

## TRANSCRIPT: Gender in Colombia's Peace Transition (with Isabel Jaramillo Sierra)

**Mónica Arango Olaya (0:11):** You're listening to RightsUp, a podcast from the Oxford Human Rights Hub. I am Mónica Arango Olaya. In today's episode, we are delighted to welcome back Dr Isabel Cristina Jaramillo from Los Andes University in Colombia. We'll be talking to her about the latest publication she edited, "Gender in Transition: Studies about the Role of the Law in the Distribution of Resources for Implementing the Transition in Colombia after the Peace Agreement."<sup>1</sup>

**(0:52)** Isabel Cristina Jaramillo is a full professor of law at Universidad des los Andes in Bogotá, Colombia, where she teaches constitutional law, feminist jurisprudence, and family law. She obtained her law degree with honours from Universidad des los Andes, and a doctoral degree in law (as JD) from Harvard Law School. Her work has focused on feminist legal reform in Latin America. Professor Jaramillo has been a visiting professor in Paris and taught courses at the Free University of Berlin, the University of Geneva, the University of Miami, and Berkeley Law School.

**(1:26):** Welcome, Isabel. It's a pleasure to have you with us.

**Dr Isabel Jaramillo (1:29):** Thank you, Monica. It's great to be here.

**Mónica Arango Olaya (1:32):** Congratulations on this publication. The objective of this edited collection is to reconstruct and think about what gender has meant during Colombia's transition to peace and reconciliation. Additionally, it seeks to answer, "what has the transition meant for the building of Colombian feminisms?" This is very exciting and timely.

**(1:54):** For our listeners who are less familiar with Colombia's Peace Accord and its transitional justice scheme, Colombia's Peace Agreement was signed in 2016 after over four years of negotiations.<sup>2</sup> It ended a 50-year war with the Revolutionary Armed Forces of Colombia (FARC), a leftist guerrilla. However, it was severely contested by almost 51% of the population through a plebiscite. The plebiscite made the Government renegotiate the agreement, which in its newest version was finally adopted, reshuffling Colombia's legal landscape. We are celebrating the fourth year of the Peace Agreement with FARC.

**(2:33):** Can you explain, briefly, where is Colombia now and what has happened in these four years?

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<sup>1</sup>Available at <https://www.peterlang.com/view/title/69207>.

<sup>2</sup> For the final text of the Peace Accord (*Acuerdo Final*), see <http://www.centrodehistoria.gov.co/descargas/finAcuerdoPazAgosto2016/12-11-2016-Nuevo-Acuerdo-Final.pdf>. See generally: Sergio A. Daza. "Se necesita paciencia para avanzar con el acuerdo de paz': ONU" *El Tiempo* (7 December 2020) <https://www.eltiempo.com/politica/proceso-de-paz/onu-balance-sobre-los-cuatro-anos-implementacion-acuerdo-de-paz-colombia-551882>; and "Nota de Prensa del Informa Trimestral del Secretario General de Naciones Unidas ante el Consejo de Seguridad sobre la Misión de Verificación de la ONU en Colombia." *Misión de Verificación de la ONU en Colombia* (7 January 2021) <https://colombia.unmissions.org/nota-de-prensa-del-informe-trimestral-del-secretario-general-de-naciones-unidas-ante-el-consejo-de-0>.

**Dr Isabel Jaramillo (2:40):** Yes, Mónica. Well, unfortunately, we're not where we hoped to be. The impact of the plebiscite was really important in the process of implementation of the agreements. Even if there was a process of adaptation of the final agreement, in light of the critiques of most important sectors in society, including religious sectors and the far right, the Agreement, which stayed in force after those adaptations, and was approved by Congress, has not been implemented at the speed or with the energy that was expected.

**(3:30):** Huge amounts of resources were destined, initially, to the materialisation of the many measures that were provided in the Agreement, including measures on [the] redistribution of land, on the activation of rural economies, the protection of the rights of rural populations, and in particular, of rural women, and their needs for land and education. But those resources remain unused, many of them, and others were not appropriated for these tasks. So we have a very— I was involved very closely in the supervision of the first years of implementation. The first two years showed minimal implementation, but I would say that the last two years would even show [more] significant lags in taking the measures that Government was supposed to take in accordance with the Agreement.

**Mónica Arango Olaya (4:40):** You've been working in gender issues for a long time, and now is the fourth year of the implementation, or the adoption of the Peace Accord in Colombia. So this book is quite timely. How did the idea of this edited collection come about?

**Dr Isabel Jaramillo (5:01):** I— as you mentioned, I've been working on gender issues in Colombia for a long time and questioning how to think [about] this issue through a feminist lens. I was critical of Colombian organisations that were placing too much emphasis on sexual violence within the armed conflict, paying little attention to re-distributional issues, but mostly paying little attention to the connections of the armed conflict with structural inequalities in Colombian society. So from that very critical position, I engaged [in] a number of conversations with feminist organisations that were taking very seriously issues regarding the armed conflict. And from these conversations I got to know young activists who were interested in reflecting themselves— on their own experience in the armed conflict. And we started meeting to read feminist theory and discuss their experience of conflict, and helping victims of the armed conflict, through this feminist theory. And that process brought together also some scholars from other universities, feminist scholars in other universities, who were experts on issues of armed conflict and gender, such as Carolina Vergel and María Carolina Olarte, whom I got to meet — it was very fortunate I got to meet them through this project.

**(6:38)** And so I think we were trying to create this alliance of academia and organisations to bring theory to bear on the experience of activists, which was very rich, very significant, but created some questions that a theory could or should be able to answer. So the process was one of creating bridges between academia and organisations to understand better what we were all experiencing about the place of armed conflict in feminist mobilisation and feminist thinking.

**Mónica Arango Olaya (7:22):** One of the starting points of the collection is a question about a transitional moment for Colombia with the Peace Agreement. Within the very complex Colombian context, what do you understand as this "transitional moment"?

**Dr Isabel Jaramillo (7:36):** Well, at a point in time, it seemed that this Peace Agreement with the FARC guerrilla would be the final point of long-awaited— long-awaited transition in Colombia. And just for some of the list— some in our audience who might not be as familiar with Colombian insistence on “transitioning”, we've had these type of peace agreements since the 1950s, with many measures geared towards justice, reparation, and reconciliation. We started to use this transitional vocabulary in 2005, when [the] Government entered agreements with the paramilitary groups operating in the territory, and the Constitutional Court decided that this was an opportunity to start speaking of "transition" in Colombia.

**(8:39):** So this Peace Agreement with FARC seemed to be a last step, as those political groups armed and operating in the territory were finally going to surrender their arms, and we were thinking that we would— that the new scenario would be one in which only groups that delinquents— regular delinquent groups would remain organised and operating in the territory. So this— The hope with the Peace Agreement with FARC was that we would finally end a long process of transition, which meant negotiating which each— with each one of the different political groups that were operating in the territory.

**Mónica Arango Olaya (9:29):** You mentioned in the introduction of the collection that one of its main contributions is to provide new information about women in Colombia's transition to peace, but mainly, more pointedly, an analysis of the role of gender in the Peace Accord. How do you understand the role of gender in the Peace Accord?

**Dr Isabel Jaramillo (9:48):** Well, this agreement with FARC was particularly influenced by feminist organisations and it was empathetic that these agreements should have a gender approach to issues of transition. This was possible because Colombian feminists have been mobilising around peace at least since 1994. But with the Peace Agreement with FARC, there was a stronger participation, there was international pressure, and pressure from the media, to include women in the negotiating teams. But there was also pressure to create a commission that was in charge of the gender approach to the Peace Agreement. And so the chapter by Olga Velásquez in the book shows how progressively women, and in particular feminist points of view, were introduced in the negotiation of the Peace Agreement with FARC.

**(10:53):** This Peace Agreement, as my chapter shows, not only names gender— the gender approach or "gender mainstreaming" as a tool that should be used to read the agreement as a whole, but includes a number of measures— quite different measures that try to make the Agreement itself an agreement that is sensitive to gender. So, not only is the language of the Agreement— or not only is there an attempt to have the language of the Agreement be language that is gender-inclusive, but also, systematically, there is a call for equal participation of women in the institutions that will be created for the implementation of the Agreement.

**(11:42)** And then there are special measures geared towards women in particular, as I mentioned before — women in rural areas or areas which have crops in a more vulnerable situation. So gender is thoroughly in the Peace Agreement. As a matter of fact, this led— this was one of the stronger criticisms of groups— of religious groups and groups from the far

right, was that the vocabulary of gender was too present and that this was against the neutrality that the Agreement should have.

**Mónica Arango Olaya (12:17):** This notion about gender ideology, and the backlash that it generated, is quite interesting. Can you tell us a little bit more about that and how it was used against the Peace Accord?

**Dr Isabel Jaramillo (12:30):** Yes, well, this is not an issue that we are able to go too far into in this book, but it was actually part of the process. It was during the plebiscite campaigns, or in the time allocated by Government for citizens to get to know the content of the Peace Agreement, and to make a decision on whether they would support or not the Agreement as it was negotiated— In that process, for some reason, evangelical and Protestant groups started to— and even some Catholic priests started to raise issues of the Peace Agreement as introducing, in Colombian legislation, the notion of gender. And in that sense, interestingly, they argued the Peace Agreement would authorise same-sex marriage, the adoption of children by same-sex couples, would incentivise sexual education that animated individuals to become transgender, and would authorise abortion.

**(13:45):** Although it was clear that the intention of the Agreement was to have an impact on the structures of Colombian society far beyond the particulars of the confrontation between Government and FARC, as it understood that patriarchy was at the root also of this political confrontation, it didn't have any clauses on same-sex marriage, sexual identity, or reproductive rights. Those were already ingrained in Colombian legislation that could not be changed by an Agreement of this type. This agitation, through these false messages, was crucial to creat[ing] an ambience of rejection of the Agreement as a whole. Now, Government and FARC astutely, I would say, didn't surrender gender as a category that should be used to interpret the Agreement, or that should be used in the implementation, and introduced some clauses on the protection of religious freedom and of religious rights. And it also created a particular institution that would supervise the implementation of gender in the Agreement.

**Mónica Arango Olaya (15:14):** Given that gender is so central to the Peace Agreement, as you've mentioned, how is the collection structured? How are you thinking [about] gender in this collection?

**Dr Isabel Jaramillo (15:25):** The collection is structured along, I would say, two lines. One of them is the— almost a chronological line, because part of the work is about the Peace Agreement with FARC. But another part of the work that we include here is a— somehow an evaluation or a reflection on the transitional process that preceded the agreements with FARC. So, as I mentioned before, there was a Peace Agreement with a paramilitary that created a transitional infrastructure, transitional apparatus. And some of the— some of the chapters are dedicated to understanding how that transitional apparatus worked, and what were the results for women. And then there's another part that was— that is specifically about the Peace Agreement with FARC. So that's one way in which we're— in which the book is organised.

**(16:27):** But the book is also organised along the question of the distributional effects of the reforms as— and so some of the chapters show the more private, economical impact, and

other chapters study more the justice aspects of the peace agreements and the effects, while others are looking at political participation. So we cover, roughly, issues of justice, and particularly women victims of gender violence in the armed conflict, we cover issues of political participation, both in the negotiation of the Agreement and after the negotiation of the Peace Agreement with FARC, and issues of economical redistribution that should come with a peace agreement, and that in many ways has been problematic, and we've seen much less than we have to see.

**Mónica Arango Olaya (17:31):** The second part of the book is devoted to case studies. Can you tell us a little bit about them?

**Dr Isabel Jaramillo (17:38):** Well, yeah, it has, I would say, quite interesting studies on, first, how our family law rules have been part of property law all along, but we're not thinking of this intersection when doing land reform — which is at the heart of agreements with FARC — and how the fact that women do not have rights if they're not wives of the m[a]n who has the title or who is given the title.

**(18:12):** Then there's, I think, a very interesting chapter on the way in which reparations are using the financial system to bring women into the logic of market and finance, and are leaving women poorer in the process of giving them reparations for the damage they have endured in armed conflict.

**(18:44):** Then another chapter on the procedural innovations introduced to adjudicate cases involving the armed conflict, and how those innovations — which seemed to bring some promise to feminists for the judicialisation of cases of sexual violence against women in the armed conflict — have not fulfilled the promise, or those innovations have not brought any change in reducing impunity of sexual violence against women in the Colombian armed conflict.

**(19:26):** Finally, we have two chapters on the case of Bojayá, one of the very few massacres involving FARC in these chapters.<sup>3</sup> The case is— again, is interesting because this is a case that has been researched and tried even before the Peace Agreement with FARC. And so we have plenty of governmental action involved in— involved in justice, reparation and non-repetition in this case of Bojayá. But what the chapters do is, from an ethnographic point of view, try to express the frustration and society's limitations of all these transitional efforts.

**Mónica Arango Olaya (20:20):** As you mentioned, these case studies go way before than the Peace Accord. Why do you think it was important to examine gender resource distribution before the Agreement?

**Dr Isabel Jaramillo (20:31):** Well, as I mentioned Mónica, feminists have been engaged— they've been negotiating gender with the Colombian state for at least 25 years. So I think that— or we thought it was crucial to see the Agreement with FARC as a final product of that

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<sup>3</sup> See generally: “Bojayá: La Guerra sin Límites.” (2010) [https://www.centrodememoriahistorica.gov.co/descargas/informes2010/informe\\_bojaya.pdf](https://www.centrodememoriahistorica.gov.co/descargas/informes2010/informe_bojaya.pdf); and “Bojaya massacre: After 17 years, victims’ remains returned.” *Al Jazeera* (15 November 2019) <https://www.aljazeera.com/features/2019/11/15/bojaya-massacre-after-17-years-victims-remains-returned>.

negotiation. So in— it would be very unfair to think that gender appeared in the Peace Agreement with FARC only because there was some international pressure, or only as a result of the transplant of some foreign institutions to this process. It was actually— whatever resulted in terms of having gender as a part of the Peace Agreement with FARC definitely is the result of the work of feminists in Colombia, for, as I mentioned, at least 20 years.

**(21:31):** And on the other hand, we thought that these tales of gender in the implementation of peace agreements with the paramilitary could serve as cautionary tales of the ways in which our projects could unravel, and the unexpected adverse effects of some measures that the literature has been advocating as beneficial for women, so that in this process of implementation, we have more time, we have more elements, for a reflection, that is... one could say more conscious of the adverse effects that some of these measures have, and tries to avoid them, or at least recognises that the decisions are made, notwithstanding the knowledge that we have that they will not produce the effects that we desire.

**Mónica Arango Olaya (22:33):** These case studies vary widely, in theme and geographically, as you have mentioned. Are there any common threads in the findings of those studies?

**Dr Isabel Jaramillo (22:43):** I would say that, as I mentioned, what we're trying here to push is to take seriously the role of law in the transitional processes. So one common thread would be this notion of law as relevant in distribution, and in that sense— For example, putting forward how doctrinal— our interpretations of the legal rules in force create scenarios that not— were not necessarily foreseen to begin with. So this would be one of the— is that doctrinal interventions of legislation produce relevant effects in distribution.

**(23:37):** Another aspect I would say that these papers have in common is, it's not only the cultural that is at stake, or "justice" as a very abstract notion of being considered an equal part of society — which, of course, we agree is quite crucial — but it's a— it's also women's empowerment and women's capacity to control resources within Colombian society. So— and even in situations— so, both how law intervenes in distribution, but also how distribution is a crucial aspect of some of the operations of law that in many cases are just not as visible to us as interpreters and as adjudicators of the law.

**Mónica Arango Olaya (24:35):** This is perfect, now that you mentioned a distributive analysis. That is really the second contribution of the book, to present methodological tools for a gender analysis. Can you explain a little bit — what is a "distributive analysis" of the law?

**Dr Isabel Jaramillo (24:50):** So, as lawyers we are frequently taught that distributional questions are solved by legislators, and that expertise on distribution remains with economists. And so we understand our task as not involved in issues of distribution, and that means that we are not— on the one hand, that we're not liable for the costs of our decisions, and on the other hand, that we're not able to intervene to make those costs less for the people we care about. So our lawyerly training in general makes us irresponsible, both as actors, as agents, of transformation — positive transformation or negative transformation — when it comes to the costs of the— of our decisions.

**(25:56):** So what we're trying to push here is the notion that choices about rules have consequences, economic consequences, not necessarily or mainly \*monetary\* consequences, but negative consequences. And many times those are negative consequences for the groups we care about, or that we are— whose rights we are advocating. And other times there will be costs for other groups. But we should remain alert towards the possibility of creating those costs, both for the groups that we are trying to protect, or empower, and for other groups in society.

**(26:48):** So in the case of this book, by pushing the distributional line, I think we're both developing a critique of the Colombian state and its institutions, and how they have understood gender, or implemented gender as part of their institutional arrangement, but we're also furthering an internal critique in feminism, about the costs that some of our innovations might bring, both for women and for other groups.

**Mónica Arango Olaya (27:22):** This is a— certainly an innovative tool of approaching gender within this context. Do you think there is a role of human rights— for human rights in this type of analysis?

**Dr Isabel Jaramillo (27:36):** Distributional analysis— it takes as its point of departure [a] human rights analysis. So it is \*because\* we're interested in protecting the rights of individuals who have been excluded, marginalised — well, killed, expropriated, etc. So "human rights" is our contemporary vocabulary— it's a vocabulary that allows us to understand all these harms. And so distributional analysis starts from the acknowledgement of these harms, and the intention of understanding how these harms are the result of different institutional arrangements. Human rights analysis is, I would say, the starting point of identifying harm in contemporary societies and in identifying costs. Definitely we use human rights in— as a theory of harm in distributional analysis, yes.

**Mónica Arango Olaya (28:44):** The third contribution of the book is to create new knowledge about the Colombian transition from a gender lens, in furthering a feminist standpoint that really signifies knowledge production and contests past stories. So here, the "who" is talking is central to the collection. Can you tell us a little bit more about the authors — who are the authors of these book chapters?

**Dr Isabel Jaramillo (29:09):** Yes, the authors in these chapters are all Colombian legal scholars, professors at Colombian universities, who are interested in how law creates or transforms the lives of people. This is innovative because most work on violence in Colombia has been the work either of male scholars — most of them not lawyers or not legal scholars, but rather sociologists, historians, psychologists even — and most of the work on feminism and gender has been done by feminist organisations and activists in Colombia. So we're entering as a group of legal scholars into a scenario that is populated by men on the side of scholarship, and by activists on the side of gender analysis.

**Mónica Arango Olaya (30:18):** You mentioned that this collection is contributing to build[ing] Colombian feminism. Can you unpack this idea?

**Dr Isabel Jaramillo (30:25):** Well, we're, as a group, convinced that the Colombian experience and thinking about the transition has been long, intense, interesting, and it would add— that it certainly contributes to the transnational dialogue existing on transitional justice and gender. That is a conversation — the conversation about transitional justice and gender — in which many English-speaking scholars have participated, and in some ways have shaped the concepts that we use to think through our own situations, our own local experience, and it has been this scholarship, produced, that I would say is part of a transnational feminist canon, is rich, interesting, and has taught us a lot, but what we— we were convinced that we, through these type of exercises, are making contributions that are not only relevant locally, but are also relevant in that transnational conversation. And that's what we believe is somehow a Colombian feminist contribution to the conversation.

**Mónica Arango Olaya (31:53):** Well, thank you so much, Isabel. It's been fantastic to talk to you.

**Dr Isabel Jaramillo (31:57):** Thank you, Mónica.

**Mónica Arango Olaya (32:10):** RightsUp is brought to you by the Oxford Human Rights Hub. The Executive Producer is Kira Allmann. This episode was co-produced by Mónica Arango Olaya, edited by Christy Callaway-Gale, and hosted by Mónica Arango Olaya. Music for the series is by Rosemary Allmann. Show notes for this episode have been written by Sarah Dobbie. Thanks to our production team members — Sandra Fredman, Megan Campbell, Gauri Pillai, and Natasha Holcroft-Emmess — for their valuable feedback in putting this episode together. Subscribe to this podcast wherever you like to listen to your favourite podcasts.

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