Language and Politics* 5(1) (2006): 15–35.

18 E.g., Rosalind Shaw, ‘Labors of Memory and the Post-Conflict Economy,’ *Allegra* (blog), 20 January 2015; Rosalind Shaw, ‘Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone,’ *IJTJ* 1(2) (2007): 183–207; see also French, *supra* n 17.

19 Fiona Ross, ‘On Having Voice and Being Heard Some After-effects of Testifying Before the South African Truth and Reconciliation Commission,’ *Anthropological Theory* 3(3) (2003): 325–341.

20 Makau W. Mutua, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights,’ *Harvard International Law Journal* 42(1) (2001): 201–245; Vasuki Nesiah, ‘The Trials of History: Losing Justice in the Monstrous and the Banal,’ in *Law in Transition: Human Rights, Development and Transitional Justice*, ed. R. Buchanan and P. Zumbansen (Oxford: Bloomsbury Publishing, 2014), 289–308.

21 Tshepo Madlingozi, ‘On Transitional Justice Entrepreneurs and the Production of Victims,’ *Journal of Human Rights Practice* 2(2) (2010): 208–228, 210.

speak for victims. Such practice perpetuates further disempowerment and marginality of those co-opted as victims.<sup>22</sup>

Similarly, Sajjad underlines how hierarchies have been reproduced between international and national elites and selected victims as the ‘marginalized local’ in Nepalese experiences of victims’ inclusion. Elite civil society actors ‘persuaded by global norms, [. . .] selected the most legitimate partners for their international counterparts,’ creating ‘a climate of competition not only between the different grassroots victims’ networks, but also between the “elite” local and the “marginalized” local.’<sup>23</sup> Critical socio-legal scholarship also underlines the intersectional dimensions of inclusion: the reproduction of race and class inequalities among supporters of the inclusion agenda and the consequent effects of co-option.

All these scholar debates emphasize how the conceptual blurriness and limitations around victimhood and inclusion entail ethical and political challenges. These critical theories present different facets of the inclusion conundrums and their exclusionary effects. Building on such scholarship, the article mostly makes an ontological claim. Inclusion conundrums are not just inevitable. Engaging with such conundrums is not about accepting trade-offs on who to include but about addressing the structural and intersectional nature of the exclusivity of inclusion and of institutional responses to violence formulated within peace processes. In other words, I present an ontological re-assessment of how inclusion conundrums are shaped (affected) by different forms of sexism, classism and racism, which are entangled through the inevitable social and political choices in deciding which victims deserve to be included in institutional responses to violence.

#### ANALYZING VICTIMHOOD IN PEACE AGREEMENTS: METHODOLOGICAL NOTES

Combining different coding procedures and text analysis, the adopted methodology evolved within a working framework articulated around a clear definition of ‘peace agreement’ and an interest in inclusion within peace processes. This article results from the following steps in the development of the applied methodology. First, I contributed to the consolidation of PA-X,<sup>24</sup> the largest peace agreement repository. Second, I reviewed peace processes and transitional justice literature that discuss the notions of inclusion and victimhood with an emphasis on feminist and decolonial perspectives. Third, I explored technical options that could integrate PA-X coded categories and undertook further qualitative analysis – which resulted in importing PA-X Coding into NVivo, a software that facilitates analysis of large volumes of rich text-based data. Fourth, I organized the data into NVivo and proceeded with thematic analysis of the text entries of ‘victim provisions.’ Based on emerging findings, I refined and extended the scope of the literature review around the concepts of intersectionality and non-binary fluidity. In this methodological section, I detail the

22 Ibid., 213.

23 Tazreena Sajjad, ‘Heavy Hands, Helping Hands, Holding Hands: The Politics of Exclusion in Victims’ Networks in Nepal,’ *IJTJ* 10(1) (2016): 25–45, 21.

24 Christine Bell, Sanja Badanjak, Robert Forster, Astrid Jamar, Jan Pospisil and Laura Wise, *PA-X Codebook, Version 1*. Political Settlements Research Programme, University of Edinburgh, Edinburgh (2017).

working framework, the adopted definitions and the rationale for studying victim inclusion through peace agreements and thematic analysis.

### Working Framework and Definitions

Motivated by an ‘interest in how peace processes navigate [...] different projects of inclusion to accommodate groups with often-incompatible agendas for change,<sup>25</sup> the team I was part of produced a database that codes all 1,518 peace agreements from 1 January 1990 to 1 January 2016. Building on Bell’s work on peace agreements,<sup>26</sup> PA-X:

provides a basis for mapping how these relationships and agendas are addressed and re-shaped across a peace process, as one or other of the peace agreement projects comes to the fore, or into tension with each other.<sup>27</sup>

The PA-X working definition of a peace agreement is ‘formal, publicly available documents, produced after discussion with conflict protagonists and mutually agreed to by some or all of them, addressing conflict with a view to ending it.’ Documenting resulting agreements between warring parties, the texts of peace agreements are therefore ‘important starting points achieving other political, legal and social gains.’<sup>28</sup>

As stated by Mallinder and O’Rourke, the use of such a database enables us to ‘provide valuable evidence for researchers who are asserting the existence of a new norm,’ and to ‘build better conceptualizations of a phenomenon.’<sup>29</sup> Norms, like discourses, are often abstract and not necessarily consciously employed. The texts of agreements capture how the inclusion of victims has been framed through and results from power asymmetries at play during peace negotiations. This article does not address issues of the correlation or effectiveness of peace processes in ending conflicts, nor consider linear relationships between peace agreement texts and national transitional justice institutional frameworks. The intent is limited to mapping how peace agreements have formulated the inclusion of victims and how they engage with emanating a global normative construction of victimhood, and the conceptual and ethical implications of this.

Covering conflicts across nearly 120 countries, PA-X’s wide geographic and chronological scope enables going beyond the discourse analysis of standards produced by international organizations. I acknowledge the limitations of solely focusing on peace agreement texts. Indeed, the contexts of negotiation and implementation, structural power asymmetries, unexpected hooks or neglected forms of agency are as

25 Christine Bell and Sanja Badanjak, ‘Introducing PA-X: A New Peace Agreement Database and Dataset,’ *Journal of Peace Research* 56(3) (2019): 452–466, 457.

26 Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000); Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: Oxford University Press, 2008).

27 Supra n 25 at 457–458.

28 Christine Bell and Catherine O’Rourke, ‘Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements,’ *International and Comparative Law Quarterly* 59 (2010): 941–980, 947.

29 Louise Mallinder and Catherine O’Rourke, ‘Databases of Transitional Justice Mechanisms and Contexts: Comparing Research Purposes and Design,’ *IJTI* 10(3) (2016): 498–499.

important to discuss inclusion and victimhood – literature that I mobilize in the discussions throughout the article.<sup>30</sup> The adopted methodology still enables capturing existing blind spots, including a global overview of gaps between normative commitments, exclusion and agency contained within mobilized language.

### Consolidating PA-X and Thematic Analysis

As a core team of seven researchers, we sourced peace agreements and coded manually for 225 categories/subcategories for each peace agreement. Mobilizing our respective expertise, the work was initially divided by countries and regions. The consistency of coding was then checked by categories. I provided finely-grained definitions for transitional justice categories and subcategories. The subcategory ‘victims’ includes any reference to victims of the conflict when explicitly addressed as ‘victims,’ i.e., ‘those who have suffered to do with the conflict’ within the agreement.<sup>31</sup> References to groups that could be implicitly considered as victims – such as refugees, missing people or ethnic groups – were coded in their own respective category. Without such coding delimitation, any individual or group referenced in peace agreements could in some way be considered as victims. In addition, ‘victims’ was coded as a sub-category of transitional justice given the centrality of victimhood within transitional justice academic and policy debates, and not because these provisions are necessarily associated with a transitional justice mechanism which would be coded separately.

For me as an ethnographically trained researcher, PA-X coding prompted many qualitative questions. I was particularly curious to investigate patterns and nuances of wording within this large quantity of texts (all victim provisions are over 26,000 words). Using NVivo, all the texts of victims’ provisions were further coded through the identification and refining of recurring themes. Thematic analysis involves searching across a data set to find repeated patterns of meaning.<sup>32</sup> I paid attention to two dimensions:

1. What sort of qualifiers are assigned to people who are considered to have been affected by the conflict? (Who are the victims?)
2. What sort of actions are provided for victims? (What forms of inclusion are considered?)

Identified themes do not just emerge out of the data but are shaped by definitions of ‘peace agreements’ and ‘victims’ and the coding process within PA-X, as well as the two delimitating questions, as I detail in the following empirical section.

30 E.g., Bell and O’Rourke, *supra* n 28; Erin Baines, “‘Today, I Want to Speak Out the Truth’: Victim Agency, Responsibility, and Transitional Justice,” *International Political Sociology* 9(4) (2015): 316–332; Sajjad, *supra* n 23; María Parada-Hernández and Margarita Marín-Jaramillo, ‘Cocalero Women and Peace Policies in Colombia,’ *International Journal of Drug Policy* 19 (2021): 1–9.

31 *Supra* n 5.

32 Virginia Braun and Victoria Clarke, ‘Using Thematic Analysis in Psychology,’ *Qualitative Research in Psychology* 3(2) (2006): 77–101, 86.

## THE GLOBAL CONSTRUCTION OF VICTIMHOOD IN PEACE AGREEMENTS: A THEMATIC ANALYSIS

After a general overview, this section discusses the conceptual delimitations of victimhood and inclusion provided for building on thematic analysis of peace agreement texts. Providing illustrative examples, I analyze the conceptual construction of victimhood and the associated disempowering, gendered and political qualifiers, building on insights from intersectional, feminist and decolonial scholarship. Having adopted the most ambitious and inclusive approach towards victims, the Colombian peace process is then focused on to situate these analytical observations in a specific context and to illustrate how its inclusive language has been under political attacks to pursue conservative agendas.

### Chronological and Regional Overview

Out of the 1,518 peace agreements signed over the past 25 years, 760 agreements (50%) address transitional justice matters. This includes 195 peace agreements that contain provisions related to victims. Weighting these provisions in line with levels of commitment, I found:

- 84 agreements with weak or rhetorical references in relation to victims
- 97 peace agreements with substantive commitments to dealing with issues related to victims
- 14 with strong provisions that include detailed modalities that deal with victims

These boxes provide examples of weak/rhetorical and substantive commitments. Strong provisions entail an important disparity, as I discuss with the Colombian case in the analysis below.

### EXAMPLES OF RHETORICAL OR WEAK COMMITMENTS:

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'The participants condemned in strongest terms the violent acts committed in Mostar and all provocative acts preceding the present crisis. They equally condemned the evictions of Mostar citizens and the harassments on the road to and from Mostar which followed the events of Monday. They deeply deplored the bloodshed and the loss of life of Mostar citizens. They expressed their condolences to the **bereaved and sympathy to those who were injured**,' Bosnia and Herzegovina, Decisions on Mostar of 12 February 1997, 12 February 1997, 1, Untitled preamble (emphasis added).

'We [...] solemnly and unconditionally engage to implement, on the entire national territory, the following provisions: [...] 11. To **guarantee access for humanitarian organizations to population victim groups**,' Democratic Republic of Congo, Acte d'Engagement Gaborone, 24 August 2001 (emphasis added).

## EXAMPLE OF SUBSTANTIVE COMMITMENTS:

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'We reaffirm the consensus among all Central African actors on: [...]

- The creation of a mechanism for transitional justice, in line with the Global National Reconciliation Strategy; **the institution of a day of commemoration for the victims of the Central African Republic crises**; the promotion of a civic and citizen-focused culture in the Central African Republic.

- **Of the need for urgent humanitarian aid for the victims of these recent crises, including the creation of social solidarity funds**;

[...]

- The **re-establishment of basic social services throughout the country**, in particular schools, health centres and hospitals (including an HIV-AIDS strategy), access to drinking water and sanitation, and social housing **for all of the victims of the recent Central African crises**;

[...]

- The need to **ensure effective legal and jurisdictional protection for victims, and in particular the most vulnerable**,

Central African Republic, Pacte Républicain pour la paix, la réconciliation nationale et la reconstruction en la République Centrafricaine, 11 May 2015, 5–7 (emphasis added).

In terms of chronological trends, one key observation is that peace agreements have been providing for victims since 1990 – well before the rise in norms and global policy addressing victims (see [Figure 1](#)).<sup>33</sup> The numbers of agreements providing for victims were the same in 1991 and 2015. The evolution curve is moderate, with a peak to 14 provisions in 2008. When reviewing the number of agreements providing for victims in comparison with agreements containing transitional justice provisions and overall agreements signed by year, the peak years are slightly different. Forty-one percent of peace agreements with transitional justice provisions contain victim-related provisions in 2000 and 2015; this figure is thirty percent and above in 1991, 1992, 2004, 2008 and 2010. In other words, the number varies similarly when looking at the chronological distribution of victims' provisions.

As [Figure 2](#) illustrates, a comparison between the chronological evolution of the number of peace agreements providing for victims (lower blue line), the number of agreements containing transitional justice components (middle brown line)<sup>34</sup> and the overall number of agreements signed (upper gray line) does not show a significant increase in attention to victims' provisions. The peak of inclusion provisions corresponds to a peak in the number of agreements signed per year as well as to a peak in the number of transitional justice components contained in these agreements.

33 See supra n 11, 12, 13.

34 This category entails the following sub-categories: transitional justice general, amnesty/pardon, courts, mechanism, prisoner release, vetting, victims, missing people, reparations, reconciliation.



Figure 1: Number of victims' provisions in peace agreements region.

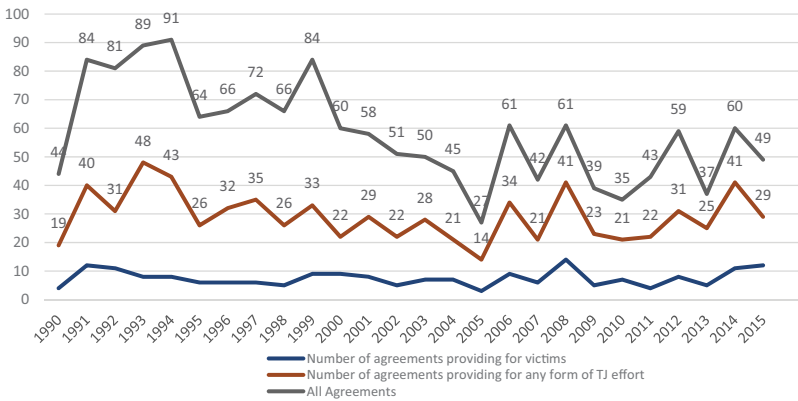


Figure 2: Comparative and chronological overview of number of agreements dealing with victims and transitional justice.

### Thematic Trends: Who Are We Talking About When We Talk About Victims? What Type of Efforts Are Provided for When We Talk About Victims?

To identify qualifiers associated with victims, I coded in NVivo the provisions related to victims contained in the 195 agreements. Doing so, I found 282 references to how victims are qualified. Some peace agreements include more than one entity of victims, while others do not specify who is understood to be a victim. The most common references to victims are to people who were killed during the conflict (12%, 34 references out of 282); the wounded (10%, 28 out of 282); people from a specific group (such as an ethno-linguistic group, from a geographic region, affected by a specific incident; see discussion below; 10%, 28 out of 282); family members of victims (9%, 26 out of 282); the displaced (8%, 24 out of 282); and victims of human rights violations (7%, 19 out of 282). Figure 3 shows the type of victims' conceptual delimitation and their recurrences in peace agreements.

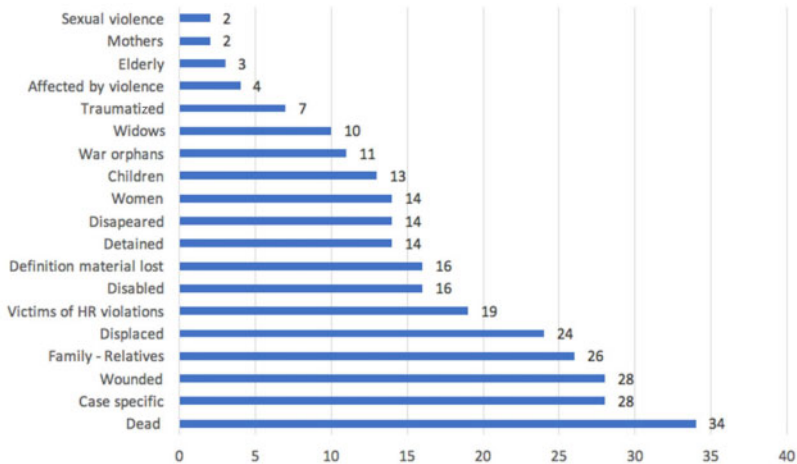


Figure 3: Overview of definitions of victims.

Grouping these coded entries into thematic categories (Table 1), we observe that peace agreement texts often refer to people who have suffered physical injuries, physical conditions and material destruction (57%).

Another widely used identifier of victims is related to a family link (such as being an orphan, a widow, a mother or any other family member of a dead victim; 20%, 60 references). Gender identifiers (9%, 28 references) mostly refer to women, mothers, widows and daughters; there are only two references to men. Nine percent (28 references) of agreements attempt to narrow down which groups are perceived as beneficiaries, implying that most references to victims do not engage with the inevitable political decisions in defining who are (or should be) the ‘victims.’ A small number of agreements also refer to people affected by emotional or psychological suffering as well as to victims of sexual violence. Overall, qualifiers for victims within peace agreements are mostly conceptually unclear as to whom would actually be included through the peace agreements implementation – see examples below.

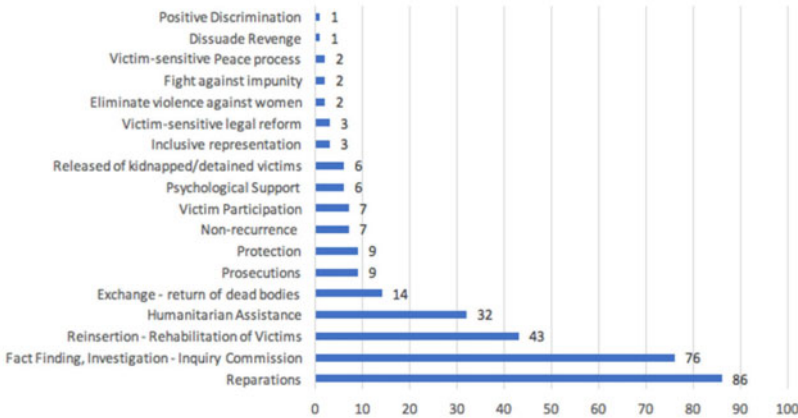
Paying attention to repeated patterns related to specific actions provided within the texts of 170 peace agreements that contained efforts for victims, I captured the following efforts (Figure 4): 86 agreements provide for some forms of reparations (28%); 76 for investigation and fact-finding activities (25%); 43 for rehabilitation or reinsertion of victims (14%); 32 for humanitarian assistance (10%); and 14 for the exchange and return of dead bodies (5%).

Within these identified thematic threads, references to victimhood are framed as gender and/or politically blind, or they impose fixed binary gender and political qualifiers that dismiss complex social and political navigations of violent conflicts while reproducing disempowering stereotypes. At the same time, the efforts envisioned around victims are often framed around verbs, sets of actions and institutional frameworks that have already been criticized to limit victims’ active participation.<sup>35</sup> Doing so, inclusion efforts are co-opting victims who are less politically controversial,

35 See supra n 14 to n 24.

**Table 1: Percentage by agglomerated categories**

Grouped victim types	Number of References	Overall Percentage
Physical injuries and conditions – material destruction	168	57%
Family tie	60	20%
Gender related	28	9%
Case specific	28	9%
Traumatized/vulnerable	12	4%



**Figure 4:** Overview of efforts provided in relation to victims.

excluding the many who do not squarely fit within the provided conceptualization. Paying attention to the types of qualifiers towards victims and the types of actions provided for, the analysis below breaks down the implications of disempowering, gendered and political qualifiers/blindness. Unpacking these three angles, I provide an intersectional critique of the global construction of vulnerable and innocent victimhood consolidated through inclusion conundrums.

**Emphasis on a Vulnerable Group of Victims: Disempowering Qualifiers**

Victims are predominantly defined on paper as people who have suffered physical injury or material destruction, thus reducing the legacies of conflicts to physical violence and not engaging with the wider structural dimensions that sparked the conflicts and that perpetuate violence. Such conceptual constructions of victimhood are mostly centered around specific vulnerabilities: the dead, the wounded, the displaced and the disabled. These provisions identify people who are restrained to – or understood as – having limited agency within the institutional efforts provided for. Indeed, most common efforts for victims frequently come in the form of reparations, investigation and fact-finding activities, rehabilitation and humanitarian assistance. We are presented with the conceptual construction of vulnerable victims that will be repaired, accounted for, rehabilitated and assisted.

None of these verbs rely on the active participation of victims or their agency. Despite policy discourse to enhance the participation of victims in both peace and transitional justice efforts, these envisioned responses continue to be shaped around ‘salvation institutions’ that can speak for victims and argue their cases.<sup>36</sup> Agglomerating these categories, it becomes clear that envisioned policies do not propose a framework that enhance victims’ agency or encourage participatory approaches in peace processes but rather magnify the vulnerability of victimhood, as illustrated in the examples in the box below.

### EXAMPLES OF PROVISIONS MAGNIFYING VULNERABILITY:

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‘The participants in the UN Talks on Afghanistan hereby [...] invite the United Nations and the international community to **create a fund to assist the families and other dependents [sic] of martyrs and victims of the war, as well as the war disabled,**’ Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (‘Bonn Agreement’), Afghanistan, 5 December 2001, Annex III, 11.

‘The summit meeting of the Seven Parties and the Maoists today, November 8, 2006 has taken the following decisions in order to implement the commitments made by the two sides to hold the election to the Constituent Assembly by June 15, 2007 in a free and fair manner: [...]

1. Provisions shall be made for **providing appropriate relief, recognition and resettlement for the family members of those killed in the course of the conflict and for those injured and rendered handicapped and disabled.**
2. **Relief shall be provided to the family members of those who have been disappeared** as determined by an inquiry commission appointed for the purpose.
3. Special programs shall be carried out for the **rehabilitation of people displaced** during the course of the armed conflict; for **relief** in case of private and public properties destroyed and for the reconstruction of the damaged infrastructure,’

Decisions of the Seven Party Alliance (SPA) – Maoist Summit Meeting, Nepal, 8 November 2006, 5.

Only very few exceptions, such as the Colombian and Nepali cases, are calling for inclusive representation and victims’ active participation. The conceptual articulation of constrained and magnified vulnerability does not render beneficiaries agentless, but rather increases the exclusionary effects of inclusion. As Erin Baines demonstrates dis-

cussing victimhood in Uganda, women affected by violence deploy agency even in extreme situations.<sup>37</sup> Annika Björkdahl and Johanna Mannergren also criticize disempowering projections of victimhood within transitional justice and call to widen the scope of analysis to the everyday.<sup>38</sup> Doing so, they draw attention to how women's agency is both disabled and enabled within different private/public and formal/informal peace-building spaces and across time.<sup>39</sup>

The adopted language magnifies vulnerabilities within peace agreements, and provides for actions that do not create space for active participation within these institutional settings. Such construction of victimhood excludes wider structural issues and those affected by them from the scopes of these provisions. Everjoyce Win criticizes policy responses that only focus on the most vulnerable without addressing the structural factors that create these very vulnerabilities (extreme poverty, powerlessness, being a vulnerable pregnant woman).<sup>40</sup> Such policy approaches to poverty do not call for structural measures, but rather neglect the wider effects on the whole society and exclude all those not captured by fixed understandings of vulnerability.

### Gender Qualifiers: Reproduction of Patriarchal Views

Looking closely at the 28 references to gender identifiers, it appears they are predominantly related to female qualifiers, i.e., women, mothers and widows. Some feminist scholars see an opportunity in transitional justice efforts to address patriarchal structures and masculine identities that led to the subordination of women prior to the conflict, to underline the continuity of gender-based violence after the conflict and to grasp the consequences of violence against women and LGBT communities.<sup>41</sup> However, as observed here, the conceptualization of victimhood in peace agreements is either gender blind (70%) or reproduces gendered stereotypes with Western, patriarchal and heteronormative connotations. Indeed, the gendered qualifiers for victims are binary (mostly women and occasionally men). These references are both implicitly and explicitly associated with disempowering qualifiers.

Women are systematically associated with vulnerable qualifiers. The most frequent word associated with 'women' is 'children.' As illustrated with these two examples, the wording of 'women' is mostly used in lists of victims to be included, along with elderly and disabled people. Women are also associated with the traumatized and with being victims of sexual violence.

37 Erin Baines, *Buried in the Heart: Women, Complex Victimhood and the War in Northern Uganda* (Cambridge: Cambridge University Press, 2017).

38 Annika Björkdahl and Johanna Mannergren. 'Gendering Agency in Transitional Justice,' *Security Dialogue* 46(2) (2015): 165–182.

39 *Ibid.*

40 Everjoyce Win, 'Not Very Poor, Powerless or Pregnant: The African Woman Forgotten by Development,' in *Feminisms in Development: Contradictions, Contestations and Challenges*, ed. Andrea Cornwall, Elizabeth Harrison and Ann Whitehead (London: Zed Books, 2007), 79–85.

41 E.g., Vasuki Nesiha, 'Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice,' *Colum. J. Gender & L.* 15 (2006): 799–812; Catherine O'Rourke, 'Feminist Scholarship in Transitional Justice: A De-Politicising Impulse?,' *Women's Studies International Forum* 51 (2015): 118–127.

## WOMAN AND CHILDREN – PROVISION EXAMPLES

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‘The [National Transitional Government of Liberia] shall accord particular attention to the issue of the rehabilitation of vulnerable groups or war victims (**children, women, the elderly and the disabled**) within Liberia, who have been severely affected by the conflict in Liberia,’

Liberia, Accra Agreement, 18 August 2003.

‘All bodies implementing the Agreement shall establish internal procedures and arrangements for protecting and ensuring the participation of victims, **traumatised individuals, women, children, persons with disabilities and victims of sexual violence** in proceedings,’

Uganda, Annexure to the Agreement on Accountability and Reconciliation, 19 February 2008.

In other words, ‘women’ becomes a qualifier for unthreatening, vulnerable victims who can be co-opted for silenced political aims. Already in 1990, Enloe coined the term ‘womenandchildren’ to denounce the reproduction of patriarchal norms in security issues: she underlines how the need to protect vulnerable women and children is being manipulated politically to legitimize military interventions in the Middle East.<sup>42</sup> This conceptualization of gendered victims in peace agreements continues to reproduce disempowering patriarchal views by depicting women as equally vulnerable as children and in need of protection and assistance.

The conceptualization of victimhood is then reduced to the damaged family links: a mother who lost her son in combat; a wife or daughter who lost her protector and breadwinner. It also reproduces problematic gendered binaries: the sons fight and die; the women stay at home, lose their sons and suffer socio-economic consequences due to the damaged family ties, as illustrated in these examples:

‘As an expression of just recognition of the patriotic work of the Nicaraguan resistance, it is necessary to assist the **injured, orphans and widows, the innocent victims** of the armed struggle,’ Nicaragua, The Toncontin Agreement, 23 March 1990.

‘With regard to the huge problems facing the Parties in identification of remains of those perished, the State Commissions appeal to the Coordination Council, to the group of friends of the UN Secretary General, as well as to the International Committee of Red Cross, to other international humanitarian organizations to render technical assistance. Solution of this extremely difficult issue would contribute to **easing the pain and suffering of hundreds of mothers waiting for their sons**,’ Georgia, Statement of the State Commissions of Abkhazia and Georgia on Search for the Persons Missing without Trace, 19 January 2000.

42 Cynthia Enloe, ‘Womenandchildren: Making Feminist Sense of the Persian Gulf Crisis,’ *The Village Voice* 25(9) (1990): 98–116.

'The protection and assistance of IDPs, refugees and all victims of conflict with special needs, including **separated and unaccompanied children, female heads of household, expectant mothers, mothers with young children, the elderly, and persons with disabilities,**' Sudan, Doha Document for Peace in Darfur (DDPD), 31 May 2011.

The normative assumption of inclusion becomes confronted with problematic patriarchal binary, heteronormative and often Western stereotypes of sufferings – language that contains exclusionary functions. In these texts, women are projected as vulnerable, particularly unmarried daughters, widowed or single mothers or those made victims by losing male relatives, who are explicitly portrayed as the sole breadwinners of the family. Women are understood to be affected at the core of their stereotypical roles as carers and as bearing the sole responsibility for the emotional labor of the family, and hence being most affected by the emotional pain and material loss. This excludes the emotional and material suffering of parents losing their daughters in combat, fathers losing their children in combat, as well as any other type of affected family and intimate relations.

Such exclusion also reproduces Western conceptions of the nuclear heterosexual family unit and gendered patriarchal expectations of contributions towards the livelihood of a household. While calling for included/participating/empowered victims, we are faced with dead sons, female vulnerable victims or absent (unnamed but implied) fathers and husbands. There is no understanding of fluid gender identities and roles. There is no acknowledgement of non-nuclear types of family compositions that regularly rely of wider networks for social and economic support nor of diversity in gender identities and sexual orientations already excluded from 'traditional' family units.<sup>43</sup> It discounts household/family units with multiple sources of income that would be equally affected by losing one person who contributed to the subsistence of the family.

While most are gender blind, the agreements' provisions discussed here construe a heteronormative conception of victimhood and gendered binaries that instigate further power asymmetries along the traditional Western nuclear family structure. The gendered binary language reproduces patriarchal ideas of men versus women and attached fixed qualifiers. Dianne Otto denounces the exclusion of non-heteronormative people by the wording 'men and women' in international human rights law.<sup>44</sup> Alternative formulations have been rejected because gender fluidity is still perceived as controversial within the global legal elite. Such binary conceptions continue to perpetuate problematic gender binaries and attached stereotypes. Due to the over-emphasis on toxic masculinity in conflict studies, Henri Myrntinen, Lana

43 Jamie Hagen, 'Queering Women, Peace and Security in Colombia,' *Critical Studies on Security* 5(1) (2017): 125–129.

44 Dianne Otto, 'International Human Rights Law: Towards Rethinking Sex/gender Dualism,' in *The Ashgate Research Companion to Feminist Legal Theory*, ed. Margaret Davies and Vanessa E. Munro (London/New York: Routledge, 2013), 197–216.

Khattab and Jana Naujoks also underline that the conceptualization of men as fighters excludes non-combatants or displaced persons, 'unconventional' masculinities, non-heterosexual masculinities and the positive agency of peacebuilders from academic debates.<sup>45</sup>

As decolonial feminists state, heterosexualism and racially differentiated gendered structures played an important function in the deployment of colonial power.<sup>46</sup> Similarly, Oyewumi Oyeronke argues against Western gender categories inherently attached to the body, and their operationalization 'through dichotomous, binarily opposed male/female, man/woman duality in which the male is assumed to be superior and therefore the defining category.'<sup>47</sup> She also contests 'the nuclear family household' because such a unit of analysis theoretically 'reduces woman to wife.'<sup>48</sup> While patriarchy takes different forms across societal contexts, inclusion efforts that do not embrace these various combinations of oppression and the fluidity of gendered categories take part in reproducing exclusion.

While feminists call for the perception of women as legitimate actors in policy making and policy implementation, the conceptual construction of female victims is still mostly constrained in their roles as carers and as a vulnerable group and continues to exclude non-binary people as well as intersectional forms of exclusion. It is not surprising women continue to be challenged when they step out of such constructed identities.<sup>49</sup> Gender inclusion in peace processes will aim to define gender identities as fluid elements in victims' social and economic life.

### Political Blindness or Fixed Identities: Depoliticized Exclusion

Out of 195 peace agreements providing for victims, only 28 specify the group of people who qualify as victims. Most agreements implicitly silence the political delimitation of victimhood. We are again faced with fixed identities or political blindness. These 28 cases vary in terms of how precise and partial the specifications are when identifying who is being talking about when victims are mentioned – as illustrated in these examples:

These examples contain qualifiers related to specific dates, group belonging or people who are part of a specific movement or have been affected by a specific

45 Henri Myrntinen, Lana Khattab and Jana Naujoks, 'Re-Thinking Hegemonic Masculinities in Conflict-Affected Contexts,' *Critical Military Studies* 3(2) (2017): 103–119.

46 E.g., Oyewumi Oyeronke, 'Conceptualizing Gender: The Eurocentric Foundations of Feminist Concepts and the Challenge of African Epistemologies,' *Jenda: A Journal of Culture and African Women Studies* 2(1) (2002): 1–9; María Lugones, 'Heterosexualism and the Colonial/Modern Gender System,' *Hypatia* 22(1) (2007): 186–219; Rosalba Icaza and Rolando Vázquez, eds., 'The Coloniality of Gender as a Radical Critique of Developmentalism,' *The Palgrave Handbook of Gender and Development* (London: Palgrave Macmillan, 2016), 62–73; Nfah-Abbenyi and Juliana Makuchi, 'Gender, Feminist Theory, and Post-colonial (Women's) Writing,' in *African Gender Studies: A Reader*, ed. Oyewumi Oyeronke (New York: Palgrave Macmillan, 2005), 266, 277.

47 Oyewumi, supra n 46.

48 Oyewumi, supra n 46.

49 E.g., Julieta Lemaitre and Kristin Bergtora Sandvik, 'Beyond Sexual Violence in Transitional Justice: Political Insecurity as a Gendered Harm,' *Feminist Legal Studies* 22(3) (2014): 243–261.

'A law on compensation of war victims, and of the **insurrectional movement of March 22, 2012**,' Mali/Azawad, Accord cadre de mise en œuvre de l'engagement solennel du 1er Avril 2012, 6 April 2012.

'The ultimate goals of the talks is to consider new modalities to end the armed hostilities with responsibility to protect and for human security, in addition to resolve the legitimate grievances and claims for the people of Moro ancestry and origin,' Philippines/Mindanao, Declaration of Continuity for Peace Negotiation. . . , 3 June 2010.

'The Government's decision to provide Rs 1 million to the family of Mangal Bahadur Gurmachhan, who received martyrdom after being killed by the police during the movement of Chure Bhawar Pradesh Ekta Samaj, shall be implemented immediately. Suitable arrangements shall be made to provide medical treatment to those who were injured during the movement and still have not received treatment, including the Vice Chairperson of Chure Bhawar Pradesh Ekta Samaj,'

'The process of providing relief to the families of those killed in the attacks of various armed groups in the Terai shall be continued,' Nepal, Agreement between the GoN and Chure Bhawar Pradesh Ekta Samaj, Nepal, 13 September 2007.

'Provision shall be made to provide a compensation of Rs. 1 million as relief to the families of each of the Nepalese **who died in the helicopter crash at Ghunsa, Taplejung**,' Nepal, Agreement between the GoN and Nepal Adivasi Janajati Mahasangha and Adivasi Janajati Samyukta Sangharsha Samiti, 7 August 2007.

accident. None of the examples spell out clearly the political nature of such qualifiers. Other agreements refer to a specific lapse of time, a specific regime, particular social/ethnic/political groups or people from defined geographical locations. Two agreements provide the actual names of victims who should be acknowledged as martyrs and whose families should receive reparations. Despite apparent neutrality, such qualifiers evoke important political dimensions. In mediation contexts, delimitation of victimhood requires important political choices in deciding what event, timelines and types of crimes will be consensually agreed by all signing parties.

Victims' inclusion has suffered from a 'double whammy' of vagueness: provisions within peace negotiations often address victims as a 'side issue' to the main issue and focusing on remedies to vulnerability might provide one of the few grounds of agreement between radically divided parties to peace negotiations, while meeting the normative goals of the international supporters of the process.<sup>50</sup> At the level of policy discourse, apolitical approaches may be generated more by attempts to act 'neutrally' and apply generalized standards that give no guidance as to how to navigate the complex territory of dealing with legacies of violence. This in contexts where all those engaged in the conflict are often still involved in a struggle over 'who will win the peace.'

50 See e.g., Sajjad on Nepal, *supra* n 23.

Inadvertently, it excludes people who suffered from consequences of specified events differently, or people who suffered from similar harm but in different circumstances. Again, fixed political identity negates the fluidity of people's experiences of violence, contrives their re-appropriation of institutional efforts and rejects frictions between and within victim groups. The rest of the agreements on PA-X (91% of them) are not specific – see all examples above. This is not surprising given the nature of peace processes and political contention in defining who is a victim among negotiating parties.

In practice, the following steps to implement peace agreements will inevitably be required to address these questions related to the political implications of who is considered to be a victim or not. While there are benefits to maintaining a certain flexibility to who qualifies as a victim, the trend to refer to undefined vulnerable groups establishes a political 'neutrality' for issues that are likely to be deeply contested in the context in which peace agreements are negotiated. By not defining who the 'victims' are, agreements relegate the decision to the implementing bodies and hence depoliticize the public process. As Leebaw argues, depoliticization of transitional justice is 'useful to establish legitimacy of transitional justice institutions.' Depoliticization does not transcend the politics of transitional justice, but rather functions to obfuscate and naturalize the way that politics operate.<sup>51</sup>

Such depoliticization disregards the political identity of victims, upon which they could draw for their agency. In Bouris' words, the complex political victim is 'complex because of ambiguities and contradictions surrounding her opinion of and constitution within a particular discourse, not complex because of ambiguities about her position in a particular moment of victimization.' With a policy discourse centered around the needs and participation of apolitical and vulnerable victims, transitional justice processes are promoted as efforts that no one can dispute. Behind the veneer of inclusion, this normative void and pretence of being apolitical contributes to political distortion from both national and international actors.

Reassessing what counts as political or not, feminist perspectives provide crucial insights to remind us about how politics infiltrate private, intimate as much as formal and institutional spaces. In line with observations detailed in the previous subsection, female vulnerable victims are not perceived as politically controversial and male victims are associated with heroism. Still, as the Colombia example illustrates, both politically neutral and politically affirmative inclusion efforts are connected to politics of exclusion. Hence, rather than seeking a right combination of politically and socially representative actors, the inclusion conundrum and associated exclusive effects lead me to call for serious reconsiderations of how structures and functioning of peace and transitional justice institutions navigate the politics.

51 Ibid., 15–16. See also Colombia discussions below; and discussions on Burundian politics of victims in Jamar, 'Victims' Inclusion and Transitional Justice - Attending to the Exclusivity of Inclusion Politics'. (Edinburgh: PSRP Report, 2018): 25–40.

### The Colombia Case: Inclusivity and Gender Fluidity Under Political Attack

Following decades of conflict and four years of negotiations, the Final Agreement signed between the FARC-EP and the Colombian government in 2016 articulates an understanding of victims that is significantly inclusive and non-binary:

The armed conflict, which has multiple causes, has inflicted suffering and loss on the people to a degree unparalleled in our history. Millions of Colombians have been victims of forced displacement, the dead number in their hundreds of thousands, tens of thousands of people of all kinds have disappeared, and vast numbers of families, groups and communities have been affected throughout the length and breadth of the country, including rural communities, indigenous peoples, the Afro-Colombian, black, palenquero, raizal and Roma communities, persons due to their religious beliefs, political parties, social and trade-union movements, the LGBTI population and economic associations, inter alia. There have also been other, less visible but no less painful forms of victimisation, such as sexual violence, psychological damage or simply living in fear. (Colombia, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, 24 November 2016)

Such definition entails feminist and decolonial insights that result from extensive activist efforts and consultations between various constituencies during the mediations.<sup>52</sup> Already with substantive references to victims in agreements since 1991 and a Victim Law adopted in 2012, recent peace talks in Colombia resulted in a series of agreements that pushed the conceptual boundaries of both victims and inclusion. ‘Victims of the Conflict’ constitutes a 71-page section and one of the six points that structured the Final Agreement – the five other points being rural reform, political participation, armed forces re-integration, illicit drugs and implementation. The section sets up principles granting special attention to victims within all the points of the agreement; it also establishes the Comprehensive System of Truth, Justice, Reparation and Non-Repetition – one of the most complex and ambitious transitional justice frameworks ever designed.

However, the conceptual inclusivity of victimhood was instrumentalized to undermine the peace process. After reaching key settlements on the six points in 2016, the final agreement was subjected to a referendum which narrowly failed. The inclusive definition of victimhood, its mentions of LGBTI communities, misinformation and homophobia, were mobilized by conservative political and radical religious groups to campaign against the agreement.<sup>53</sup> Consequently, parties re-affirm their

52 In addition to these gendered dimensions, the Havana talks also adopted a territorial differentiated approach. For background and discussion of the approach, see Diana Gómez, ‘Les droits des victimes dans les accords de paix de La Havane,’ *IdeAs* 9 (2017); Ana Isabel Rodríguez Iglesias, ‘A Decolonial Critique of the Liberal Peace: Insights from Peace Practices of Ethnic People in Colombia,’ *Revista de Paz y Conflictos* 12(2) (2019): 199–223; Juan-Luis Suárez and Yadira Lizama-Mué, ‘Victims of Language: Language as a Pre-condition of Transitional Justice in Colombia’s Peace Agreement,’ *Transitional Justice in Comparative Perspective* (Cham: Palgrave Macmillan, 2020), 97–127.

53 Sara Koopman, ‘Building an Inclusive Peace Is an Uneven Socio-Spatial Process: Colombia’s Differential Approach,’ *Political Geography* 83 (2020): 102252.

commitments to heteronormative family units during post-referendum negotiations. For instance, the FARC addressed Christians and religious groups to reassure them that gender was used as a synonym for women's rights and a commitment to family values.<sup>54</sup>

Re-centering the gender approach around women and heteronormative and family values impacted several groups through the implementation of the whole agreement. For instance, Maria Parada-Hernandez and Margarita Marin-Jaramillo illustrate how it excluded women from the implementation of the agrarian reforms and solutions to illicit drugs: women would not be considered as 'autonomous subjects' and hence this 'reduces the chances of women's access to mechanisms to achieve economic and productive empowerment.'<sup>55</sup> Such re-conceptualization excludes LGBT+ communities and undermines efforts to address how they have been and continue to be disproportionately targeted by violence.<sup>56</sup>

Within a context of continued violence against human rights defenders, limited emphasis on structural violence and restrictive socio-economic reforms,<sup>57</sup> the conceptualization of victimhood in the Colombian peace process is also politically blind. It thus neglects internal politics and exclusive politics within victims' constituencies,<sup>58</sup> hierarchizing and non-recognition of some victims' groups,<sup>59</sup> the political implications of the exclusion of criminal violence, as well as the political production of victims' declarations and their bureaucratic verification procedures.<sup>60</sup> In addition, the entanglements between conservative politics, radical religious groups and unequal access to capital and land prompted by colonialism play an important role through the political mobilization of homophobia to counter the peace process and hence perpetuate exclusive social, economic and political agendas.

### AN INTERSECTIONAL READING OF THE INCLUSION CONUNDRUMS: FROM BINARY COMBINATIONS TO ONTOLOGICAL FLUIDITY

One by one, these peace agreement provisions draw attention to the lack of clarity around who we are talking about or what should be done when we talk about victims – except the few highlighted exceptions. Bringing all these provisions together, searching for qualifiers of victims in efforts provided for them and observing trends

54 FARC Letter To Christians and Anyone Who Professes a Religion, Colombia, 29 November 2016.

55 Parada-Hernández and Marín-Jaramillo, *supra* n 30.

56 Theresia Thylin, 'Violence, Toleration, or Inclusion? Exploring Variation in the Experiences of LGBT Combatants in Colombia,' *Sexualities* 23(3) (2020): 445–464.

57 Sara Meger and Julia Sachseder, 'Militarized Peace: Understanding Post-conflict Violence in the Wake of the Peace Deal in Colombia,' *Globalizations* 17(6) (2020): 953–973; Francisco Gutiérrez, Margarita Marín, Diana Machuca, Mónica Parada and Howard Rojas, 'Paz sin garantías: El asesinato de líderes de restitución y sustitución de cultivos de uso ilícito en Colombia,' *Estudios Socio-Jurídicos* 22(2) (2020): 361–418.

58 Adriana Rudling, 'What's Inside the Box? Mapping Agency and Conflict within Victims' Organizations,' *International Journal of Transitional Justice* 13 (2019): 458–477.

59 Roxani Krystalli, 'Narrating Victimhood: Dilemmas and (In)dignities,' *International Feminist Journal of Politics* 23(1) (2021): 125–146.

60 Sebastián Ramírez Hernández, 'Truth and Sensibility: Epistemic Repair in Victim Narratives in Colombia,' *Bureaucracy, Justice, and The State in a Post-Accord Colombia*, PoLAR Online Emergent Conversation (2020).

emerging out of the thematic analysis, we observe the ubiquity of conceptual ambiguity, constraining fixed and binary qualifiers in terms of political, social and gender identities. Opening the black box of ‘inclusion conundrums’ enables articulation of how the socio-political functions of such conceptualization of victimhood relate to the global agendas of inclusion. This final section articulates the relevance of global and intersectional lenses. Rather than searching for an efficient combination of actors to participate, intersectional perspectives encourage us to think of inclusion as an ontological reflection. A reflection that re-imagines institutional efforts and appreciates the fluid and inserting experiences of violence and oppression – beyond the veneer of inclusion. Indeed, in enquiring and deciding who should be included at which policy steps (consultations or active negotiations during peace talks, participation in bureaucratic accountability efforts, recipients of assisting/repairing programs, etc) current inclusion efforts entail numerous inevitable, political and exclusive effects that are left untackled.

Medie and Kang denounce how Western scholarship and gender mainstreaming homogenized determinants of sexual violence by neglecting global analysis: i.e. gender norms and socialization, neoliberal globalization and the global political economy of armed conflict.<sup>61</sup> They draw attention to the ‘effects of the global order on women in the South depend[ing] on intersecting identities, such as caste, class, ethnicity, race and religion.’<sup>62</sup> Following this call to trace global trends, I underline social and political functions that constrain the conceptualization of victimhood produced and disseminated within peace agreements across 120 countries. Such an exercise projects apolitical, agentless and innocent feminine victims while non-binary and fluid dimensions of their identity are being denied. So why does intersectionality matter for inclusion?

Coined by Crenshaw:

intersectional subordination need not be intentional; in fact, it is frequently the consequences of the imposition of one burden than interacts with preexisting vulnerabilities to create yet another dimension of disempowerment.<sup>63</sup>

Denouncing how feminist and antiracist activisms failed to protect women of colour affected by domestic and sexual violence in the US, Crenshaw affirms that ‘tokenistic, objectifying, voyeuristic inclusion is at least as disempowering as complete exclusion.’ Observing that intersectional forms of oppression are relevant for the portrayed innocent vulnerable victims depicted in peace agreements: ‘the images and stereotypes we fear are readily available and are frequently deployed in ways that do not generate sensitive understanding of the nature of domestic violence in minority communities.’<sup>64</sup>

61 Peace Medie and Alice Kang, ‘Power, Knowledge and the Politics of Gender in the Global South,’ *European Journal of Politics and Gender* 1 (1–2) (2018): 37–53, 49.

62 *Ibid.*, 39.

63 See Crenshaw, *supra* n 9.

64 *Ibid.*, 1261–1262.

In other words, race, class and gender within specific contexts, along with patriarchy and colonial dynamics globally,<sup>65</sup> contribute to ready-made and tokenistic approaches to victims' inclusion in peace and transitional justice processes. The global conceptual construction framed in peace agreements imposes with limited consideration 'disempowering elements for [people] who didn't match the kind of [victim] [international organizations and mediators] imagined.'<sup>66</sup> Ultimately, an intersectional reading of the lack of clarity in inclusion provisions underlines important social and political functions of these silences and/or constraining qualifiers: searching for an effective combination of victims' representatives increases the veneer effects of inclusion and its exclusive effects.

I call for the re-imagining of institutional responses to conflict that embraces non-binary, fluid and political experiences of violence and that also creates flexible institutional spaces that do not put the burden of fitting into given qualifiers of victimhood onto the victims. Following Win's suggestions, we need to 'move away from the simplistic "magic bullet" solutions that they [aid practitioners] often see for African [and Global South] women,' from stereotypical beneficiaries, and address structural changes that need to happen.<sup>67</sup> Articulating the importance of intersectionality and fluid identities, Juliana Makuchi Nfah-Abbenyi calls for stronger engagements with the 'infinite layers' depicting 'the politics of identity and gender-as-difference, as otherness, a struggle that must actively involve the dominant and the dominated, the colonizer and the colonized, the First and the Third Worlds.'<sup>68</sup>

While the veneer of inclusion neglects political interpretation of normative commitments to render peace processes more inclusive, it does not challenge structural exclusion perpetuated by institutional frameworks. Viewing such conundrum solely as inherent dismisses how patriarchal and intersectional structural power asymmetries infiltrate peace talks and resulting agreements. Intersectional lenses enable us to capture the too-many blind spots of inclusion and its rather exclusive effects. Still, even more than inclusive agendas, intersectional discourses have been depoliticized, dissociated from social movements and the struggles they emanated from, hence erasing their various and multiple origins, complementarity and tensions.<sup>69</sup> As Katrin Meyer warns, it is important to not close ourselves off from emerging forms of differences that continue to generate significant inequalities, oppression and exclusion.<sup>70</sup>

## CONCLUSION

Trying to operationalize victims' 'inclusion' by adopting an apolitical approach to who is included and how can make it difficult to decide who are the victims and how

65 See also Maria Lugones, 'The Coloniality of Gender,' in *The Palgrave Handbook of Gender and Development*, ed. Rosalba Icaza and Rolando Vázquez (London: Palgrave Macmillan, 2016), 13–33.

66 Ibid.

67 Win, *supra* n 46 at 64.

68 Juliana Makuchi Nfah-Abbenyi, 'Gender, Feminist Theory, and Post-colonial (Women's) Writing,' in *African Gender Studies: A Reader*, ed. Oyewumi Oyeronke (New York: Palgrave Macmillan, 2005), 266, 277.

69 Mara Viveros Vigoya, *supra* n 9.

70 Katrin Meyer, 'Différences, pouvoir, capital. Réflexions critiques sur l'intersectionnalité,' in *Sexe, race, classe: Pour une épistémologie de la domination*, ed. Elsa Dorlin (Paris: Presses Universitaires de France, 2009), 127–146.

should they be included. Inclusion efforts are mostly undertaken with seemingly wishful socio-political blindness that ignores power politics and intersecting forms of oppression, and reproduces heteronormative and fixed binary qualifiers. Peace processes include victims based on false binaries or fixed identifiers (such as gender, age, ethnicity or group belonging) rather than embracing their fluid social and political identities. While it helps to pursue self-legitimacy, such approaches obfuscate side effects of the inclusion conundrum: the inevitable exclusivity of inclusion and its political and ethical implications.

There may be good reasons to avoid controversial victim definitions in peace negotiations: the parties may not be able to agree, and may not be the right people to formulate a more detailed victim policy. International organizations promoting victims' inclusion into peace processes have no legitimacy to import their own political decisions, and nor are they above power imbalances. However, this article points to the fact that simply ignoring the complex issue of victims and assuming the 'inclusion of victims' to be an uncontroversial 'good' ignores the complex power dimensions and can result in a purely 'protectionist' approach that does little to further a broader social engagement and legitimacy for the peace process. Worse still, it can further empower constituencies to operationalize specific political transitional justice agendas in ways that obscure, rather than address, durable legacies of violence. While there are no easy solutions, it is important to understand that the language of inclusion and victimhood is not apolitical, but will cut to the heart of the most contested issues in the conflict, that the term 'victims' includes a range of often opposing constituencies with relation to the conflict and that transitional justice processes need to provide a space in which these issues can be socially negotiated.

The review of global commitments to include victims in peace processes over the past 25 years denounces the conceptual construction of victims as unclear entities as well as vulnerable apolitical individuals in need of repair whilst reproducing patriarchal gendered binaries. The desire to gain legitimacy with a reluctance to engage and confront exclusive politics leads to the instrumentalization of victims. Because of how 'inclusion conundrums' play out through their socio-political functions by silencing the fluid and multi-layered political identities of victims, they inadvertently reproduce false disempowering and heteronormative binaries and consequently contain exclusionary effects. Only by creating institutions that embrace fluid identities and tackle intersectional power asymmetries can policy makers and peace mediators address the various forms of exclusion exacerbated by violence.