University of Southampton

Faculty of Social Sciences Graduate School

School of Law

Adjusting the Narrative Lens: Overcoming the Incommensurability of Representations of Rape and Sexual Violence in the Field of Transitional Justice

by

Kelly Mackenzie

Thesis for the degree of Doctor of Philosophy

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Abstract

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The recognition of rape and sexual violence against women in periods of armed conflict has become increasingly prevalent in the discourse of the international community in recent years culminating in rhetoric concerned with the ending of impunity for such crimes. While the establishment of ad-hoc criminal tribunals may have spawned a jurisprudence that mobilises and articulates the international legal response to conflict-related rape and sexual violence against women, the legal processes implemented, legal agents employed and legal language used all come together to produce a particular narrative construction designed to secure law's retributive aim. As complex lived experiences are reduced to fit universal legal categories, the construction of legal narratives is achieved at the expense of victim-survivors through narratives that elide the causes and consequences of rape and sexual violence resulting in incommensurable representations. Crimes of this nature continue to take place throughout the word, continually evading capture in law. This work explores the way in which three modes of thought - temporality, genealogy, and spatiality - operate to frame laws narrative, precluding for it the possibility of recognising fully the multifaceted nature of lived experience. These normative modes of thought represent interrelated aspects of law's boundaries, perceived in a particular way within law. Framed from a feminist perspective, this work pushes at these boundaries to question whether law's limits can be redrawn as commensurable with life through a new perception of narrative, examining the processes and actors designated with the task of providing justice in judicial, quasi-judicial and extra-judicial mechanisms. Adjusting the narrative lens demands acknowledgment of a common thread that ties each of us together - though our languages may differ, our ability to tell stories remains. Through blurring the boundaries, the work not only seeks enrichment through reconfiguration of those approaches already established in law but also attempts to harness the potential of the narrative lens to consider the possibility of overcoming incommensurability.

Acknowledgments

To my late Grandad, Geoffrey Martin: thank you for igniting my thirst for knowledge with your intelligence and your love for telling stories.

To my supervisory team, Dr. James MacLean and Dr. Regina Rauxloh: your knowledge, patience and kind words of encouragement were instrumental in guiding me through to the end.

I am eternally grateful to my mum, dad, and brother, for the immense emotional and moral support you each provided throughout this process. And to my other family members and friends for the laughter and reassurance.

List of Acronyms

Bosnia and Herzegovina	BiH
Central African Republic	CAR
Commission for Reception, Truth and Reconciliation in East Timor	CAVR
Complex Post-Traumatic Stress Disorder	C-PTSD
Democratic Republic of Congo	DRC
International Armed Conflict	IAC
International Federation for Human Rights	FIDH
International Center for Transitional Justice	ICTJ
International Committee of the Red Cross	ICRC
International Criminal Tribunal for Former Yugoslavia	ICTY
International Criminal Court	ICC
International Criminal Tribunal for Rwanda	ICTR
International Human Rights Law	IHL
Law of Armed Conflict	LOAC
Lord's Resistance Army	LRA
Non-Governmental Organisation	NGO
Non-International Armed Conflict	NIAC
Special Court for Sierra Leone	SCSL
South African Truth and Reconciliation Commission	SATRC
Trust Fund for Victims	TFV
Truth and Reconciliation Commission for Sierra Leone	SLTRC
United Nations	UN
United Nations General Assembly	UNGA
United Nations Security Council	UNSC
United Nations Security Council Resolution	UNSCR
United Nations High Commissioner for Refugees	UNHCR
Victim and Witness Unit	VWU
World Health Organization	WHO
Women's Caucus for Gender Justice	WCGJ

Research Thesis: Declaration of Authorship

I, **Kelly Mackenzie**

declare that the thesis entitled:

Adjusting the Narrative Lens: Overcoming the Incommensurability of Representations of Rape and Sexual Violence in the Field of Transitional Justice

and the work presented in it is my own and has been generated by me as the result of my own original research. I confirm that:

- This work was done wholly or mainly while in candidature for a research degree at this University;
- Where any part of this thesis has previously been submitted for a degree or any other qualification at this University or any other institution, this has been clearly stated;
- Where I have consulted the published work of others, this is always clearly attributed;
- Where I have quoted from the work of others, the source is always given. With the exception of such quotations, this thesis is entirely my own work;
- I have acknowledged all main sources of help;
- Where the thesis is based on work done by myself jointly with others, I have made clear exactly what was done by others and what I have contributed myself;
- None of this work has been published before submission.

Signature: K.Mackenzie Date: 23/09/2019

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Time comes into it.

Say it. Say it.

The universe is made of stories,

not of atoms.[1]

[1] Muriel Rukeyser, 'The Speed of Darkness' (Poetry Foundation) <www.poetryfoundation.org/poems/56287/the-speed-of-darkness>

Part I: The Normative Lens

Chapter One: Introduction

The measure of any society is how they treat their women and girls.[1]

Each day, approximately seven billion human beings experience this world differently. No experience is entirely the same, as our lives are uniquely our own. Through the medium of narrative, we share our lived experiences with others to communicate our memories of the past and our hopes for the future. "We dream…daydream… remember, anticipate, hope, despair, believe, doubt, plan, revise, criticise, construct, gossip, learn, hate and love" notes Hardy, "by narrative."[2] We are living in a period of history in which narratives from around the world are disseminated across news channels every minute of every hour of every day. From newspaper articles, to films, literature, to photographs: each reminds us in the West that the faraway suffering caused by the atrocities in distant lands are not happening to *us*. Until conflict is on our doorstep, the lack of emotional proximity to atrocity renders a distance, a disjuncture, between narratives of suffering as lived and narratives as they are told and heard. This disjuncture continually results in a difficulty to fathom or fully comprehend the suffering of others, resulting in a failure to pay adequate attention. As Sontag has noted, "Compassion is an unstable emotion. It needs to be translated into action, or it withers."[3]

For women throughout the world, where once their suffering was silenced, recognition of the varied quotidian forms of injustice and violence they face have slowly come to light. Growing up in England, I am privileged to have grown up in an affluent, peaceful, and multicultural society, provided with a level of safety and security that many women throughout the world are not afforded. Yet, violence against women emerges in the public and private lives of women each day in England and Wales. An estimated 510,000 women experienced sexual assault in the year ending March 2017, making them five times more likely

[1] BBC, 'US Election: Read Michelle Obama Address in Full' *BBC News* (14 October 2016) <www.bbc.co.uk/news/election-us-2016-37651657> accessed 10 November 2017.
[2] Barbara Hardy in Jenny Rankin, 'What is Narrative? Ricoeur, Bakhtin, and Process Approaches' (2002) 3 *Concrescence* 1, 3.
[3] Susan Sontag, *Regarding the Pain of Others* (Picador 2003) 90.

to experience such violence than men.[4] 20% of women aged 16 – 59 years old have experienced some form of sexual violence since the age of sixteen.[5] Girls are taught from an early age to cover up, not to wear clothes that are too 'provocative'; a pervasive, though subtle, acknowledgement of the prevalence of the predatory behaviour of some men. Rather than teaching boys from a young age not to rape, girls are taught how not to be raped.[6] Women are taught, whether explicitly or implicitly, to acquiesce, to make ourselves smaller, and not to react to unsolicited attention shouted at us by strangers in case such attention rapidly turns to anger, abuse or violence. In the public domain, I have been groped by strangers and followed whilst walking home alone. Lewd statements have been shouted at me from the mouths of men as their vehicles pass me by, catcalled on the street. In my own home, my formative years were defined by domestic abuse and violence. The problems I face, and the lived experiences I have, as a white, Western woman are relative to my position and differ drastically from other women within my own country and from those around the world. I do not wish to equate my own experiences with the severity of violence committed against women, rather I use my own experiences to elucidate the culture that surrounds the continued devaluing of women and the patriarchal, male-dominated lens through which women are perceived.

Violence against women is endemic and remains a global public health problem.[7] It is one of the most prevalent human rights abuses in the world. As Copelon has noted, throughout history women have had to fight violence "on all fronts", from repressive governments and armed conflict to violence and harassment in their workplace and home.[8] In 2013, the World Health Organization (WHO) indicated that approximately 1 in 3 women worldwide "have experienced either physical and/or sexual intimate partner violence or non-

[4]Office for National Statistics, 'Sexual Offences in England and Wales: year ending March 2017' (Report, 2018) <www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017> accessed 24 February 2018.

[5] ibid.

[6] Kathryn Stamoulis, 'Teaching Our Sons Not to Rape' *Psychology Today* (21 January 2015) <www.psychologytoday.com/gb/blog/the-new-teen-age/201501/teaching-our-sons-not-rape>

[7] World Health Organization and London School of Hygiene and Tropical Medicine, 'Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence (Geneva, World Health Organization 2010) 3 <www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf> accessed 18 November 2015 (herein WHO).

[8] Rhonda Copelon, 'Women and War Crimes' (1995) 69(1) *St. John's Law Review* 61, 63.

partner sexual violence in their lifetime."[9] Such figures are demonstrative of the discriminatory outcomes of inequality that stem from "disparate meanings, processes and power relations, and result in very different outcomes" that "reflect the underlying lack of value for what it means to be female."[10] Wherever you look in the world, a common theme emerges, whether blatant or hidden and systemic, women and girls persistently face injustice, discrimination, and violence. Once one truly opens their eyes to the darkness that takes place, it becomes impossible to look away. This thesis concerns a specific form of harm: sexual violence committed against women in conflict.

Considered "history's greatest silence", conflict-related sexual violence was, for a long time, held to be merely a spoil of war.[11] Yet, violence of this nature has pervaded conflicts throughout the world for thousands of years. In 1453, approximately 70,000 to 250,000 women and girls were "unmercifully and repeatedly ravaged by Ottoman troops" in the city of Constantinople during the Armenian genocide.[12] In 1937, over a period of six weeks, the Japanese military went on a rampage of mass murder and rape, becoming known as the 'Rape of Nanking.' Given the size of the city of Nanking and the concentrated nature of the assault on women this paralleled the Rape of Bangladesh in 1971[13] when between 200,000-400,000 Bangladeshi women were raped by the Pakistani military.[14] When used as a conscious strategy, sexual violence in conflict is intended as an attack on individual women's bodies and the collective "body politic" to humiliate, terrify, and forcibly displace,[15] in an attempt to devastate nations, divide communities, and to destroy the lives of those who survive.[16] Pankhurst elucidates some of the main reasons why men typically perpetrate such violence

[9] WHO, 'Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence' (Report, 2013) 2 <http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1> accessed 18 November 2015.

[10] Barbara Cole, 'Gender, Narratives, and Intersectionality: Can Personal Experience Approaches to Research Contribute to "Undoing Gender"?' (2009) 55 *International Review of Education* 561, 564.

[11] Margot Wallström, 'Introduction: Making the Link Between Transitional Justice and Conflict-Related Sexual Violence' (2012)19 *William & Mary Journal of Women and the Law* 1, 2.

[12] Cyril J. Smith, 'History of Rape and Rape Laws' (1975) 6(1) *International Bar Journal* 33.

[13] Susan Brownmiller, *Against Our Will* (Ballantine Books 1975) 61.

[14] ibid 80.

[15] Coleen Kivlahan, 'Rape as a Weapon of War in Modern Conflicts: Families and Communities Are Victims, As Well As Individuals' (2010) 341(7771) *MJ: British Medical Journal* 468.

[16] Kelly Dawn Askin, 'Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles' (2003) 21(2) Berkeley J. Int'l Law 288, 298.

during conflict. These include, but are not limited to, 'frustration-aggression and men trauma', 'the absence of social constraints', 'rewarding soldiers', 'rape as a weapon of war', and 'masculinity as a root cause.'[17] The perpetration of rape and sexual violence against women is not limited to a particular time or location, "women are attacked in conflicts across the globe by men of all colours, religions, nationalities and ideologies."[18]

Despite the United Nations (UN) recognition of women's rights as human rights in the years following the Second World War (WW2),[19] the silence surrounding sexual violence largely remained until the early 1990s when reports of systemic rapes and sexual abuse emerged from the Bosnian War during the break-up of the former Yugoslavia and the Rwandan genocide. Working tirelessly during this time, feminist scholars and activists fought to end impunity for those who commit such violence, striving to gain the recognition and incorporation of gender-based crimes in international law. Their contributions have consistently extended beyond the confines of scholarly works to disrupt and advocate for international legal practice that recognises women's lived experiences in conflict and post-conflict situations.

In recent years, the fight to end impunity for conflict-related sexual violence has become increasingly prevalent in the discourse of the international community. Largely commencing from jurisprudential and legal developments spurred by feminist activism in the 1990s, judicial mechanisms, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC) have become a central element in the acknowledgment of sexual violence. As Copelon has noted, prior to this sexual violence in war was:

[17] Donna Pankhurst, 'Sexual Violence in War' in Laura Shepherd (ed), *Gender Matters in Global Politics* (Routledge 2010) 163-166.
[18] Christine Chinkin, 'Rape and Sexual Abuse of Women in International Law' (1994) 5 (3) *European Journal of International Law* 326, 328.
[19] This will be further explored in Chapter 2. See, Convention on the Elimination of All Forms of Discrimination Against Women (8 December 1979, entry into force 3 September 1981) 34/180; Declaration on the Elimination of Violence against Women (20 December 1993) A/RES/48/104; United Nations, Beijing Declaration and Platform for Action (adopted at the Fourth World Conference on Women 27 October 1995).

> with rare exception, largely invisible. If not invisible, it was trivialized; if not trivialized, it was considered a private matter or justified as an inevitable by-product of war, the necessary reward for the fighting men.[20]

Despite this increased attention, however, such violence continues to rage throughout the world, forever eliding and evading capture in law. This thesis explores the narratives that have emerged from judicial, quasi-judicial and non-judicial mechanisms of transitional justice. It argues that the narratives produced in internationalised judicial mechanisms, central to transitional justice practice, remain incommensurable to women's lived realities and what it means to experience and survive conflict-related sexual violence. In elucidating the problem of incommensurability, the thesis questions the nature and extent of this problem within the field. The challenge for the field of transitional justice, it contends, lies in the need to confront the basis upon which the centrality of law in the field is built and the consequences of the incommensurable nature of representing, and subsequently addressing the individual and collective trauma that arises in its aftermath. In the following sections, I clarify the distinction between a conflict situation and a post-conflict scenario, providing an overview of the law of war and the emergence of transitional justice as a means to assist societies moving from war to relative peace.

1.1. The Law of War: International and Non-International Armed Conflict

The end of the WW2 observed the beginning of a new internationally wide focus upon the development of international human rights law (IHRL), international human rights law (IHL) and international criminal law (ICL). There are similarities and distinctions between these three bodies of law, with each providing particular protections during armed conflict and in times of peace.[21] Whilst IHL is only invoked upon the determination that an armed conflict exists, certain crimes, including genocide, war crimes, torture, slavery, and crimes

[20] Rhonda Copelon, 'Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law' (2000) 46(1) *McGill Law Journal* 217, 220.
[21] Askin (n 16) 291.

against humanity, have achieved *jus cogens* status. This means that these particular crimes are prohibited by international customary law at all times and in all places without requiring a connection to conflict.[22]

Contemporary armed conflict is regulated by a framework of rules and standards contained in international humanitarian law treaties. Principally, these are the 1907 Hague Conventions and Regulations,[23] the four 1949 Geneva Conventions along with their annexes,[24] and the two 1977 Additional Protocols to the Geneva Conventions.[25] Focussed upon the protection of those who do not take part in conflict and those who are no longer able to fight, these are the most important rules aimed at regulating conduct and limiting the impact of armed conflict. They bind all actors involved in international armed conflict and non-international armed conflict. IHL permits, within certain parameters, the use of armed and lethal force. Situations that do not amount to an 'armed conflict' are governed by IHRL which applies at all times in both peace and war. Assessing the factual situation of a particular context is important to ascertain which of these distinct but complimentary bodies of law will apply.[26] As the International Committee of the Red Cross (ICRC) has noted, **"l**egally speaking, no other type of armed conflict exists" but "a situation can evolve from one type of armed conflict to another, depending on the facts prevailing at a certain moment."[27]

[22] M. Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59 Law and Contemporary Problems 63, 68.

[23] Convention Concerning the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 3 Martens Nouveau Recueil (ser. 3) 461.

[24] The Conventions signed at Geneva The Conventions signed at Geneva on August 12, 1949, consist of the following: Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 U.S.T. 3114; 75 U.N.T.S. 31 (herein First Geneva Convention); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 6 U.S.T. 3217, 75 U.N.T.S. 85 (herein Second Geneva Convention); Geneva Convention (III) Relative to the Treatment of Prisoners of War, 6 U.S.T.3316, 75 U.N.T.S. 135 (herein Third Geneva Convention); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, 75 U.N.T.S. 287 (herein Fourth Geneva Convention).

[25] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1331 (entered into force Dec. 7, 1978); Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, **S.** TREATY Doc. No. 100-2, 1125 U.N.T.S. 609 (entered into force Dec. 7, 1978)

[26] International Committee of the Red Cross, 'International Humanitarian Law' (2000) 2 <www.icrc.org/en/doc/assets/files/other/icrc_002_0703.pdf> accessed 6 March 2019.

[27] ibid.

For the existence of an international armed conflict to be determined, no minimum threshold is applied. Rather, "an armed conflict exists whenever there is a resort to armed force between States."[28] Common Article 2 to the Geneva Convention provides that this applies to either a case of "declared war" or an armed conflict arising between two or more States party to the Geneva convention, "even if the state of war is not recognized by one of them."[29] Governed by common Article 3 to the Third Geneva Convention and Article 1 of Additional Protocol II, a non-international armed conflict is "not of an international character."[30] Based upon practice and the development of jurisprudence since the ratification of the Geneva Conventions, the ICRC has provided an encompassing definition of non-international armed conflict as:

> protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a *minimum level of intensity* and the parties involved in the conflict must show a *minimum of organisation*.[31]

For the existence of a non-international armed conflict to be determined, a higher threshold is applied to distinguish from less serious forms of violence not subject to IHL. This means that not every armed conflict within a particular situation will be classified as a non-international armed conflict if it does not meet the criteria above. Askin has noted that IHL has increasingly governed non-international conflict due to the fact that the laws governing internal conflict are far less developed than the codified international treaties.[32] This has led to "a palpable trend" in IHL to "reduce the disparity" between the characterisation of international and non-international conflict because, as noted in the case of *Dusko Tadic, "*the distinction between interstate wars and civil wars is losing its value as far as human beings are concerned."[33] The

[28] *Prosecutor v. Dusko Tadic* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) IT-94-1-A (2 October 1995) [70] (herein *Dusko Tadic* case).
[29] First Geneva Convention (n 25).
[30] Third Geneva Convention (n 25) and Protocol II (n 26).
[31] ICRC, 'How is the Term "Armed Conflict" Defined in International Humanitarian Law?' 5 (Opinion paper, 2008) 1 <www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf> accessed 6 March 2019.
[32] Askin (n 16) 290-291.
[33] *Dusko Tadic* case (n 29) [97].

classification of an international or non-international armed conflict is determined by the continued assessment of the facts emerging from the particular context, decided in light of the evidence provided and taken on a case-by-case basis.[34] These legal definitions enable the international community to distinguish between armed conflict and a non-war scenario and to determine whether national or international legal rules will apply in a given context. For international armed conflicts and non-international armed conflicts, "a formal surrender, a negotiated cessation of hostilities, and/or peace talks followed by a peace treaty mark possible 'ends' to conflicts."[35] In its aftermath, how does a context begin the transition from a conflict to post-conflict scenario in the aftermath of violence? How is peace defined in such situations and what mechanisms may be implemented to facilitate justice following social violence?

1.2. Post-conflict and the Rise of Transitional Justice

'Post-conflict' is defined as the period immediately following the cessation of conflict.[36] Such situations are often perceived to be in a less urgent phase than a context considered to be in violent conflict. Yet any situation of collective social violence is a complex and multifaceted phenomenon that inherently embodies a multiplicity of perspectives, grievances and harms. These can have a polarising effect that ruptures the social fabric. The onslaught of violence or repression twists and tarnishes social relations pulling them to extremes, creating a social space in which the darkest of human nature materialises whilst people endeavour to survive. This makes post-conflict situations particularly fragile and they often remain tense in the years following the conflict. As such, there is a strong likelihood that a post-conflict context will relapse into violence becoming "trapped in ongoing cycles of armed conflict."[37] Unless the end of fighting is followed by the establishment of effective

[34] *Prosecutor v. Fatmir Limaj* (Judgment) IT-03-66-T (30 November 2005) [90].
[35] Graham Brown, Arnim Langer, and Frances Stewart, (2011) 'A Typology of Post-Conflict Environments' Centre for Research on Peace and Development CRPD Working Paper 1, 4 <https://soc.kuleuven.be/crpd/files/working-papers/wp01.pdf> accessed 4 April 2019.
[36] Marie-Soleil Frère and Nina Wilen, 'INFOCORE Definitions: Post-Conflict' (INFOCORE 2015) <www.infocore.eu/wp-content/uploads/2016/02/def_post-conflict.pdf> accessed 4 April 2019.
[37] Eric Schoon, 'Why does armed conflict begin again? A new analytic approach' (2018) 59(5-6) International Journal of Comparative Sociology 480.

measures that are able to ensure safety and security, the designation of a situation as 'post-conflict' risks being short-lived.[38]

Working to promote peace, societal transformation and facilitate justice in the aftermath of violence, transitional justice mechanisms are intended to support the work of the other[s] to address human rights violations "so numerous and so serious that the normal justice system will not be able to provide an adequate response."[39] Over the years, post-conflict justice has typically taken the form of either retributive or restorative justice. Each model embodies different values such as truth, justice, and peace, and entail distinct responses to egregious human rights violations. "Restorative justice" notes Porter "sees crime as an injury to people, where retributive justice sees crime as a violation of law."[40] Retributive justice is based upon a perception that "pain will vindicate" the harm caused and underpinned by moral principles that those who are responsible for causing harm to others should suffer as a consequence of their own actions.[41] It has a normative function that focusses upon punishment by incarceration and incapacitation with the goal of deterring future crimes from being committed. Conversely, restorative justice is focussed upon the acknowledgment of the harm inflicted upon victims, combined with encouraging "offenders to take responsibility, make right the wrongs and address the causes of their behaviour."[42] Whilst retributive justice is centred upon the fixing of blame and focussed upon the past, restorative justice is focussed upon problem solving, with a view to the future.[43] Retributive justice is often associated with legal, national or international mechanisms, whereas restorative justice is predominantly connected with extra-judicial, traditional, community-based practices such as truth and reconciliation commissions.

[38] Roger Duthie, 'Introduction' in *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (Roger Duthie and Paul Seils eds, International Center for Transitional Justice 2017) 117.
[39] International Center for Transitional Justice (herein ICTJ), 'What is Transitional Justice?' <www.ictj.org/about/transitional-justice> accessed 16 November 2014.
[40] Holly E. Porter, 'Justice and Rape on the Periphery: The Supremacy of Social Harmony in the Space Between Local Solutions and Formal Judicial Systems in Northern Uganda' (2012) 6(1) *Journal of Eastern African Studies* 81, 82.
[41] Howard Zehr and Ali Gohar, *The Little Book of Restorative Justice* (Good Books 2003) 60.
[42] ibid.
[43] Stephen Savage, 'Restoring Justice: Campaigns Against Miscarriages of Justice and the Restorative Justice Process' (2007) 4(2) *European Journal of Criminology* 195, 210.

The early beginnings of the transitional justice field emerged from a focus upon punishment and retribution. In the immediate aftermath of WW2, the 'Nuremberg Charter' established the jurisdiction and procedure of the International Military Tribunal at Nuremberg in August 1945 (herein Nuremberg Tribunal).[44] With a mandate to prosecute the highest-ranking political and military leaders of the Nazi regime, the Nuremburg Tribunal had a 'heavy didactic emphasis',[45] establishing the principle of individual criminal accountability and holding those responsible answerable for the human rights violations committed by the Nazi regime.[46] At the end of the investigations, twenty-one defendants, whom represented the diplomatic, economic, political, and military leadership of the Nazi regime, were held accountable for the orchestrated crimes committed during WW2. This model was utilised in the establishment of the International Military Tribunal for the Far East (herein Tokyo Tribunal).[47] The principles of the Nuremberg Charter, including crimes of peace[48] and crimes against humanity,[49] were subsequently introduced into the framework of international law.

Although the focus upon determining individual responsibility and prosecution remains, since the end of WW2 transitional justice has evolved into a distinct field of practice. It is now seen to be critical for post-conflict reconstruction, peacebuilding and the (re)establishment of the rule of law.[50] Transitional justice encompasses a range of judicial, quasi-judicial and extra-judicial mechanisms, including international criminal tribunals, hybrid courts, truth and/or reconciliation commissions, apologies, memorials, and reparations.[51] The development of alternative justice mechanisms within the practice of transitional justice field denotes the continuum upon which retributive and restorative justice, formal and informal

[44] Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (adopted 8 August 1945) (herein Nuremberg Charter).
[45] Kirsten Sellars, 'Imperfect Justice at Nuremberg and Tokyo' (2011) 21(4) T*he European Journal of International Law* 1085, 1092.
[46] Ruti Teitel, 'Transitional Justice: Postwar Legacies' (2006) 27(4) *Cardozo Law Review* 1615.
[47] Charter of the International Military Tribunal for the Far East (adopted 19 January 1946).
[48] Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal, Principle VI (a)(i)-(ii). (1950) <http://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf> (herein Nuremberg Tribunal Principles).
[49] ibid Principle VI (c).
[50] See United Nations Security Council, 'Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies' (23 August 2004) S/2004/616 <www.un.org/ruleoflaw/files/2004%20report.pdf> accessed 9 March 2019.
[51] Ruti Teitel, 'Transitional Justice Genealogy' (2003)16(1) *Harvard Human Rights Journal* 69.

justice mechanisms reside as such models are not strictly dichotomous.[52] The mechanism[s] employed will differ depending upon the transitional context and what is conceivable and appropriate will depend on the complex web of social, economic, political and legal conditions in each transitional context.[53] Each transitional justice mechanism is focussed upon achieving one or more objectives of determining the truth of the atrocities, facilitating justice through holding perpetrators to account, providing restitution for victims harms and losses, and reconciling divisions.[54] As such, it has been considered an "extraordinary and international" form of justice.[55]

In 2010, the UN reconsidered its approach to transitional justice highlighting the need for mechanisms to ensure women's rights through redress, full participation, and the adequate representation of their rights and perspectives.[56] In some cases, armed conflict can hold the potential to act as a transformative force resulting in, for instance, increased diversity in political representation and stability. From a feminist perspective, the post-conflict space presents both opportunity and risk for women.[57] Feminist scholars note that such periods often provide the occasion for violence against women to be recognised in transitional justice mechanisms, as well as facilitating new rights and the potential for participation in peace building processes.[58] For instance, the Women Peace and Security Agenda (WPS), implemented by UNSCR 1325, is intended to address the disproportionate impact of armed conflict on women and girls and to advance the participation of women in conflict and resolution processes.[59] The WPS Agenda has become internationally recognised, evolving to include a number of different resolutions.[60] This nevertheless coincides with the

[52] Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) Social & Legal Studies 179, 181.
[53] Ruti Teitel, *Transitional Justice* (Oxford University Press 1997) 18; Jill Stauffer, 'Speaking Truth to Reconciliation: Political Transition, Recovery, and the Work of Time' (2013) 4(1) *Humanity* 27, 29.
[54] Charlotte Fielder and Karina Mross, 'Post-Conflict Societies: Chances for Peace and Types of International Support' (German Development Institute, Briefing Paper 4/2017, 2017) <www.die-gdi.de/uploads/media/BP__4.2017.pdf>
[55] Teitel (n 51) 70.
[56] UN, 'Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice' (March 2010) <www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf> accessed 14 March 2015.
[57] Margaret Davies, 'Unity and Diversity in Feminist Legal Theory' (2007) 2(4) *Philosophy Compass* 650, 660.
[58] ibid.
[59] United Nations Security Council Resolution (UNSCR) 1325 S/RES/1325 (31 October 2000)
[60] Seven subsequent resolutions were further adopted to strengthen the implementation of WPS mandates: UNSCR 1820 S/RES/1820 (19 June 2008); UNSCR 1888 (2009); 1889 (2010); 1960 (2011); 2106 (2013); 2122 (2013) and 2242 (2015).

prevailing risk that women's voices will be silenced and the harms committed against them will remain hidden.[61] Given that already powerful men often reap the benefits of the move into the seemingly democratic paradigm implemented by transitional justice mechanisms, women are often inadvertently or actively excluded from positions of power, despite the invaluable knowledge they hold. Instead, their knowledge is overlooked in favour of the misconceived notion that men – as commanders, community leaders, patriarchs – are more adequately suited to respond to diverse range of women's needs without centring, including or even consulting with different groups of women.[62] Moreover, the risk of violence is exacerbated in in transitional and post-conflict settings – rates of domestic and family violence typically tend to rise during this time. As Bradley has noted, "for women, an end to conflict does not always mean an end to violence."[63]

1.3. Incommensurability: Law, Lived Experience and Representations of Sexual Violence

Within the practice of transitional justice, the representation of conflict-related sexual violence has predominantly emerged in, and been characterised by, legal responses to address the human rights violations committed. Emerging from ad-hoc international tribunals, jurisprudence has drawn attention to the prevalence of conflict-related sexual violence committed in conflict, whilst international statutes have developed an international framework to incorporate gender-based crimes. Though laudable, the thesis contends that the centrality of law is problematic. The centrality of Eurocentric, internationalised justice mechanisms reproduce these gendered hierarchies allowing masculine dominance to remain within their practice. Legal representations remain the predominant means through which lived experiences of sexual violence are conceived in the field. This has resulted in a disjuncture between normative, institutional practices and the wants and needs of victim communities in the aftermath of conflict-related sexual violence. Instead, the dominance of legalistic transitional justice responses to sexual violence and the androcentric practice of law

[61] Davies (n 57). See also, Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6(2) *International Journal of Transitional Justice* 205, 207.
[62] Karen Engle, 'Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99(4) *The American Journal of International Law* 778, 794-795.
[63] Samantha Bradley, 'Domestic and Family Violence in Post-Conflict Communities: International Human Rights Law and the State's Obligation to Protect Women and Children' (2016) 20(2) *Health and Human Rights* 123.

has resulted in a narrow and stubborn focus upon individual responsibility and accountability. As Sontag has noted, "part of the puzzle, surely, lies in the disconnect between official rhetoric and lived realities."[64] This puzzle is yet to be solved as "almost total impunity for crimes of sexual violence" remains.[65]

The incommensurability of legal representations, the thesis contends, functions to universalise and misrepresent lived experiences of conflict-related sexual violence and the trauma that this can inflict, limiting the multifaceted nature of justice to retributive notions of justice. Women's stories are reshaped and translated through the imposition of universal legal categories that reduce the particularities of their lived experience into legal narratives through the practice of lawyers and judges. Legal representations of sexual violence are incommensurable to lived realities, the thesis contends, because in attempting to represent the nature of sexual violence as accurately as possible, legal representations sever women's subjectivity from the act of rape.[66] The universalised and abstracted representations are underpinned by powerful institutional norms that act to preserve the retributive function of law which diminishes recognition of the ethical demand that the particularities of lived experience hold and, in turn, fails to recognise the full humanity of women. Challenging the centrality of law in the field of transitional justice, the thesis considers the ways in which the particularities of women's trauma have subsequently been represented in quasi-judicial and extra-judicial mechanisms. Nevertheless, the thesis argues that such mechanisms fail to address the trap of shame and stigma that continues to frame sexual violence through singular normative representations of victim-survivors as opposed to recognising those responsible. Incommensurability coupled with the centrality of law has resulted in a distinct lack of attention paid to the humanity of victim-survivors as human beings recovering from the trauma of sexual violence and war, undermining the ability of the field to deliver the promises of justice made to those deemed central to its work.[67] This diminishes the possibility of considering what justice may look like from the perspective of victim-survivors.

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[64] Susan Sontag, *At the Same Time* (Farrar, Straus and Giroux 2007) 201.
[65] Davies (n 57).
[66] Ruth Ronen, 'Incommensurability and Representation' (1998) 2(5) *Applied Semiotics* 177 <http://french.chass.utoronto.ca/as-sa/ASSA-No5/Vol2.No5.Ronen.pdf>
[67] Fionnuala Ní Aoláin, 'After Things Fall Apart: Challenges for Transitional Justice Futures' (2017) (forthcoming) <http://uir.ulster.ac.uk/37165/>

The problem of incommensurability arises in various disciplines due to the inherent difficulty of representing other human minds and experiences in realms that differ in norms, values, and language.[68] It remains a problem for law and about law and recognising the consequences of this raises serious questions about the ways in which male violence against women is framed and categorised in the practice of transitional justice. Masculine dominance and gendered power imbalances play out in legal practice emerging in the representations of sexual violence formulated through legal practice, in turn the powerful normative function of legal representation has impeded upon quasi-judicial and extra-judicial transitional justice mechanisms.[69] There is a need to recognise victims not as bound, singular and static representations but as concrete beings worthy of receiving justice in a field that endeavours to reconnect them to the world in the aftermath of trauma. The thesis argues that the extent and dimensions of the problem of incommensurability for transitional justice are yet to be fully explored. In the following section, I define what is meant by the normative lens and narrative lens employed throughout the thesis to reveal the incommensurable nature of representations of conflict-related sexual violence.

1.4. The Normative and The Narrative Lens: Framing Lived Experience

War is merely a general term, a collective noun for so many individual stories. War is every individual; it is what happened to that individual, how it happened, how it changed that person's life.[70]

Following Bruner's reasoning that human thought can be divided into two distinct approaches, the thesis is divided into two interrelated parts: the normative and the narrative,[71] Whether one resides in the normative or narrative realm, each lens is underpinned by the human capacity to tell stories and narrative is central to how our lived

[68] Matthew Adler, 'Law and Incommensurability: Introduction' (1998) 146(5) *Pennsylvania Law Review* 1169.
[69] Emily Snyder, Lindsay Borrows, and Val Napoleon, '*Mikomosis and the Wetiko*: A Teaching Guide for Youth, Community, and Post-Secondary Educators' (Indigenous Law Research Unit, University of Victoria 2013) 15 <www.indigenousbar.ca/indigenouslaw/wp-content/uploads/2013/04/Mikomosis-and-the-Wetiko-Teaching-Guide-Web.pdf> accessed 14 April 2017.
[70] Slavenka Drakulić, *S.: A Novel About the Balkans*. (Reprint edn, Penguin 2001) 5-6.
[71] Jerome Bruner, *Actual Minds, Possible Worlds* (Harvard University Press 1986) 11.

experiences are represented. The recognition of the power of narrative and storytelling in the shaping of our own lives is fundamental to consider how lived experience is represented in judicial, quasi-judicial and extra-judicial transitional justice mechanisms. Whilst normative legal narratives have been instrumental in the recognition of conflict-related sexual violence and the fight to end impunity, the thesis contends that the universalisation of lived experiences of sexual violence in law permits incommensurability and the continued diminishment of women's perceptions of justice in the field of transitional justice. Framed through three modes of thought – temporality, spatiality, and genealogy - the first part explores how normative practice has become the dominant lens through which lived experiences of conflict-related sexual violence are understood. The extent and dimensions of incommensurability, arising as a consequence of the application of the normative lens, have reduced and silenced the particularities of lived experience, constraining women's experiences within singular categorisations.

In its second part, the thesis applies the narrative lens to truth and reconciliation commissions, community-based mechanisms, memorialisation projects, apologies, and reparations. The application of the narrative lens has enriched many areas of scholarly endeavour, both theoretically and practically. From the fields of psychotherapy to medicine, psychology to art, narrative theory has become infused within a wide variety of disciplines. For thousands of years, our ability to narrate our lived experiences has been one of our species greatest weapons.[72] As Barthes surmises, the narrative mode is:

> present at all times, in all places, in all societies; indeed, narrative starts with the very history of mankind; there is not, there has never been anywhere, any people without narrative; all classes, all human groups, have their stories.[73]

A dividing or uniting force, narrative structures the stories told by frightened and persecuted slaves around campfires to powerful speeches told by skilled orators. Whether emerging in the autobiographical accounts of our lives, the sharing of life stories between friends, to the

[72] Jerome Bruner, *Acts of Meaning* (Harvard University Press 1990) 45.
[73] Roland Barthes, 'An Introduction to the Structural Analysis of Narrative' (1975) 6(2) *New Literary History* 237.

testimonies articulated in a courtroom, narrative is the way human beings make sense of the world and make our existence meaningful. [74] Many narrative theorists perceive the words 'narrative' and 'story' as synonymous and I use these terms interchangeably throughout the thesis.[75]

In feminist literature, narrative and storytelling has been central in the representation of women's lived experiences and challenging singular categorisations and stereotypes. The 1960s and 1970s marked the beginning of feminist theory using consciousness-raising as an empirical method of inquiry into the violence experienced by women. Consciousness-raising groups placed women's narratives at the centre of discussions, shared amongst other women who had experienced similar violence. This allowed those who had survived such trauma with a space to overcome the shame, secrecy, and denial of the violence occurring behind closed doors.[76] Their lived experiences were seen as demonstrative of the particular whilst also belonging to the collective, making individual experience "not so individual at all."[77]. Feminism centred its collective political project upon "bringing to voice and sharing of women's experiences as key to developing 'sisterhood' and to building women's collective resistance to their subordination."[78] This meant that the women's movement could focus upon the "wide-spread, political, rather than individual, personal experiences of survivors."[79] Lived experience has a hopeful purpose for feminist scholars because "by unveiling what is habitual, it also reveals our agency to reconfigure it."[80] In emphasising the feelings and experiences of women to challenge generalisations, the focus upon lived experience of violence through storytelling and consciousness-raising was used with the purpose of effecting social, political, and legal change.[81] In doing so, the feminist movement offered a

[74] Donald Polkinghorne, *Narrative Knowing and the Human Sciences* (State University of New York Press 1988) 11.
[75] Rankin (n 2) 2.
[76] Judith Herman, *Trauma and Recovery* (Basic Books 1992) 29.
[77] Diana Mulinari and Kerstin Sandell, 'Exploring the Notion of Experience in Feminist Thought' (1999) 42(4) *Acta Sociologica* 287, 288.
[78] Sonia Kruks, 'Women's 'Lived Experience': Feminism and Phenomenology from Simone de Beauvoir to the Present' in Mary Evans, Clare Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, Ania Plomien and Sadie Wearing (eds) *The SAGE Handbook of Feminist Theory* (SAGE 2014) 75.
[79] Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) Social & Legal Studies 179, 184.
[80] Kruks (n 78) 87.
[81] Social action such as the recent #MeToo movement is a contemporary example of international feminist politics and consciousness-raising in action. See, Susan Brownmiller, *Against Our Will* (Ballantine Books 1975);

"new language" for understanding the impact of sexual and domestic violence which framed rape not as a sexual act but of a criminal offence.[82] Narrative provided a medium through which to make visible oppressive, androcentric norms that had relegated women's experiences to silence. Women's narratives of violence and the breaking of their silence became central to making the public aware, prompting sorely needed reforms to be brought to fruition.

Engaging with feminist critique of conflict and post-conflict mechanisms, the thesis follows Mackinnon's argument that looking at the "reality of women's lives first" allows feminist scholarship to "hold human rights law accountable to what we need" rather than beginning from an 'add women and stir' approach.[83] As Niarchos has noted, the representation of women's lived experiences:

> requires an exposition of the facts, in all their horrifying and indelicate detail. Only in this way can the full extent of female suffering be conveyed to a male-dominated legal culture. From this vantage point, it becomes apparent just how divorced from reality are legal protections for women in war.[84]

Explored further in Chapter Two, lived experience has nevertheless been a controversial framework through which to understand gender-based violence. Divisions amongst feminist activists and scholars, and their varied schools of thought, have drawn different conclusions as to how the notion of lived experience should be employed in the attempt to understand the female experience of war and conflict.

Through an analysis of the various narrative forms embodied within judicial, quasi-judicial, and extra-judicial mechanisms, the thesis pays attention to what is elided by the dominant lens demanding that representation moves beyond the boundaries of the normative in the

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Judith Herman, *Trauma and Recovery* (Basic Books 1992) 29; Carine Mardorossian, 'Toward a New Feminist Theory of Rape' (2002) 27(3) *Signs* 743.

[82] Judith Herman, *Trauma and Recovery* (Basic Books 1992) 30.

[83] Catherine Mackinnon, 'Rape, Genocide, and Women's Human Rights' (1994) 17 *Harvard Women's Law Journal* 5, 6.

[84] Catherine Niarchos, 'Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia' (1995) 17(4) *Human Rights Quarterly* 649, 654.

field of transitional justice.[85] Reconfiguring rape narratives to reveal what normative representations of conflict-related rape elide has the potential to impact how the transitional justice community approaches victim-perceptions of justice and the dominance of legalism that bears down upon these, masking the insidious and pervasive nature of sexual violence.[86] Narratives of rape reveal the unfathomable, detailing the horrors of lived experiences of sexual violence and the trauma this can inflict upon a victim-survivors mind, body, and soul. Some of the narratives of sexual violence contained within these chapters are explicit and disturbing, detailing the most egregious acts that human beings can inflict upon another. When detailing stories of sexual violence, notes Sivakumaran, "the least we can do… is to accurately represent what they had to go through, using their words where possible" because "to euphemize would be to further the silence."[87]

In framing the problem of incommensurability, I follow Bellantoni's line of reasoning that, "the incommensurable conflicts practical enquiry admits are a condition of its progress, not a signal of its decay."[88] In order to progress, the challenge for transitional justice is to overcome incommensurability and the centrality of legalism to make space for women's voices and their perspectives on justice to more adequately represent their lived experiences. Narrative emerges as a tool through which to begin this process, finding a commonality between the two realms of the universalised narratives in law and the particularities of women's lived experiences.

1.5. Outline of Thesis

Chapter two explores the historical development of the recognition of conflict-related sexual violence, focussing upon the work of the transnational feminist movement of women's NGOs, women's caucuses, and feminist scholars who were central in facilitating this in both IHL and ICL. Exploring the successful prosecution of crimes against sexual violence in the ICTY and

[85] Sorcha Gunne and Zoe Brigley-Thompson (eds) *Feminism, Literature and Rape Narratives: Violence and Violation* (Routledge 2010) 4.
[86] ibid.
[87] Sandesh Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18(2) The European Journal of International Law 253, 263.
[88] Lisa Bellantoni, *Moral Progress: A Process Critique of MacIntyre* (SUNY Press 2000) 8.

ICTR, the drafting of the Rome Statute and the establishment of the ICC, the chapter notes the importance of the feminist movement in facilitating the revolutionary recognition of sexual violence as more than merely an inevitability of war.

Having explored the historical development of its recognition, Chapter three focusses upon the subsequent feminist analyses of the representations that have emerged within international tribunals over the last twenty-five years. After years of being silenced, the chapter highlights the central themes that have arisen in the legal narratives arising from such mechanisms. Despite being crucial in the recognition of conflict-related sexual violence, the chapter elucidates the limits of law's representations and calls for the refocussing of the feminist lens to challenge the centrality of law within the field of transitional justice.

Chapter four responds to this call, taking a broad view of the field of transitional justice to consider why law has become the dominant representative force of conflict-related sexual violence. Outlining Bourdieu's theory of practice and the central concepts of habitus, field, capital and symbolic power and violence, the chapter applies these to the field of international law, elucidating the overlap of international criminal justice and transitional justice. In doing so, the chapter highlights the underlying masculine dominance that has shaped how women's experiences are framed through the field, circumscribing the forms of justice available to them within the field.

Entering the juridical field through the ICC, chapter five explores how legal representations of conflict-related sexual violence emerge. To do so, the chapter outlines three modes of thought - temporality, spatiality, and genealogy – that operate to frame law's narrative boundaries. The chapter applies the three modes of thought to the testimonies articulated within the case of *Bemba* elucidating how the normative lens translates the particularities of women's lived experiences of conflict-related sexual violence. After years of being silenced and rendered invisible, the chapter contends that representations of rape emerging from international judicial mechanisms are limited and generalized, failing to adequately and appropriately address the complexities of sexualized violence and the lived experiences of trauma women are forced to endure on such massive scales; trauma that marks the human psyche and seeps into the very fabric of society. These three modes provide a framework

through which the narratives produced in quasi-judicial and extra-judicial mechanisms will be analysed.

Chapter six explores what is omitted from the universalised legal representations of conflict-related sexual violence in judicial mechanisms. Framed through a therapeutic lens, the chapter elucidates the particularities of trauma and the ethical demand that this places upon the transitional justice field to perceive women as fully human, beyond prevailing categorisations of victimhood. The chapter explores the notion of paying attention to the excessive focus upon the universal, demonstrating the ability of imagination to draw together legal and narrative representations to promote a more socially just vision of the world.

Shifting from the normative to narrative lens, Chapters Seven and Eight undertake a narrative analysis of the representations of sexual violence articulated within and emerging from each mechanism. Chapter seven examines the narratives articulated within the South African Truth and Reconciliation Commission (SATRC) and those arising from the Gacaca courts in Rwanda. Chapter eight explores the official apologies made by Prime Minister Abe and the Japanese Government and President Koroma in Sierra Leone. It then considers the conceptual narratives embodied in memorial projects such as those installed for the 'Grandmothers'[89] raped and sexually enslaved by the Japanese military during the Second World War and two memorials in Kosovo, the permanent *Heroinat* and the temporary *Thinking of You*. Finally, the chapter explores the true value of reparations. Applying the three modes of thought, the thesis elucidates the extent to which the focus upon the particularities of women's trauma, outside of legal representations, can overcome incommensurability. It questions the temporal limits of each mechanism, the spatial relations underpinning the contexts within which women's lived experiences arise in these mechanisms and the power underpinning the articulation of such narratives. Both chapters consider whether the narratives produced in these mechanisms challenge the incommensurability present in legal representations. The dominance of legalism and the centrality of legal justice has, the thesis contends, subsequently prevented transitional justice from paying attention to the realities of women's lived experiences.

[89] Rather than using the term 'Comfort Women', I will refer to the term of endearment used in the form of 'Grandmother.'

Chapter eight explores the adjustment of the narrative lens. This chapter pushes at existing boundaries to ultimately question how law's limits might be redrawn as commensurable with lived experiences of conflict-related sexual violence through a new narrative habitus within the field of transitional justice. Shifting the three modes – temporality, spatiality, and genealogy – from normative to narrative, the chapter explores how transitional justice practice may emerge from the challenge to overcome the centrality of law and incommensurable representations of sexual violence. Centring the perspectives of victim-survivors, the adjustment of the narrative lens notes the importance of bringing women's voices to the fore and restoring the connections between victim-survivors and their community, utilising narrative as a means through which to collectively demand for institutional and societal change. Beyond the act of rape, women's lived experiences demand our full attention.

1.6. Terminology, Definitions and Conceptual Boundaries

In 2018, the UN Secretary-General updated the definition of 'conflict-related sexual violence' as an umbrella term that encompasses:

> Rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.[90]

This highlights how the perpetration of sexual violence in conflict is not confined to women. Feminist scholars have highlighted the importance of moving away from gender being equated solely with women and girls to recognise that such violence impacts both women *and* men.[91] Like women, men are subjected to violent hegemonic masculinities arising within

[90] UNSC, 'Report of the Secretary-General on Conflict-related Sexual Violence' (23 March 2018) S/2018/250 <http://undocs.org/S/2018/250> accessed 27 March 2018.
[91] Elisabeth Porter, ''Gendered Narratives: Stories and Silences in Transitional Justice' (2016) 17(1) Human Rights Review 35, 40; Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013) 83.

militarised contexts that endeavour to shame, stigmatise, and traumatise.[92] Whilst evidence of the sexual violence committed against men and boys is slowly coming to light, women and girls remain disproportionately affected by conflict-related sexual violence.[93] The scope of the thesis is predominantly focussed upon women's experiences of sexual violence. This is not to undermine or diminish the harms inflicted upon men and boys. Rather, the thesis addresses the oversight that has emerged in the transitional justice field as to women's justice needs in the aftermath of traumatic experiences of sexual violence and the absence of their voices within the field.

Reflexivity is important when approaching a project that centres upon the experiences of women as it is vital to be cognizant of the ways in which my own background, location, and implicit assumptions impact upon my own worldview.[94] This also entails recognition of the intersecting axes of oppression, such as age, race, class and ethnicity, that impact upon women's lived experiences of conflict and sexual violence.[95] Accessing and analysing women's narratives of sexual violence expressed in transitional justice mechanisms demands sensitivity otherwise I run the risk of universalising the varied experiences of women. I do not wish to use women's experiences as commodities, as the infamous question "Anyone here been raped and speak English?" made by a journalist in a refugee settlement during the conflict in BiH alludes.[96] My position as a white, Western researcher and feminist creates a power dynamic as I am arguably attempting to "speak for 'the other/s' in a global context."[97] I must be aware of the risks of homogenizing the experiences of women and overlooking the multiple intersections that impact upon their life prior to, during, and following conflict.[98]

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[92] See Sandesh Sivakumaran (n 91); Amrita Kapur and Kelli Muddell, 'When No One Calls It Rape Addressing Sexual Violence Against Men and Boys in Transitional Contexts' (ICTJ 2016) <www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf> accessed 10 January 2017; Tom Hennessey and Felicity Gerry, 'International Human Rights Law and Sexual Violence Against Men in Conflict Zones' (Halsbury's Law Exchange 2012) <https://blogs.lexisnexis.co.uk/wp-content/uploads/sites/25/2012/12/policy-paper-sexual-violence-main.pdf> accessed 10 January 2017.

[93] UNSC (n 94).

[94] Sharlene Nagy Hesse-Biber (ed), *Handbook of Feminist Research: Theory and Praxis* (2nd edn, SAGE Publications 2012) 17; Janine Clark, 'Working with Survivors of War Rape and Sexual Violence: Fieldwork Reflections from Bosnia-Hercegovina' (2017) 17(4) Qualitative Research 424, 425.

[95] See, Kimberle Crenshaw, 'Mapping the Margin: Intersectionality, Identity Politics and Violence against Women of Color' (1991) *Stanford Law Review* 1241.

[96] Inger Skjelsbæk, *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina* (Routledge 2012) 46.

[97] Hesse-Biber (n 100) 14.

[98] ibid.

The reader should note that I use the term conflict-related sexual violence to denote 'rape' and 'sexual violence.' I also use the terms rape and sexual violence interchangeably though differentiating between the two when necessary.[99] I have chosen not to abbreviate the term conflict-related sexual violence because the abbreviation 'CRSV' has a sterility that further detaches sexual violence from the realities of lived experience. The hyphen between conflict-related denotes the extension of rape beyond the confines of war, stretching prior to and beyond the boundaries imposed by legal definitions of conflict and post-conflict. I also use the terms victim, survivor and victim-survivor interchangeably to represent the choices women make in relation to such terms. Some women may use the term victim as a means of agency, refuting the label of survivor because, for example, the term survivor does not grant them legal status to access reparations and compensation. Conversely, some may reject the term victim because they claim agency through moving away from victimhood. As such, I apply Jean Charles' reasoning of the use of the neologism victim-survivor because it reminds "us that surviving rape is processual; it is an extended rather than accomplished act."[100]

From the Rwandan genocide and the war in the Former Yugoslavia in the 1990s, the present-day situation in the DRC, the persecution of Rohingya women in Myanmar, across to the Islamic State controlled territories of Iraq and Syria, rape and sexual violence in conflict continues to emerge as a conscious strategy employed by armed groups. [101] The need to re-conceptualize conflict-related sexual violence beyond the confines of legal categorisations is becoming ever more urgent. Challenging the centrality of law and exploring the possibilities of overcoming incommensurability is one step towards this reconceptualization in the field of transitional justice. This thesis acts as a call to attention to lawyers, judges, scholars, human rights activists and transitional justice practitioners to reflect more critically on the centrality

[99] The definition of rape and sexual violence is ever evolving and these definitions vary in academic and legal literature. For further discussion relating to the definition of conflict-related sexual violence, see Kirsten Campbell, 'The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia' (2007) 1 *The International Journal of Transitional Justice* 411.
[100] Régine Michelle Jean-Charles, 'Toward a Victim-Survivor Narrative: Rape and Form in Yvonne Vera's Under the Tongue and Calixthe Beyala's Tu t'appelleras Tanga' (2014) 45(1) *Indiana University Press* 39, 41.
[101] See Lauren Wolfe, 'Syria Has A Massive Rape Crisis' *The Atlantic* (3 April 2013) <www.theatlantic.com/international/archive/2013/04/syria-has-a-massive-rape-crisis/274583/> accessed 10 April 2017.

of law and the consequences of abstract and generalised representations upon the lived realities of victim-survivors in the aftermath of conflict.

Chapter Two: From Absence, to Acknowledgment, to Acquittal – Feminist Victories in the Fight to Recognise Conflict-Related Sexual Violence

The soldier invades the woman's body just as he invades her country; he crushes her body as well as her right to autonomy and control over her life.[1]

Why should a fight be played out on my body?[2]

Placing the thesis within its context, this chapter outlines the development of the recognition of conflict-related sexual violence in the aftermath of WW2. The chapter draws attention to the historic absence of conflict-related sexual violence, noting the initial unwillingness of the international community to criminalise such violence. As such, a central focus of the chapter is upon the significance of feminist contributions, both academic and activist, that have been principal to the fight to reconceptualise forms of conflict-related sexual violence perpetrated against women as gender specific war crimes under international law. Were it not for the activism of women's human rights advocates and feminist scholars over the past twenty-five years, conflict-related sexual violence would likely have remained to be seen as an inevitability of conflict. Advocates fought tirelessly for the full realisation of women's human rights, the incorporation of gender-based crimes in international statutes, and the ending of impunity for the violence committed against women during conflict. As a consequence, they indirectly paved the way for the recognition of conflict-related sexual violence in the jurisprudence of the special tribunals system and were central to the drafting of the Rome Statute and the subsequent establishment of the ICC. Feminist legal theorists, lawyers, activists and transitional justice scholars continue to draw attention to the ways in which women's lived experiences of violence are represented in judicial mechanisms and conceived under international law when existing social, political and legal institutions have been overthrown or undermined.[3]

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[1] Sonja Hedgepeth and Rochelle Saidel, *Sexual Violence Against Jewish Women During the Holocaust* (Brandeis University Press 2010) 14.

[2] ICTJ, 'Gender Justice' <www.ictj.org/our-work/transitional-justice-issues/gender-justice>

[3] Margaret Davies, 'Unity and Diversity in Feminist Legal Theory' (2007) 2(4) *Philosophy Compass* 650, 660.

2.1. From Recognition to Realisation: 'Women's Rights as Human Rights'

In the aftermath of WW2, the gamut of sexual violence committed by Japanese and Nazi troops against women, including forced nakedness, sexual enslavement, forced sterilisations and rape, were either entirely absent or minimally considered by the two Military Tribunals. Askin has noted how despite the extensive documentation of such crimes the Nuremberg Tribunal did not "expressly prosecute such crimes."[4] Their acknowledgment of such crimes was implicit, included as evidence of the atrocities with trial records containing "extensive evidence of sexual violence."[5] Chinkin has noted that the lack of explicit acknowledgment at Nuremberg was "not because the German troops were not guilty of rape, but because the allied forces… were also guilty of many rapes."[6] In the Tokyo Tribunal, sexual violence was only prosecuted in conjunction with other crimes.[7] This is despite the fact that approximately 80,000 to 200,000 women from thirteen Asian-Pacific countries, including Korea, China, Taiwan, the Philippines and Indonesia were kidnapped and trafficked by Japanese forces.[8] Evidence of sexual violence in both the Nazi and Japanese contexts was an open and well-documented 'secret' by both axis and allied forces.[9] Nevertheless, the magnitude and the severity of the forms of conflict-related sexual violence committed were subsequently overlooked, resulting in a dearth of protections for women and the silencing of their experiences.[10]

[4] Kelly Dawn Askin, 'Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles' (2003) 21(2) Berkeley Journal of International Law 288, 301.
[5] ibid.
[6] Christine Chinkin, 'Rape and Sexual Abuse of Women in International Law' (1994) 5 (3) *European Journal of International Law* 326, 334.
[7] Rhonda Copelon, 'Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law' (2000) 46(1) *McGill Law Journal* 217, 221; Hilly Moodrick-Even Khen and Alona Hagay-Frey, 'Silence at the Nuremberg Trials: The International Military Tribunal at Nuremberg and Sexual Crimes against Women in the Holocaust' (2013) 35(1) *Women's Rights Law Reporter* 43, 44.
[8] The subsequent silence and failure to address the crimes committed against the so-called 'Comfort Women' will be explored further in Chapter seven.
[9] Rhonda Copelon, 'Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law' (2000) 46(1) *McGill Law Journal* 217, 222.
[10] The crimes of the Japanese military with regard to the sexual slavery of the so-called 'Comfort Women' was subject to the historic independent Women's International War Crimes Tribunal which took place in Tokyo in December 2000. For further discussion, see Christine Chinkin, 'Women's International Tribunal on Japanese Military Sexual Slavery' (2001) 95(2) *The American Journal of International Law 335.*

Following the Nuremberg and Tokyo tribunals, the Universal Declaration of Human Rights (UDHR) was adopted in 1949.[11] The UDHR explicitly states that no one should be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.[12] Drafting the UDHR was on the agenda for the first meeting of Commission on the Status of Women (CSW).[13] In drafting the UDHR, the CSW lobbied for more gender-sensitive and inclusive language to be inserted within it, to varying degrees of success.[14] As Otto has noted, "the main subject of human rights law, the generic bearer of human rights, remained tenaciously masculine."[15] The UN subsequently drafted and signed the International Convention for the Prevention and Punishment of the Crime of Genocide, making genocide a crime under international law, whether committed in times of peace or periods of conflict.[16] A year later, the Geneva Convention explicitly provided women with "protect[ion] against [rape as an] ... attack on their honour."[17] Despite this, Copelon has highlighted that the document systematically failed to treat rape as a form of violence and such crimes were not "subject to the universal obligation to prosecute."[18] Sexual violence endured as an inevitability of war, framed through notions of family honour and as an 'outrage to personal dignity' rather than as a grave breach of international law. [19] Otto has noted that this functioned to naturalise a 'gendered distinction' between man as combatant "and those other 'vulnerable' members of families and communities in need of his protection."[20]

[11] It is an international proclamation of individual rights providing a common standard to be achieved by all member states using measures implemented both nationally and internationally. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) Preamble (herein UDHR).
[12] ibid art 5.
[13] Established in 1946, the CSW is described by UN Women as the principal global intergovernmental body exclusively dedicated to 'promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards on gender equality and the empowerment of women.' See, 'Commission on the Status of Women' <www.unwomen.org/en/csw> accessed 18 October 2014.
[14] Dianne Otto, 'Lost in translation: Re-scripting the sexed subjects of international human rights law' in Anne Orford, *International Law and Its Others* (Cambridge University Press, 2006) 328-329.
[15] ibid 337.
[16] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948) United Nations, Treaty Series, vol. 78, p. 277 (herein Genocide Convention).
[17] Fourth Geneva Convention, art 27. For further discussion, see Louise Chappell, 'Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court' (2003) 22(1) Policy and Society 3, 6-7.
[18] Copelon (n 9) 221.
[19] Rhonda Copelon, 'Violence Against Women, Rape and Gender Violence: From Impunity to Accountability in International Law' (2003) 2(10) Human Rights Dialogue <www.carnegiecouncil.org/publications/archive/dialogue/2_10/articles/1052>
[20] Otto (n 14) 323.

From the mid-1980s, the transnational feminist movement of women's NGOs, women's caucuses, and feminist scholars, endeavoured to break the historic silence surrounding sexual violence that had endured in "treaty formulations, prosecutorial strategy, and narrative of the Nuremberg, Tokyo and other trials."[21] Ní Aoláin has noted that the the initial focus for women's human rights advocates in advancing their position in international law, "had a hard-headed and practical edge" that was employed to reveal the gendered dimensions of legal and social measures shrouded in gender neutrality.[22] To adopt a feminist perspective thus encompassed imposing a gendered lens upon law and its interaction with the wider social world through its seemingly gender-neutral categorisations. In the context of conflict critique, feminist contributions endeavoured to ensure that the forms of sexual violence perpetrated against women committed would be recognised as gender-specific war crimes.[23] During this time, women's human rights advocates, predominantly radical feminists and women's NGOS, were focused upon dismantling the binary that had rendered many of the human rights violations experienced by women in conflict hidden, deemed legally to be 'private' matters.[24] The binary of public/private continues to silence women's voices, excluding them from public space, limiting their access to power and inhibiting the full realisation of their rights.[25] Scholars such as Rhonda Copelon, Catherine Mackinnon, and Christine Chinkin were fundamental in drawing together feminist scholarship and activism to create transformative change. In the early 1990s, Chinkin *et al*. interrogated why gender was not perceived to be an issue in international law. They argued that women must be heard and made visible both substantively and in practice,[26] emphasising the impact of the public/private dichotomy and elucidating how the erasure of gender in international law

[21] Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6(2) *International Journal of Transitional Justice* 205, 211. For a more detailed overview of the history of the Development of Gender Crimes Under International Law prior to the 1990s, see Askin (n 4) 299-305.
[22] ibid 219; See also, Dorothy Thomas and Michele Beasley, 'Domestic Violence as a Human Rights Issue' (1993) 15(1) Human Rights Quarterly 36, 39.
[23] Joanne Conaghan, 'Reassessing the Feminist Theoretical Project in Law' (2000) 27(3) *Journal of Law and Society* 351
[24] Karen Engle, 'A Genealogy of the Centrality of Sexual Violence to Gender and Conflict' in Fionnuala Ní Aoláin, Naomi Cahnm Dina Francesca Haynes and Nahla Valji (Eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press, 2017) 142.
[25] Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013) 116.
[26] Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *The American Journal of International Law* 613, 623.

maintained the structural bias of male dominance.[27] Their approach was premised upon the "radical act of taking women seriously… believing that what we say about ourselves and our experience is important and valid."[28] Following this, Copelon revealed the ways in which domestic and international law served to protect perpetrators of violence against women by failing to recognise women's lived experiences within its frameworks.[29] As such, she demanded that a framework of women's rights and a gendered perspective be integrated into international documents to,[30] secure universal recognition of women's human rights. Whether working inside legal and political institutions, outside as scholars and activists, or residing somewhere in-between, women's human rights advocates fought to reveal and disrupt "inherent gender biases in order to use these institutions to advance women's equality and justice claims."[31]

The Vienna Declaration and Programme of Action (VPDA) was adopted in June 1993. This emerged from the shadow of the World Conference on Human Rights where women's NGOs in attendance presented concrete examples of the rapes being committed in the former Yugoslavia and demanded the international community implement a comprehensive framework for eliminating discrimination and violence against women.[32] VPDA was the first international document to explicitly recognise gender violence as a violation of IHL and IHRL, providing a non-exhaustive list of violations including "systematic rape, sexual slavery, and forced pregnancy."[33] It stressed the importance of eliminating violence and discrimination against women in both their public and private life.[34] Up until this point, IHL and IHRL had either incorporated sexual violence at a minimum, characterised it inappropriately or entirely omitted it from its documents; a consequence, notes Askin, of the drafting and enforcing of legal provisions by men who had historically "neglected to enumerate, condemn, and

[27] ibid 627.
[28] ibid 634.
[29] Rhonda Copelon, 'Women and War Crimes' (1995) 69(1) *St. John's Law Review* 61, 64.
[30] Copelon (n 9) 219.
[31] Louise Chappell, 'Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court' (2003) 22(1) *Policy and Society* 3, 4.
[32] Cees Flinterman, 'Vienna Declaration and Programme of Actions: 20 Years Later' (2013) 31(2) Netherlands Quarterly of Human Rights 129, 130
[33] United Nations, Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights held in Vienna from 14 to 25 June 1993, (A/CONF.157/24), 13 October 1993.
[34] ibid.

prosecute" the crimes committed against women.[35] VPDA was followed by the adoption of the Declaration on the Elimination of Violence against Women (DEVAW) in December 1993.[36] This was seen as a success for the 'anti-violence agenda' yet, as Otto notes, DEVAW "does not recognize violence against women as a violation of human rights because of states' concerns that to do so would water down their universality."[37] Rather than denoting women's specific rights as universal, violence against women was, and continues to be, "understood as a 'barrier' to women's enjoyment of human rights." [38]

As the work of feminist advocates progressed, the notion of women's 'lived experience' became, and continues to be, a much-contested framework through which to understand gender-based violence.[39] For radical feminist Catherine Mackinnon, recognition of conflict-related sexual violence and women's human rights necessitated a 'reality-based approach' that focussed upon the failure of states and governments to recognise the sexual and reproductive violations affecting women "every day in every country in the world."[40] She has noted that the idea of women's human rights was created by women, not states or governments:

> out of a refusal to believe that the reality of violation we live with is what it means for us to be human - as our governments seem largely to believe… by refusing to abandon ourselves and each other, out of attachment to a principle of our own humanity… by refusing to deny their reality as violations.[41]

[35] Askin (n 4) 295-296.
[36] Article 1 of DEVAW defined violence against women as: "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." It provides a non-exhaustive list of examples of violence covered by the definition such as martial rape, female genital mutilation, trafficking and forced prostitution. Declaration on the Elimination of Violence against Women (20 December 1993) A/RES/48/104, art 2.
[37] Otto (n 14) 346.
[38] ibid.
[39] Sonia Kruks, 'Women's 'Lived Experience': Feminism and Phenomenology from Simone de Beauvoir to the Present' in Mary Evans, Clare Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, Ania Plomien and Sadie Wearing (eds) *The SAGE Handbook of Feminist Theory* (SAGE 2014) 75.
[40] Catherine Mackinnon, 'Rape, Genocide, and Women's Human Rights' (1994) 17 *Harvard Women's Law Journal* 5, 16.
[41] ibid.

As such, lived experience became a means through which to "grasp the collective reality of women's condition from within the perspective of that experience, not from outside it."[42] She considered women's experience to be representative of the "collective social being" revealing "gender relations to be a collective fact."[43]

The radical feminist assertion that a 'reality-based approach' presented a unique, female voice that encapsulated the voice and experience of all victims "as women live through it"[44] was received with considerable critique. Many feminist scholars rejected the claim that lived experience could provide an all-encompassing and authentic ontological framework for understanding women's experience of war. Prominent activists and academics contested the "arguably tendentious unity between women."[45] Before and after the VPDA, feminists of the Global South accused feminists of the Global North of homogenising women's lived experiences through this notion.[46] Ong recounted how Western feminists, whether academic or activist, were perceived to be "working in collaboration with the imperialist hegemonies of Northern countries" presenting themselves as "enlightened and liberated subjects with the answers to the problems of women in non-Western cultures."[47] Feminist scholars tended to "to conflate the specificities and meanings of women's experiences and to perpetuate the dubious portrayal of women as mere epiphenomena or passive objects of male transactions."[48] As such, many women, survivors and scholars alike, felt marginalised, absent, and misrepresented as 'women's experience' was perceived to stand for "the experiences of only a certain subgroup of privileged (white, middle class, heterosexual) women."[49] Writing at the same time as Mackinnon, Hooks noted how, "Privileged feminists…" tended to "reflect

[42] Catherine Mackinnon, 'Feminism, Marxism, Method, and the State: An Agenda for Theory (1982) 7 *Signs* 515, 536.
[43] ibid 543.
[44] ibid.
[45] Lois McNay, 'Agency and experience: gender as a lived relation' (2004) 52(2) The Sociological Review 175, 178-179.
[46] See also, Aihwa Ong, 'Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia' (1996) 4(1) *Indiana Journal of Global Legal Studies* 107, 113; Leslye Obiora, 'Feminism, Globalization and Culture: After Beijing' (1997) 4(2) *Indiana Journal of Global Legal Studies* 355; Karen Engle, 'Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99(4) *The American Journal of International Law* 778.
[47] Aihwa Ong, 'Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia' (1996) 4(1) *Indiana Journal of Global Legal Studies* 107, 116.
[48] Paula C. Johnson and Leslye Obiora, 'How Does the Universal Declaration of Human Rights Protect African Women' (1999) 26(2) *Syracuse Journal of International Law and Commerce* 195, 207.
[49] Kruks (n 39) 75.

the dominant tendency in Western patriarchal minds to mystify woman's reality by insisting that gender is the sole determinant of woman's fate."[50] The notion of lived experience was deemed to be effectuating the universalisation of white women's' experiences.[51] The assertion by radical feminists such as Mackinnon of the shared experience of women was thus deemed to be "unproblematically assumed rather than empirically researched" impeding recognition that although women's experiences of violence were inherently gendered, they were also embodied in other intersections of oppression.[52] Heeding the critiques of the 1990s, feminist theorisation of women's lived experiences of conflict has since endeavoured to become more sensitive to the various intersections impacting upon women's lived experiences of conflict and violence.[53]

In year following the VPDA, the United Nations Commission on Human Rights appointed a Special Rapporteur on Violence against Women, its Causes and Consequences,[54] to investigate alleged situations of sexual violence. The Rapporteur recommends measures to be implemented nationally and internationally to eliminate sexual violence, suggests potential remedies to its consequences, and communicates with States regarding alleged cases of violence.[55] During the Fourth World Conference on Women in Beijing in 1995, the need for the UN and wider international community to move beyond mere rhetoric in relation to women's rights was emphasized. As Hillary Clinton stated:

> As long as discrimination and inequities remain so commonplace everywhere in the world, as long as girls and women are valued less, fed less, fed last… subject to violence

[50] Bell Hooks, *Feminist Theory: From Margin to Center* (Routledge 1984) 14; See also, Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1 *University of Chicago Legal Forum* 139, 154.
[51] Diana Mulinari and Kerstin Sandell, 'Exploring the Notion of Experience in Feminist Thought' (1999) 42(4) *Acta Sociologica* 287, 290. For further discussion see, Catharine A. MacKinnon, 'From Practice to Theory, or What is a White Woman Anyway?' (1991) 4(1) *Yale Journal of Law & Feminism* 13 and Martha R. Mahoney, 'Whiteness and Women, In Practice and Theory: A Reply to Catharine MacKinnon' (1992) 5(2) *Yale Journal of Law & Feminism* 217.
[52] Diana Mulinari and Kerstin Sandell, 'Exploring the Notion of Experience in Feminist Thought' (1999) 42(4) *Acta Sociologica* 287, 288.
[53] This will be further explored in Chapter Three s3.3. See also, Ní Aoláin (n 21) 211.
[54] UN Commission on Human Rights, Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women, Res 1994/45.
[55] UN Human Rights Council, Elimination of violence against women, Res 7/24 <http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_7_24.pdf> accessed 14 November 2014.

> in and outside their homes, the potential of the human family to create a peaceful, prosperous world will not be realised.[56]

The Beijing Declaration and Platform for Action was subsequently adopted.[57] Like the VPDA, it highlighted forms of sexual violence as egregious violations of human rights,[58] aimed to increase women's participation in conflict resolution, provided protection of women living through armed conflict, and called for gender parity in judicial institutions.[59] During this time, Mackinnon highlighted how the structure of IHRL, founded upon the sovereignty of states to agree to such declarations, inhibits states holding other states to account for how it treats women. She noted that:

> In this statist structure, each state's lack of protection of women's human rights is internationally protected, and that is called protecting state sovereignty… Each state finds its reasons to do nothing, which can be read as not wanting to set a higher standard of accountability for atrocities to women than those they are prepared to be held to themselves.[60]

To this day, there is yet to be a treaty that holds countries accountable for the violence committed against women.[61] In the following section, I explore the background and jurisprudence of the special tribunals system drawing attention to how feminist scholarship and activism indirectly laid the foundations for the successful prosecution of crimes of sexual violence in the ICTR and ICTY.[62]

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[56] Museum of Fine Arts Boston, 'Hear Hillary Clinton's Women's Rights are Human Rights' (Transcript) <www.mfa.org/exhibitions/amalia-pica/transcript-womens-rights-are-human-rights> accessed 14 November 2014.

[57] UN, Beijing Declaration and Platform for Action, Fourth World Conference on Women (adopted 15 September 1995) A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995) (herein Beijing Declaration).

[58] ibid, para 136.

[59] Ibid, paras. 132, 224, and 142(b) respectively.

[60] MacKinnon (n 40) 15.

[61] Rashida Manjoo and Daniela Nadj, 'Bridging the Divide: An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence against Women' (2015) 23(3) *Feminist Legal Studies* 329, 342; Ronagh McQuigg, 'Is it Time for a UN Treaty on Violence Against Women?' (2018) 22(3) *The International Journal of Human Rights* 305.

[62] Dubravka Zarkov, Jeff Handmaker, Helen Hintjens, 'Rhonda Copelon: Activist, Lawyer, Feminist' (2011) 42(1) *Development and Change* 387, 391.

2.2. Prosecuting Gender-Based Violence in the ICTY and ICTR

In 1992, the Bosnian War of Independence began. For decades, the multi-ethnic communist territory of the Socialist Federal Republic of Yugoslavia had lived peacefully under President Tito's rule. His death marked the end of communism within the country and slowly the once allied territory began to collapse as its constituent states sought independence. This resulted in a number of violent conflicts as consistent republic leaders, such as Slobodan Miloševic, used nationalist propaganda to break the ties that had held the former Yugoslavia together by reinforcing the differences Tito had worked to erase. Where once ethnicity had been no issue, tensions began to develop between different ethnic groups. BiH was one of the most ethnically diverse states inhabited by Muslim Bosniaks, orthodox Serbs, and Croats. In 1992, BiH declared its independence. Following the declaration, Serbian forces, supported by Miloševic, were mobilised to take control of the country. The Muslim population were specifically targeted, forced to flee their homes in an attempt to avoid the ensuing violence with many seeking refuge in neighbouring countries. In 1993, one month prior to the Vienna World Conference, the ICTY was established, becoming the first tribunal established by the UN to investigate and prosecute the war crimes being committed.[63] The international armed conflict in the Balkans lasted for three years until 1995. Murder, mass rape, and torture were all employed in what would eventually be understood as a violent and widespread regime of 'ethnic cleansing' and, following this, in the city of Srebrenica in July 1995, genocide.

In 1994, a year after the establishment of the ICTY, Rwandan President Juvénal Habyarimana was assassinated along with ten Belgian peacekeepers. Echoing the Bosnian context, the community ties between the Hutu and Tutsi population of Rwanda had been purposefully eroded by dehumanising propaganda against the Tutsi people. The assassination of the President triggered the 100 days of bloodshed that ensued. The Hutu militia the *Interahamwe* ('those who attack together'), *Impuzamugambi* ('those who have the same goal) and other Hutu civilians, raped, tortured and slaughtered Tutsi men, women, and children. During this time, the international community avoided referring to the violence as

[63] Statute of the International Criminal Tribunal for the Former Yugoslavia (adopted 25 May 1993 by UNSCR 827 (25 May 1993) as last amended by UNSCR 1877 (2009) of 7 July 2009) (herein ICTY Statute) <www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf>.

genocide because to do so would have created an obligation for them to prevent the violence under the Genocide Convention.[64] Instead, the UN withdrew the majority of its troops from Rwanda and further limited the actions of the 450 soldiers who remained whilst the onslaught spread rapidly through the country. The institutional foundations of the small, landlocked, East African country were destroyed. Three months after the genocide began, the atrocities ended when the Rwandan Patriotic Front seized power in July 1994, implementing a transitional government in an attempt to restore peace within the country. Approximately one million Tutsi and moderate Hutu, who had attempted to protect their Tutsi friends, family, and neighbours, had been murdered. Wielenga and Harris have noted that "another million Rwandans died in refugee camps and unrest in the Democratic Republic of Congo (DRC) over the following few years." [65] The ICTR was subsequently established in 1994 to prosecute those responsible for the genocide in Rwanda.[66]

Occurring on separate continents thousands of miles apart, the brutality that took place in both BiH and Rwanda shattered the lives of those who managed to survive, destroying families, communities, and livelihoods. As the atrocities unfolded, stories of mass rape began to be published in news media and non-governmental organisation (NGO) reports, slowly drawing the attention of the international community.[67] In BiH, it is estimated that between 20,000 and 50,000 women were raped during the conflict.[68] Simic notes that this figure does not account for women who were raped and murdered, women who disappeared, and those who never reported the crime.[69] In Rwanda, the number of women

[64] Genocide Convention, art 1.
[65] Cori Wielenga and Geoff Harris, 'Building peace and security after genocide: the contribution of the gacaca courts of Rwanda' (2011) 20(1) *African Security Review* 15
[66] Statute of the International Tribunal for Rwanda Security Council (adopted 8 November 1994 by UNSCR 955 (8 November 1994) as last amended by UNSCR 1717 (2006) of 13 October 2006) <www.irmct.org/specials/ictr-remembers/docs/res955-1994_en.pdf?q=ictr-remembers/docs/res955-1994_en.pdf>
[67] See, Robert Fisk, 'Bosnia War Crimes: 'The Rapes Went on Day and Night': Robert Fisk, in Mostar, Gathers Detailed Evidence of the Systematic Sexual Assaults on Muslim Women by Serbian 'White Eagle' Gunmen' *The Independent* (8 February 1993) <www.independent.co.uk/news/world/europe/bosnia-war-crimes-the-rapes-went-on-day-and-night-robert-fisk-in-mostar-gathers-detailed-evidence-of-1471656.html> accessed 18 November 2015; Amnesty International, 'Rwanda: Arming the Perpetrators of Genocide' (Report, 1995) <www.amnesty.org/download/Documents/172000/afr020141995en.pdf> accessed 18 November 2015.
[68] Nina Berman, 'Sexual Violence in Bosnia' *Remembering Srebrenica* (7 December 2014) <www.srebrenica.org.uk/what-happened/sexual-violence-bosnia/> accessed 15 November 2015.
[69] Olivera Simic, 'Rape, Silence and Denial' in Martina Fischer and Olivera Simic (eds), '*Transitional Justice and Reconciliation: Lessons from the Balkans* (Routledge 2015) 102.

raped by the Interahamwe range from thousands to hundreds of thousands.[70] In both contexts, rape was used as a pre-planned and deliberate strategy against women and girls. Gang-rapes were frequently committed by the Interahamwe in Rwanda[71] and in BiH women and girls were held in concentration camps and repeatedly raped.[72] For feminist scholars and activists, the atrocities committed during the 1990s presented a "horrible occasion for consciousness-raising."[73]

Disagreement amongst feminist scholars arose as to whether rape should be classified as 'genocidal.'[74] As stories of the mass rape being committed in the former Yugoslavia emerged, feminists inside and outside of the country became "deeply divided over how to name and understand rapes that had taken place there and over whether military intervention was called for in terms of a response."[75] Some scholars advocated the position that the rapes committed by Serbs in the Balkans were used as an instrument of genocide and thus different from 'everyday rape' due to the targeted focus upon Bosnian Muslims.[76] Mackinnon, for instance, contended that:

> If all men do this all the time, especially in war, how can one pick a side in this one? And since all men do this all the time, war or no war, why do anything special about this now? This war becomes just a form of business as usual. But genocide is not business as usual- not even for men.[77]

Other feminists, such as Rhonda Copelon, disagreed entirely with this position and the problematic nature of genocidal rape as "uniquely a weapon of war."[78] Rather, proponents of this position argued that "international criminal system should respond equally to rapes

[70] Paula Donovan, 'Rape and HIV/AIDS in Rwanda' (2002) 360 *The Lancet* 17.
[71] Human Rights Watch, 'Shattered Lives' (Report, 1996) <www.hrw.org/reports/1996/Rwanda.htm> accessed 10 March 2015.
[72] Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (University of Minnesota Press 1996) 138.
[73] Judith Herman, *Trauma and Recovery* (Basic Books 1992) 238.
[74] Mackinnon (n 40) 5.
[75] Engle (n 24) 138.
[76] Karen Engle, 'Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99(4) *The American Journal of International Law* 778, 779.
[77] Mackinnon (n 40) 11.
[78] Rhonda Copleon, 'Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law' (1994) 5(2) Hastings Women's Law Journal 243, 259.

committed on all sides."[79] Copelon considered that highlighting the "apparent uniqueness" of the rape of women in the former Yugoslavia and "as part of a genocidal campaign of 'ethnic cleansing' was a product of the invisibility of the rape of women in history as well as in the present."[80] She noted how, in doing so, certain contexts and particular experiences of rape and sexual violence were privileged, whilst others, such "the routine rape of women in the civil wars in Peru, Liberia, and Burma" were ignored. [81] For Copelon, resisting the powerful legal conceptions that make certain mass rapes exceptional and restricts its recognition and meaning for women raped in different contexts whether perpetrated in war or peace, "demands recognition of situational differences without losing sight of the commonalities. To fail to make distinctions flattens reality; and to rank the egregious demeans it."[82] More recently, Zarkov *et al.* have noted how national and international legal and feminist scholars during this time "largely followed the mainstream politics in the ethnic classification of both Yugoslav and Rwandan violence" and took "ethnic categories" promulgated by international legal instruments "as a given," whilst "never attempting to analyse the processes by which those categories became privileged in waging, and explaining, the violence."[83]

Despite these disagreements, Engle has noted that there was a consensus amongst feminists that regardless of how the rapes were named, these acts were criminal and those responsible should be held accountable, giving them "power in the simultaneous development of international criminal law and institutions."[84] She notes that, "Because no one—feminist or otherwise—could claim that rape in war was culturally defensible, those debates did not resurface in the context of the treatment of rape in conflict."[85] As such, fem concerning conflict-related sexual violence.[86] The unwavering determination of the feminist movement transformed the shape of international law through the incorporation of gender-based crimes in the international statutes which established the ostensible universal

[79] Engle (n 76) 779.
[80] Copelon (n 9) 244-245.
[81] ibid 245.
[82] ibid 266.
[83] Zarkov and others (n 62) 392.
[84] Engle (n 24) 138.
[85] ibid.
[86] Engle (n 76) 779.

recognition of women's rights as human rights and centered violence against women as a concern for the international community.[87]

Echoing the model of the Nuremberg and Tokyo tribunals, the ICTY and ICTR sought to end impunity for the crimes committed in BiH and Rwanda. As the work of the ICTY commenced, it was "survivors, committed journalists, and feminist human rights advocates" who "forced the story of the rape of women in the former Yugoslavia into the media and into international consciousness."[88] Nusreta Sivac, a former judge, and Jadranka Cigelj, a prosecutor, gathered the testimonies of four hundred women who had been raped and sexually abused and presented these to the ICTY as evidence of the sexual violence committed against women.[89] They, along with 34 other women, had been detained, beaten and repeatedly raped in the Omarska concentration camp and were released only after international journalists demanded a tour of the camp. 29 of the women were released but five were never seen again.[90] Following their release, they liaised between tribunal officials and survivors who came to testify in The Hague and advocated for more stringent safeguarding procedures for victims who agreed to tell their story.[91] Both Cigelj and Sivac focussed upon speaking publicly about their experiences to bring to light the atrocities that had been committed against women during the war. Unlike the two early Military Tribunals, which almost entirely overlooked gender-based crimes, the ICTY and ICTR successfully prosecuted various forms of sexual violence.[92] The mobilisation of the women's rights movement working within and outside of the two Tribunals to gain recognition and the subsequent prosecution of sexual violence cannot be downplayed.[93] The women's human rights movement also focussed upon the election of women judges, which proved pivotal in

[87] Engle (n 24) 142.
[88] Copelon (n 19).
[89] Sivac and Cigelj both testified about their experiences in the case of *Prosecutor v Kvočka et al*. (Judgment) IT-98-30/1 (2 November 2001).
[90] Martha Minow, *Breaking the Cycles of Hatred: Memory, Law, and Repair* (Nancy Rosenblum ed, Princeton University Press 2002) 6; Wendy Hesford, 'Rape Stories' in Wendy Hesford and Wendy Kozol (eds), *Haunting Violations: Feminist Criticism and the Crisis of the "Real"* (University of Illinois Press 2000) 37.
[91] Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Beacon Press 1998) 22-23.
[92] Askin (n 4) 317.
[93] ibid 346.

the subsequent developments both Tribunals made in relation to gender crimes.[94] As Doris Buss has noted:

> the subsequent work of the Yugoslav and Rwanda Tribunals owes much to the activism and effort of feminists who, as lawyers employed by the Tribunals, or as 'friends of the court'… had a substantial impact on the Tribunals' determinations that rape is a war crime and, more specifically, can constitute a crime against humanity or genocide. [95]

In the ICTR, Judge Navanethem Pillay, the only female judge sitting on the panel, insisted upon the investigation of mass rape committed in Rwanda, in light of the testimonies of two women who testified that they, along with other women, had been raped in the Taba Commune led by Jean Paul Akayesu.[96] Rhonda Copelon has noted the lack of will on the part of the prosecution to amend the initial indictment to include rape or sexual violence, despite the pressure that had been mounted on the chief prosecutor responsible for the ICTY and ICTR to facilitate institutional change in the investigation of gender crimes.[97] Subsequently, a group of NGOs submitted an amicus curiae brief that had been circulated for signatures from women's groups in Rwanda. Two weeks later, the prosecutor amended the charges. The witness testimonies, pursued by Judge Pillay, were held to be central to the amendment but, as Copelon has noted:

> the amicus served the purpose of making visible the invisibility of the survivor community, emphasising to both the court and the public the unacceptability of excluding sex-specific crimes against women from the justice process.[98]

The intervention by Judge Pillay, the amicus, and the disclosures by the witnesses culminated in the lauded outcome of *Akayesu*, the first conviction for sexual violence and rape as crimes

[94] Copelon (n 9) 228.
[95] Doris Buss, 'Rethinking "Rape as a Weapon of War"' (2009) 17(2) *Feminist Legal Studies* 145, 149.
[96] Kelly Dawn Askin, 'Gender Crimes Jurisprudence in the ICTR' (2005) 3 *Journal of International Criminal Justice* 1007, 1009; Copelon (n 9) 225.
[97] Copelon (n 9) 225.
[98] ibid 226.

of genocide in international law.[99] Judge Pillay's recognition of feminist organisations alongside her own feminist values was instrumental in leading to the lauded decision. In the process of "the doing and living" [100] of her role in the context of the ICTR Judge Pillay wilfully challenged the neutrality of her profession and its response to sexual violence, paying attention to victim-survivors with "an open mind, creativity and humility."[101] She pushed at the boundaries of the field, bringing the advocacy of women's human rights organisations who had fought so tirelessly into her legal practice and the lived experiences of those who were raped to the fore. Within the case, the ICTR held that the mass rape committed by the Interahamwe was a systematic attack committed with "the intent of destroying, in whole or in part, the Tutsi population" which constituted genocide.[102] The definition provided in the *Akayesu* case remains the leading definition of rape.[103] The aim of the genocidal rape committed was intended to kill women "through the transmission of AIDS, penetration with sharp objects, or as a result of the sheer number of times a woman was raped."[104] Following the judgment, Judge Pillay stated that "from time immemorial, rape has been regarded as spoils of war… Now it will be considered a war crime. We want to send out a strong signal that rape is no longer a trophy of war."[105] Despite the unparalleled significance of the law developed by the *Akayesu* decision, Askin has noted that outside of this, efforts to bring forth charges for rape and other forms of sexual violence were meagre and investigation by the

[99] United Nations Office of the High Commissioner for Human Rights (UNHCR), 'Navanethem Pillay' <www.ohchr.org/EN/AboutUs/Pages/NaviPillay.aspx> accessed 10 March 2015. For further discussion see, Catherine A. MacKinnon, 'The ICTR's Legacy on Sexual Violence' (2008) 14 New England Journal of International & Competition Law 211.

[100] Peter Lang, Martin Little, Vernon Cronen, 'The Systemic Professional: Domains of Action and the Question of Neutrality' (1990) 1 *Human Systems: The Journal of Systemic Consultation and Management* 39, 47.

[101] Brett G. Scharffs, 'Adjudication and the Problems of Incommensurability' (2001) 42 William and Mary Law Review 1367, 1374.

[102] *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998) [732].

[103] Any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact … coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances. *Akayesu* (n 55) [688].

[104] Sherrie Russell-Brown, 'Rape as an Act of Genocide' (2003) 21(2) *Berkeley Journal of International Law* 350, 356.

[105] Neil Howard and Jon Lunn, 'Sexual and Gender-based Violence: Global Trends and Perspectives' SN/IA/5011 (House of Commons Library, 13 March 2009); Bill Berkeley, 'Judgement Day' (Washington, 11 October 1998) <www.washingtonpost.com/archive/lifestyle/magazine/1998/10/11/judgement-day/3ae2490b-c3c7-4c17-b43c-e96bbfc064e5/?utm_term=.584efd1476c8> accessed 10 March 2015.

Prosecutor's Office lacked rigour resulting in "rape acquittals, dropped charges and other missed opportunities and debacles."[106]

In the ICTY, feminist groups were invited to make suggestions regarding its practice through a process of open rule-making. This highlighted the lack of protective measures afforded to those testifying about their experiences of sexual violence.[107] Additionally scholars and NGOs filed a number of feminist amicus briefs supporting a motion made by the Office of the Prosecutor (OTP) for protective measures in light of the perceived gender-insensitive practices.[108] Subsequently, criteria regarding witness confidentiality and potential anonymity was outlined in *Tadić*.[109] The Tribunal panel, guided by two female judges, Judge Gabrielle Kirk McDonald and Judge Elisabeth Odio-Benito, adopted particular Rules of Procedure and Evidence to encourage victim participation and to counter the perception of the tribunal system as an unsupportive environment.[110] Along with the establishment of a Victim and Witness Unit (VWU), both the ICTY and ICTR established that in cases of sexual assault no corroboration of the victim's testimony was required, consent could not be a defence in particular circumstances, and the prior sexual conduct of the victim would not be deemed relevant to the proceedings.[111] In 1997, Ní Aoláin tentatively considered that the protective measures provided in the ICTY and ICTR were a step in the right direction but warned that the "legal process must not become another trauma for the victim",[112] encouraging the Court to truly listen to victims who provided their testimony.[113]

As the work of the ICTY began, the OTP instigated the jurisprudential revolution that was spurred by the valued work of women's advocates, feminist scholars, judges, and victims'

[106] ibid 1007-1008. It should be noted, however, that Askin highlights the "major and lasting contributions" of the ICTR to the jurisprudence, criminalisation, and punishment of gender-related crimes of violence.
[107] Copelon (n 9) 228.
[108] ibid 232.
[109] *Prosecutor v. Dusco Tadić* Decision of the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses IT-94-1-T (10 August **1995).**
[110] Copelon (n 9) 228; Fionnuala Ní Aoláin, 'Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War' (1997) 60 *Albany Law Review* 883, 893.
[111] ICTY, Rules of Procedure and Evidence as amended on 8 July 2015 IT/32/Rev.50 (2015) Rule 34 and Rule 96 <www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf>
[112] Fionnuala Ní Aoláin, 'Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War' (1997) 60 *Albany Law Review* 883, 894.
[113] ibid 905.

groups.[114] Although rape was included as a crime against humanity in the Statute of the ICTY, it was not included as a grave breach under article 2.[115] Copelon has highlighted that to be able to include charges of rape as a war crime the OTP had to use the language of other clearly defined war crimes, making rape a constituent element of these crimes.[116] Feminists fought for more than the recognition of rape and sexual violence in the indictments, seeking a "reconceptualization" of such crimes being charged as humiliating or degrading treatment.[117] The ICTY subsequently applied the *Akayesu* definition in the *Celebici* case and held that rape could constitute the crime of torture.[118]Following this, a more specific definition of rape was formulated in the case of *Furundžija.*[119] Utilising "principles of criminal law common to the major legal systems of the world", the Trial Chamber developed the objective elements of rape.[120] Compared to the definition established in *Akayesu*, *Furundžija* provided a narrower interpretation, specifying the penetrative and coercive or forceful nature of the act.[121] Kelly Dawn Askin, who served as a legal advisor to the judges of both the ICTY and ICTR from 2000-2002, noted the importance of *Furundžija* confirming that sexual violence committed against a single victim constitutes a serious violation of international law worthy of prosecution.[122] Following this, *Kunarac et al.* was the first case to bring charges exclusively for crimes of sexual violence and held that that rape and sexual enslavement may constitute crimes against humanity.[123] It expanded the constituent elements of rape stating that the definition formulated in *Furundžija* was narrower than required under international law because it excluded other factors "which would render an act of sexual penetration *non-consensual* or *non-voluntary* on the part of the victim."[124] The Trial Chamber expanded the definition to

[114] Copelon (n 9) 228.
[115] See, Christine Chinkin (n 6) 326; Allen (n 86); Kelly Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Martinus Nijhoff Publishers 1997) 359.
[116] Copelon (n 9) 229.
[117] ibid 230.
[118] *Prosecutor v Delalic, Mucic, Delic, Landzo* (Judgment) ICTY IT-96-21-T (16 November 1998) [495-497].
[119] *Prosecutor v Furundzija* (Judgment) IT-95-17/1-T (10 December 1998).
[120] The sexual penetration, however slight:
(i)(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
(ii)(b) of the mouth of the victim by the penis of the perpetrator;
(ii) by coercion or force or threat of force against the victim or a third person. ibid [185-186]. For further discussion of the judgment, see Askin (n 4) 327-332.
[121] Catherine Mackinnon, 'Defining Rape Internationally: A Comment on *Akayesu* (2006) 44(3) *Columbia* 940.
[122] Askin (n 4) 332.
[123] *Prosecutor v Kunarac, Kovac, Vukovic* (Judgment) IT-96-23-T& IT-96-23/1-T (22 February 2001) (herein *Foca Rape Camp* case).
[124] Original emphasis, ibid [438].

include all contexts in which consent is not 'freely' and 'voluntarily' provided.[125] Moreover, Askin has noted that one of the most important aspects of the case was the development of the crime of enslavement in relation to gender-related crimes.[126] Radomir Kovac, the sub-commander of the military police and a paramilitary leader in Foca during the conflict in BiH, detained and sexually assaulted women, forcing them to take off their clothes and to dance naked on a table whilst he pointed a gun at them.[127] The body of jurisprudence developed by the ICTY and ICTR has subsequently ensured that sexual violence is no longer perceived as a spoil of war under international law. Both Askin and Copelon have noted that the recognition and successful prosecution of rape and sexual violence within in the ICTY and ICTR was revolutionary given the silence that had previously surrounded such crimes in ICL.[128] Despite this, the prosecution of gender crimes has historically been, and remains, inherently difficult and is often only investigated and indicted as a consequence of the pressures placed upon relevant institutions by feminist scholars and women's organisations.[129] In the following section, turn to consider the centrality of the mobilisation of the Women's Caucus for Gender Justice in the creation of the Rome Statute and establishment of the ICC.

2.3. Mobilising for Gender Justice: The Women's Caucus, the Rome Statute and the ICC

In 1995, the Coalition for an International Criminal Court (CICC) was formed by NGOs who placed pressure upon the UN to create a permanent international criminal tribunal. Rhonda Copelon and other feminist activists formed the Women's Caucus for Gender Justice in the International Criminal Court in 1997 with a mandate to integrate gender justice in the new ICC.[130] Joining the efforts of the CICC, the WCGJ was comprised of women's rights advocates and activists who brought together regional knowledge and a broad range of advocacy experience of domestic judicial systems and international forums. Members of the WCGJ met at international conferences, monitored the work of the ICTY and ICTR, worked with survivors

[125] ibid [453-460]
[126] Askin (n 4) 338.
[127] *Foca Rape Camp* (n 144) [773-774].
[128] Copelon (n 9) 220; Askin (n 4) 317.
[129] Askin (n 4) 317.
[130] Upon the adopted of Rome Statute in 1998, the Caucus became the Women's Caucus for Gender Justice (herein WCGJ). See, Copelon (n 9) 240; Valerie Oosterveld, 'The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?' (2005) 18 *Harvard Human Rights Journal* 55.

of sexual violence,[131] as well as publishing reports, articles and online newsletters.[132] The Women's Caucus quickly developed into a diverse network of more than 300 women's human rights organisations and 500 individuals fighting for the integration of gender in the practice of the ICC. Copelon noted that the continued fight for integration mattered because of the "almost inevitable tendency for crimes that are seen simply or primarily as crimes against women to be treated as of secondary importance. "[133] As such, the WCGJ sought the codification of a range of sexual violence crimes within the Statute that would establish the permanent court. They also wanted sexual violence to be "seen as part of, and encompassed by, other recognized egregious forms of violence",[134] such as genocide, as had been recognised in IHL and the jurisprudence of the ICTY and ICTR.

Over 160 governments participated in the five-week long negotiations at the Rome Conference in July 1998. During the deliberations, Spees notes that the WCGJ fought to "correct the deficiencies in existing humanitarian law" and were:

> among the strongest voices calling for a more active role for victims and witnesses in the justice process, a broad reparations scheme, strong mandates for protection of victims and witnesses, and gender experts and women on the court and among staff at all levels.[135]

At the end of this period, 120 nations voted in favour of the adoption of the Rome Statute. Gender was included as a constituent element of the crime of persecution as a crime against humanity.[136] The inclusion and definition of 'gender' was one of the last issues to be resolved; it was the most contentious and 'intense' issue debated amongst parties in discussion during the Rome Conference.[137] The WCGJ faced extensive opposition from the Vatican and other

[131] Copelon (n 9) 233.
[132] Chappell (n 31) 14.
[133] Copelon (n 9) 234.
[134] ibid.
[135] Pam Spees, 'Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power' (2003) 28(4) *Signs* 1233, 1238.
[136] UN General Assembly, Rome Statute of the International Criminal Court (opened for signature 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(1)(h) (last amended 2010) <www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> (herein Rome Statute)
[137] Copelon (n 9) 236.

conservative states, who fought against a definition recognising gender as a social construct.[138] Despite this, they were successful in their fight to have a definition of gender included.[139] Copelon noted that this was:

> Thanks to the expertise and commitment of a small group of delegates - both women and men - and the openness, albeit sometimes reluctant, of the overwhelming majority of delegates, the [Rome Statute] is a landmark.[140]

The Rome Statute codified rape, sexual slavery, enforced prostitution, and forced pregnancy, among other forms of sexual violence, as constituting crimes against humanity[141] and/or war crimes.[142] The definition of rape provided by the EC for the ICC combines elements of the crime as defined in the jurisprudence of the ICTY and ICTR, particularly *Akayesu, Furundzija*, and the *Foca Rape Camp* case. It rests on two key elements: 1) the 'invasion' of another's body and 2) the use of force, or the threat of force, in a coercive environment.[143] Reference to the invasion of the 'body of a person' is intended to be gender neutral with the focus upon the coercive element of the act, as opposed to any lack of consent on the part of the victim.[144] Robertson has argued that the inclusion of sexual slavery and enforced prostitution was a "belated recognition" of the forced enslavement of 'comfort women' by Japanese soldiers

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[138] For further discussion as to the potential and pitfalls of the definition of gender within the Rome Statute, see Hilary Charlesworth, 'Feminist Methods in International Law' (1999) 93(2) *The American Journal of International Law 379, 394;* Valerie Oosterveld, 'The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?' (2005) 18 *Harvard Human Rights Journal* 55-84.

[139] 'For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above' Rome Statute (n 136) art 7(3).

[140] Copelon (n 9) 233.

[141] Rome Statute (n 136) art 7(1)(g).

[142] ibid, art 8(2)(b)(xxii).

[143] The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. See, ICC, Elements of Crimes, ICC-PIDS-LT-03-002/11_Eng (2011) arts. 7 (1) (g)-1, 8 (2) (b) (xxii)-1, 8 (2) (e) (vi)-1 <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (herein ICC Elements of Crimes).

[144] Catherine Mackinnon, 'The ICTR's Legacy on Sexual Violence' (2008) 14(2) *New England Journal of International and Comparative Law* 211, 220.

during WW2.[145] The WCGJ were also successful in ensuring that the ICC would "effectively investigate and prosecute crimes of sexual and gender violence."[146] For instance, Article 54 states that the OTP shall take particular account of the nature of a crime "where it involves sexual violence, gender violence or violence against children", whilst Article 42(9) requires the OTP "to appoint advisers with legal expertise on specific sexual and gender violence" and facilitate the effective investigation and prosecution of such crimes.[147] The WCGJ did not halt their work upon the adoption of the Rome Statute. They subsequently campaigned for the fair representation of women judges elected to serve on the ICC, and developed numerous preparatory committee meeting documents during the formulation of the Elements of Crime (EC) and Rules and Procedures of Evidence (RPE).[148]

In 2002, the ICC was established. It builds upon the work of the two prolific international tribunals that proceeded its creation, with the aim of ending impunity, building a future free of violence, and encouraging states to prosecute international war crimes.[149] The WIGJ subsequently transformed into the Women's Initiative for Gender Justice (WIGJ), which:

> operates as an ICC watchdog, advocating women's human rights and gender justice and the prosecution of gender-based and sexual violence against women… works on gender advocacy within the Court and conducts gender training of the ICC personnel.[150]

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[145] Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (Penguin 2006) 432.

[146] WCGJ, 'Recommendations and Commentary to the Elements Annex and Rules of Procedure and Evidence' (Submitted to the Preparatory Commission for the International Criminal Court, 12-30 June 2000) <http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/icc/iccpc/062000pc/elementsannex.html> accessed 24 April 2019.

[147] See Fatou Bensouda, 'Gender Justice and the ICC' (2014) 16(4) *International Feminist Journal of Politics* 538, 539.

[148] WCGJ (n 146); WCGJ, 'Women's Caucus Advocacy in ICC Negotiations' <http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/icc/pcindex.html> accessed 24 April 2019.

[149] ICC, 'About' <www.icc-cpi.int/about> accessed 15 February 2015. As of 2018, 123 nations are now State Parties to the Rome Statute with eleven situations currently under investigation. These include Burundi, Georgia, Central African Republic I & II, Mali, Cote d'Ivoire, Libya, Kenya, Darfur Sudan, Uganda, Democratic Republic of Congo. The focus solely upon African countries has caused considerable critique contesting the tribunals impartiality and leading to accusations that it is reflective of the colonialist underpinnings of international law and its Western centred focus. For further discussion see Oumar Ba, 'International Justice and the Postcolonialist Condition' (2017) 63(4) *Africa Today* 44, 46.

[150] Zarkov and others (n 62) 394.

One of the main divergences from the ICTY and ICTR model is the centrality of victim protection enshrined in the Rome Statute, bolstered by the implementation of a victim participation framework and the ICCs Rules of Procedure and Evidence.[151] In codifying the needs of victims, acknowledging their pain and the need for support throughout the justice process, the victim participation framework presents a means through which to encourage participation of victims in a more meaningful manner. It provides access to legal representation[152] and reparations.[153] As Mackinnon has noted:

> The fact that the ICC even exists, with its prohibitions on sexual violence, however imperfect, displaying the detail and seriousness they do… shows that these outrages are more palpable and prominent in international legal thinking today than they ever have been. This legacy, among many others, can never be erased.[154]

In March 2016, the ICC issued its decision in *Bemba,* the first case to include a conviction for crimes of sexual violence in the permanent tribunal.[155] It sent a message to high-ranking officials that sexual violence committed by those under their watch will have repercussions. In 2017, Human Rights Watch (HRW) considered that the ICC's novel procedures allow a link to be created between the court and victims, in the hope that it will make their trial experience "more meaningful and relevant to them" with the potential to ensure that "justice is not only done, but seen to be done, by the victims."[156] Subsequently, however, the Appeals Chamber, in a divided opinion of 3-2, reversed the Trial Chamber's decision, acquitting Bemba of his command responsibility.[157] Despite the increased rhetoric surrounding sexual violence,

[151] ICC, Rules of Procedure and Evidence (as amended on 22 May 2013) ICC-PIDS-LT-02-002/13_Eng, rules 70-72 <www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf> (here in ICC RPE)
[152] Rome Statute (n 136) art 55.
[153] ibid 75.
[154] Mackinnon (144) 212.
[155] Whilst charges of rape have been made against others in different contexts, the Trial Chamber found Jean-Pierre Bemba Gombo guilty beyond any reasonable doubt of two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape, and pillaging) in his role as military commander with authority and over those who committed the crimes. *Prosecutor v. Jean-Pierre Bemba Gombo* (Judgment) ICC-01/05-01/08-3343 (21 March 2016) (herein *Bemba* Judgment).
[156] HRW, 'Who Will Stand for Us? Victims' Legal Representation at the ICC in the Ongwen Case and Beyond' (Report 2017) <https://reliefweb.int/sites/reliefweb.int/files/resources/ijongwen0817_web.pdf>
[157] "The trial chamber erred in its evaluation of Bemba's motivation and the measures that he could have taken in light of the limitations he faced in investigating and prosecuting crimes as a remote commander

in practice the risks associated with the continued focus upon ending impunity through internationalised justice mechanisms have become all the more apparent.[158] After fifteen years, victims of conflict-related rape in the CAR now face little recourse to justice whilst the men that raped them walk free.[159]

2.4. Conclusion

Behind each normative advancement, feminist action has been instrumental in bringing the magnitude and severity of sexual violence to light. It has been the "courageous and concerted actions of women around the world" that have "forced a sea change in international law."[160] The power that the connection between and among women has been repeatedly recognised throughout the thesis "the most problematic, and the most potentially transforming force on the planet."[161] The mobilisation of women's movements has undergirded each legal initiative and jurisprudential development concerning conflict-related sexual violence.[162] Without their advocacy and action in supporting women, campaigning for change and holding governments to account, few of the normative advances made would have been brought to fruition.[163] As Dianne Otto has noted:

> Around the world, women's human rights campaigners have engaged assiduously with the discourse as activists, victims, policy-makers and lawyers, pushing against its

sending troops to a foreign country." *Prosecutor v. Jean-Pierre Bemba Gombo* (Judgment) ICC-01/05-01/08 A (8 June 2018) [191-192] (herein *Bemba* Appeal)

[158] For further discussion of the *Bemba* Appeal judgment see, Amnesty International, 'CAR: Acquittal of Bemba a Blow to Victims' (8 June 2018) <www.amnesty.org/en/latest/news/2018/06/car-acquittal-of-bemba-a-blow-to-victims/> accessed 9 June 2018; Fritz Streiff, 'The Bemba Acquittal: Checks and Balances at the International Court' (18 July 2018) <www.ijmonitor.org/2018/07/the-bemba-acquittal-checks-and-balances-at-the-international-criminal-court/> accessed 20 July 2018.

[159] FIDH, 'Acquittal of Jean Pierre Bemba on Appeal: An Affront to Thousands of Victims' (8 June 2018) <www.fidh.org/en/region/Africa/central-african-republic/acquittal-of-jean-pierre-bemba-on-appeal-an-affront-to-thousands-of> accessed 10 June 2018). See also, Nicola Henry, *War and Rape: Law, Memory and Justice* (Routledge, 2011) 124.

[160] Copelon (n 19).

[161] Adrienne Rich, *On Lies, Secrets, and Silence: Selected Prose 1966-1978* (W.W Norton Company 1979) 298.

[162] Womankind, 'Standing with the Changemakers: Lessons from Support Women's Movements' (Womankind Worldwide 2017) <www.womankind.org.uk/docs/default-source/default-document-library/standing-with-the-changemakers32b5501e0c8663e39143ff00009d7e70.pdf?sfvrsn=0> accessed 1 May 2019.

[163] Mala Htun and S. Laurel Weldon 'The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975-2005' (2012) 106(3) *American Political Science Review* 548, 553.

masculinist and imperial underpinnings in their efforts to glimpse its emancipatory potential.[164]

Copelon adds that these "long, deep, intersectional, and gender inclusive feminist revolutions… exposed the androcentrism of human rights law" were facilitated by "women's creative, urgent, and culturally rooted demand for equality and human rights."[165] As a global backlash against women's rights rises throughout the world, the fight to continue these revolutions, to engender social transformation, and to ultimately bring an end to violence against women, in times of war and in peace, continues.[166]

Whilst feminism has succeeded in making sure we speak about conflict-related rape and sexual violence, allowing us to look back and reflect upon the gains made and the forward momentum gathered, "the primary objective" is now "*how* we speak about rape and to what end."[167] Having set the scene through an exploration of how the recognition of conflict-related sexual violence moved from a distinct absence to a central concern for the practice of the international community, the following chapter turns to consider how conflict-related sexual violence has been spoken about and for what purpose. Exploring feminist critiques of the representation of women's lived experiences of sexual violence that have emerged from legal institutions such as the ICTY and ICTR, the chapter reveals the subtle ways in incommensurability arises in representations of women's lived experiences of conflict and conflict-related sexual violence impacting upon understandings of sexual violence and maintaining the power that law exudes over the practice of transitional justice.

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[164] Otto (n 14) 318

[165] Katie Gallagher, 'On the Cutting Edge: CUNY Law's International Women's Human Rights Clinic' (CUNY School of Law Magazine) 17 <www.law.cuny.edu/wp-content/uploads/page-assets/faculty/directory/emeriti/copelon/cutting-edge.pdf> accessed 31 March 2019.

[166] Zeid Ra'ad Al Hussein, 'Backlash against women's rights progress hurts us all - Statement by UN High Commissioner for Human Rights' (08 March 2017) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21305>

[167] Sorcha Gunne and Zoe Brigley-Thompson (eds) *Feminism, Literature and Rape Narratives: Violence and Violation* (Routledge 2010) 3.

Chapter Three: The Rise of Incommensurability: Representations of Conflict-Related Sexual Violence Through a Feminist Lens

During the 1990s, feminist activism was instrumental in ensuring that conflict-related sexual violence against women was successfully prosecuted in the ICTY and ICTR and integrated into the Rome Statute, becoming visible as a crime against humanity, genocide, and violation of the laws of war. This recognition has been "celebrated as an important advance for feminist engagement with international law and policy."[1] Since then, sexual violence has increasingly gained the attention of the international community and been recognised as a concern for international criminal law and judicial transitional justice mechanisms.[2] In light of the integration of sexual violence in international statutes and the prosecution of forms of sexual violence that have emerged from the special tribunals system, feminist scholars have provided a number of central themes of critique that elucidate both the potential and the pitfalls of the continued centrality of law in making visible gendered violence. Drawing upon the work of scholars such as Doris Buss, Karen Engle, and Chiseche Salome Mibenge, this chapter explores these themes of critique, highlighting the tendency of legal representations to reproduce gendered binaries and reinforce gendered and/or ethnic hierarchies that underpin patterns of violence against women,[3] to reduce women's lived experiences into prescribed categories and to construct monolithic narratives that make sexual violence visible within constrained framework. Moreover, the chapter considers the centrality of law to feminist scholarship concerning conflict-related sexual violence highlighting the dearth of attention in feminist literature as to the consequence of this centrality and the enduring focus upon ending impunity. In doing so, I explore how the judicialization, or expansion of judicial power, of gender-based crimes in international criminal law and the continued focus upon the fight to end impunity permits and maintains

[1] Doris Buss, 'Rethinking "Rape as a Weapon of War"' (2009) 17(2) *Feminist Legal Studies* 145, 146.
[2] Doris Buss, 'The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law' (2007) 25(1) *Windsor Year Book of Access to Justice* 3, 4.
[3] Elissa Helms, 'The Challenges of Gendering Genocide: Reflection on a Feminist Politics of Complexity' (2015) 22(4) *European Journal of Women's Studies* 463, 464.

the incommensurability of legal representation and lived experience in the transitional justice field.

3.1. The Reproduction of Gendered Binaries

Feminist legal scholars have continually rejected the claim made by liberal legalism that law and legal institutions are "benign, neutral and autonomous" and that legal practice is "objective, impartial and self-limiting."[4] Instead, feminist theory has demonstrated how law divides the world into dichotomous terms whereby femininity and masculinity are placed into a binary that is:

> aligned with other dichotomies such as active/passive, culture/nature, autonomy/dependency, bounded/penetrable, universal/particular, subject/object, self/other. And these dichotomies are hierarchical, with the 'feminine' side of the pair occupying the devalued position in each case.[5]

In legal practice, this is notable in systems of judgment that pull between the dualism of reason and emotion where reason has become equated with the masculine worldview producing mechanical jurisprudence that excludes the seemingly unreliable nature of emotion associated with the feminine.[6]

In the application of law within internationalised justice mechanisms, feminist legal scholars contend that representations of conflict-related sexual violence are often deficient, reducing the complexity of women's lives because the particularities of their experiences of conflict have been inscribed in gendered binaries that continually frame men as perpetrators and women as victims.[7] There is no denying that conflict-related sexual violence is

[4] Vanessa Munro, *The Ashgate Research Companion to Feminist Legal Theory* (Routledge 2016) 19.
[5] Rosemary Hunter, Clare McGlynn, Erika Rackley, *Feminist Judgments: From Theory to Practice* (Bloomsbury Publishing 2010) 7.
[6] Gayle Letherby, *Feminist Research in Theory and Practice* (Open University Press 2003) 22-23.
[7] Buss (n 1) 155.

predominantly orchestrated and perpetrated by men.[8] This emerges as a product of the "warped (yet normalised) militarised hegemonic masculinity" which Henry considers to be the "common thread between all wars."[9] This militarised hegemonic masculinity means that men are typically called or choose to engage in combat whilst women tend to remain at home or are forced to flee,[10] resulting in the public domain becoming a masculine space whilst the private arena is perceived as feminine.[11] As such, power follows this militarised masculinity in conflict situations.[12] As a consequence of these gendered power relations whether a victim of conflict-related sexual violence is a man or a woman, they become 'feminized' whilst the perpetrator adheres to masculinized notions of power and control, demonstrating the lack of value placed upon the 'feminine.'[13]

For feminist legal scholars, representing experiences of war through gendered binaries diminishes the complexity of women and men's experiences of violence, erasing difference and curtailing nuance in how conflict-related sexual violence is understood.[14] Since the 1990s, international criminal tribunals, as powerful normative judicial mechanisms, have maintained, without nuance, a lens of victimhood that has prescribed certain frames through which women's lived experiences conflict are construed.[15] Buss has highlighted how "Woman as Victim' continues to emerge as a powerful symbolic representation of the wrongs of large-scale violence" resulting in the integration of particular lived experiences "of specific women and men within specific political and cultural contexts, with supposedly universal

[8] Donna Pankhurst, 'Sexual Violence in War' in Laura Shepherd (ed), *Gender Matters in Global Politics* (Routledge 2010) 160.
[9] Nicola Henry, 'Theorizing Wartime Rape: Deconstructing Gender, Sexuality, and Violence' (2016) 30(1) *Gender and Society* 44.
[10] Siniša Malešević, *The Sociology of War and Violence* (Cambridge University Press 2010) 304.
[11] ibid 88.
[12] Inger Skjelsbæk, *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina* (Routledge 2012) 10.
[13] ibid 89. See also, Sandesh Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18(2) The European Journal of International Law 253, 263.
[14] Buss (n 1) 155; Doris Buss, Knowing Women: Translating Patriarchy in International Criminal Law' (2014) 23(1) *Social & Legal Studies* 73, 78-79.
[15] In the early 1990s, feminist legal scholars were divided over whether to define rape as a gender crime or as the crime of genocide. For further discussion see Catherine Mackinnon, 'Rape, Genocide, and Women's Human Rights' (1994) 17 *Harvard Women's Law Journal* 5, 14 and Rhonda Copelon, 'Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law' (1994) 5(2) Hastings Women's Law Journal 243, 259; Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013) 12-13.

meanings."[16] If the particularities of men and women's lived experiences of conflict "do not, cannot, or will not fit neatly into" the categories prescribed and the meanings attributed to these binaries then their experiences are either excluded, homogenised, or oversimplified.[17] In the ICTR, for instance, Buss revealed how the judge's finding that rape was *"committed solely against Tutsi women*"[18] legally defined rape as an instrument of the genocide in gendered terms by constituting women as "naturally gendered" victims[19] and in 'ethnic' terms as victims of rape were only deemed to be of one ethnicity, Tutsi, and not another, Hutu.[20] This foreclosed "a closer account of sexual violence and the harms suffered by women."[21] Placing two women's experiences in tension with the categorisations prescribed and produced by the ICTR, Buss exposed the homogenisation of rape as an instrument of genocide because their stories revealed how Tutsi women were not the only women raped during the genocide despite the ICTR's determination as such.[22] Whilst the specification of only 'Tutsi women' allowed the ICTR to determine that rape constituted genocide, this specific political identity re-inscribed women's lived experiences of rape in singular ethnic and gendered terms, rendering those who did not fit succinctly into the narrative, such as moderate Hutu women, invisible.[23] Instead the ICTR "naturalise[d] sexual violence and ignore[d] rapes that contradict[ed] the rape script."[24] In turn, this prevented any interrogation as to:

> *why* the rapes happened, *how* the rapes might have been connected to various social relations and structures that pre-dated the genocide, and *what* women did to negotiate and resist sexual violence.[25]

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[16] Doris Buss, 'Knowing Women: Translating Patriarchy in International Criminal Law' (2014) 23(1) Social & Legal Studies 73, 78.
[17] Megan Bastick, Karin Grimm, and Rachel Kunz, 'Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector' (Geneva Centre for the Democratic Control of Armed Forces, 2007) 183-184 <www.dcaf.ch/sites/default/files/publications/documents/sexualviolence_conflict_full.pdf> accessed 14 November 2015. Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013) 132.
[18] Emphasis added. Prosecutor v Akayesu (Judgment) ICTR-96-4-T, T Ch I (2 September 1998) [731].
[19] Buss (n 1) 147.
[20] Buss (n 16) 78.
[21] Buss (n 1) 147.
[22] ibid 158.
[23] Buss (n 16) 78; Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013) 80.
[24] Buss (n 1) 155.
[25] ibid 148.

Like Buss, Mibenge has highlighted how former girl combatants were disqualified from the prosecutorial process in the Special Court for Sierra Leone (SCSL), a hybrid of national and international legal norms, because women were recognised only as "child brides or rape victims."[26] The messy, blurred lines of armed conflict were instead smoothed into legal categories that failed to adequately capture the diverse nature of women's experiences and excluded those that did not fit within the prescribed notion of victimhood. Not only did this reinforce the exclusion of women combatants from valuable disarmament, demobilisation and reintegration (DDR) programmes, it also diminished recognition of the complexities of conflict whereby victim may also be perpetrators.[27] As a consequence, Mibenge contends that judicial mechanisms create:

> benchmarks for 'true victimhood' and victims learn with each testimony they give that justice, acknowledgment, and social and political absolution is forthcoming only when the prescribed form of victimhood is claimed.[28]

This means that "the institutional protection of women becomes another form of oppression – silencing, essentialising, and undervaluing women's experiences."[29] The particularities of women's lived experiences of war are universalised, making "some victim subjects visible at the expense of others,"[30] diminishing recognition of fundamental elements of women's lived experiences of war that are not reducible to the categorisations imposed by law upon them.

Moreover, the failure of international tribunals to recognise men and women beyond the binary of male/female has circumscribed recognition of the complexity of the male experience of sexual violence beyond the confines of 'perpetrator' leading to the inconsistent recognition of sexual violence against men. As Sivakumaran highlights cases of sexual violence against men and boys often fall into three particular categories. In the first sexual violence against men and boys is mentioned but not characterised as sexual violence. The second is when sexual violence is highlighted and characterised appropriately but without any consequences attaching to this and the third is when it is characterised as sexual violence

[26] Mibenge (n 23) 132.
[27] Bastick and others (n 17) 183-184.
[28] Mibenge (n 23) 162.
[29] Mibenge (n 23) 153.
[30] Buss (n 16) 78.

with the appropriate consequences being imposed.[31] In international criminal tribunals, the language of torture or cruel or inhuman treatment as a crime against humanity is often used to define violence of a sexual nature committed against men. Violence other than rape such as the placing of "a lit fuse around the genitals", "forced fellatio between two detained brothers", or the deliberate castration of men's genitals were each instances of violence that were deemed not to qualify as sexual violence.[32] This enforced 'gender-neutral' narrative is consistent with the institutionalisation of "heterocentrism" that views the criminality of sexual acts in law through the lens of heterosexuality.[33] This means that sexual violence is predominantly framed "in terms of an active masculine body that penetrates a passive feminine body."[34] Consequently, Campbell draws attention to the way in which sexual violence is easily attached to women's bodies compared to the consistent failure of legal determinations to categorise the sexual nature of the harms inflicted against men.[35] This divides men and women whereby women are continually presented as passive victims who testify about conflict-related sexual violence whilst men are considered active agents who testify about conflict and experience human rights violations.[36] The *Bemba* judgment went some way to address this recognising rape committed against men challenging the gendered binary. This demonstrated the capacity of powerful normative institutions to rewrite the narrative to include, as opposed to silence, the lived experiences of men who have been raped.[37] The symbolic importance of the explicit recognition of sexual violence against men in the *Bemba* judgment should not be undermined. It is imperative that prevailing dominant narratives are challenged. The limited numbers of prosecutions that do occur in international, national and local legal mechanisms highlight how crucial it is for the narratives produced to

[31] Sandesh Sivakumaran, 'Lost in Translation: UN Responses to Sexual Violence Against Men and Boys in Situations of Armed Conflict' (2010) 92(877) International Review of the Red Cross 259, 272-272.
[32] For full discussion of the international criminal courts and tribunals treatment of male rape and other forms of sexual violence, see Mibenge (n 23) 80; Valerie Oosterveld, 'Sexual Violence Directed Against Men and Boys in Armed Conflict or Mass Atrocity: Addressing a Gendered Harm in International Criminal Tribunals' (2014) 10 Journal of International Law and International Relations 107, 110-115;
[33] Mibenge (n 23) 159.
[34] Kristen Campbell, 'The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia' (2007) 1 The International Journal of Transitional Justice 411, 417-418.
[35] ibid; Mibenge (n 23) 160.
[36] Buss (n 16) 78-79
[37] Louise Chappell, *The Politics of Gender Justice at the International Criminal Court* (Oxford University Press 2016) 122.

be as encompassing and representative as possible, without falling foul to essentialist conceptions of men and women.

Representing men and women's experiences of conflict along solely gendered lines erases the differences in lived experience amongst them. As Otto has noted, using dichotomous language to define and contain "differences like those of gender, race, sexuality, indigeneity, culture, class and nation" legal practice functions to "confirm and normalise the supremacy of Europe's elites"[38] whilst homogenising women in a singular group and maintaining existing power structures without challenge. Whilst women are often divided from men along gendered lines,[39] they are often also divided as women due to ethnic, religious, or political affiliations that typically emerge as the foundational causes of a conflict but also as combined forces that make women, who are members of particular intersections targeted for human rights violations, a specific target of sexual violence. [40]

Like the feminist critique levelled at the decision in *Akayesu*, feminist scholarship has been criticised for failing to recognise victims who are excluded from legal narratives, women who reject the label of victim, and the differences amongst victim groups themselves as a consequence of ethnic or religious ties.[41] Simic builds upon this critique noting how Bosnian Serb women who were victims of rape during the war in BiH have been perceived as "members of the aggressor nation" and subsequently overlooked in legal and feminist scholarship, potentially reproducing the very tensions they were deemed to address.[42] Debate amongst feminist scholars has drawn attention to the challenge for feminist theorisation of rape not to reproduce women's suffering as a "communal narrative of pain."[43] Olivera Simic reflects Engle's observations made ten years prior of the way in which feminist scholarship of rape in Bosnia has tended, like law, to perceive that all Bosnian Muslim women

[38] Dianne Otto, 'Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law' (1997) 18 Australian Yearbook of International Law 1, 36
[39] Judith Herman, *Trauma and Recovery* (Basic Books 1992) 237.
[40] Inger Skjelsbæk, 'Sexual Violence and War: Mapping Out a Complex Relationship' (2001) 7(2) *European Journal of International Relations* 211, 215.
[41] Nicola Henry, The Fixation on Wartime Rape: Feminist Critique and International Criminal Law' (2014) *Social & Legal Studies* 93
[42] Olivera Simic, *Silenced Victims of Wartime Sexual Violence* (Routledge 2018) 154-157.
[43] Buss (n 1) 146.

had been raped during the war.[44] At the Women's World Conference in 2011 a woman in the audience assumed that Simic had been a victim of rape during the war in the former Yugoslavia firstly because she had introduced herself as a Bosnian woman and secondly because the woman had assumed her ethnic group.[45] In drawing attention to her own experiences, Simic elucidates the pervasive nature of the "prism of victimhood" which limits her ability to stop others from viewing solely through this lens despite not identifying as such.[46] Consequently, 'woman as victim' and the persistent inability or unwillingness of judicial responses to recognise the nuance of women's experiences has resulted in women being gathered under the collective umbrella of 'victim'[47] in law with feminist literature falling foul to the same critique. Scholars, policymakers, lawyers and judges alike need to reconceptualise the prevailing assumptions that frame women merely as "creations of the war, overwhelmed by the sense of victimization and over determined by the trauma they experience."[48] This demonstrates the importance of dismantling the power of the image of 'victim' and recognising its propensity to pull all women into its frame with little regard as to the nuances and complexities of their lives. In the following section I turn to consider the parameters placed upon women's narration of their experiences of conflict and the trauma they have endured.

3.2. Bearing Witness and the Recognition of Trauma

The ultimate choice whether to bear witness to their trauma in a public forum rests with the victim-survivor.[49] Reasons for testifying, whether public and personal, can include international criminal tribunals and post-conflict judicial mechanisms presenting the chance for women to tell their story, breaking their silence in a context where they feel they will be listened to and recognised, as well as feeling morally compelled to tell their stories on behalf

[44] Karen Engle, 'Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99(4) *The American Journal of International Law* 778, 794.
[45] Olivera Simic, 'Challenging Bosnian Women 's Identity as Rape Victims, as Unending Victims: The 'Other' Sex in Times of War' (2012) 13(4) *Journal of International Women's Studies* 129, 138.
[46] ibid 139.
[47] ibid.
[48] ibid.
[49] Elisabeth Porter, 'Gendered Narratives: Stories and Silences in Transitional Justice' (2016) 17(1) H*uman Rights Review* 35, 38.

of other victims without a voice.[50] Consequently, testifying in an institutional setting, such as an international tribunal, can be a cathartic experience that validates women's experiences and may provide a sense of closure, particularly if the accused is found guilty.[51] As Henry notes, telling one's story through the provision of testimony emerges as a means of to "recognition, vindication, and collective justice."[52] Upon the closure of the ICTY, King *et al*. found that many victims concluded that their experience of testifying had been a positive experience.[53] As the work of international criminal law has progressed, "greater appreciation of the importance of participation and process for victims of gross human rights violations" has emerged,[54] as demonstrated by the Rules of Procedure and Evidence codified by the ICC. Story-telling within such contexts can thus invoke a sense of restoration allowing survivors to "re-negotiate their social marginalization and insist on their innocence and social worth."[55] There is an inherent tension between the potential catharsis and recognition of conflict-related sexual violence within a public forum and the risk of secondary violence in the form of re-traumatisation.[56]

The recognition of sexual violence against women in international criminal law has provided a language and vocabulary through which women's experiences of violence can be named and recognised. A prerequisite to prosecution in international tribunals is the articulation of victim's traumatic experiences as judicial mechanisms demand that victims of sexual violence verbalise their suffering. This entails victims of rape trawling through the

[50] Kimi King and others, 'Echoes of Testimonies: A Pilot Study into the Long-term Impact of Bearing Witness before the ICTY' (University of North Texas (UNT) and the VWS Victims at the ICTY 2016) 50 <www.icty.org/x/file/About/Registry/Witnesses/Echoes-Full-Report_EN.pdf> accessed 4 December 2016.
[51] Jill Stauffer, 'Speaking Truth to Reconciliation: Political Transition, Recovery, and the Work of Time' (2013) 4(1) *Humanity* 27, 28.
[52] Nicola Henry, 'The Impossibility of Bearing Witness: Wartime Rape and the Promise of Justice' (2010) 16(10) *Violence Against Women* 1098, 1099.
[53] King and others (n 50) 121. Nevertheless, women participated in far lower numbers than men. As Smith and others asked, "Are investigators seeking out female witnesses at lower rates, or are women unable or unwilling to testify for other reasons?" See, Stephen Cody Smith, Alexa Koenig, and Eric Stover, 'Bearing Witness at the International Criminal Court: An Interview Survey of 109 Witnesses' (Human Rights Center University of California Berkeley School of Law, June 2014) 68 <www.law.berkeley.edu/files/HRC/Bearing-Witness_FINAL(3).pdf> 4 November 2015.
[54] Nicola Henry, *War and Rape: Law, Memory and Justice* (Routledge, 2011) 98-99.
[55] Porter (n 49).
[56] Stauffer (n 51).

trauma that is inflicted upon the "most intimate, private, sacred parts of their body."[57] Askin contends that, "Theoretically, no rape victim should have to testify about their rape in order to sustain a conviction."[58] The perception of the closed nature of the judicial process has consistently been shown to undermine women's belief in the legal system as a space in which they will be heard and justice will be served. As Chia notes, the way in which legal spaces are structured, "open, direct face-to-face interactions – has been likened to an extension of a battlefield, mirrored in the human interactions in combative construction of argument that the judicial realm presents."[59] This can be unfavourable to victim-survivors as a consequence of the contest between the defence and prosecution and can result in a sense of injustice as opposed to closure.[60] As a context within which to seek redress and receive justice the punishment provided presents an important measure of justice for victim-survivors of sexual violence and the outcome of the case can have a significant impact upon their belief in criminal justice and judicial mechanisms.[61] As one woman, unsatisfied with the length of the sentence imposed by the ICTY upon the man who raped her, stated: "I do not think that justice in my sense of the word will be done."[62] The line between the provision of justice and the provocation of trauma is thus a fine one.[63]

From a therapeutic perspective, the incommensurable nature of the legal process embodied in international tribunals and the language through which sexual violence is understood inhibits the ability of the tribunal to truly hear their experiences.[64] The "competitive playing field"[65] of an international tribunal requires victims to "submit to a

[57] Kelly Askin, 'Can the ICC Sustain a Conviction for the Underlying Crime of Mass Rape without Testimony from Victims?' in Richard H. Steinberg (ed), Contemporary Issues Facing the International Criminal Court (Martinus Niijhoff Publishers 2016) 276
[58] ibid 275.
[59] Robert Chia, 'Rediscovering Becoming: Insights from an Oriental
Perspective on Process Organization Studies' in Tor Hernes and Sally Maitlis (eds), *Process, Sensemaking, and Organizing* (Oxford University Press 2010) 127.
[60] Herman (n 39) 72; Stauffer (n 51).
[61] Nicola Henry, 'Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence' (2009) *International Journal of Transitional Justice* 114, 124.
[62] Inger Skjelsbæk, 'Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina' (2006) 16(4) *Feminism and Psychology* 373, 393.
[63] Martha Minow, *Between Vengeance and Forgiveness:* Facing History After Genocide and Mass Violence (Beacon Press 1998) 43.
[64] Jill Stauffer, *Ethical Loneliness: The Injustice of Not Being Heard* (Columbia University Press 2015) 67.
[65] Teresa Godwin Phelps, 'The Symbolic and Communicative Function of International Criminal Tribunals' in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia 2013) 174.

complex set of rules and bureaucratic procedures that they may not understand and over which they have no control."[66] As Rothenberg notes, the focus upon evidentiary truth through the normative legal lens means that judicial processes filter "the complexity of human suffering through a point-by-point review of the unitary and coherent presentation of a personal narrative of suffering."[67] What does sexual violence sound like in legal proceedings and how is it heard?[68] The following excerpt demonstrates how mechanical and specific the victims must be when detailing their experiences:

> Q. What did he do after he took you there?
>
> A. He ordered me to lie down and to take off my trousers.
>
> Q. And then what did he do?
>
> A. Then he raped me.
>
> Q. I apologise again for asking you specifics, but the Court needs to know. Can you describe what he did?
>
> A. This time he raped me vaginally.
>
> Q. Do you mean that he put his penis into your vagina?
>
> A. Yes...[69]

Only the prescribed 'who' and 'what' will be recognised in the legal narrative produced culminating in a representation in the form of a judgment that women have little choice whether to reject or accept.[70] Language and phrases such as "put his penis into your vagina" frames victims experiences in ways that do not necessarily correspond to who the victim considers herself to be nor relate to the verbal expression she would use to describe her experiences.[71] As Henry notes, "Law alienates witnesses through language… witnesses are often forced to describe the rape using language that confirms facts rather than expresses

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[66] Judith Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 574.
[67] Daniel Rothenberg, 'The Complex Truth of Testimony A Case Study of Human Rights Fact-Finding in Iraq' in Philip Alston and Sarah Knuckey, *The Transformation of Human Rights Fact-Finding* (Oxford University Press 2016) 200.
[68] Jill Stauffer, 'A Hearing: Forgiveness, Resentment and Recovery in Law' (2012) 30(1) *Quinnipiac Law Review* 517.
[69] *Foca Rape Camp* case (Witness 50 Testimony, 29-30 March 2000), 1252-1523 <www.icty.org/x/file/Voice%20of%20Victims%20Support%20Docs/Witness%2050/Kunarac%20et%20al-Witness%2050-Full%20Testimony_EN%281%29.doc> accessed 10 May 2017.
[70] Richard Terdiman, 'Translator's Introduction' (1987) 38 *Hastings Law Journal* 805, 812.
[71] Henry (n 61) 124; Adriana Cavarero, *Relating Narratives: Storytelling and Selfhood* (Routledge 2014) xix

emotions."[72] In this sense, trauma becomes incommensurable to the norms, values, and choices that underpin legal processes through the application of specific rules, categorisations and language.[73] As Chappell notes, "the translation of human suffering into the language of law and rights will always satisfy the interests of legal authorities more than those who are called to narrate their pain."[74] This is exacerbated by the translation of judgments into language that is "devoid of humanity and of pain and suffering"[75] and further exacerbated by the translation of women's experiences into a foreign language they may not understand.[76]

Trauma can be used to validate women's experiences during conflict or as a means through which the defence can undermine their reliability and credibility as a witness.[77] This was demonstrated in the case of *Furundžija.* The defence, without disputing that Witness A had been raped on multiple occasions, attempted to challenge her credibility, arguing that because she had accessed therapeutic services from the VWU she was an unreliable witness.[78] It was submitted that her testimony was unsound and unreliable because she was suffering symptoms of Post-Traumatic Stress Disorder (PTSD) as a result of the multiple rapes and torture she had suffered, and because she had received one session of psychological counselling to help her cope. This denotes how prevailing rape scripts insist upon weakness as the predicate of credibility of women's testimony. "Her very lack of power guarantees her truthfulness; her not counting makes her words count."[79] As Campbell explains, the two conventional defence strategies arising in the ICTY were that the victim had consented to the sexual relationship (*Foca Rape Camp case*) or she was an unreliable witness due to trauma arising as a consequence of her experiences (*Furundzija*), building upon misconceived notions of femininity that only appeared in the cases of sexual violence against women.[80] This reflects Godwin Phelps observation that, "the rape trials tend to perpetuate a bad narrative – the

[72] Henry (n 61) 124.
[73] Matthew Adler, 'Law and Incommensurability: Introduction' (1998) 146(5) *Pennsylvania Law Review* 1169
[74] Louise Chappell 'Gender and Transitional Justice' in Susanne Buckley-Zistel and Ruth Stanley, Gender in Transitional Justice (Springer 2011) 44.
[75] Henry (n 52) 1109.
[76] Stauffer (n 51) 67.
[77] Henry (n 54) 128.
[78] For a full discussion of the case proceedings, see Henry (n 41) 1107-1111; Godwin Phelps (n 65) 177.
[79] Sorcha Gunne and Zoe Brigley-Thompson (eds) *Feminism, Literature and Rape Narratives: Violence and Violation* (Routledge 2010) 11.
[80] Campbell (n 34) 411, footnote 85.

story of raped women as damaged and 'damaged goods.'"[81] In international tribunals, this places women in a double bind; if she is deemed too emotional then she is considered an unreliable witness and treated merely as "evidence, without subjectivity and agency." Conversely, if she is too calm and controlled, she is perceived "as an agent of manipulation."[82] This demonstrates the inherent risks that arise in women choosing to engage with the sterile context of law.

However, Henry disputes what she perceives to be one of the "problematic, unsupported assertions" put forth by feminist legal theory that frames international criminal law as negating victim agency rendering them "passive and submissive." [83] Framed through an agential lens, Henry notes that despite the attempts to undermine the credibility of their testimony the witnesses in *Furundžija* and the *Foca Rape Camp case* were able to "find ways to assert their agency, both inside and outside the courtroom."[84] By accessing psychological services and agreeing to testify, they resisted the "toxicity" of the rape myths presented by the defence and challenged "the pre-given political identity of 'rape victim."[85] Rather than permitting women's agency to be consumed by the limits of the legal process, Henry highlights how the feminist lens must be wary of totalising women within the very narratives of victimisation they intend to critique. She contends that feminist scholarship often frames women's participation in legal proceedings through the lens of victimhood, diminishing recognition of the choices and ways in which women take responsibility for their recovery in the aftermath of violence. Despite the trial proceedings being re-opened as a response to the perceived prejudice the defence had suffered, Witness A was subsequently permitted to provide her testimony in camera and refused to submit to the defences attempt to undermine her credibility. Nevertheless, it is not that women will necessarily have a negative experience within a tribunal rather the prescribed boundaries of legal representation in international tribunals limit the narratives that can be told because of fixed legal processes and particular expectations upon victims demanded by institutional mandates, inhibiting what victim-

[81] Godwin Phelps (n 65) 179.
[82] Henry (n 52) 1111.
[83] Henry (n 41) 104.
[84] ibid 103.
[85] ibid.

survivors of sexual violence can say in the ways in which they need to articulate their narrative.[86]

This calls in to question the centrality of law and legal processes as spaces in which harms are named and women's voices are heard particularly when victim-survivors have entered the field in the hope that international tribunals will be able to provide them with a sense of justice.[87] The difficulty for feminist legal theory in drawing attention to how lived experiences of sexual violence are represented in judicial mechanisms arises in the tension produced between paying attention to the suffering women endure whilst also attempting to avoid defining them solely by the harm committed against them. As a consequence of this tension, dissent within scholarship has emerged. Henry, for example, has accused feminist literature of fixating upon rape and representing this as a universal element of women's lived experiences of conflict.[88] Simic builds upon this noting, "What is happening to women during war? Rape, yes, but not only."[89] Recognition of women's agency and choice to engage in consensual sex, sexual desire, and their sexuality is often consumed in feminist theory in the misconceived notion that "war destroys everything."[90] At the heart of this challenge is the need to not only 'give voice' to those overlooked but to make sure that victim-survivors voices are heard and understood from their own perspective.[91] For transitional justice, this means consistently challenging prevailing binaries that endeavour to categorise women's experiences into a singular collective narrative. Through listening to, and engaging with, the differences and nuances of women's experiences, a much richer, more accurate picture of what has taken place within a conflict can be brought into view.[92]

3.3. Monolithic Narratives and the Silencing of Social Relations

[86] Porter (n 49) 37.
[87] Henry (n 52) 1113.
[88] Henry (n 41) 97.
[89] Simic (n 45) 132.
[90] ibid 134.
[91] Engle (n 44) 806.
[92] Fionnuala Ní Aoláin 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6 (2) *International Journal of Transitional Justice* 205, 225.

Scholars have highlighted the tendency of international law and legal mechanisms to produce monolithic narratives. Otto notes that the narrative constructed by law tend to draw upon "three recurring female subjectivities" presenting women as either the "figure of wife and mother in need of 'protection' during times of war and peace" perceived as "more an object than a subject of international law", or as "'formally equal' with men, at least in the realm of public life", and finally, as a 'victim' subject "produced by colonial narratives of gender, as well as by notions of women's sexual vulnerability."[93] Each subjectivity stands in opposition to dominant male representations of 'protector', 'combatant', and 'bearer of civilisation' applied without nuance. In the shifting nature of these representations, "a sense of unity" is achieved "from the consistency of the hierarchies" produced upon which men remain dominant.[94] These subjectivities presented in narratives of law have, Otto has noted, "an uncanny ability to survive despite the best efforts of feminist legal strategists." [95] In case of *Prosecutor v Krstic*, for instance, the patriarchal foundations of Bosnian society and women's seemingly subordinated position within this became a central element of each judge's line of questioning, resulting in the Court holding that genocide was committed in the town of Srebrenica. Whilst this ostensibly presented a more nuanced view, applying Otto's subjectivities this line of questioning oscillates between 'woman as the figure of wife and mother' and 'the victim subject' has prevailed in the representation of sexual violence in internationalised justice mechanisms produced through and maintained by the singular and constricting frame of normative lens. Focussing explicitly upon remarriage and procreation as aspects of patriarchy, Buss contends that the narrative produced served to replicate the exclusionary nature of the gendered relations the judges had attempted to represent as the judges inadvertently reduced women to passive, silent victims and excluded other women who were not identified as Bosnian Muslim but were also victims of rape.[96] Moreover, the division of men and women's experiences in gendered terms and subsequently along ethnic lines threatens to reinforce pre-existing ethno-nationalist narratives that embody what Minow refers to as "cycles of hatred."[97] Rather than overturning these prevailing narratives,

[93] Dianne Otto, 'Lost in translation: Re-scripting the sexed subjects of international human rights law' in Anne Orford, *International Law and Its Others* (Cambridge University Press, 2006) 320.
[94] ibid.
[95] ibid 321.
[96] Buss (n 16) 79.
[97] Martha Minow, *Breaking the Cycles of Hatred: Memory, Law, and Repair* (Nancy Rosenblum ed, Princeton University Press 2002).

law further entrenches the divisions that were the pre-cursor to conflict, such as divisions between Hutu and Tutsi and Bosnian Serb and Bosniak communities. In each of these examples, the reframing of harm translates lived experiences to fit within predetermined and prescribed notions of victimhood. [98] If their experiences are deemed not to fit the narrow legal referents that define what will constitute harm, their experiences are deemed irrelevant and omitted.[99]

Furthermore, aggressive cross-examination tactics reflecting problematic rape myths continued to arise during proceedings. In the *Foca Rape Camp case*, for example, Witness FWS-87 provided her testimony, detailing how, at fifteen years old, she was held captive and raped repeatedly by Radomir Kovac. The following is an excerpt from the cross-examination of Witness FWS-87 by defence counsel, Mr Kolesar:

> Q. It is a fact that Kovac helped you and rescued you from the hell of war, and you are here giving false testimony. So will you tell us why? Why don't you tell us that he helped you?
>
> A. To begin –
>
> Q. And that you were -- that you liked him?
>
> A. To begin with, I did not like him. Secondly, it's not true that he helped me. To be grateful? There's nothing to be grateful for, because -- because -- I really don't see why should I be grateful. Because he raped me? Because Kostic raped me? Because he sold me to some Montenegrins? I don't know.
>
> MR. KOLESAR: [Interpretation] Thank you, Your Honours. I have no further questions.[100]

The frame through which Mr Kolesar sought to undermine Witness FWS-87's credibility is reflective of the prevailing narratives that frame women as responsible for the violence committed against them.[101] The defence counsel, employed to represent the accused

[98] Buss (n 16) 78.
[99] Salome Mibenge (n 23) 5.
[100] *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* IT-96-23-T &IT-96-23/1 (4 April 2000) Witness 87, 6136-6137.
[101] Campbell (n 34) 427.

throughout the trial is, of course, required to undermine the credibility of a witness and their testimony on instruction from their client. This may mean testing evidence in unattractive or uncomfortable ways. Whilst Witness FWS-87 may have been supported prior to and following her testimony, this nevertheless reflects Herman's perception of courtroom settings as environments in which "aggressive argument, selective presentation of the facts, and psychological attack are permitted, with the presumption that this ritualized, hostile encounter offers the best method of arriving at the truth."[102] However, Mr Kolesar's suggestion that Witness FWS-87 liked or felt gratitude towards the man who raped and molested her attempts to shift the narrative from coercion to affection, insinuating that she had affections for the man who was ultimately held to have raped her and kept her captive. This frames the violence as a shame that the survivor should bear because she either consented, is seeking revenge, or is in some way to blame. Henry notes that the imposition of such narratives "contributes to the further entrenchment of social and legal constructions of rape myths."[103] Such myths demonstrate how shame is reinforced through the language used that situates the responsibility of rape as belonging to those harmed, rather than men who commit such violence. As Godwin-Phelps notes, such narrative constructions fail to insist on what should be "a new (and frankly correct) narrative – this crime is his shame, not hers."[104] She highlights how such the "rhetorical stances" tribunals reinforce problematic patriarchal narratives about victim-survivors of sexual violence.[105] This demonstrates the veiled violence of the law.[106] As Marcus notes:

> the violence of rape is enabled by narratives and institutions which derive their strength not from outright, immutable or unbeatable force but rather from their power to structure our lives as imposing cultural scripts.[107]

[102] Herman (n 66) 572.
[103] Henry (n 54) 113.
[104] Godwin Phelps (n 65) 179. See also, Henry (n 54)130.
[105] Godwin Phelps (n 65) 173.
[106] Robert Cover, 'Narrative, Violence and the Law' in Michael Ryan, and Austin Sarat (eds), *Narrative, Violence, and the Law: The Essays of Robert Cover* (University of Michigan Press 1995) 238.
[107] Wendy Hesford and Wendy Kozol (eds), *Haunting Violations: Feminist Criticism and the Crisis of the "Real"* (University of Illinois Press 2000) 19.

The tribunals symbolise and communicate powerful messages about women and "do not do 'justice' work in a vacuum; they respond to and in turn affect the culture."[108]

In international criminal tribunals, the heightened attention given to conflict-related sexual violence not only presents women as a homogenised group, limiting what and whom is made visible, but also risks making "everyday violence and injustice" invisible.[109] Feminist scholars have drawn repeated attention to the distinction made between wartime rape and 'ordinary rape' that takes place in times of peace, reinforced by legal narratives and the feminist focus upon sexual violence.[110] Writing in 1994, Copelon noted that, "Every rape is multidimensional, but not incomparable." [111] Mackinnon added that:

> The trouble has been that men do in war what they do in peace, only more so, so when it comes to women, the complacency that surrounds peacetime extends to wartime, no matter what the law says.[112]

More recently, Mibenge agreed noting how "'ordinary' rape taking place in times of peace," does not "offend the sensibilities" of the collective conscience as it would if it were to have taken place during armed conflict.[113] Elevating the severity of wartime rape in this way means that the true nature of rape as a form of male sexual violence against women fails to be investigated sufficiently with the element of individual experience becoming obscured by the seemingly greater harm that wartime rape causes to society. The focus is placed solely upon the prosecution of wartime rape as opposed to the individual incidences and individual experiences of rape undermining the severity of sexual violence in times of peace. Moreover, there has been a tendency in legal representations to overlook the relationship between the physical violence exerted against women in conflict and the unequal gendered relations that shape life prior to, during, and in the aftermath of conflict. Conflict, post-conflict, and displacement is now understood to exacerbate violence against women by intimate partners

[108] Godwin Phelps (n 65) 174.
[109] Henry (n 41) 105.
[110] Rhonda Copleon, 'Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law' (1994) 5(2) Hastings Women's Law Journal 243, 245.
[111] ibid 265.
[112] Catherine Mackinnon, 'Rape, Genocide, and Women's Human Rights' (1994) 17 *Harvard Women's Law Journal* 5, 16.
[113] ibid.

or violence committed by non-partners.[114] This also includes the perpetration of sexual violence by some UN peacekeepers who commit sexual violence during peace missions.[115] The threat of violence for women does not end when the social violence is draws to an end. As Mackinnon has commented:

> There is no 'post-conflict for gender crimes. The daily campaign of violence against women, well documented as a worldwide war on women – with substantial variation but substantially invariant impunity - can be reframed as the longest-running siege of crimes against humanity in the history of the world.[116]

When conflict is over the likelihood of a "post-war backlash against women" rises, often exacerbated by a lack of support services in the aftermath of the trauma of war, as unaddressed male trauma has been shown to aggravate further violence.[117] Henry has explored how the often-chaotic conditions of war directly relate to the "norms, beliefs, and attitudes about gender, sexuality, and violence."[118] Without challenging unequal gender power relations in the aftermath of conflict, transitional justice and post-conflict mechanisms risk giving up the potentially transformative effect of conflict – what Bell and O'Rourke term the 'perverse equality gains of war' – when men and women return home, potentially exacerbating other forms of abuse such as domestic violence.[119] In the legal narratives produced, however, violence is divided into "discontinuous realities" as opposed to recognising violence as "part of one singular experience that is not compartmentalized."[120]

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[114] World Health Organisation, 'Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-partner Sexual Violence' (Report, 2013) 2 <http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1> accessed 10 May 2017.

[115] See Muna Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions' (2009) 27(1) *Berkeley Journal of International Law* 127; Olivera Simic, 'Distinguishing Between Exploitative and Non-Exploitative Sex involving UN Peacekeepers: The Wrongs of Zero Tolerance' (Expert Analysis, Norwegian Peace Building Resource Centre 2013).

[116] Catherine Mackinnon, 'Creating International Law: Gender and Leading Edge' (2013) 36 Harvard Journal of Law and Gender 105, 120.

[117] Donna Pankhurst, 'Post-War Backlash Violence against Women: What Can "Masculinity" Explain?' in Donna Pankhurst (Ed) Gendered Peace: Women's Struggles for Post-War Justice and Reconciliation (Taylor & Francis 2012).

[118] Henry (n 9) 52.

[119] Christine Bell and Catherine O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) 1(1) *The International Journal of Transitional Justice* 23, 44.

[120] Fionnuala Ní Aoláin, 'Women, Security, and the Patriarchy of Internationalized Transitional Justice' (2009) 31(4) *Human Rights Quarterly* 1055, 1064.

Instead, experiences of rape are reinterpreted by tribunals as "tales of sexual violence"[121] focussed upon isolated instances instead of recognising patterns of violence.[122] Sexual violence is not committed solely in conflict; the conditions conducive to making such violence a heightened reality during conflict are the social power relations that underpin a society prior to conflict beginning. Sexual violence against women is not confined to particular spaces or periods in time.[123] Yet, the dichotomy between private and public realms, blurred during conflict, is continually reinforced in its aftermath. Nadj highlights how the heightened attention upon the public nature of violence coupled with the limited jurisdiction of international criminal tribunals means that "low-level offences" are omitted, "crimes, such as domestic violence, are rendered invisible."[124] This results in the recognition of sexual violence emerging as singular accounts that fail to recognise the continuum of violence for many women in pre, during, and post conflict settings. [125]

The focus upon sexual violence as a singular account means that tribunals often fail to fully comprehend women's needs in the aftermath of conflict-related sexual violence. Larger justice ideals of ending impunity and seeking retribution diminish recognition of the need for other forms of justice, whether reparative, social, or restorative, beyond the confines of the tribunal walls. Yet, despite the heightened attention, when rape is utilised by women seeking material reparations to aid their everyday lives, their stories are often silenced or marginalised.[126] In the aftermath of the ICTY, for example, women in BiH have been waiting since 1995 to be recognised as eligible to make a claim for war reparations, rather than welfare benefit. As one survivor stated, "We need support, not pity.**[127]** As the UN Secretary-General notes, "Owing to the absence of adequate support, the passage of time has compounded, rather than alleviated, their plight."[128] Along with a lack of care, support and

[121] Buss (n 1) 146.
[122] Mayesha Alam, *Women and Transitional Justice* (Palgrave 2014) 61.
[123] Rashida Manjoo and Calleigh McRaith, 'Gender-Based Violence and Justice in Conflict and Post-Conflict Areas' (2011) 44 *Cornell International Law Journal* 11, 13.
[124] Rashida Manjoo and Daniela Nadj, 'Bridging the Divide: An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence against Women' (2015) 23(3) *Feminist Legal Studies* 329, 339.
[125] Bell and O'Rourke (n 119) 44; Buss (n 1) 146; Alam (n 122) 63.
[126] This will be further explored in Chapter 7. See, Buss (n 1) 158.
[127] Amnesty International, 'We Need Support, Not Pity' Last Chance for Justice for Bosnia's Wartime Rape Survivors (Report 2017) 45 <www.amnesty.org/download/Documents/EUR6366792017ENGLISH.PDF> accessed
[128] UNSC 'Report of the Secretary-General on Conflict-related Sexual Violence' (23 March 2018) S/2018/250 <http://undocs.org/S/2018/250> accessed 27 March 2018.

justice for survivors, the post-transition state failed to ensure that the return for survivors of rape to their former homes would be 'safe and dignified' through a property restitution programme. Simic notes that women refused to return to their homes after the war because they are spaces that hold memories of severe trauma from which victim-survivors were often forcibly removed.[129] She notes that many women "were betrayed by their government so many times and had their hopes raised high, only to have them fall again and again, with no support apart from what they occasionally receive from each other."[130] An absence of reparations, a lack of memorials for victims of gender-based violence, a lack of psychological support, no education, has resulted in the erase of rape from the public consciousness of BiH.[131] This highlights limited purview of international tribunals, exacerbating the divide between international and national responses and undermining the ability of tribunals to secure the larger justice ideals embodied in the rhetoric of the international community.

Nevertheless, women may construct narratives that challenge feminist assumptions surrounding conflict-related sexual violence. Skjelsbæk highlights how women articulate narratives within which the main plot is them as a victim contradicting feminist theorisation that values agency over victimhood. [132] Such narratives can serve an emancipatory function whereby women adopt victimhood as a means through which to, for example, receive reparations or gain recognition of their experiences. "Assuming that wartime rape has universal effects on women because of universal hierarchical relationships between men and women", Skjelsbæk contends, "simply serves to reinforce the passivity associated with victimhood."[133] This can limit feminist scholars from seeing the "complete picture" and prevents recognition of "the diverse strategies women employ in living with war rape in its aftermath.".[134]The bounded narratives of victimhood and agency should not be the only narratives through which women's experiences of violent conflict are imagined.[135] As a consequence, the full relevance of feminist scholarship in transitional justice "is only slowly

[129] Olivera Simic, 'Drinking Coffee in Bosnia: Listening to Stories of Wartime Violence and Rape' (2017) 18 (4) *Journal of International Women's Studies* 321, 328.
[130] ibid.
[131] Janet Jacobs, 'The Memorial at Srebrenica: Gender and the Social Meanings of Collective Memory in Bosnia-Herzegovina' (2017) 10(4) *Memory Studies* 423, 435.
[132] Skjelsbæk (n 62) 395.
[133] ibid 394.
[134] Skjelsbæk (n 12) 46.
[135] Zarkov in Simic (n 45) 133.

being revealed through ongoing debate and critique."[136] Heeding critiques from scholars such as Skjelsbæk and Simic, the application of the feminist lens must endeavour to provide a sharper focus that brings the nuances of women's lived experiences of conflict-related sexual violence and their recovery in the aftermath of conflict into clearer view, not solely as victims or agents but as human beings, beyond the confines of singular narratives. Consequently, it is imperative that feminist scholarship recognises the context and relations of power that surround women's narratives. Feminist theorisation in transitional justice needs to devise new conceptualisations of violence that open up space for women to tell their own narratives from their own perspective otherwise, as Smart notes, "we forever go around in circles."[137]

3.4. The Turn to Criminalisation and The Fight to End Impunity: Refocusing the Feminist Lens

As outlined in Chapter Two, the 1990s marked a pivotal point in the practice of international criminal law and transitional justice practice. Engle has provided a comprehensive overview of the turn to criminal law in the human rights and transitional justice movements, shifting the focus upon ending impunity for war crimes that occurred during this period. For instance, she has noted how, in recognising that states may not always be able to or be unwilling to prosecute IHR violations in domestic courts, a "general international governance trend toward the expansion of criminal legal institutions at both the international and domestic levels"[138] emerged. For instance, the VPDA promoted the development of international criminal institutions, stressing that those who perpetrate or authorise war crimes are "individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice."[139] Echoing the work of the Nuremberg and Tokyo Tribunals, accountability and prosecution through the turn to criminal law became a central a "central pillar in the broad architecture of transition from conflict."[140]

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[136] Ní Aoláin (n 92) 205-206. See also, Bell and O'Rourke (n 119) 44.
[137] Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 75.
[138] Karen Engle, 'A Genealogy of the Centrality of Sexual Violence to Gender and Conflict' in Fionnuala Ni Aoláin, Naomi Cahnm Dina Francesca Haynes and Nahla Valji, *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2017) 140.
[139] Karen Engle, 'Anti-Impunity and the Turn to Criminal Law' (2015) 100(2) *Cornell Law Review* 1069, 1113.
[140] Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34(4) *Journal of Law and Society* 411, 439.

As recognition of conflict-related sexual violence has gained traction, international criminal tribunals have been instrumental in the endeavour to provide formal justice, developed around a discourse centred upon the ending of impunity for those responsible for committing such violence. The potential of law emerges in the ability for women to tell their story and the capacity for the provision of retributive justice which may, for many victims, be a sufficient form of justice.[141] Whilst prosecutions are undoubtedly necessary and send a strong message that such crimes will not be tolerated, as explored above, the judicialization of representations of conflict-related sexual violence emerging from institutions such as the ICTY and ICTR have conflicted with feminist ideals.[142] Despite this conflict it appears that for many feminists the 'move to institutions' and the centrality of law to the treatment of rape and sexual violence against women has not, in itself, raised cause for alarm.[143] Mackinnon, for instance, has argued that "sexually violated women and international jurisdiction belong together"[144] because:

> the further away from home women go, the experience has been, the more rights they get. Distance appears to attenuate the male bond, making it more likely that women's violations by men will be recognized as real."[145]

She continues, presenting a hopeful analysis of the practice and institutional mandate the ICC as an opportunity to "develop grounded procedures… that respond to the practical imperatives" for the effective prosecution of "the so-called 'little fish' when they *are* most responsible" and those "who lead and deploy and permit their actions, sustaining the Nuremberg principle from both the top down and the bottom up."[146] Despite noting how literature has failed to question "why laws against gender crime are largely not obeyed, domestically *or* internationally"[147] she somewhat contradictorily goes on to international law and prosecution as the central means through which to represent women's lived experiences

[141] Henry (n 52) 1113.
[142] Henry (n 41) 104-105; Godwin-Phelps (n 65) 174.
[143] Engle (n 44) 778.
[144] Mackinnon (n 116) 119-120.
[145] ibid 120.
[146] ibid.
[147] ibid 114.

despite this disobedience. Though she was hopeful that a "well-travelled two-way street" could open upon between "the national and the international, including the always-crucial NGOs",[148] her argument is undermined by the ever-increasing justice gap that remains, exemplified by the recent acquittal of *Bemba* in the ICC, the lack of international and domestic prosecutions for conflict-related sexual violence, and the dearth of reparative measures provided.[149] Mackinnon fails to interrogate the assumptions that underpin her assertion that the best place for the representation of women's lived experiences of sexual violence remain in powerful normative criminal institutions. As St. Germain and Dewey have noted that, whilst the "hard-won" jurisprudential gains in the special tribunal system "certainly constitute cause for celebration, but they also present feminist scholars with an occasion to pause for thought."[150]

Whilst Mackinnon remains hopeful with regard to the practice of international law, Engle has been far more tentative in her endorsement of criminal law as the means through which to derive justice for victims. She has provided a genealogical analysis of the dominant strategic response to sexual violence in conflict that has become increasingly focussed upon criminalisation, prosecution and prevention and underpinned by anti-impunity rhetoric.[151] The work of initiatives such as the implementation of the Preventing Sexual Violence Initiative and the Global Summit to End Sexual Violence in Conflict held in London in June 2014, organised by William Hague and Angelina Jolie, demonstrates the serious commitment to implementing the criminal laws concerning conflict-related sexual violence.[152] Despite this, Engle has noted how such initiatives proceed on the "unspoken (and always unproved) assumption that deterrence will result from bringing the perpetrators to justice,"[153] further undermined by the continued failure to invest in the furthering of prosecutions.[154] This builds

[148] ibid 121.
[149] This will be further explored in Chapter 4, 5 and 8.
[150] Tonia St. Germain and Susan Dewey, 'Justice on whose terms? A critique of international criminal justice responses to conflict-related sexual violence' (2013) 37 Women's Studies International Forum 36.
[151] Engle (n 38) 1086.
[152] The summit which was attended by over 120 countries, 70 Foreign Ministers, more than 100 NGOs, and 900 experts from health, legal, military and academic fields, and many survivors. For discussion concerning the 'celbritization' of activism, see Elissa Helms, 'Rejecting Angelina: Bosnian War Rape Survivors and the Ambiguities of Sex in War' (2014) 73(3) *Slavic Review* 612 and Linda Piknerová and Eva Rybáková, 'The "celebritization" of development – Bono Vox and Angelina Jolie as actors in development' (2017) 3(1) *Development, Environment and Foresight* 20.
[153] Engle (n 138) 134.
[154] ibid 136.

upon Buss' analysis of the paradoxical treatment of conflict-related sexual violence whereby there is a "strikingly low conviction rate… but relatively strong and repeated recognition" of such crimes as a component of serious international war crimes.[155] The "unashamed emphasis" upon individual criminal responsibility for crimes of sexual violence has continued to thwart investigation into the multifaceted factors which contribute to its perpetration in conflict, frustrating scholars, practitioners and survivors alike.[156]

Despite the consistent reminder made by feminist scholars that we should not accept international criminal tribunals tasked with providing justice to victims as wholly "impartial, legitimate and knowledgeable,"[157] the contemporary embrace of criminal law has remained largely uncontested in feminist theorisation concerning conflict-related sexual violence. Mibenge has reminded us that "the pain that law and justice can inflict, the omissions they make… and the oppression they legitimate are part and parcel of their protection mechanisms in a patriarchal society."[158] Despite this, feminist scholars have continually "ceded power and legitimacy to law as a source of knowledge and truth and the grantor and protector of women's equality, rights and liberty."[159]

Engle has argued that the carceral turn by feminist advocates and scholars alike overlooks how criminalisation, in its focus upon individual perpetrators and harms, "has little justification beyond retribution, and makes little sense even to the victims (though it is generally done in their names)."[160] Nonetheless, the power of law and its related attributes – prosecution, accountability, and its connection to ending impunity – has inhibited the interrogation of how and why law came to be central to transitional justice practice. This is because, Otto contends, "law has the constitutive power to universalize certain knowledges and to disqualify others, the ability to speak to and influence law-making processes is a critical determinant of access to power."[161] Despite the instrumental contribution of feminist

[155] Buss (n 1) 147.
[156] McEvoy (n 140) 438.
[157] Mibenge (n 23) 158.
[158] ibid 158
[159] Henry (n 41) 97.
[160] Engle (n 138) 141.
[161] Dianne Otto, 'Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference' (1996) 5(3) *Social and Legal Studies* 337, 359.

movements to the recognition of conflict-related sexual violence, law's ability to structure and maintain its power has centred retributive justice, criminal penalties and punishment, as the central avenue of justice for victim-survivors.[162] I do not wish to undermine the value of international institutions as a necessary and legitimate response to conflict-related sexual violence.[163] Rather, there is a need to a strike a balance, recognising, "the importance of appreciating both law's limits and its potential."[164] As Ní Aoláin notes:

> without attention to other ways of thinking about transitional justice -- by drawing on the centrality of law to the endeavor but equally recognizing its functional and practical limitations -- overall transformation will remain elusive.[165]

3.5. Conclusion

Whilst the jurisprudential advancements made over the past quarter of a century are undeniably a step in the right direction, feminist scholars have revealed the impact of the judicialization of crimes of sexual violence and the representations of lived experiences of such violence that have emerged as a consequence. The continued inscribing of men and women's lived experiences into gendered binaries, the repeated oversight of underlying social relations, the harms that law can inflict in its reduction of trauma into a legal narrative, and prevailing rape myths demonstrate the difficulties the field of transitional justice faces in providing justice to victim-survivors of conflict-related sexual violence.

Despite feminist legal scholars unravelling the limited nature of legal representations of sexual violence, critiquing law as the gatekeeper of what is known about lived experiences of rape, scholarship has, for the most part, failed to interrogate the centrality of law to representations of conflict-related sexual violence. Understandings of conflict-related sexual violence have been continually framed within existing structures without interrogating the underlying structures of power that give rise to incommensurability. This has allowed

[162] Engle (n 138) 134.
[163] Henry (n 54) 25; Engle (n 44) 780.
[164] Henry (n 41) 104.
[165] Ní Aoláin (n 92) 228.

incommensurability to reign, universalising and misrepresenting the lived experiences of victim-survivors through the translation of traumatic experience into a legal narrative. The proliferation of legal norms and the connections between the centrality of law and the lack of holistic transitional justice responses remains unchartered.[166] In the context of exploring incommensurability, this raises a number of questions: why does the legalistic practice of international (criminal) law remain the dominant means through which women's lived experiences of war are represented? Why is this deference so readily accepted? What is the impact of the centrality of law upon the practice of transitional justice responses to conflict-related sexual violence? And finally, what are the justice implications for victim-survivors? The following chapter begins the process of answering these questions, unravelling the historical foundations of the centrality of law within the field of transitional justice and revealing the power relations that have maintained law's dominance, impeding the focus of transitional justice on justice beyond prosecution.

[166] Fionnuala Ní Aoláin, ''After Things Fall Apart: Challenges for Transitional Justice Futures' (2017) (forthcoming) <http://uir.ulster.ac.uk/37165/>

Chapter Four: The Force of Law in the Field of Transitional Justice

Responding to the critiques made by feminist scholars, such as Karen Engle and Nicola Henry, of the continued deference by transitional justice to legal practice, this chapter turns to answer the questions of how and why law has become central to the representation of conflict-related sexual violence. In moving to answer these questions, the chapter outlines the theoretical underpinnings of the thesis, applying Bourdieu's theory of practice to the practice of international criminal law in the field of transitional justice. In the context of this thesis, Bourdieu's conceptualisation of power allows the symbolic domination and violence exerted by international criminal justice, the normative force it holds in the practice of transitional justice, and the lens it places upon transitional contexts and lived experiences of sexual violence to be brought to the fore.

The appropriation of Bourdieu's theory of practice for feminist purposes arises on two fronts. The first unravels how gender, as symbolic violence, functions in international law to maintain and reproduce masculine domination in its practice. The second provides a broader focus, exploring the symbolic domination of international criminal law and the centrality of legalism within contemporary transitional justice responses to conflict-related sexual violence. This, the chapter contends, is relevant to both feminist legal theory and transitional justice scholars as the symbolic domination of international legal practice has diminished recognition of the impact of the incommensurable disjuncture between the institutional practice and power of law and the wants and needs of victims in transitional contexts. In turn, I show how Western-centric internationalised justice has imposed particular avenues of, namely criminal, justice that has inhibited the potential and possibility for transformative justice change to emerge in the lives of victim-survivors of conflict related sexual violence. In doing so, I endeavour to elucidate the conceptual underpinnings of the challenge to the centrality of law, paving the way for the subsequent interrogation of the cost of the incommensurable nature of law and representations of women's lived experiences of conflict in coming chapters.

4.1. The Symbolic Violence of Gender in the Practice of International Criminal Law

Applying a Bourdieusian lens to the practice of international criminal law unravels its nature as a socially structured pattern of human behaviour that structures and characterises the professional world inhabited by international judges and lawyers, and other legal professionals, as legal agents. His theory of practice emerged from a single question: "how can behaviour be regulated without being the product of obedience to rules?"[1] The answer can be presented in a formula "[(habitus) × (capital)] + field = practices."[2] Each of these theoretical concepts are internally linked to the other and they "are not – and are not supposed to be – precise and unambiguous."[3] Rather than being forced to accept either structure or agency, Bourdieu endeavoured to elucidate the connections between the two. Interrogating why particular social fields, such as the juridical field and the practice of law, give rise to divisions that maintain the distribution of power and create unequal social relations.

For Bourdieu, the juridical (or legal) field denotes "the existence of an entire social universe… which is in practice relatively independent of external determinations and pressures."[4] It is the "network… of objective relations between positions", such as prosecutor, defence lawyer, or judge, that are imposed upon individuals who choose to enter the field as legal agents. In order to enter juridical field and to sustain their position within it, legal agents must acquire relevant dispositions to practice law through a process of rigorous formal training and education. This allows them to gain the "feel for the game" or what Bourdieu terms the habitus.[5] The habitus is a set of pre-conscious dispositions attained overtime, including habits and skills, that shape the everyday practice, producing history and generating

[1] Pierre Bourdieu, *In Other Words: Essays Towards a Reflexive Sociology* (Matthew Adamson tr, Stanford University Press 1990) 65.
[2] Pierre Bourdieu, *Distinction: A Social Critique of Judgement of Taste* (Richard Nice tr, Harvard University Press 1984) 101.
[3] Rogers Brubaker, 'Social Theory as Habitus' in Craig *Calhoun*, Edward LiPuma and Moishe *Postone* (eds) Bourdieu: Critical Perspectives (2nd edn, University of Chicago Press 1993) 217; See also, Navarro (n 1) 18.
[4] Pierre Bourdieu, '*The Force of Law*: *Toward a Sociology of the Juridical Field*' (1987) 38 *Hastings Law Journal* 814, 816.
[5] Bourdieu (n 1) 64.

behaviour that accords to the practices that have come before within a particular field.[6] Following distinguished legal careers, international judges and lawyers are elected to practice, having acquired the relevant dispositions and necessary capital to engage in the practice of international criminal law. This allows them to maintain the structure of the juridical field and their position within it.

Bourdieu uses the term field, rather than system, to denote the interplay or 'ontological complicity' between habitus and field.[7] This complicity between the individual habitus of a legal agent produced through their past socialisations, which shapes their perceptions of the world and guides their actions, subsequently forms part of the collective habitus of the juridical field.[8] As Akram et al. note, habitus and field:

> are mutually constituted through practice... it is through the agent's recurrent practice that the 'objective structures' of the field become reflected in the 'incorporated structures' of habitus, which serves to reproduce the very objective structures of the field of which the habitus itself is the product.[9]

Through these concepts, Bourdieu distinguishes his theory of practice from systems theory, which understands law to be a self-referentially structured system that renews through a process of autopoiesis or the reproduction of elements of the system through self-reproduction.[10] Systems theories, such as Luhmann's notion of autopoiesis, perceive law as "a system or set of institutions which is simply imposed upon us as an external code – affecting our actions, perhaps our status, but not our inner identity."[11] The legal system is understood to function upon a binary coding of lawful and unlawful; this controls the selection of material outside of the system through communications that determine its

[6] Bourdieu (n 2) 170-171; Pierre Bourdieu, *The Logic of Practice* (Richard Nice tr, Stanford University Press 1992) 54.
[7] Sadiya Akram, Guy Emerson and David Marsh, '(Re)Conceptualising the third face of power: insights from Bourdieu and Foucault' (2015) 8(3) Journal of Political Power 345, 351.
[8] Pierre Bourdieu, *The Logic of Practice* (Richard Nice tr, Stanford University Press 1992) 121.
[9] Akram and others (n 7).
[10] Niklas Luhmann, 'The Autopoiesis of Social Systems' in Felix Geyer and Johannes van der Zeuwen (eds), *Sociocybernetic Paradoxes: Observation, Control and Evolution of Self-Steering Systems* (Sage 1986); Niklas Luhmann, *A Sociological Theory of Law* (Elizabeth King and Martin Albrow tr, Martin Albrow ed, Routledge & Kegan Paul 1985).
[11] Margaret Davies, 'Feminism and the Idea of Law' (2011) 1(1) *feminists@law* 1, 3.

relevance.[12] For Bourdieu, systems theory reflects a mechanical jurisprudence that "provides an ideal framework for the formal and abstract representation of the juridical system" but "does not contain within itself the principles of its own dynamic."[13] This is because it diminishes the agency of those who reside within the field, whom are also members of other social fields that influence their habitus, and, fundamentally, how the constructed juridical field functions within, and as part of, social life. The dynamic between structure and agency, field and habitus, thus moves beyond formalist or instrumentalist perspectives that view the practice of law as either an autonomous system or, conversely, as solely a reflection of existing social power relations in the social realm.[14] Rather, the interplay between habitus and field undermines "the common-sense duality between the individual and the social"[15] because it creates a non-oppositional strategy that recognises both the structure, as the objective, socially constituted, outside, and agency, as the subjective, creative, and inventive inside.[16] As such, "habitus and the social field are never fully synchronised, which in turn helps to avoid social determinism."[17] This lack of full synchronicity means that the tensions a judge's past socialisations carry and create alongside the acquirement of legal dispositions organises their actions and shapes the categories of perspective they apply to the nature of human behaviour presented before them in the interpretation and application of relevant bodies of law.[18] As such, the habitus is a "structuring structure… but also a structured structure"[19] that embodies "the dialectic of the internalisation of externality and the externalisation of internality."[20] It guides behaviour and organises legal agents amongst their fellow colleagues unconsciously,[21] as an invisible albeit "forceful influence" within the particular spatial and temporal contexts they occupy in the field.[22]

[12] Niklas Luhmann, *Theory of Society: Volume 2* (Rhodes Barrett tr, Stanford University Press 2013) 95.
[13] Bourdieu (n 4) 816.
[14] ibid 816-817.
[15] Loïc Wacquant, 'Habitus' in Jens Becket and Zafirovski Milan (eds), *International Encyclopaedia of Economic Sociology* (Routledge 2005) 316.
[16] ibid.
[17] Akram and others (n 7) 349.
[18] Bourdieu (n 3) 173.
[19] Bourdieu (n 3) 170.
[20] Pierre Bourdieu, *Outline of Theory of Practice* (Richard Nice tr, Cambridge University Press 1977) 72.
[21] Bourdieu (n 3) 173.
[22] Richard Terdiman, 'Translator's Introduction' (1987) 38 *Hastings Law Journal* 805, 806.

Capital denotes the organisation of symbolic elements such as "modes of thought, codes of behaviour… dress, gestures" that reflect the "historically-informed and culturally-situated" understanding acquired by legal agents.[23] For instance, codes of behaviour such as all rising when judges enter a tribunal, or the wearing of robes and wigs, creates a sense of social identity and cohesion between legal agents. Such capital creates difference and shapes the relations of power both within and outside of the field.[24] For instance, over their career, judges have attained sufficient capital to distinguish themselves from both lay people outside of the legal field and other legal representatives who are yet to attain the required capital. This provides judges with the ultimate right to speak,[25] or the "power to make things with words."[26] Capital, and the struggles for power it entails, maintain the boundaries of the field and distinguishes between those who practice law from those who reside outside of the field.[27] Bourdieu's conceptualisation of power differs from other social theorists. The power international judges and lawyers exert is censored, recognised in the tacit albeit unconscious understanding of legal agents whose habitus reinforces this as an implicit aspect of their practice.[28] It is symbolic in nature, imposing an "official representation" of the world.[29] This symbolic domination is upheld through a process of misrecognition that results in an "induced misunderstanding" whereby the power relations of the structure and practice of international criminal law "come to be perceived not for what they objectively are, but in a form that renders them legitimate in the eyes of those subject to power."[30] This symbolic power is thus "a power of constructing reality,"[31] which denotes the tacit modes of domination as being 'in the order of things.'[32] As McNay explains, "Power is no longer incarnated in persons or specific institutions but becomes coextensive with a complex set of relations between

[23] Robert Chia, 'Rediscovering Becoming: Insights from an Oriental
Perspective on Process Organization Studies' in Tor Hernes and Sally Maitlis (eds), *Process, Sensemaking, and Organizing* (Oxford University Press 2010) 132.
[24] Pierre Bourdieu 'The Forms of Capital' in John Richardson (ed), *Handbook of Theory and Research for the Sociology of Education* (Greenwood 1986) 241-258; Terdiman (n 22) 812.
[25] Toril Moi 'Appropriating Bourdieu: Feminist Theory and Pierre Bourdieu's Sociology of Culture' (1991) 22(4) *New Literary History* 1017, 1022.
[26] Pierre Bourdieu, 'Social Space and Symbolic Power' (1989) 7(1*) Sociological Theory* 17, 23.
[27] Bourdieu (n 4) 817.
[28] Moi (n 27) 1022.
[29] Bourdieu (n 4) 848.
[30] Terdiman (n 22) 813.
[31] Pierre Bourdieu, *Language and Symbolic Power* (Polity Press 1994) 164
[32] Bourdieu (n 28) 18.

different fields" making "social control... more insidious and hence more effective."[33] Taking Foucault as a comparative example, both theorists endeavoured to reveal how social systems survive and maintain order, revealing the "hidden, and often unobservable, nature of power" at play.[34] Foucault considered that power does not have a central focus but is, rather, omnipresent, "produced from one moment to the next, at every point, or rather in every relation from one point to another. Power is everywhere… because it comes from everywhere."[35] Unlike Foucault, and other social theorists, Bourdieu did not consider the exercise of power to be ubiquitous or beyond agency or structure and sought to uncover the processes undergirding the acceptance and misrecognition of power as natural. He noted that we cannot simply accept power as a "circle whose centre is everywhere and nowhere."[36] In doing so, Bourdieu wanted to illuminate how human beings as social agents are shaped by processes that are a pre-conscious or unconscious that they are not necessarily aware of without recourse to overt social control or repression.[37] Whilst the use of Foucauldian analysis to explore the subtleties of power as a force exerted upon every social agent has been given considerable weight in feminist legal scholarship and beyond,[38] symbolic power conceptualises the subtle operation of power that is "culturally and symbolically created, and constantly re-legitimised through the interplay between agency and structure in habitus."[39] This allows a focus upon how power is exercised by particular agents or institutions.[40] Moi notes that, unlike Foucault, Bourdieu's "micro-theoretical approach" and his focus upon revealing the subtle, habitual and invisible operation of power allows feminist legal scholars to "trace the specific and practical construction and implementation of hegemonic ideology."[41] This provides a means through which to articulate and critically reflect upon

[33] Lois McNay, *Gender and Agency: Reconfiguring the Subject in Feminist and Social Theory* (John Wiley & Sons 2013) 106.
[34] Akram (n 7) 358.
[35] Michel Foucault, *The History of Sexuality* (Robert Hurley tr Vol 1 Pantheon Books 1978) 93.
[36] Bourdieu 1994; 163.
[37] Akram et 358.
[38] See Carol Smart, 'Feminism and the Power of Law' (Routledge 1989); For other areas of social theory, see also J. Butler, Gender Trouble – Feminism and the Subversion of Identity (1990). 11 J. Sawicki, Disciplining Foucault – Feminism, Power and the Body (1991).
[39] Sadiya Akram, Guy Emerson and David Marsh, '(Re)Conceptualising the third face of power: insights from Bourdieu and Foucault' (2015) 8(3) Journal of Political Power 345, 351.
[40] Sadiya Akram, Guy Emerson and David Marsh, '(Re)Conceptualising the third face of power: insights from Bourdieu and Foucault' (2015) 8(3) Journal of Political Power 345, 359.
[41] Moi (n 27) 1019. For further discussion on the differences between work of Bourdieu and Foucault, see Lois McNay, 'Gender, habitus and the field: Pierre Bourdieu and the Limits of Reflexivity' (1999) *Theory Culture and Society* 16 (1) 95.

"law's own participation in distributions of power."[42] Conceptualising power in this way provides feminist legal scholars with "more empirically sensitive analytical framework"[43] to decipher how male dominance operates in the practice and structures of law utilised to provide justice to victims of conflict-related sexual violence.

Ostensibly Bourdieu's social theory said very little about issues of gender and feminist theory. This does not denote that his social philosophy is irrelevant to feminist legal thought, as many feminist scholars have appropriated his concepts for particular purposes.[44] In *Masculine Domination*, one of Bourdieu's final essays, he considered gender inequality to be the paradigm of symbolic violence. Such violence is "imperceptible and invisible even to its victims, exerted for the most part through the purely symbolic channels of communication and cognition"[45] which maintain existing relations and structures of power. This is reflective of patriarchy and the male dominance exerted throughout social fields, including law. As Mackinnon has explained:

> male dominance is perhaps the most pervasive and tenacious system of power in history… it is metaphysically near perfect. Its point of view is the standard for point-of-viewlessness, its particularly the meaning of universality.[46]

Since the early beginnings of international legal practice, the symbolic violence of gender as a form of symbolic domination has devalued the position of women in international law.[47] Feminist legal scholars have consistently highlighted how the field and its practice are inherently gendered.[48] The function of masculine domination continually serves to divide the world to maintain existing unequal gendered hierarchies.[49] This is most ostensible in the predominance of men in the juridical field. In international law, Bianchi notes, "men

[42] Davies (n 11).
[43] Akram and others (n 7) 359.
[44] Lisa Adkins, 'Introduction: Feminism, Bourdieu and After (2004) 52(2) *The Sociological Review* 3, 6.
[45] Pierre Bourdieu, *Masculine Domination* (Richard Nice Trs, Stanford University Press 2002) 1-2.
[46] Catherine MacKinnon, 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence' (1983) 8(4) *Signs* 635, 638; Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 87.
[47] Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *The American Journal of International Law* 613.
[48] ibid.
[49] Bourdieu (n 48) 41-42.

monopolize international legal structures."[50] In both the Nuremberg and Tokyo tribunals, for example, the judges' bench was comprised solely of men. In the ICTY, women made up 29 percent of permanent judges in the ICTY and only 18 percent in the ICTR.[51] The lack of gender parity between judges in international tribunals and institutional bodies has been consistently challenged by feminist scholars and activists, such as the WCGJ, who have drawn attention to the unequal relations of power gender in the practice of international criminal law and fought for equal representation within judicial institutions.[52] Gender as symbolic violence is repeatedly misrecognised in the juridical field because it pretends to be the natural order -- socially constructed it "is *itself* a power structure."[53] Gender is not a field in its own right, rather the habitus functions to silently reproduce the relations of power that give rise to masculine domination.[54] "Masculine domination assumes a natural, self-evident status through its inscription in the objective structure of the social world which is then incorporated and reproduced in the habitus of individuals."[55]

Upon Bourdieu's view, whereas men tacitly recognise the symbolic power they hold, women have little choice other than to accept the unconscious but powerful force and the resulting of dominance upon which men reside.[56] As such, the misrecognition of gender as symbolic violence means women become compliant pre-reflexively without conscious acceptance of its presence because it is "always and already the organising idea of consciousness."[57] The complicity of women in their subordination has caused scholars to question the full relevance of Bourdieu's theory of practice to feminist scholarship. As McNay

[50] Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford University Press 2016) 189.
[51] Nienke Grossman, 'Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?' (2012) 12(2) *Chicago Journal of International Law* 647, 654.
[52] See Fionnuala Ní Aoláin, 'More Women – But Which Women? A Reply to Stéphanie Hennette Vauchez' (2015) 26(1) *The European Journal of International Law* 229; International Commission of Jurists, 'Women and the Judiciary' (Geneva Forum Series no 1, September 2014) <www.icj.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf>.
[53] Catherine Mackinnon, 'Violence Against Women--A Perspective' (1982) 33 *Aegis* 51, 54.
[54] Moi (n 27) 1036; Chandra Mukerji, 'The Cultural Power of Tacit Knowledge: Inarticulacy and Bourdieu's Habitus' (2014) 2(3) *American Journal of Sociology* 348.
[55] Lois McNay, 'Gender, habitus and the field: Pierre Bourdieu and the Limits of Reflexivity' (1999) *Theory Culture and Society* 16 (1) 95, 99.
[56] Moi (n 27) 1022.
[57] Clare Chambers, 'Masculine Domination, Radical Feminism and Change' (2005) 6(3) Feminist Theory 325, 330.

notes, Bourdieu's "symbolic formations of masculinity and femininity are unproblematically mapped on to the social realm where men unambiguously occupy the dominant position and women the subordinate one."[58] In doing so, Bourdieu underestimates the "ambiguities and dissonances that exist in the way men and women occupy masculine and feminine positions."[59] Furthermore, gender as symbolic violence has been criticised as being deterministic because it appears so engrained in the depths of individual and group relations that overcoming masculine domination renders an insurmountable task.[60] As Chambers has noted, "resisting symbolic violence seems almost impossible on Bourdieu's analysis",[61] whilst Krais contends that, "The social order of gender… seems hermetic and indestructible, as though constituting a closed and perfectly ordered universe."[62] Rather than engaging with feminist research to recognise "his feminist colleagues as 'equal players' in the intellectual field",[63] Krais contends that Bourdieu failed to recognise the possibilities for action and change presented by feminist theory and activism.[64] In the juridical field of international criminal law, feminist legal scholars have consistently refused to tacitly and unquestioningly accept the gender relations that arise in and from legal practice.[65] Campaigns for legal reform, for instance, have been most effective in delivering feminist strategy.[66] As such, Bourdieu's focus upon the pre-conscious elements of masculine domination resulted in his theory of practice being accused of being reductive of conscious action.[67]

In the practice of international criminal law, for instance, the dynamic between field and habitus emerges in the work of feminist judges. Were it not for the initiative, or conscious action, of feminist judges in the ICTY and ICTR, spurred by the persistence and mobilisation of the women's movement, it is likely that sexual violence would have remained absent from

[58] McNay (n 58) 107.
[59] ibid 108.
[60] Beate Krais, 'Gender, Sociological Theory and Bourdieu's Sociology of Practice' (2006) 23(6) *Theory, Culture & Society* 119, 122.
[61] Chambers (n 63) 334.
[62] Krais (n 66) 123.
[63] ibid.
[64] Chambers (n 63) 334. See also, Leslie McCall, 'Does Gender Fit? Bourdieu, Feminism, and Conceptions of Social Order' (1992) 21(6) *Theory and Society* 837.
[65] Moi (n 27).
[66] See, Krais (n 66) 122; Chambers (n 63) 334.
[67] See, Lois McNay, 'Gender, habitus and the field: Pierre Bourdieu and the limits of reflexivity' (1999) *Theory Culture and Society* 16 (1) 95; Lisa Adkins, 'Reflexivity: freedom or habit of gender?' (2003), 20 (6) *Theory, Culture and Society* 21.

the mandate of both the ICTY and ICTR.[68] In the ICTR, Judge Navanethem Pillay in the ICTR instigated the lauded decision in *Akayesu* whilst other international judges, such as Justice Carmen Argibay at the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery and Justices Elizabeth Odio Benito and Florence Mumba during the work of the ICTY each "challenged gender-based stereotypes to change the way women's experiences of war and conflict are conceived under international law."[69] They reframed prevailing narratives dispelling sexual violence as honour based or an inevitability of war and, in turn, challenged the symbolic violence that had excluded silence and exclude women's experiences of sexual violence from the rhetoric and practice of international law.[70] More recently, three women judges, Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki determined that rape formed part of the *modus operandi* of the MLC troops in the *Bemba* judgment.[71] The mismatch between their own individual habitus, embodied by feminist ideals, and the structure of international criminal law generated an agential response that emerged through their habitus and instigated a more gender just vision of international criminal law.[72] They successfully challenged the existing lexicon that excluded conflict-related sexual violence, moving beyond formalist conceptions of judges as merely "la bouche de la loi" or mouthpieces of the law.[73] The power that the international criminal judges hold coupled with their feminist ideals presented an alternative view of the world that allowed them to send a powerful message around the globe that such violence will no longer be tolerated.

Nevertheless, the extent to which the judges can resist and create transformative change is limited by the structure and practice of the field. In *Masculine Domination*, Bourdieu noted how the struggle for individual agency is insufficient without recognition of the underlying structures that give rise to such struggles. Despite the judges instigating transformative change through their agential responses to conflict-related sexual violence,

[68] Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6 (2) *International Journal of Transitional Justice* 205, 213.
[69] Chappell (n 72).
[70] Patricia Wald, 'Strategies to Promote Women's Participation in Shaping International Law and Policy in an Era of Anti-Globalism' (2017) 46(1) *Georgia Journal of International and Comparative Law* 141, 143.
[71] *Bemba* Judgment [676]-[680].
[72] Wacquant (n 15) 316.
[73] Yves Dezalay and Mikael Rask Madsen, 'The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law' (2012) 8(52) *Annual Review of Law and Social Science* 433, 439.

the conscious action taken by each judge was nonetheless "sensible and reasonable."[74] The contexts within which feminist judges are situated limit the range of possible actions available to them, regulated by the habitus and confined to the structure of the field of practice to which they belong. Their agency in seeking transformative change concerning such violence, shaped in part by their feminist perspective, is "channelled through the 'proper' avenues for change already laid down by legal procedure."[75] Bourdieu noted that, "Practices often hailed as 'resistant'", as the work of feminist judges has been "may have an impact only on the relatively superficial 'effective' relations of the field rather than its deeper structural relations."[76] This is important in the context of feminist legal critique because Bourdieu does not reject the capacity for conscious action through the habitus but rather guards against the "conflation of potentiality for autonomous action with a celebration of its subversive political significance."[77] In guarding against this, the appropriation of Bourdieu's concepts for feminist legal purposes provides a vehicle through which to recognise the relations and structures of power at play which limit the practice of those working within the field to that which is acceptable to international criminal law. Bourdieu's concepts of symbolic power and violence allow feminist legal scholars to reveal that the relations of power, at play in the fields of international law and transitional justice, seen to be the natural order of things, are in fact, historically contingent.[78] In exploring how power operates, this calls to attention how symbolic domination emerges in the practice of international criminal law and encourages the interrogation of the historical and contextual roots of the centrality of legal practice in the representation of conflict-related sexual violence. In the following section, I begin by considering how the practice of international criminal law became central to transitional justice responses to conflict-related sexual violence. I then explore the impact of the symbolic power and force of law upon the field of transitional justice, highlighting the tangible consequences of this domination, the resulting incommensurability, and the cost of this upon the lives of victim-survivors as the force of law dominates processes, practice, and forms of justice available to victims.

[74] Bourdieu (n 9) 79.
[75] Davies (n 11) 3; Bourdieu (n 4) 816-817.
[76] Bourdieu (n 48) 113.
[77] McNay (n 58) 105.
[78] Chambers (n 63) 337; Krais (n 66) 124.

4.2. The Symbolic Power of International Criminal Law in the Field of Transitional Justice

Placing the authority and legitimacy of international criminal law in its historical context, Dezalay and Madsen remind us that the power international law now derives "entailed a very long historical process of both institutionalization and legitimization."[79] Over time, the field of international criminal law engaged in struggles for capital, eventually becoming able to distinguish itself as distinct field of practice independent of other legal regimes. Through the process of institutionalisation and legitimisation that Dezalay and Madsen refer to, the symbolic power that international criminal law holds has defined "the limits of the thinkable and the unthinkable" contributing "to the maintenance of the social order from which it derives its power."[80] Transitional justice practice predominantly emerged from the work of the post-war military tribunals as the rhetoric and practice of ICL and IHRL became to take shape in the aftermath of WW2. [81] The legal legacy of the Nuremberg and Tokyo Tribunals echoes in the practice of modern international criminal law and is particularly apparent in the continued focus upon the "locus of responsibility" in international criminal tribunals, holding political and military personnel to account for the actions independently performed by others in their command.[82]

Dezalay and Madsen note that "the emergence of a new field almost always has its roots in other fields"[83] and this reflected in the evolution of transitional justice. As Chapter Three outlined, a shift began to emerge in the practice of transitional justice in the late 1990s. Moving from the focus upon truth and peace, as was the case in Latin American transitions from authoritarian to democratic rule in the 1980s, transitional justice began to focus upon accountability and ending impunity which involved, "at its apex, international judicial intervention in post-conflict settings in Africa, Asia, and Europe."[84] The establishment of the ICTY and ICTR, the move to criminal accountability and re-establishment of the rule of law has

[79] Dezalay and Madsen (n 81) 439.
[80] Bourdieu (n 7) 108.
[81] Ruti Teitel, 'Transitional Justice Genealogy' (2003) 16 *Harvard Human Rights* 69, 70.
[82] Yuma Totani, 'Legal Responses to World War II Sexual Violence: The Japanese Experience' in Elizabeth Heineman (ed), *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* (University of Pennsylvania Press 2011) 218.
[83] Dezalay and Rask Madsen (n 81) 441.
[84] Rachel Kerr, 'Transitional Justice in Post-Conflict Contexts: Opportunities and Challenges' in Roger Duthie and Paul Seils (eds) *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Center for Transitional Justice 2017) 117.

since come to reflect "contemporary responses to tragic atrocities."[85] The speed at which prosecution and criminal accountability became a central element of the practice of transitional justice demonstrates the force of law or "quasi-magnetic pull of the field" and the symbolic power the practice of international criminal law maintains.[86] Following the shift in the 1990s, the force of international criminal law and the symbolic power it holds has played a fundamental role in how power is distributed in the practice of transitional justice. Its power, alongside the globalisation of international human rights norms, has resulted in the normative force of law becoming the seemingly "apt response to communal violence and disorder."[87] This is further demonstrated by the establishment of the permanent ICC which "appears to entrench the post-war tribunal for the end of the century and the next millennium."[88] As such, the 'revolution in accountability'[89] and the 'fight against the culture of impunity' have become synonymous with criminal justice responses to widespread human rights violations.[90]

In transitional contexts, national courts and domestic judicial systems are unstable and where justice has been denied to those affected by sexual violence, internationalised legal institutions become the "only option for accountability."[91] International criminal law has "an important symbolic function" in transitional justice practice because it "can make a significant contribution to satisfying victims' thirst for accountability" as the categorisation of a breach of the laws of war denotes a level of seriousness in "a way that a trial employing ordinary domestic charges cannot."[92] This symbolic function has pervaded in the conceptions of post-war justice that have centred criminal justice as means through which victim-survivors

[85] Ruti Teitel, 'The Universal and the Particular in International Criminal Justice' (1999) 30 *Columbia Human Rights Law Review* 285.
[86] Terdiman (n 22) 807.
[87] Teitel (n 96) 296.
[88] ibid 299.
[89] Kerr (n 94) 117.
[90] Karen Engle, 'Anti-Impunity and the Turn to Criminal Law' (2015) 100(2) *Cornell Law Review* 1069, 1074-1079; Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34(4) *Journal of Law and Society* 411, 439.
[91] Mark Kersten, 'Making a Distinction: the Rome Statute is not the ICC; it is much more than that' (Justice in Conflict, 2017) <https://justiceinconflict.org/2018/07/17/making-a-distinction-the-anniversary-of-the-rome-statute-not-just-the-international-criminal-court/> accessed 16 August 2018.
[92] Colm Campbell, 'Peace and the Laws of War: The Role of International Humanitarian Law in the Post-Conflict Environment' (2000) *International Review of the Red Cross* 839 <https://www.icrc.org/en/doc/resources/documents/article/other/57jqq7.htm>

can receive justice.[93] Nonetheless, this important symbolic function risks being undermined by a number of issues pertaining to the overlap between international law and transitional justice practice.

Maxine Marcus, an International Crimes Prosecutor and Investigator in Transformative Justice for Conflict-Related Sexual Violence, has drawn attention to the impact of the symbolic domination exerted by international criminal law on the community of transitional justice.[94] She has noted that international legal agents and transitional justice practitioners do not incorporate one another into their practice and have become increasingly divided. The struggle for power and dominance exerted, though tacit and unconscious, has caused international legal practitioners to grow "into a separate professional circle, quite apart from the transitional justice community of practice" weakening "inter-sectoral engagement" between them.[95] This is demonstrative of symbolic power in action, reflecting how symbolic exchange can only occur between two groups of actors if their habitus endows them with the "same cognitive schemes" that permit the two groups to "communicate and consequently…recognise each other as legitimate interlocutors, equal in honour."[96] The symbolic power accumulated by those in the international legal field maintains the boundaries of criminal law. This division is not malicious nor intentional but rather a consequence of the normative force underlying the practice of international criminal law that permits law to maintain its capital through symbolic violence. The specific legal mandate of internationalised justice mechanisms and the focus upon criminal justice in the form of punishment and incarceration distinguishes their legal practice from that of transitional justice practitioners who embody different values, such as justice as truth, restoration or reconciliation. In the ICTY, for instance, very few of the ICTY's most senior-level staff were from the former Yugoslavia.[97] Although many domestic legal agents in the judicial system of BiH may have been unable or unwilling to participate in the work of the ICTY

[93] ibid.
[94] Maxine Marcus, Louise Chappell, and Andrea Durbach '"Nothing About Us, Without Is, is For Us": Victims and the International Criminal Justice System' (2017) 21(9) *The International Journal of Human Rights* 1337, 1338.
[95] ibid.
[96] Pierre Bourdieu, *Pascalian Meditations* (Richard Nice Tr, Stanford University Press, 2000) 199; Bourdieu (n 20) 73. See also, Haridimos Tsoukas and Mary Jo Hatch, 'Complex Thinking, Complex Practice: The Case for a Narrative Approach to Organizational Complexity' (2001) 54 (8) *Human Relations* 979, 998.
[97] Marcus and others (n 94) 1339.

following the end of the war, the failure to incorporate domestic legal agents demonstrates the exclusionary and divided practice of international criminal law and transitional justice

Moreover, the "largely symbolic and ex post normative order"[98] is typically removed from transitional and post-conflict situations causing the practice of international justice to become "increasingly removed from the victim communities and increasingly disengaged with the broader transitional justice arena."[99] Both the ICTY and ICTR were located hundreds of miles from the affected communities and were felt to have been imposed upon the transitional contexts, diminishing the capacity of the Tribunals' to fulfil justice for victims.[100] As McEvoy has noted, legalism contributes to a process which creates a distinction between "'distant justice' carried out in predominantly internationalised, detached, normative settings and justice which is actually 'embedded' in communities which have been directly affected by violence and conflict."[101] This relational distance means that when legal actors focus upon:

> the self-image of serving higher goals such as 're-establishing the rule of law', the temptation to see victims or violence-affected communities as constituencies which must be managed rather than citizens to whom they must be accountable becomes all too real.[102]

The more removed a justice mechanism from local justice needs, the less transformative potential it holds to enact valuable local changes for victims and survivors.[103] Transformative change does not emerge uniformly and, as the work of the ICTY and ICC exemplifies, this is further exacerbated by the dominance of international criminal tribunals and the separation

[98] Teitel (n 96) 303.
[99] Marcus and others (n 94) 1340.
[100] Peter Verovšek, 'Against International Criminal Tribunals: Reconciling the Global Justice Norm with Local Agency' (2017) *Critical Review of International Social and Political Philosophy* 1, 5; Binaifer Nowrojee, '"Your Justice is Too Slow": Will the ICTR Fail Rwanda's Rape Victims?' (UN Research Institute for Social Development (UNRISD), Occasional Paper 10 2005) 20.
[101] Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34(4) *Journal of Law and Society* 411, 425.
[102] ibid 424.
[103] Holly E. Porter, 'Justice and Rape on the Periphery: The Supremacy of Social Harmony in the Space Between Local Solutions and Formal Judicial Systems in Northern Uganda' (2012) 6(1) *Journal of Eastern African Studies* 81, 85; Marcus and others (n 94) 1340.

this often creates between international, national, and local transitional justice responses, or the lack thereof, to conflict-related sexual violence.[104]

Bell has argued that the framing of transitional justice as a field of practice merely emerged as a consequence of the need to establish a relationship between the particularities of conflict resolution practice and the universality of international legal norms, masking the pretence of transitional justice as a distinct field of practice.[105] As such, she contends that transitional justice is rather a "cloak" to cover a range of specific "bargains on the past" that have been narrated into a "coherent whole."[106] Whilst I agree with Bell that the centrality of international legal practice has fundamentally impacted and shaped the transitional justice field, I do not agree fully with the contention that the current transitional justice paradigm is merely a cloak. Though varied and distinct, the virtues of transitional justice practice have established a distinct field of practice and a number of key mechanisms, both judicial and non-judicial, that have been recognised as legitimate within transitional contexts. To refer to transitional justice as a cloak is to diminish the work of transitional justice practitioners on the ground.[107] Rather, I consider there to have been an overlap between the fields within which international criminal law and criminal justice have subsequently have become a powerful symbolic and normative force upon transitional justice practice. Bell nonetheless reminds feminist legal scholars that transitional justice should not be viewed as an impartial nor uncomplicated area of theory and practice and this is particularly relevant in relation to conflict-related sexual violence.

4.3. Transitional Justice for Whom? The Centrality of Legalism and its Consequences for Victim-Survivors of Conflict-Related Sexual Violence

As the criminal turn in transitional justice gained traction, a number of distinct international legal regimes emerged that provided multiple analyses of sexual violence

[104] Moi (n 27) 1033.
[105] Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"' (2009) 3 *The International Journal of Transitional Justice* 5, 16.
[106] ibid 15.
[107] Fionnuala Ní Aoláin, ''After Things Fall Apart: Challenges for Transitional Justice Futures' (2017) (forthcoming) <http://uir.ulster.ac.uk/37165/>

through different lenses.[108] Since then, repeated calls for the protection for women and the ending of impunity for conflict-related sexual violence have been persistently and overwhelmingly criminal in nature.[109] As Mackinnon has noted, the international adjudication of rape "under increasingly serious rules" recognises "a context of force that no domestic rape law yet does."[110] As the Global Summit to End Sexual Violence in Conflict in June 2014 denotes, the legacy of international criminal law's recognition of conflict-related sexual violence has focussed global attention upon its perpetration. Jurisprudential developments, policy changes, and victim participation and protection measures employed in international judicial mechanisms demonstrate the 'quasi-magnetic pull' of law's normative force and the progressive steps taken by the international community to end impunity for sexual and gender-based crimes.[111]

The fight to end impunity for conflict-related sexual violence has predominantly centred upon holding political and military personnel accountable for the actions independently performed by others in their command.[112] The dominant 'Euro-American model of justice' employed focuses upon the prosecution of, for the most part, one man for the rape of one woman is complicated by the magnitude of conflict-related committed in conflict zones.[113] In the ICC, for example, Bemba was held to be responsible for the rape of twenty-seven women and two men committed by Movement for the Liberation of the Congo (MLC) troops under his command. Bemba was prosecuted for acts that he did not commit himself but "for acts attributed to him, acts that other men engaged in, in some sense, for him."[114] Drawing on Mackinnon's critique of the *Akayesu* judgment, this prosecutorial

[108] Christine Chinkin, 'Rape and Sexual Abuse of Women in International Law' (1994) 5(3) *European Journal of International Law* 326, 331; Catherine Mackinnon, 'Creating International Law: Gender and Leading Edge' (2013) 36 Harvard Journal of Law and Gender 105, 118.
[109] Teitel (n 96) 285.
[110] Catherine Mackinnon, 'Women's September 11th: Rethinking the International Law of Conflict' (2006) 47 Harvard International Law Journal 1.
[111] See, UN Office of the High Commissioner for Human Rights, Opening Statement by Ms. Navi Pillay United Nations High Commissioner for Human Rights at the 22nd session of the Human Rights Council (25 February 2013) <https://reliefweb.int/report/world/opening-statement-ms-navi-pillay-united-nations-high-commissioner-human-rights-22nd> accessed 5 March 2019.
[112] See Karen Engle, 'Anti-Impunity and the Turn to Criminal Law' (2015) 100(2) *Cornell Law Review* 1069, 1077.
[113] Tonia St. Germain and Susan Dewey, 'Justice on whose terms? A critique of international criminal justice responses to conflict-related sexual violence' (2013) 37 Women's Studies International Forum 36, 27; Henry (n 77) 104.
[114] Catherine Mackinnon, 'The ICTR's Legacy on Sexual Violence' (2008) 14 New England Journal of International & Competition Law 211, 214.

strategy is “undermined by incommensurate liability tools” underpinned by “the pervasive reluctance to hold men responsible for their sex acts, exacerbated by a distinct resistance to finding vicarious responsibility for sex acts other men commit.”[115] Individual perpetrators of conflict-related sexual violence are very aware that the chances of them being punished are particularly remote. Prosecutorial strategy and tribunal transcripts tend to include only a small, representative sample of cases of sexual violence whilst the “the remaining backlog of cases is dropped for want of sustained interest from the international community.”[116] The number of those affected who were recognised by the ICC under the prosecutorial strategy in Bemba stands in stark contrast to the numbers of men and women who have been, and continue to be raped, in the CAR.[117] As such, cases of sexual violence in conflict remain a small proportion of the focus of the prosecution in international criminal tribunals and a proverbial 'drop in the ocean' compared to women's experiences of sexual violence and other harms in transitional contexts.[118] This has resulted in “ad hoc and patchy” responses to conflict-related sexual violence, making “advocacy for as well as representation and inclusion of women arduous.”[119] In the two decades since it was established, the ICC is yet to cement a conviction for sexual violence. [120]

In narrating broader issues of gender inequality and violence against women solely through the normative, criminal lens, the field risks presenting the few “victories in punishing a few bad actors” as being sufficient in addressing violence against women thereby relieving “pressure on the state to attend to structural issues of distribution.”[121] Rather than subverting dominant narratives and challenging unequal social relations,[122] the symbolic dominance of international criminal law in the practice of transitional justice has meant that victim-survivors are often forced to return to “socially allocated places and identities within the

[115] ibid.
[116] Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013) 160.
[117] ibid.
[118] Ní Aoláin (n 76) 212.
[119] Ní Aoláin (n 118)
[120] The Office of the Prosecutor, ‘Policy Paper on Sexual and Gender-Based Crimes’ (ICC June 2014) <www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>
[121] Engle (n 125) 1126.
[122] McEvoy (n 112) 440.

hierarchy of power" that serve to subordinate their voices and experiences.[123] This has culminated in the judicialization of transitional justice responses to sexual violence as representations of lived of sexual violence continue to emerge "through the narrow prism of legal (read criminal) accountability." [124] Despite the repeated recognition of crimes of sexual violence, the overarching focus of the international community upon criminal accountability and ending impunity through international criminal trials has resulted in the 'justice' or 'impunity' gap.

The distanced nature of international justice mechanisms and the lack of communication between international legal practice and national transitional justice responses to sexual and gender-based violence has resulted in questionable justice outcomes for victims of conflict-related sexual violence.[125] Taking the ICTY as an example, the Tribunal concentrated on the most senior leaders and high-ranking officers responsible for war crimes and, under its completion strategy, intended to transfer cases involving lower-ranked accused to national jurisdictions on the assumption that they would, with guidance, implement the rule of law.[126] Following the transference, however, convicted rapists were permitted to apply for mitigating circumstances under legislation, meaning that whilst the men were convicted, many were permitted to either pay a fine as punishment or return to their communities after having their sentences significantly reduced. [127] This reflects the challenge for transitional justice of "coordinating different legal systems that have no established procedure for resolving disagreements over resources and jurisdiction" due to the distanced and detached relationship between international and domestic judicial systems.[128] The 'impunity' gap is not

[123] Michael Neocosmos, 'Transition, Human Rights and Violence: Rethinking a Liberal Political Relationship in the African Ne-Colony' (2011) 3(2) *Interface* 359, 363.
[124] This will be further demonstrated in Chapters 5 and 6. See, Ní Aoláin (n 118).
[125] Holly Dunn, 'The Transitional Justice Gap: Exploring 'Everyday' Gendered Harms and Customary Justice in South Kivu, DR Congo' (2017) 25(1) *Feminist Legal Studies* 71. See also, ICTJ, 'Criminal Justice' <www.ictj.org/our-work/transitional-justice-issues/criminal-justice> accessed 14 November 2016.
[126] Marcus and others (n 94) 1339.
[127] Organisation for Security and Co-operation in Europe, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (OSCE Mission to Bosnia and Herzegovina, June 2017) 63 <www.osce.org/mission-to-bosnia-and-herzegovina/324131?download=true>; Amnesty International (n 117) 11.
[128] Peter Verovšek, 'Against International Criminal Tribunals: Reconciling the Global Justice Norm with Local Agency' (2017) *Critical Review of International Social and Political Philosophy* 1, 7.

simply a theoretical phrase; it can have a catastrophic impact upon victim-survivors and their families. As Dr Branka Antic-Stauber, a counsellor, explains:

> Four men who raped eight girls, gang raped them, the women pointed to the men in court and said it was them, and there's no doubt these women went through sexual abuse, but that's not enough evidence to prosecute the perpetrators so they were released. Now they live just 20 kilometres from the men, just 10 minutes by car, and they know them because they're just in the neighbouring town, but still these men were released to return to their homes. One of the women had a heart attack and died. The son of another of the women hanged himself. He couldn't live with it.[129]

The physical and psychological impact that the impunity gap has upon the lives of those affected impinges upon a victim-survivors ability to establish safety and to reintegrate with their community in the aftermath of trauma.[130] To a degree, the fallibility of internationalised judicial mechanisms to facilitate transitional justice will of course be part and parcel of legal practice because, as Marcus has noted, "No one remedy will address all the affected community's harms and no one remedy can be effective for all survivors."[131] Any transitional justice mechanism is likely falter in being able to provide for all those affected by sexual violence in all the ways they hope justice will be achieved because, "It is inescapable that the multitude of individual, psychological and material needs of survivors can never be addressed." [132] Nevertheless, the practice of international criminal justice should complement as opposed to overwhelm national responses,[133] yet a lack of scrutiny, inconsistency, and arbitrariness by local and domestic justice processes coupled with the distanced and narrow focus of international legalism has left survivors wondering why they faced the difficult psychological hurdles of testifying in the court.[134] The focus upon

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[129] Sue Turton, 'Bosnian War rape survivors speak of their suffering 25 years on' *The Independent* (21 July 2017) <www.independent.co.uk/news/long_reads/bosnia-war-rape-survivors-speak-serbian-soldiers-balkans-women-justice-suffering-a7846546.html>

[130] Judith Herman, *Trauma and Recovery* (Basic Books 1992) 162.

[131] Marcus and others (n 94) 1344.

[132] Brandon Hamber and others, *'Telling It Like It Is: Survivors' Perceptions of the Truth and Reconciliation Commission' (2000)* 26 *Psychology in Society* 18, 34.

[133] Marcus and others (n 94) 1338.

[134] Amnesty International, 'We Need Support, Not Pity' Last Chance for Justice for Bosnia's Wartime Rape Survivors (Report 2017) 11 <www.amnesty.org/download/Documents/EUR6366792017ENGLISH.PDF> accessed 7 June 2017.

prosecuting the highest-ranking officials is undermined by the return of convicted rapists returning to a victim's community after receiving a reduced sentence as the woman he raped struggles to make sense of a life tarnished by the physical and psychological harm he inflicted upon her.[135] Women should not have to risk meeting the men who raped them who have either stayed in their community without repercussion for their actions or are allowed to return after serving only a reduced sentence.[136] Rather than ending impunity, this risks fostering a "sense of impunity," jeopardising the confidence of victim-survivors in the ability of judicial mechanisms to provide criminal.[137] In the ICC, the risks associated with the continued symbolic dominance of international criminal justice, the centrality of legalism and promulgation of anti-impunity rhetoric throughout the field of transitional justice have become all the more apparent. Despite the OTPs commitment to closing the impunity gap for sexual and gender-based crimes through its positive complementarity policy, thousands of victims of sexual violence in the CAR are now left questioning the precarity of criminal justice that was lauded as the central means through which to receive justice, their trust in the process diminished after ten years of waiting for justice.[138]

Whilst the ICC has described itself as a hybrid of retributive and restorative justice whose mandate is focussed upon the prevention of future crimes.[139] It has endeavoured to include some restorative justice values, such as improving accessibility, providing victims with protective safety measures to create a secure environment for them, as well fostering a greater sense of respect for victims in the legal proceedings.[140] Nonetheless, this assertion is problematic. Through a Bourdieusian lens, only qualified legal actors are permitted to

[135] Olivera Simic, 'Drinking Coffee in Bosnia: Listening to Stories of Wartime Violence and Rape' (2017) 18 (4) *Journal of International Women's Studies* 321.
[136] Olivera Simic, 'Drinking Coffee in Bosnia: Listening to Stories of Wartime Violence and Rape' (2017) 18 (4) *Journal of International Women's Studies* 321, 323.
[137] Amnesty International (n 149) 11.
[138] Nadia Carine, Fornel Poutou and Lucie Boalo Hayali, 'A Belief Shattered: The International Criminal Court's Bemba Acquittal (Just Security 25 June 2018) <www.justsecurity.org/58386/belief-shattered-international-criminal-courts-bemba-acquittal/> accessed 27 June 2018.
[139] International Criminal Court, 'ICC President tells World Parliamentary Conference "ICC brings retributive and restorative justice together with the prevention of future crimes"' (Press Release, 2012) <www.icc-cpi.int/Pages/item.aspx?name=pr860> accessed 15 January 2017.
[140] Restorative Justice Council, 'Restorative Justice Principles'<https://restorativejustice.org.uk/sites/default/files/resources/files/Principles%20of%20restorative%20practice%20-%20FINAL%2012.11.15.pdf> accessed 13 January 2017.

participate within its legal boundaries.[141] Retributive justice is predicated upon holding those responsible to account through the establishment of a judgment and is ultimately predicated upon strict adherence to the courts Rules of Evidence and Procedure. This does not permit the offender nor the Court to address the causes of a perpetrators behaviour which diminishes its restorative function. The ICC remains a traditionally retributive paradigm, despite the rhetoric surrounding restoration.[142] Meaningful participation and restorative justice come secondary to the ultimate aim of ending impunity.[143] Consequently, the "social, political, or cultural circumstances which lead" to the perpetration of particular human rights violations are not the focus of the ICC.[144]

The justice ideals underpinning the practice of institutions such as the ICC are predicated upon the universalisation of justice and the "acknowledgment that all human beings are owed inalienable respect,"[145] intended to "reflect the objective that core international crimes transcend borders and impact upon all of humanity."[146] The ethical demand such universal justice standards represent fails to recognise the ways in which plural and incommensurable values and diverse human relations serve to emotionally, physically, and relationally distance the abstract subject of universal justice from those who such ideals demand care and respect equally.[147] Consequently, Otto has noted how the seemingly inclusive nature of universal justice ideals of international law and the "assumptions, conceptual underpinnings, and vocabularies… which order the way that we think about the international community" maintain "exclusionary normative conceptions of who is fully human, while masquerading as

[141] This will be further expounded in Chapter 4. See, Claire Garbett, 'The International Criminal Court and Restorative Justice: Victims, Participation and the Processes of Justice' (2017) 5(2) *Restorative Justice* 198, 216.
[142] Luke Moffett, 'Elaborating Justice for Victims at the International Criminal Court Beyond Rhetoric and The Hague' (2015) 13 *Journal of International Criminal Justice* 281 <https://pure.qub.ac.uk/portal/files/13870551/Moffett_final_130115.pdf> accessed 16 June 2016.
[143] Claire Garbett, 'The International Criminal Court and Restorative Justice: Victims, Participation and the Processes of Justice' (2017) 5(2) *Restorative Justice* 198 207.
[144] McEvoy (n 112) 438.
[145] Raimond Gaita, *Thinking About Love and Truth and Justice* (Routledge 2002) 9-10. See also, Dianne Otto, 'Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law (1997) 18 Australian Year Book of International Law 1.
[146] Marcus and others (n 94) 1338.
[147] Jenneth Parker, 'Towards a Dialectics of Knowledge and Care in the Global System' in Roy Bhaskar and others (eds), *Interdisciplinarity and Climate Change Transforming Knowledge and Practice for Our Global Future* (Routledge 2010) 214.

objective and universal."[148] Such conceptions have emerged on the presumption that the "subject of human rights is an autonomous and masculine individual"[149] defined by men "in accordance with male assertions of what constitutes the most fundamental guarantees required by individuals."[150] The application of these 'exclusionary, normative conceptions' function as a form of censorship permitting the symbolic violence of gender and the symbolic domination of law to prevail throughout the field,[151] imposed by the "unreflective, disciplined absorption" of this androcentric view and "the modes of discrimination" that are implicit within it.[152]

In the ICC, whilst the notion of 'command responsibility' was used to frame the sexual violence addressed in the case of Bemba, perceived as a jurisprudential achievement for the ICC, this does not necessarily equate to a corresponding achievement of justice for survivors of rape and sexual violence. I do not deny the necessity of providing perpetrators with the right to a fair trial nor do I deny that they should not be treated with such respect. Rather, I draw attention to how the domination of international criminal law has, over time, narrated recognition of conflict-related sexual violence through criminal trials, determining the language through which their lived experiences of rape are defined and understood. This has created a vision of justice that focuses upon "what happens to the offender, rather than what happens to the victim" in the aftermath of conflict-related sexual violence.[153] This is because the universal application of justice creates a tension for the judicial mechanism between whether to institute "the particular justice of procedure for the accused or the justice of recognition of the wrong to the victim."[154] Despite the practice of international criminal justice providing "normative resources" and recognition of conflict-related sexual violence, the "'blind' application' of rigid, 'one-size-fits-all' principles" remains insufficiently attuned to

[148] Dianne Otto, 'Celebrating Complexity' (2012) 106 Proceedings of the American Society of International Law 169.
[149] Dianne Otto, 'Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law (1997) 18 Australian Year Book of International Law 1, 11.
[150] Kirsten Campbell, 'The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia' (2007) 1 *The International Journal of Transitional Justice* 411.
[151] Moi (n 27).
[152] Raimond Gaita, *Thinking About Love and Truth and Justice* (Routledge 2002) 263.
[153] Judith Herman, *Trauma and Recovery* (Basic Books 1992) 155; Judith Herman, 'The Mental Health Outcomes of Crime Victims: Impact of Legal Intervention' (2003) 16(2) *Journal of Traumatic Stress* 159, 162.
[154] Kirsten Campbell, 'The Trauma of Justice: Sexual Violence, Crimes Against Humanity and the International Criminal Tribunal for the Former Yugoslavia' (2004) 13(3) *Social & Legal Studies* 329, 340.

women's specific needs." [155] The imposition of international criminal justice and its detachment from transitional contexts overlooks the fact that not all victim-survivors "adopt the same principles of justice when" their "struggles for meaningful experiences/relationships/lives conflict with one another."[156] This functions to reinforce the claim of Western, international criminal justice as superior maintaining the symbolic domination of international criminal law and masking the "the imperialist tendencies associated with even well-meaning international involvement in transitional contexts."[157] For Otto, this results in "the epistemic violence of forcing its commensurability,"[158] whereby the West "arrogates the universal to itself and then brings all others into its fold of humanity."[159] This devalues "non-dominant, non-elite, subaltern" forms of justice, such as ritual healing and storytelling, because they are not deemed to be ways of knowing and avenues to justice that are "commensurate or coextensive with the European imagination."[160] The symbolic domination of international criminal justice has thus placed restrictive limits inhibiting the potential of transitional justice practice to create novel forms of justice emerging for victim-survivors.[161] In turn, the deficit between international criminal justice norms and principles and the reality on the ground for those affected by conflict-related sexual violence maintains the impunity gap.[162] The centrality of legalism has thus impeded the creation of holistic, long-term, victim-centred responses that can function alongside top-down, international or state-sponsored transitional justice initiatives.[163] The dominance of "the (mainly western)

[155] Susan Thomson and Rosemary Nagy, 'Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's *Gacaca* Courts' (2011) 5(11) *International Journal of Transitional Justice* 11, 29. See also, Stephanie Vieille 'Transitional Justice: A Colonizing Field?' (2012) 4(3) *Amsterdam Law Forum* 58, 67.
[156] Bruce Ackerman, 'Temporal Horizons of Justice' (1997) 94(6) *The Journal of Philosophy* 299
[157] McEvoy (n 112) 426.
[158] Dianne Otto, 'Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference' (1996) 5(3) *Social and Legal Studies* 337, 355.
[159] Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections' (2008) 29(2) *Third World Quarterly* 275, 281.
[160] Otto (n 173) 338.
[161] Terdiman (n 22) 813.
[162] Yasmin Sooka, 'Dealing with the Past and Transitional Justice: Building Peace through Accountability' (2006) 88(862) *International Review of the Red Cross* 311, 325.
[163] This will be further explored throughout Chapters 7 and 8 in the analysis of truth commissions, apologies, memorialisation efforts. See, Christine Chinkin, '*Giving Voice and Visibility to Victims of Sexual Violence has the Potential to Drive Cultural Change in Colombia' Women, Peace and Security* (04 May 2017) < http://blogs.lse.ac.uk/wps/2017/05/04/giving-voice-and-visibility-to-victims-of-sexual-violence-has-the-potential-to-drive-cultural-change-in-colombia/>

champions of 'universal justice'", who have not yet learned the lesson of the limits of legal response to sexual violence, remains.[164]

4.4. Conclusion

Bourdieu's theory of practice has provided a vehicle through which to interrogate how the dominance of international criminal law in transitional justice came to be and why the centrality of law in the representation of conflict-related sexual violence has, for the most part, remained an uncontested reality.[165] In answer to these questions, the chapter began by utilizing Bourdieu's concept of the symbolic violence of gender. Building upon Chapter Two, the notion of the symbolic violence of gender unravelled how existing structures of power have functioned to maintain law's position as the central, normative lens. This operates upon and within pre-existing gendered realities contributing to their continued construction and misrecognition in constrained and harmful ways.[166] Bourdieu's notion of symbolic power was subsequently employed to explore the genealogical development of legal practice in the field of transitional justice. In doing so, the chapter elucidated the important symbolic function law plays within the field of transitional justice whilst highlighting the risks associated with its continued dominance upon transitional contexts.

Deference to the symbolic domination and violence of international criminal justice as the predominant means through which victim-survivors can access justice and have their voices heard denotes a single point of access into the transitional justice process.[167] As a consequence, spaces for women to speak to their narratives of sexual violence continue to be narrow within the field.[168] Without challenge, the power law holds in the field risks circumventing adequate outreach, consistent and contextually sensitive responses, and alternative justice mechanisms for victim-survivors of violence, along with the collaboration

[164] Julie Mertus, 'Shouting from the Bottom of the Well. The Impact of International Trails for Wartime Rape on Women's Agency' (2004) 61 International Feminist Journal of Politics 110, 112.
[165] Engle (n 125) 1071.
[166] Rosemary Hunter, Clare McGlynn, Erika Rackley, *Feminist Judgments: From Theory to Practice* (Bloomsbury Publishing 2010) 7.
[167] Patricia Lundy and Mark McGovern, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up' (2008) 35(2) Journal of Law and Society 265
[168] Sorcha Gunne and Zoe Brigley-Thompson (eds) *Feminism, Literature and Rape Narratives: Violence and Violation* (Routledge 2010) 16.

and integration of national and international legal actors and institutions. Moreover, the dominance of international criminal law risks jeopardising victim's belief in the justice system. This impinges upon the possibility of transformative and meaningful change emerging because the dominance of the legal field and the practice contained within is focussed solely upon particular outcomes, processes, and procedures, namely retributive forms of justice, prosecution, and the rhetoric surrounding prevention. In the following chapter, I shift from the broader analysis of law's centrality to enter the juridical field. I utilize the case of *Bemba* to reveal how legal narratives of sexual violence are constructed through the normative lens. In doing so, I analyse the practice of the ICC to reveal what is elided by the incommensurable nature of legal representation and the universalisation of women's lived experiences of conflict-related sexual violence.

Chapter Five: Entering the Juridical Field: Representations of Sexual Violence in the International Criminal Court

Building upon the previous chapter's interrogation as to why and how international criminal law has remained central to the practice of transitional justice, this chapter elucidates the impact of the field's continued deference to law upon understandings of sexual violence emerging from the ICC. As the previous chapters have explored, the evolution of jurisprudence, definitions, provisions and statutes concerning conflict-related sexual violence have played an integral part in bringing the magnitude of rape to the global stage demonstrating the international community's commitment to achieving justice through prosecution. Nevertheless, justice is circumscribed by the structures of power that undergird law's practice impeding upon the ability of the field to move beyond the focus upon retribution.

Moving into the juridical realm of the ICC via the case of *Bemba*, I undertake a closer analysis of the parameters and processes surrounding the participation of victim-survivors standing as victims and witnesses before the Tribunal. In doing so, I explore the interrelated elements of law's representational boundaries as constructed through the normative lens. These interrelated elements are revealed through the use of three modes of thought - temporality, spatiality, and genealogy. Temporality reveals the way in which legal narratives impose limited temporal frameworks that present time in a linear fashion. This diminishes recognition that the trauma of sexual violence knows no linear bounds and instead disrupts the temporal existence of victim-survivors. Spatiality refers to the physical detachment of internationalised justice legal mechanisms from the specific transitional contexts. Spatiality also denotes how the ability of victim-survivors to tell their story in their own voice is circumscribed by the imposition of strict rules of practice. I contend that international tribunals such as the ICC are powerful normative 'non-places', contexts within which the structures and processes temporarily suspend and possess those who step within from the outside. Finally, genealogy refers to how power has become institutionalised in the practice and structure of the field over time. I elucidate the way in which the language used within legal narratives imposes symbolic violence, legitimising and reflecting masculine domination.

Via these modes of thought, the chapter contends that despite the ICC's endeavours to encourage participation and improve protection for victim-survivors in its practice, the legal narratives constructed continue to give rise to incommensurability, imposing a secondary violence upon women in the reduction of their lived experiences.

5.1. The Case of *Bemba*: Victim Participation and Protection in the ICC

Responding to feminist lobbying and the critique previously levelled against the ICTY and ICTR, the first victim participation framework in the history of international criminal justice was enshrined in the Rome Statute and the RPE of the ICC. This provided greater participatory and protective measures for victims of sexual violence, including "a range of structures and procedures necessary to ensure" that those victimised by crimes of sexual as codified in the Statute "will remain on the agenda and be properly treated in the process of justice."[1] Article 68(1) governs the victim participation framework and outlines the requirement for the ICC to take "appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses" that are not prejudicial or inconsistent with the rights of the accused and the need for a fair and impartial trial.[2] The inclusion of the term dignity also suggests recognition of the burden of shame that is often placed upon those who are raped or sexually violated. This recognises the need to establish a safe, respectful environment, that is not hostile or aggressive, within which those victimised by crimes of rape and sexual violence can detail their experiences of rape and feel satisfied that the procedures of the ICC will not re-traumatise them. Other protective measures include Article 68(2), which allows for in camera proceedings in particular for victims of sexual violence.[3] Article 68(3) grants victims the right to participate in the case where their personal interests have been affected, and allows them to voice their views and concerns directly via a legal representative as opposed to being a witness for the prosecution.[4] This does not grant victims with an automatic right to testify, however, as victims are not parties to the

[1] Rhonda Copelon, 'Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law' (2000) 46 *McGill Law Journal* 217, 233.
[2] UN General Assembly, Rome Statute of the International Criminal Court (opened for signature 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (last amended 2010) <www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> (herein Rome Statute)
[3] ibid.
[4] ibid.

proceedings.[5] Following victim registration and the completion of an application form detailing the harms committed, ICC judges decide whether the victim has a direct link to the specific crimes put forth in the indictment against the accused. Where the Court considers it appropriate, and upon acceptance of the victim's application, victim's views and concerns can be presented by a legal representative who is either self-appointed or provided by the Court. This process allows victims to express their views and concerns in the form of observations but these will not be considered as evidence.[6] Victim participation is predicated upon strict rules surrounding victim testimony, which is only permitted to form part of the evidence if it meets strict criteria. This includes:

> whether the proposed evidence is consistent with the rights of the accused, whether it is necessary to establish the truth, whether it will help the chamber in understanding the facts, and whether the evidence is not duplicative of something that has already been presented by the Office of the Prosecutor.[7]

In light of the vagueness of Article 68(3), ICC jurisprudence has refined how victims can participate. Victims are permitted to participate in the trials in the following ways: making opening and closing statements, consulting the records of proceedings, receiving notification of all public filings and confidential filings that affect their person interests and examining the evidence if the Chamber feels it will help in determining the truth.[8]

The Rome Statute is complemented by the RPE. Rule 16 of the ICC RPE, for example, explicitly recognised the need for the Registrar to take gender sensitive measures to

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[5] *Prosecutor v. Jean-Pierre Bemba Gombo* (Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims) ICC-01/05- 01/08-2138 (22 February 2012) <www.icc-cpi.int/iccdocs/doc/doc1341474.pdf> accessed 14 July 2015.

[6] Nicholas Damski, 'Victim testifies publicly in the Bemba trial: "I lost my dignity"' (Access Victims' Rights Working Group Bulletin, Issue 20 Access, REDRESS Trust, 2012) 2 <www.vrwg.org/ACCESS/ENG20Rev.pdf> accessed 7 June 2016.

[7] Open Society Justice Initiative, 'The Trial of Jean-Pierre Bemba at the ICC: Judgment' (Briefing Paper, March 2016) 6 <www.opensocietyfoundations.org/sites/default/files/briefing-bemba-judgment-20160315.pdf> accessed 7 June 2016.

[8] Stephen Lamony, 'What are the Benefits and Difficulties of Victim Participation at the ICC? (Humanity United, 4 May 2015) <https://humanityunited.org/what-are-the-benefits-and-difficulties-of-victim-participation-at-the-international-criminal-court-icc/> accessed 14 April 2017.

encourage victim participation at all stages of court proceedings.[9] Rules 70, 71 and 72 provide particular principles and practices relating to evidence that concerning sexual violence,[10] responding to some of the feminist critiques levied at the ICTY and ICTR. The codification of sexual violence and the victim participation framework outlined in the Rome Statute centres upon integrating victim's voices in the international justice process.[11] The difficulties facing those who testify about their traumatic experiences of rape has been duly noted by the ICC. Echoing the practice of the ICTY and ICTR, the ICC established a VWU to provide protective measures and psychological assistance, staffed by those with expertise in trauma inflicted by sexual violence.[12] This demonstrates a clear commitment to Article 68(1) to adequately protect those who choose to provide their testimony, which has the potential to empower or traumatise victims and witnesses. Seemingly, this shift has centred the focus of the ICC upon the recognition of trauma as an element of the lived experiences of rape and sexual violence and the difficulties that bearing witness to such trauma may create. The OTP has heralded the victim participation framework as a "milestone in international criminal justice" that is "part of a consistent pattern of evolution of international law… which recognizes victims as actors and not only passive subjects of the law and grants them specific rights."[13] The admission that victims were previously perceived as 'passive subjects of law' suggests a renewed awareness of the impact that entering legal contexts can have upon victims and witnesses. In June 2014, the 'Policy Paper on Sexual and Gender-Based Crime' was published by the Office of the Prosecutor to the ICC and measures such as increased witness protection, support and enhanced psychological services have endeavoured to soften the perception of the practice of international criminal law as hostile and aggressive towards victim-survivors.

[9] ICC RPE (as amended on 22 May 2013) ICC-PIDS-LT-02-002/13_Eng <www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>

[10] ibid.

[11] Copelon (n 1) 233.

[12] Rome Statute (n 2) art 43(6).

[13] Office of the Prosecutor, Policy Paper on Victim Participation (April 2010) 5 <www.icc-cpi.int/iccdocs/otp/Policy_Paper_on_Victims_Participation_April_2010.pdf> accessed 14 January 2016; See also, Fatou Bensouda, 'Reflections from the International Criminal Court Prosecutor' (2012) 45(4) *Vanderbilt Journal of Transnational Law* 955, 958; HRW, 'Who Will Stand for Us? Victims' Legal Representation at the ICC in the Ongwen Case and Beyond' (Report 2017) <https://reliefweb.int/sites/reliefweb.int/files/resources/ijongwen0817_web.pdf> accessed 15 November 2017.

The case of *Bemba* became a prime opportunity for the ICC to put into practice the victim participation and protective frameworks enshrined in the Rome Statute. As outlined in Chapter Two, Jean-Pierre Bemba Gombo was the first person to be convicted under Article 28(a) of the Rome Statute for crimes committed by troops in his command and the first person to be convicted of sexual violence.[14] A total of 5222 victims were able to participate in the case via a legal representative yet only five victims were allowed to testify before the court in person as victim participants.[15] Three other victims presented their views and concerns but their testimony was not authorised to form part of the evidence within the case.[16] This demonstrates how only a select few victims are recognised in proceedings of the ICC.[17] In March 2016, the Trial Chamber held that *Bemba* knew his troops were committing mass rape but failed to take "all necessary and reasonable measures within his power to prevent or repress their commission."[18] The case became a prime opportunity for the court to demonstrate its commitment to the implementation the victim participation framework enshrined in the Rome Statute.[19] The judgment focussed upon the consequences of rape, both physical and psychological, and considered the specific motivations and objectives underpinning the perpetration of rape committed by the forces under Bemba's military command.[20] The proceedings were lauded as a significant milestone in the recognition of the trauma surrounding experiences of conflict-related sexual violence. The Trial Chamber found that the soldiers intended to inflict "significant medical, psychiatric, psychosocial, and social consequences, including PTSD, HIV, social rejection, stigmatisation, and feelings of humiliation, anxiety and guilt"[21] moving beyond the confines of solely bodily harm. During the sentencing phase of the case, a psychiatrist from Stanford University testified to the impact of trauma upon victims[22] and an expert's brief was submitted concerning the mental

[14] *Prosecutor v. Jean-Pierre Bemba Gombo* (Judgment) ICC-01/05-01/08-3343 (21 March 2016) (herein *Bemba* Judgment).
[15] International Justice Monitor, 'Who's Who' (Open Society Justice Initiative) <www.ijmonitor.org/jean-pierre-bemba-gombo-whos-who/> accessed 7 June 2016.
[16] Open Society Justice Initiative (n 7) 6.
[17] Stephen Cody Smith, Alexa Koenig, and Eric Stover, 'Bearing Witness at the International Criminal Court: An Interview Survey of 109 Witnesses' (Human Rights Center University of California Berkeley School of Law, June 2014) 68 <www.law.berkeley.edu/files/HRC/Bearing-Witness_FINAL(3).pdf> 25.
[18] *Bemba* Judgment (n 14) [210].
[19] Rome Statute (n 2) arts 16, 43, 68; ICC RPE (n 9), rules 70-72; See also, Office of the Prosecutor (n 4).
[20] *Bemba* Judgment (n 14) [567].
[21] ibid.
[22] *Prosecutor v. Jean-Pierre Bemba Gombo* (Sentencing Hearing) ICC-01/05-01/08 (16 May 2015) <www.icc-cpi.int/Transcripts/CR2016_04026.PDF> accessed 15 November 2016.

health outcomes of rape and sexual violence upon victims.[23] In the following sections, I begin by defining each mode of thought - temporality, spatiality, and genealogy – and subsequently employ each mode to analyse how the testimonies of three victims, Pulchérie Makiandakama and victims a/555/08 and a/480/08, who each testified about their experiences of rape during the trial proceedings in *Bemba,* were formed.[24] As interrelated aspects of legal practice that frame law's narrative boundaries, I employ these normative modes to elucidate how they shape victim participation in the ICC and the incommensurability of representations of sexual violence that have emerged as a consequence of its practice.

5.2. Temporality

Time and temporality have often been used synonymously to explain temporal existence on Earth. However, this is not a wholly accurate assessment as although they are related, they are not identical. Time is an elusive concept. As Saint Augustine once said, "If no one asks me, I know what it is. If I wish to explain it to him who asks me, I do not know."[25] Checking our watches throughout the day, we observe the seconds ticking by. This is the overarching means through which we make sense of time, as we observe the slow progression through the twenty-four hours each day holds. Clock time is subdivided into smaller units which are used to measure the succession of the present moment. It allows the objective measure of our lived experience to be divided linearly; once 9:00 ticks to 9:01, there is no going back to that time. Objectively, the length of the hour never changes because of the "underlying assumption… that the world has no beginning or nor end."[26] Clock time, universalised and spatialised, provides the "the central epistemological pillar around which our conceptualisations of temporality, movement, process, and change have been forged."[27]

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[23] *Prosecutor v. Jean-Pierre Bemba Gombo*, 'Mental Health Outcomes of Rape, Mass Rape, and other Forms of Sexual Violence' ICC-01/05-01/08-3417-Conf-AnxA (22 September 2016) <www.icc-cpi.int/RelatedRecords/CR2016_06768.PDF> accessed 15 November 2016.

[24] Pulchérie Makiandakama was the first witness to take the stand in the *Bemba* trial and her testimony was submitted as evidence in the prosecution's case. See, Center for Human Rights and Humanitarian Law, 'Gender Perspectives on Torture: Law and Practice' (Washington College of Law 2018) 30 <www.wcl.american.edu/impact/lawwire/gender-perspectives-on-torture-law-and-practice/gender-perspectives-on-torture/> accessed 15 May 2018.

[25] Saint Augustine in Robert Chia, 'Essai: Time, Duration and Simultaneity: Rethinking Process and Change in Organizational Analysis' (2002) 23(6) *Organization Studies* 863.

[26] Hannah Arendt, *The Life of the Mind* (Harcourt Inc 1978) 21.

[27] Chia (n 25) 863-864.

Time is often considered as a linear progression from past, present to future when in fact this is a temporal description of how we make sense of the concept of time passing. Our life is marked out by the finite time span between life and death. Again, this progression is often presented linearly, from our arrival in the world to our departure. "This finite life span," explains Arendt, "determines not merely its life expectancy but also its time experience; it provides the secret prototype for all time measurements no matter how far these then may transcend the allotted life span into past and future."[28]

Yet, the imposition of this linear path (we are born, we live, and we die) simplifies a complex temporal existence. We reminisce about the past and ruminate on what the future may hold progressing continually within the present moment with little acknowledgment that the present moment is the only moment we truly ever have. As Ricoeur explains, "the present of past things is the memory; the present of present things is direct perception; and the present of future things is expectation."[29] Instead, thinking about our lived experience as a succession of present moments, a meandering network of twists and turns, back and forth between past, present and future, allows us to "to loosen the grip of the wristwatch upon our time consciousness."[30] Whilst time progresses horizontally as the passing of each hour, temporality defines the vertical process through which we make sense of the subjective passage of time that emerges as the undulating process of memory. Time is "is in reality coincident and synchronic," it is a continuous flow made divisible through language.[31] As we grow older, our experiences of temporality may shift and loosen. Our temporal existence, or the duration of our lives divisible by time, becomes scattered through the tapestry of interconnected temporal experiences spread across the past and future. To remember is to spark the wondrous process of memory that allows us to recall lived experiences of the past into our present. In this sense, clock time allow us to quantify our passage through our life narrative but "meaning within our lives is defined by the features we place upon temporal existence. Narrative organises such time."[32] For Ricoeur, "time becomes human to the extent

[28] Arendt (n 26) 20-21.
[29] Paul Ricoeur, *Time and Narrative* (Kathleen McLaughlin and David Pellauer trs, Vol 1, University of Chicago Press, 1984) 11.
[30] Bruce Ackerman, 'Temporal Horizons of Justice' (1997) 94(6) *The Journal of Philosophy* 299, 301.
[31] Michael Tawa, 'Being (in the Midst of) Two: Interstice and De-constitution in Cinema and Architecture' (2012) *INTERSTICES* 13, 32
[32] Ricoeur (n 29) 3.

that it is articulated through a narrative mode, and narrative attains its full meaning when it becomes a condition of temporal existence." [33] It is only through narrative, or the imposition of meaning and direction, that our lived experiences unfold in time. Our memories develop into a narrative that unfolds through a fuzzy logic and they are not confined to an explicit temporal framework. This differs to how, for example, a biographer would write about one's life, imposing a beginning-middle-end to our life narrative.

Time and temporality are applied through a variety of temporal frameworks in different social fields. The temporal frameworks imposed demarcate boundaries, crucial to the way that stories are told and formed often from memories of the past and hopes for the future. In legal narrative and practice, the imposition of a set beginning, middle and end is integral to its function. The treatment of time in law focusses upon a particular event or act, determining the facts relevant to this event. The assimilation of lived time into legal time is reinforced through the dispositions that judges and lawyers acquire in legal training. The provision of witness testimony and cross-examination, for example, is underpinned by lines of questioning that determine which temporal experiences are relevant to the legal process. In the case of *Orić* heard in the ICTY, for example, Kada, a witness, wanted to tell her story in vivid detail, explaining to the judges what life had been like prior to and during the genocide in Srebrenica.[34] Judge Agius had to interrupt her on a number of occasions, limiting and excluding the detail of her narrative to allow the determination of specific periods of time relevant to proceedings:

> MR. DI FAZIO: I'm not objecting, again, if Your Honours please, but I just want to follow the evidence carefully. My understanding is that the witness went into the forests on the 8th of May …And was there for a period of 11 days, I think she said in her evidence, eight plus 11, whatever we come to, I understand that she's now talking about these events at some point eight plus 11 --
>
> …
>
> MR. JONES: Do you know approximately when Goran Zekic was killed?

[33] ibid 52.
[34] Selma Leydesdorff, *Surviving the Bosnian Genocide: The Women of Srebrenica Speak* (Kay Richardson tr, Indiana University Press 2015) 123.

JUDGE AGIUS: Yes. She said already, she mentioned the precise date, she said 8th of May.

MR. JONES: Okay. Let me put it this way.

Q. How long after the death of Goran Zekic did you return to Sebesic?

…

Q. Right. So that would mean you were in Srebrenica around the 9th or 10th perhaps of May. Is it right that you were in the woods for 11 days before that?

A. Yes.[35]

Throughout her testimony, the judges and lawyers interrupted Kada. They wanted precise dates which she struggled to give. As Leydesdorff notes, "the judge was not interested in her story, but in testimony that could lead to a judgement about the looting parties in Srebrenica."[36] The tribunal was concerned with whether the facts added up, when Kada had returned to the town, and specific dates that would enable them to establish a particular temporal framework and narrative.[37] The judges and lawyers had to control the level of detail Kada provided, reframing their questions to elucidate the point they were leading her to.[38] It demonstrates how selective witnesses have to be and the difficulties they face as the legal process attempts to integrate lived experience into the pre-defined temporal frameworks that a judicial mechanism functions within.[39]

As in the ICTY, the ICC is circumscribed by a set temporal frame. Its jurisdiction means that it is only able to consider crimes committed from 1st July 2002 at the earliest. In the case of *Bemba,* jurisdiction was limited to a small window between 26 October 2002 to 15 March 2003. As the following excerpt details:

Q. Did anything happen during that time; that is, between 2002 and 2003?

[35] *Prosecutor v. Naser Oric* 050824IT (24 August 2005) <www.icty.org/x/cases/oric/trans/en/050824IT.htm> 9680-9681 (herein *Oric* Transcript)
[36] Leydesdorff (n 34) 123.
[37] ibid.
[38] "Judge Agius: Mr. Jones, you either control her yourself or I have to control her." *Oric* Transcript (n 35) 9675.
[39] Leydesdorff (n 34).

A. Nothing happened in Mongoumba in 2002, but in 2003 some events occurred in Mongoumba.

Q. When did these events take place specifically, if you can remember?

A. I can tell you what happened and the dates on which the events took place.

Q. Please do.

A. It was on the 5th of the year 2003.

Q. The 5th of which month, please?

A. The 5th of March 2003.

Q. At around what time, please?

A. The event occurred in Mongoumba at around 5 a.m.[40]

For victim-survivors in the CAR, this limited temporal framework means that only violence committed during this time will be recognised by the ICC. The specificities of the focus upon clock time creates a disjuncture, failing to recognise victim's lives prior to and in the aftermath of such experiences.[41] Legal meaning and the relevance of evidence is thus derived from the "production, specification, and arrangement" of this specific time period.[42] This imposes an overarching objective temporal framework with a beginning, middle and end that consequently divides women's' experiences into a single frame of 'before' the rape and 'after' the rape, meaning that experiences outside of this are deemed invalid to the practice of the ICC.[43] Whilst lived temporalities and linguistic articulations of experience continually challenge law, its authority and legitimacy are tacitly accepted upon entry into the ICC overpowering the possibility of making other temporalities commensurable to its practice.[44] As Bourdieu explains, recourse to "fixed formulas and locutions" diminishes the possibility for "any individual variation."[45] The appropriation of time by law excludes the flow of lived experience, masking temporality as stationary and immobile. Over the course of the ten years

[40] *Prosecutor v Jean-Pierre Bemba Gombo* (Trial Hearing Transcript) ICC-01/05-01/08-T-220-ENG CT WT 01-05-2012 1/56 NB T (1 May 2012) 12 <www.legal-tools.org/doc/46f847/pdf/> (herein *Bemba* Trial Transcript)
[41] Nicola Henry, *War and Rape: Law, Memory and Justice* (Routledge, 2011) 98-99.
[42] Renisa Mawani, '*Law as Temporality: Colonial Politics and Indian Settlers' (2014) 4* U.C. Irvine Law Review 65, 71.
[43] Victor Igreja, 'Negotiating temporalities of accountability in communities in conflict in Africa' in Natascha Mueller-Hirth, Sandra Rios Oyola (eds), *Time and Temporality in Transitional and Post-conflict Societies* (Routledge 2018) 86
[44] Mawani (n 42).
[45] Pierre Bourdieu, '*The Force of Law*: *Toward a Sociology of the Juridical Field*' (1987) 38 *Hastings Law Journal* 814, 820.

that the case of *Bemba* spanned, an innumerable number of women were, and continue to be, subjected to rape.[46] Yet those outside of the ICC's jurisdiction are not and cannot be recognised by its practice.

Nonetheless, the Trial Chamber made an important finding with regard to temporality in relation to memories of traumatic experiences. In *Bemba,* as in the ICTY,[47] the defence counsel attempted to undermine the testimony of the victims' during the trial due to inconsistencies in their testimony concerning specific details. However, the Chamber held that the inconsistencies in the protected witness' testimony:

> Can be explained by the lapse of time between the events and the testimony, the traumatic circumstances, and her difficulties discussing such personal scenes in court. Accordingly, such inconsistencies do not undermine P81's credibility. [48]

This is significant because it provides legal recognition of the impact of trauma upon a survivor's temporal existence. Recalling such experiences in an adversarial context renowned for being demanding and potentially re-traumatising can inevitably lead to discrepancies and inconsistencies. This is further exacerbated by the fact that victims had to orate their experiences of rape from a decade earlier. The judgment is significant because rather than undermining their stories, the lapse in time between the traumatic circumstances and the testimony being provided is acknowledged by the Court as an inherent part of bearing witness to such suffering.

Upon a closer view, however, legal representations impose such abstract, divided timeframes upon those who step within the field that they are distanced from their own temporal existence, consumed by law's present moment and defined by the factual predicate

[46] Joe Bavier, 'Militia commits mass rape in Central African Republic – MSF, *Reuters* (8 March 2018) <https://uk.reuters.com/article/uk-centralafrica-rape/militia-commits-mass-rape-in-central-african-republic-msf-idUKKCN1GK2U6> Oman Mbiko, Central African Republic: Rebels Perpetrate Mass Rapes, *Caj News Africa* (12 March 2018) < https://allafrica.com/stories/201803120597.html>.
[47] See Chap 1, s1.5.
[48] *Bemba* Judgment (n 14) [492].

of rules and definitions.[49] For victims of conflict-related sexual violence, the imposition of specific temporal boundaries imposes a sense of timelessness. Legal language uses "indefinites… designed to express the generality or omnitemporality of the rule of law."[50] The imposition of legal categorisations of rape are derived from events that occurred in the past that are subsequently broken down into legally relevant and familiar parts to allow legal referents to test the behaviour described within them. This makes future events reducible to the past.[51] Time, for law, "does not really matter because the new is comprehensible in terms of the old."[52] The imposition of timelessness through the application of rules erases other temporalities, assimilating and obfuscating the diversity of lived experiences of rape and curtailing recognition of the impact that this has upon women's temporal existence.[53] For instance, this diminishes any recognition of the intergenerational trauma that rape can inflict and the potential re-ignition of conflict this entails.[54] Moreover, the imposition of this set temporal jurisdiction obscures any recognition of the ways in which women fought against rape or, in its aftermath, sought support or engaged in social action.[55] This demonstrates how the temporal boundaries of international legal practice organise the social and political lives of those whom such temporal frameworks are imposed upon.[56] Whilst transitional justice looks to the past to redress past abuses, international criminal law looks to the future to deter criminal behaviour yet this is undermined by its fixed temporal limits. Whilst deterrence is important, such static and immobile representations limit what can be known.

5.3. Spatiality

Like temporality, spatiality is imbued with a multiplicity of meanings. Space is an abstract term that can be used to denote the area that exists around us. Yet, the openness

[49] Marc Auge, *Non-places: Introduction to an Anthropology of Supermodernity* (John Howe tr, 2nd edn, Verso Books 2009) 103.
[50] Bourdieu (n 45) 820.
[51] Haridimos Tsoukas and Mary Jo Hatch, 'Complex Thinking, Complex Practice: The Case for a Narrative Approach to Organizational Complexity' (2001) 54 (8) Human Relations 979, 992.
[52] ibid.
[53] Mawani (n 42) 93.
[54] Judy Barsalou, 'Trauma and Transitional Justice in Divided Societies' (2005) United States Institute of Peace Special Report 135, 4 <www.usip.org/sites/default/files/sr135.pdf>.
[55] Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative.* (University of Pennsylvania Press 2013) 162.
[56] Mawani (n 42) 71.

or closed nature of a space can arise as "the outcome of sedimented and unequal power relations."[57] Traditionally, for example, women were kept separate from perceived masculine spaces, such as the world of work. Notions of femininity were used to reinforce unequal power relations, confining women to the realm of the private and closing off their access to many areas of public life. Law was used to implement this. Spatiality, then, is space that is socially produced, embodying the regularities and dispositions associated with the relative positions of an individual or group in relation to others. It is a means through which "the ever-shifting geometry of social/power relations" can be brought into view, articulating the relations that stretch within and beyond a particular place.[58] Rather than perceiving particular contexts as static and immobile, spatiality endeavours to reveal the underlying relations that shape a certain place.[59] In legal spaces, the organisation of legal practice and convention, such as the adherence to a specific dress code or rising as judges enter a courtroom, replicates the bounded nature of the space and elucidates the underlying and often unspoken relations at play. Bourdieu notes that spatial organisation "matched by a temporal organization obeying the same logic governs practices and representations… and thereby contributes to the durable imposition of the schemes of perception, thought, and action."[60] Consequently, such practices distinguish between those who embody the space – who are part of and are within the space - and those who enter from outside. Viewing space and time as contingent upon the organisation of various social relations allows the fixed boundaries to be challenged.

Upon entry into the juridical field of international law, victims of conflict-related sexual violence submit to the dominant means of representation arising as a consequence of the specific practices undertaken in the legal context. Such representations limit what can be known about conflict-related rape because they emerge from particular rules of practice that govern what is and is not relevant to law. Bourdieu explains, that entry into juridical field:

> implies the tacit acceptance of the field's fundamental law, an essential tautology which requires that, within the field, conflicts can only be resolved juridically—that is,

[57] Doreen Massey, *For Space* (Sage Publications 2008) 147.
[58] Doreen Massey, *Space, Place and Gender* (University of Minnesota Press 1994) 4.
[59] ibid 5.
[60] Pierre Bourdieu, *Outline of Theory of Practice* (Richard Nice tr, Cambridge University Press 1977) 89-90.

> according to the rules and conventions of the field itself. For this reason, such entry completely redefines ordinary experience.[61]

To mediate the strict rules and conventions that govern victim-survivors entry into the juridical realm of the ICC, the role of the legal representative has become a central feature in relation to the protection of victims. The role of the legal representative shifts the perspective from the prosecution as the sole means through which the voice of victims can be articulated within the field.[62] The representative is a lawyer who attends and participates on behalf of victims, questioning witnesses, experts and the accused. Along with outreach teams within the particular contexts under investigation, the legal representative allows victims' views to be included without having to travel to the proceedings, rather the representative ensures that their views are heard in the ICC.[63] The legal representative presents a means through which the juridical field of international criminal law can mediate between the particularities of the views and concerns of victims. They also present the views of the VWU in terms of protective measures relating to victims. This is particularly important when victims choose to be anonymised within the proceedings. If victims wish to participate, legal representatives work alongside the VWU to make requests for protective measures to be put in place when concerns are raised in relation to Article 68. The VWU also advises the Prosecutor and the Court on appropriate protective measures,[64] including the use of face or voice distortion when the victim is giving evidence and/or the use of a pseudonym.[65]

Ostensibly, the victim participation framework and protections provided forge a novel path through which victim-survivors can seek justice. Pieslak considered that the anonymity provisions provided by the Rome Statute pave "the road to justice for rape victims" and "attempt to halt the infliction of future pain and scars that permanently mark the memory and souls of rape victims."[66] Such measures intend to foster a greater sense of agency, encouraging women to participate and engage with the ICC system. Those who rape

[61] Bourdieu (n 45) 831.
[62] Damski (n 6) 8.
[63] ICC RPE (n 9) rule 88.
[64] Rome Statute (n 2) arts 68(4) and 43.
[65] ICC RPE (n 9) rule 87.
[66] Sylvia Pieslak, 'The International Criminal Court's Quest to Protect Rape Victims of Armed Conflict: Anonymity as the Solution' (2004) 2(1) *Santa Clara Journal of International Law* 138, 177.

endeavour to silence women and such measures strive to recognise and respond to this, reducing the adverse impact of testifying upon the lives of those who choose to break their silence.[67] Testifying in the ICC may create legitimate fears of reprisal compounded by the norms that place the shame and stigma upon the woman as opposed to the man who raped her.[68] Such measures mean that victim-survivors can testify in a relatively safe and secure environment, reinstituting a sense of control for victims, upon a more level playing field between them and the accused. After Victim a/480/08 provided their testimony, for example, the legal representative asked:

> Q. Following this deposition, once you have expressed your views and concerns to the Chamber, having done so, how do you now feel?
> A. I feel good. I feel liberated. I feel relieved because I've been able to express what I've been feeling for years. And I think that having had the chance to let this out, I feel good, I feel better.
> Q. You are -- are you expecting some form of reparation for the offences that have been committed against you?
> A. I think that would be the normal thing.[69]

The response to the question of how Victim a/480/08 feels having testified is positive in her response. In articulating her narrative testimony within the court proceedings, the legal representative acts as an intermediary between the court and the victim. The representative endeavours to protect the victim, encouraging respect as opposed to interrogation as far as is possible. This enables the victim to have her voice heard within a context detached from the difficulties of facing trauma when the telling of one's story of rape within the community or family is not the norm. Such spaces give rise to recognition that they may otherwise be unable to receive within their communities. The International Federation for Human Rights (FIDH) notes that many of the victims whose views and concerns were presented by the legal representative in the ICC found that the opportunity to tell their story during the legal process

[67] Kimi King and others, 'Echoes of Testimonies A Pilot Study into the long-term impact of bearing witness before the ICTY' (University of North Texas and the VWS Victims at the ICTY 2016) 123.
[68] Pieslak (n 66) 155.
[69] *Prosecutor v Jean-Pierre Bemba Gombo* (Sentencing Hearing Transcript) ICC-01/05-01/08 (Date Unknown) 69 <www.icc-cpi.int/RelatedRecords/CR2016_04200.PDF> (herein *Bemba* Sentencing Transcript).

had positive impact upon their psychological wellbeing.[70] The legal representative thus presents a means through which the system can mediate between the universal application of rules and the particularities of the views and concerns of victims.

Nonetheless, Pieslak's assertion of the benefits of anonymity overlook the impact that entry into the legal field has upon women's experiences of violence. Though the protective measures endeavour to recognise the challenges facing women outside of the ICC, such as the threat of further violence, Pieslak fails to acknowledge the symbolic violence women face in bearing witness trauma within legal spaces. Although hopeful and optimistic, Pieslak's observations overlook the reductive function of law and the impact that such spatial relations have upon women's subjectivity. In the case of *Bemba,* for example, Marie-Edith Douzima-Lawson, one of two legal representatives for the prosecution proposed the following recommendations upon advice from the VWU psychologist:

> When the victim is questioned about sexual violence, the questions should be formulated in the least embarrassing manner possible and avoiding unnecessarily intrusive or repetitive questions… start with questions to guide the victim through the statement. Use short simple questions and language which is easy to understand, avoiding legal terms, long sentences and double negations… put questions in a non-confrontational, non-pressuring form… observe the victim closely. In case of signs of nervousness, distraction or emotional reactions, a break is offered to the victim.[71]

Outwardly, this excerpt demonstrates the recognition of the impact of testifying about experiences of rape and sexual violence. Such a submission made by the legal representative is heard before the judges with the intention that the recommendations will be accepted, adhering to the victim participation framework. These particular protective measures were deemed "necessary, reasonable and proportionate" by the judges and permitted for victims 8480/08 and 555/08. In this regard, victims, for the first time, have are acknowledged in the

[70] FIDH, '«All I want is reparation» Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court' (Report 705a, November 2017) 22 <www.fidh.org/IMG/pdf/rca705ang.pdf> accessed 4 December 2017.
[71] *Prosecutor v Jean-Pierre Bemba Gombo* (Sentencing Hearing) ICC-01/05-01/08-T-369-Red-ENG WT 17-05-2016 40/72 NB T (17 May 2016) 39-40.

legal practice of the ICC as protection whilst testifying is perceived as being of utmost importance. Moreover, the provision of support in the form of psychological therapy prior to or following testifying recognises the impact of trauma upon survivors of rape and those who have witnessed such atrocities. The suggestion for questions to be asked in the 'least embarrassing manner' acknowledges the shame and stigma that often envelops a victim and attests to the difficulties inherent in articulating of experiences of sexual violence. Upon closer inspection, however, the reference to the need for 'short simple questions and language' and the avoidance of technical legal language is a subtle acknowledgement of the spatial boundaries imposed by the ICC. Legal actors derive their meaning from the legal setting within which their legal practice is repeatedly enacted and reproduced[72] and this request highlights how, without participating in the operation of law, the meaning of the narrative constructed "will be difficult, if not impossible, to grasp."[73] For victims of sexual violence, entering a legal setting such as the ICC denotes submission to the reductive function of international criminal law. This upholds the spatial boundaries that distinguishes victims, who enter from outside of the legal space, from legal actors who have the mental and linguistic resources to uphold their symbolic power and position within the legal context.[74] The participation of victims is predicated upon establishing a fine balance between allowing their voice to be heard and included in the legal process alongside the processes and procedures of the court that will continue irrespective of their involvement. Pulchérie's testimony presents an interesting insight into how the symbolic power that underpins legal practice and shapes relations within the ICC chamber:

> Q. Madam Witness, why did you not request special protection measures in order to give your testimony?
>
> A. I will answer as follows: I cannot ask for my voice or image to be distorted. I want it to be natural, be myself and say before the Judges and before the whole world what I suffered... I accepted to testify publicly. God is my witness. I cannot come here and ask for my image or voice to be distorted.[75]

[72] Eddie Soulier, 'Territory as Narrative' (CS-DC'15 World e-conference 2015) 4 < https://hal.archives-ouvertes.fr/hal-01291117/document> accessed 5 March 2016.
[73] Tsoukas and Hatch (n 51) 998.
[74] Bourdieu (n 45) 828.
[75] *Bemba* Trial Transcript (n 40) 55.

In light of the protective measures offered by the ICC, the legal representative questions Pulchérie as to why she has refused them. Her response demonstrates the benefits and constraints upon a victim who enters the juridical field. Firstly, it highlights her need to speak in her own voice, to be heard, seen, and actively listened to by the judges within the ICC and beyond. For Pulchérie, distorting her face and voice would have prevented an accurate representation of how she wished to be seen and heard when testifying about her experiences of rape. Secondly, when asked what she expected from the ICC, Pulchérie replied, "I'm a human being. The Judges have to pay particular attention to my situation and the Judges have to decide - rule - on this issue in rendering justice to me. That's what I expect from the ICC."[76] In rejecting anonymity, she stood before the judges and those observing within and outside of the chamber as herself, not an anonymous number or blurred face. She wanted those listening to pay attention to her suffering and to recognise her full humanity having been dehumanised by those within her community:

> They say, "You're not a human being. The Banyamulengue humiliated you. Can you stand before me and say anything? " And sometimes people spit on me, so that's how I'm stigmatised. How can I stand before somebody and say anything to anyone?[77]

Whilst Pulchérie asserted her agency, her plea to be seen as fully human by the ICC is indicative of the impact of sexual violence upon an individual and the reductive function of the law. Entry into a legal space is predicated upon submission to the reduction of one's subjectivity as Pulchérie is distanced from her life in the temporal possession of her experience by the legal setting. Legal spaces emerge as 'non-places' whereby an individual is temporarily relieved of the typical determinants that impede upon their life.[78] As Auge notes, the "space of non-place creates neither singular identity nor relations; only solitude and similitude."[79] A woman who has been raped leaves her identity at the precipice of the social realm and legal realm. In a tribunal, this reduction of identity in the non-place means victims

[76] ibid 54.
[77] ibid.
[78] Auge (n 49) 77-78.
[79] ibid.

of conflict-related sexual violence, like Pulchérie, become the means through which perpetrators of violence will be punished. As Phelps notes, "the victim is in many ways deprived of personhood, of subjectivity, and re-created as an object by which 'justice' – that is, punishment – may be achieved."[80] What this means for an individual is immaterial to the function of international criminal law; she becomes no more than what she does or experiences in the role of victim and the imposition of this identity determines how her experiences are rendered valuable and relevant to the legal process.[81] This constructs a "public representation" of violence that accords to established legal forms through which the solutions available to victim-survivors emerge in a form recognised as impartial.[82] For Pulchérie, the ICC views her, and other victims of sexual violence, through a singular category of victim interested in her identity only insofar as to determine relevant facts that delineate whether or not the accused's behaviour fits sufficiently within predetermined categories. Women do not count as individuals but are rather consumed by their imposed identity. Whether or not Pulchérie accepted or refused the protective measures offered by the ICC is thus largely irrelevant to the practice of law and the production of a judgment.

Moreover, REDRESS has recently highlighted the lack of transparency surrounding the victim participation framework. Victims, for instance, are not being made aware of their rights to appoint legal counsel of their own choice, diminishing their ability to engage with those who speak on their behalf.[83] Their report notes that the decisions of ICC judges to change the victim's legal representatives throughout the proceedings is an "inappropriate intrusion in the independent counsel-client relationship" because this can disrupt important relationships of trust developed.[84] This is significant because it elucidates the relations at play within the ICC. This undermines the role of victims within the ICC raising questions as to whether their participation is meaningful or merely symbolic.[85] This is further highlighted by the ICC's

[80] Teresa Godwin Phelps, 'The Symbolic and Communicative Function of International Criminal Tribunals' in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia 2013) 173.
[81] Auge (n 49) 103.
[82] Bourdieu (n 45).
[83] REDRESS, 'Representing Victims before the ICC: Recommendations on the Legal Representation System' (Report, April 2015) 15 <https://redress.org/wp-content/uploads/2017/12/1504reprentingvictims.pdf> accessed 13 November 2017.
[84] ibid 3.
[85] Emily Haslam and Rod Edmunds, 'Common Legal Representation at the International Criminal Court: More Symbolic than Real?' (2012) 12 (5) *International Criminal Law Review* 871, 879.

continued failure to balance the victims' expectations of reparation which have been raised by the rhetoric of the Court, as the following excerpt exemplifies:

> I will always thank the Court because I was finally able to speak about the pain that I carry in my heart. We want the Court to hear the cries of our hearts. The problem is that we still have no reparation.[86]

The gap between the rhetoric produced in the singular judgments and the reality of remedies for women in their communities remains. In the CAR, for example, the decision of the *Bemba* Appeal brings proceedings to an immediate end leaving thousands of victims without recourse to reparations.[87] Additionally, the large number of victims who participated and shared their views and concerns have overwhelmed the limited resources of the ICC. In 2011, Marie Douzima-Lawson exemplified the disparity between her, as one of two legal representatives in the *Bemba* case*,* and the sheer number of victims:

> Due to the manner in which the distribution [concerning joint legal representation] was made, I have found myself with many cases of victims that I have never met. Also, I must learn about the almost 700 victims I represent, if not meet with them, in order to present all their views and concerns to the Chamber.[88]

Robinson contends that the permanent nature of the ICC coupled with its limited resources, as exemplified by the number of victims compared to that of legal representatives, has led to an overload of demand. He highlights the disparity between the amount of funding the ICC receives: approximately 120 million euro across all situations compared to that of the ICTY

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[86] FIDH (n 70) 36.

[87] *Prosecutor v. Jean-Pierre Bemba Gombo* ICC-01/05-01/08-3636-Red (8 June 2018) <www.icc-cpi.int/CourtRecords/CR2018_02984.PDF>; REDRESS, 'Efforts to Afford Justice for Sexual Crimes in CAR Must Not Stop with Bemba's Acquittal' (8 June 2018) <https://redress.org/news/efforts-to-afford-justice-for-sexual-crimes-in-car-must-not-stop-with-bembas-acquittal/>; Nadia Carine, Fornel Poutou and Lucie Boalo Hayali, 'A Belief Shattered: The International Criminal Court's Bemba Acquittal' (Just Security, 25 June 2018) <www.justsecurity.org/58386/belief-shattered-international-criminal-courts-bemba-acquittal/> accessed 27 June 2018.

[88] Wairagala Wakabi, 'Q&A with Marie-Edith Douzima-Lawson, Lawyer for Victims in the Bemba Trial' (International Justice Monitor, 24 June 2011) <www.ijmonitor.org/2011/06/qa-with-marie-edith-douzima-lawson-lawyer-for-victims-in-the-bemba-trial/> accessed

and ICTR which each had around a $120 million budget with a single contextual mandate.[89] Coupled with the demands from victims, States, and the UN Security Council, he contends that this creates an extraordinary amount of pressure upon a single institution, meaning the "ICC must not only select situations, but within each situation it has to be even more selective than past institutions."[90] Whilst Robinson highlights the overstretched nature of the ICC, which is by all accounts undeniable, his focus upon the limited funding and the impact this has upon the interests of victims is undermined by a closer investigation into how the budget is spent. As FIDH highlights:

> the budget of the [Victims Participation and Reparations Section], [Office of Public Counsel for the Victims] and legal aid for victims altogether represents only 4.15% of the total ICC budget. Significantly, the total amount of expenditure related to victim participation related services is lower than the amount spent in judges' salaries and entitlements... When looking at the overall ICC budget, annual built-in increases, staff and judges' costs, the amount spent on victim participation – a very relevant feature of the Rome Statute – is in fact minimal.[91]

I am not suggesting that salaries of the judges be docked, rather I use this to highlight how arguments pertaining to a lack of budgetary funding as a reason for the disjuncture between rhetoric and practice are not as persuasive upon closer inspection. Institutions such as the ICC have a "patina of authority" compared to other more localised transitional justice institutions.[92] This sends the strong and repeated message that justice will be provided. Reflecting a Bourdieusian understanding of international criminal law as a system of knowledge, however, Buss stresses the importance of perceiving law as a powerful institution that produces particular narratives, allowing certain information in whilst excluding the particularities of life in order for it to function. [93] The limited resources of the court, coupled

[89] Darryl Robinson, 'Inescapable Dyads: Why the ICC Cannot Win' (2015) 28 *Leiden Journal of International Law* 323, 325.
[90] Ibid 332-333.
[91] FIDH, 'Five Myths About Victim Participation in ICC Proceedings' (Report, 2014) 12 <https://www.fidh.org/IMG/pdf/cpi649a.pdf> accessed 13 December 2017.
[92] Doris Buss, 'Knowing Women: Translating Patriarchy in International Criminal Law' (2014) 23(1) *Social & Legal Studies* 73, 75.
[93] ibid.

with individualised narratives inherently bounded within the categorisations of the legal system are continually presented as the process victims of rape must enter in order for justice to be achieved. The chance for women to have their story told, let alone tell their own story in their own voice within contexts such as the ICC is predicated upon the resources available alongside making sure that the rights of the accused are not unfairly prejudiced or undermined. Asked whether she was satisfied with the role that victims have played within the trial Douzima-Lawson noted that:

> The victims are playing an important role in the trial, but I do wish that they would play an even larger role, since they are at the centre of the Rome Statute. I wish they could go from being involved to being a party to the proceedings alongside the prosecution and the defence and that their views would be required for all matters relating to the proceedings. [94]

Victims voices are predominantly articulated through the interactions of the legal representative before the ICC. The disconnect present between the system – judges, lawyers and the legal process - and victim-survivors can be conceived as a consequence of the 'representation ladder,' noting the filtered nature of the voices of the victims and the various representative layers that their experiences must travel through until they reach the Chambers and are translated into judges' decisions.[95] Victim participation in the trial is thus limited due to the multiple levels of representation it must pass through. For victims to participate, entry into the ICC system is predicated upon the notion that their legal representative will speak on their behalf. These are the factors that give rise to the incommensurability of a system that is detached and distanced in both rhetoric and practice.

5.4. Genealogy

Genealogy defines the distribution of power institutionalised over time. It reveals the underlying power relations and particular perspectives that underpin the practice within a

[94] Wakabi (n 88).
[95] Cody Smith, Koenig, and Stover (n 17) 21.

given field. Such relations and perspectives encompass the power to define and articulate representations of the social world. In the practice of law, for example, genealogy elucidates what underpins the process of how material is selected, the categories that have been established and the language used to define what can and cannot, is and is not acknowledged as falling within such categories. Genealogy as a mode of thought thus enables the interrogation of the power relations that underpin legal practice and the construction of legal narratives. It allows us to conceive how particular configurations of masculine domination arise elucidating the cost and impact these have and questioning the possibilities that drawing attention to and challenging such relations holds.[96]

The ICC remains a powerful institution of formal justice but the categorisations imposed overdetermine representations of conflict-related rape. Overdetermination emerges when there are numerous adequate causes for the occurrence of an event but only specific cause(s) and effect(s) are deemed relevant for action to be considered legally relevant.[97] The normative significance of victims experiences of sexual violence are framed as a conduct-based crime whereby the causal relation is deemed to be between the act of penetration and the subsequent harm: "the wrongdoing is constituted by the conduct itself."[98] This is overdetermination because it limits the frames of reference to the specific physical cause as opposed to recognising the multiple causes for the occurrence of conflict-related rape.[99] Overdetermination allows the ICC to set parameters so as to prevent the system from being overcome by the complexity and multiplicity of lived experiences - judges and lawyers would simply be overwhelmed by the real world if they were unable to construct legal abstractions. Nonetheless, this impedes upon the recognition of relations, particularly relations of power, whether overt within the spatially and temporally remote context women's experiences speak to, or the symbolic violence at play within the legal context that are "active in the shaping of current actions" available to those who construct the

[96] Massey (n 58) 5.
[97] James Stewart, 'Overdetermined Atrocities' (2012) 10(5) *Journal of International Criminal Justice* 1189, 1195.
[98] ibid.
[99] Inger Skjelsbæk, *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina* (Routledge 2012) 62-63.

representation.[100] The overdetermination of the atrocity of mass rape means that the ICC instead focuses upon a singular value, such as command responsibility, as a sufficient cause. The numerous causes and effects of conflict-related sexual violence, such as pre-existing gendered relations or hegemonic militarised masculinity, cannot be registered in their totality in legal narratives. As Christodoulidis notes, anything deemed unnecessary, inappropriate, or irrelevant to the application of the particular categorisation is omitted because what can "emerge legally has to have been *expected* legally. And what *can* be expected legally depends on reductions to role and rule, the exclusionary language of law."[101] As a consequence, only certain causes are deemed relevant. The focus upon individual responsibility in response to the collective nature of atrocities has led to scepticism as to the value of international criminal justice because this results in a continued selectivity, focusing only upon a select few offenders as opposed to addressing the causes of its occurrence.[102] Whilst other causes and effects are silenced and rendered invisible in the reduction of lived experiences in law, they nevertheless continue to act and continually evade capture within legal narratives.[103]

Ostensibly, the significance of the *Bemba* judgment opened avenues for further acknowledgment and justice for male and female victims of rape. It sent a message to high-ranking officials that sexual violence committed by those under their command will have repercussions. However, the following excerpt demonstrates the symbolic violence underpinning the focus upon particular aspects of the crime of rape and the importance of being aware of the language used:

> Q. What happened when they took you to their base?
>
> A. When we arrived at their base one of their commanders took me into a house. It was a house that had been abandoned. He forced the door open and he raped me.
>
> Q. How old were you when he raped you?

[100] Steve Brown and Paula Reavey, 'Memory in the Wild: Memory in the wild: Life space, setting-specificity and ecologies of experience' (2017) (forthcoming) <www.ccp.aau.dk/digitalAssets/270/270632_brown---reavey---memory-in-the-wild.pdf>

[101] Emilios Christodoulidis, 'The Irrationality of Merciful Legal Judgement: Exclusionary Reasoning and the Question of the Particular' (1999) 18 *Law and Philosophy* 215, 233.

[102] Stewart (n 97) 1194.

[103] Christodoulidis (n 101).

A. I was about 15, 16. I remember that I was still at school, but I don't know exactly how old I was. I was still at school, at primary school.

Q. Had you been with a man before your rape? Had you had sexual relations with a man before you were raped?

A. Absolutely not. I was still a virgin.

Q. For how long did they keep you in the base at Bossangoa?

A. We spent about five days to a week there.[104]

The question concerning whether the victim has ever been with a man before focusses solely upon the sexual aspects of the crime. Victim a/555/08's answer is certain in its utterance that she was still a virgin when she was raped multiple times by a commander. The problem with asking such a question is that it implies that the rape would not have been as severe if she had answered that she was not a virgin. If she had answered in the affirmative that she had in fact "been with a man before" prior to being violently kidnapped and raped, it is difficult to conceive what difference this would have made to the determination as to whether or not she had been raped. The line of questioning is quickly left behind; if this was an important line of questioning, its relevance would have remained and further questions asked. Whilst it may be argued that such a question is related to the stigma and taboo surrounding acts of a sexual nature within a particular context, subtle inferences such as these equate rape with sex reinforcing the notion of purity related to a woman's virginity. If we turn the script, it is unlikely that the Court would ask a man who had been raped whether he "had been with a man or woman before" he was raped. The problem with such inferences is that it perpetuates the perception of women and girls as sexual objects, the notion of women needing to be pure and innocent. Moreover, the use of the possessive pronoun in the phrase 'your rape' implies a sense of belonging, distancing the act from the commander who committed the violence. Such questioning focuses the narrative upon woman as victim in relation to the gendered assumptions that underpin what the question infers. This reveals the gendered norms that undergird law's symbolic power and the symbolic violence this perpetuates in relation to how rape is understood. Such questioning adds to a narrative that presents woman as victim; though subtle, the language used and concepts alluded to continue to conflate rape with sex

[104] *Bemba* Sentencing Transcript (n 69) 47-48.

and present it through a focus upon the perceived sexual nature of the act. In doing so, the violence of the act is undermined and the acknowledgment of underlying power relations that frame rape against men and women – notions of power, domination and control – are diminished. Without investigators, prosecutors, judges and lawyers recognising the impact of the subtle uses of language that shape what is known about lived experiences of conflict-related sexual violence, jurisprudence cannot adequately capture "the reality of gender-based violence as a crime against humanity and a war crime."[105] A multiplicity of factors that were integral to how particular women experienced life prior to, during, and in the aftermath, of conflict is overlooked and the narrative remains partial.

This has also been reflected in the case of *Ongwen*.[106] Following the judgment in *Bemba*, *Ongwen* marked a turning point in the acknowledgment of sexual and gender-based violence.[107] Nevertheless, the language used by international lawyers and judges continues to fall foul to symbolic violence reinforcing rather than dispelling gendered norms. In a statement made by Prosecutor Bensouda at the beginning of the trial she continually referred to 'forced sexual intercourse', as opposed to rape, using statements such as, "having sexual intercourse with him on demand" and "he demanded sex, and she was not able to refuse." Rather than naming the violent act of rape, Prosecutor Bensouda instead conflates forced marriage and 'forced sexual intercourse' connecting these to the sexual nature of the acts as opposed to the violence.[108] The body is central to categorisations of rape yet the body as a lived experience that encompasses the mind becomes circumscribed and overdetermined – the casual link is solely concerned with the violation of body parts and connected to notions of marriage as opposed to recognising the relations that pertain to why such violence is exerted. A paradox emerges in that the only way that violence against women is understood is through the cause and effect upon the body; surviving such violence and the impact this has is relegated to the particular and deemed incommensurable to law's function. What this

[105] Salome Mibenge (n 55).
[106] *Prosecutor v Dominic Ongwen* (Decision on the Confirmation of Charges) ICC-02/04-01/15 (23 March 2016) <www.icc-cpi.int/CourtRecords/CR2016_02331.PDF>
[107] 8 of the 70 counts are for sexual and gender-based violence including rape, torture, sexual slavery, forced marriage and (sexual) enslavement.
[108] ICC, 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the opening of Trial in the case against Dominic Ongwen' (6 December 2016) <www.icc-cpi.int/Pages/item.aspx?name=2016-12-06-otp-stat-ongwen> accessed 6 December 2016.

fails to adequately consider is the way in which gendered norms shape what can be known about lived experiences of sexual violence. Despite the definition of rape being gender-neutral and the term sexual violence itself being considered as such, Campbell argues that the sexual violence model which underpins international law "defines the criminality of the act in terms of its sexual nature, and its sexual nature derives from the sexual meaning given to the interaction of particular acts and bodies."[109] This means that the legal processes of the ICC reflect gendered assumptions of social relations and continue to participate "in the production of gendered subjects" despite the insistence of international law being a gender-neutral domain.[110]

These symbolic representations of lived experiences of rape are imposed by judges and lawyers upon victim-survivors. For Navarro, "power is not only a question of wording, but it is a question of who commands it."[111] International lawyers in the ICC command particular language use that is detached through norms, values, and practice that are different to those embodied in women's narrative articulations.[112] As Phelps notes, "Whoever controls women's bodies 'wins'. Likewise, whoever controls language, the naming and describing of things, 'wins'."[113]Through the process of misrecognition, the symbolic violence of these representations stifles the recognition of the complexities of rape, detaching the provision of justice and upholding boundaries that perceive trauma in its own legal terms.

5.5. Conclusion

Throughout this chapter, the temporal, spatial and genealogical modes of thought have been employed to elucidate the narrative boundaries imposed by the ICC upon victim-survivors such as Pulchérie Makiandakama. Whilst the narratives produced in the ICC have, in some ways, challenged the binaries inscribed in previous Tribunals, such as recognising male victims of rape, lived experience is nonetheless reduced to fit specific legal categories.

[109] Kristen Campbell, 'The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia' (2007) 1 The International Journal of Transitional Justice 411, 417.
[110] Margaret Davies, 'Unity and Diversity in Feminist Legal Theory' (2007) 2(4) Philosophy Compass 650, 654.
[111] Zander Navarro, 'In Search of a Cultural Interpretation of Power: The Contribution of Pierre Bourdieu' (2005) 37(6) *Institute of Development Studies Bulletin* 11, 20.
[112] Matthew Adler, 'Law and Incommensurability: Introduction' (1998) 146(5) *Pennsylvania Law Review* 1169.
[113] Godwin Phelps (n 80) 174.

This limits the capacity of the ICC to engage with victims beyond the symbolic meaning of judgment as stories of rape are framed in narratives centred upon a single outcome or decision.[114] The ICC is a powerful normative institution but its deterrent effect in relation to conflict-related rape remains questionable. Brunger notes that the value of the ICC "remains ambiguous and unproven. Value may lie in the message from the court rather than any hope for real world change."[115] The message of the Court is inherently symbolic causing notions of justice to remain limited and the benefits of victim participation circumscribed by the proliferation of bureaucratic rules surrounding entry into the field. Whilst the international community has recognised the importance of creating a less hostile, more protective environment within which women can speak to their experiences of sexual violence, the continued overdetermination of conflict-related rape inhibits the ability of the court to truly pay attention. As such, the capacity to engage with questions as to why and for what purpose such violence is committed remain absent. In light of the hope that the victim participation framework would counter the impression that women do not matter to the legal process, the continued imposition of the normative lens, the dominance of legalism, and the centrality of legal representation has precluded engagement with the lived realties of victim-survivors inhibiting the provision of meaningful justice for victim-survivors of conflict-related sexual violence. This is due in part to the lack of critical engagement with, and inconsistent recognition of, the social relations that are conducive to sexual violence being committed against women within transitional contexts. As such, incommensurability arises in the narrative constructions produced and the continued oversight as to what justice means for victims. In the focus of internationalised mechanisms upon universal justice ideals, the voices of victims are diminished, inhibiting other possibilities, both within and outside of law, from arising.

Despite the need for trauma-based practice being recognised in international tribunals, the narratives produced in normative contexts remain incommensurable to the particularities of women's lived experiences, their hopes and fears in their recovery from the

[114] Catherine Mackinnon, 'The ICTR's Legacy on Sexual Violence' (2008) 14(2) *New England Journal of International and Comparative Law* 211, 220.
[115] Yassin Brunger, 'ICC's Bemba Ruling is a landmark, but falls short of a big leap' *The Conversation* (25 March 2016) <https://theconversation.com/iccs-bemba-ruling-is-a-landmark-but-falls-short-of-a-big-leap-56687>

suffering inflicted upon them. The inability of law to perceive the full humanity of women, the absence of an adequate language through which they can speak to their experiences, and the narrative boundaries of legal practice denies the ability of the field to recognise the multi-faceted, multi-storied nature of women's lives. Reducing a survivor to a single story is a trauma in itself. As such, the following chapter turns to consider the question of why incommensurability matters and how, and in what ways, the narrative lens has been used to challenge the normative within the field. In paying attention to women's lived experiences, the narrative lens poses a challenge to the normative, static narratives that have thus far been produced in judicial mechanisms.

Part II: The Narrative Lens

Chapter Six: Normative to Narrative: Paying Attention to the Particularities of Trauma

Where do universal human rights begin? In small places, close to home.[1]

The normative lens through which lived experiences of sexual violence are represented in the judicial realm has continually impeded the recognition of the cost of incommensurability upon the field of transitional justice. As the case of *Bemba* demonstrated, despite the ICC's commitment to engaging with victim-survivors, the parameters placed upon women's stories, the processes undertaken, and the legal narratives imposed have functioned to continually diminish women's full humanity. Central to this chapter is the question of why incommensurability matters and how it may be challenged. In elucidating the cost of incommensurability and the impact of the universalisation of women's suffering, this chapter calls those who engage in the practice of transitional justice to pay attention. The notion of paying attention, central to feminist practice and advocated by scholars such as Simone Weil, Raimond Gaita, and Susan Sontag, is employed throughout to reveal what is lost in the continued deference to incommensurable legal representations of lived experience and the impact that this has upon women's ability to recover in the aftermath of conflict. The chapter demonstrates how, in challenging the normative lens with the narrative lens, the universal with the particular, art and imagination through storytelling outside of law's boundaries have posed a challenge to the seemingly intractable nature of law's centrality in transitional justice practice.

6.1. The Universalisation of Suffering: Why Incommensurability Matters

Throughout the world, organisations, individuals, and communities use narrative to make sense of the world around them and it is through the narrative form that we endow meaning upon our lived experiences, expressed and interpreted in each field we encounter.[2]

[1] Slavenka Drakulić, *They Would Never Hurt a Fly: War Criminals on Trial in the Hague* (Abacus 2004) 55.
[2] Chené Swart, *Re-Authoring the World: The Narrative Lens and Practices for Organisations, Communities and Individuals* (Knowres Publishing, 2013) 1.

Whether articulated in fact or fiction, different narrative forms can teach us about our lived experiences as human beings and the acceptability of particular ways of behaving because they are formed in ways that make reference to life possible.[3] Narrative is an elusive concept, used in numerous ways in varying methodologies. It involves a point of view, a perspective on the object of representation underpinned by frames of reference.[4] Put simply, narrative is the "semiotic representation of a series of events meaningfully connected in temporal and causal way."[5] How narratives are formed is dependent upon the practice of a particular field, the context it is articulated within and the form, language and expression used. As Bruner observed, "people anywhere can tell you an intelligible account of their lives. What varies is the cultural and linguistic perspective or narrative form in which it is articulated and expressed."[6] Seeing the world through either the normative or narrative lens thus produces "different structures or representations or, indeed, 'realities.'"[7] Each lens produces particular narrative constructions, though these differ both in the way that they are organised and in the types of actions they are connected to.[8] Distinct from scientific, logical, and mathematical processes, whose constructions are distinguished by the ability to verify truth or falsity as a binary, constructions emerging from either the normative or narrative lens can only achieve the effect of verisimilitude as a semblance of reality.[9]

Narrative is fundamental to the practice of law. It is the portal through which victims access the "arcane realm of law" and is, what Bruner terms, "the common sense of justice."[10] The narrative form gives legal stories meaning beyond the application of rules; it is a world within which we reside. "In this normative world," Cover notes, "law and narrative are inseparably related."[11] Despite its centrality, lawyers and judges strive to make their stories "as unstorylike as possible… factual, logically self-evident, hostile to the fanciful, respectful of

[3] Jerome Bruner, *Making Stories: Law, Literature,* Life (Harvard University Press 2003) 8.
[4] Susana Onega, Jose Angel Garcia Landa, Narratology: An Introduction (1st edn, Pearson 1996) 3-4.
[5] ibid 3.
[6] Jerome Bruner, 'Life as Narrative' (2004) 71(3) *Social Research* 691, 695.
[7] Jerome Bruner, *Actual Minds, Possible Worlds* (Harvard University Press 1986) 45-46.
[8] Haridimos Tsoukas and Mary Jo Hatch, 'Complex Thinking, Complex Practice: The Case for a Narrative Approach to Organizational Complexity' (2001) 54 (8) *Human Relations* 979, 993.
[9] Jerome Bruner, 'The Narrative Construction of Reality' (1991) 18(1) *Critical Inquiry* 4.
[10] Bruner (n 3) 48.
[11] Robert Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover* (Martha Minow, Michael Ryan, and Austin Sarat (eds), University of Michigan Press 1995) 96.

the ordinary, seemingly 'untailored'."[12] As a consequence, legal narratives are devoid of subjectivity and sentimentality irrespective of the drama or 'trouble' that they frame.[13] Instead, they reduce the "big, fuzzy, indeterminate and un-bordered field" of lived experience into a "'reasonable' narrative form" in line with the conventions of the legal field.[14] The production of legal narratives is thus coordinated through the behaviour and actions of lawyers and judges trained in the appropriate narrative conventions.[15]

In bearing witness to their trauma, victim-survivors narratives of sexual violence must, "first be massaged into a legal shape through things like questions-and-answers at trial, cross-examination, and compliance with the rules of evidence" through a process of "translation and assimilation, not direct absorption."[16] The function of the normative lens is underpinned by the search for truth which arises through "empirical discovery guided by reasoned hypothesis."[17] Through this lens, "narrative discourse is isomorphic with the domain of action: humans reproduce as narrators what they do as agents, and vice versa."[18] This means that legal practice is based upon the need for certainty and predictability and characterised by generality, universality, objectivism and consistency.[19] The construction of legal narratives is grounded in the contest between the prosecutions portrayal of the evidence placed in competition with the defence counsels account whereby the direct conflict between the victim-survivor of rape and the accused is converted into "juridically regulated debate between professionals acting by proxy."[20] This allows the truth or falsity of women's stories to be challenged.[21] Counsel ask questions that endeavour to elicit responses that support their arguments, translating the stories of witnesses and victims through specific frames of

[12] Bruner (n 3) 48.
[13] ibid 34.
[14] Doug Smith, 'Order (For Free) in the Court: Legal Systems as Sites for Creating Emergent Order Out of Agent's Narratives' (2005) 7(3/4) *Emergence: Complexity & Organization 53-54*.
[15] Peter Brooks, 'Narrative Transactions – Does the Law Need a Narratology?' (2006) 18(1) Yale Journal of Law & the Humanities 1, 2.
[16] Randy Gordon, *Rehumanizing Law: A Theory of Law and Democracy* (University of Toronto Press 2011) 14.
[17] Tsoukas and Hatch (n 8) 999.
[18] ibid 999-1000.
[19] Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34(4) *Journal of Law and Society* 411, 417.
[20] Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 *Hastings Law Journal* 814, 831.
[21] Steve Brown and Paula Reavey, 'Memory in the Wild: Memory in the wild: Life space, setting-specificity and ecologies of experience' (2017) (forthcoming) <www.ccp.aau.dk/digitalAssets/270/270632_brown---reavey---memory-in-the-wild.pdf>

reference such as the application of particular legal rules and definitions that predicate what will be considered relevant.[22] This means that victims must produce "capsule versions of reality" that are moulded into a legal narrative by lawyers and judges who interpret and choose "how to define story elements, and what frames of reference to apply."[23] In doing so, the focus of a legal narrative is upon what happened, how it happened and who it happened to, overdetermining recognition of the underlying intentions and relations of the act.[24] A judgment emerges from this alchemic process as judges and lawyers mediate between the accused, the victim, and witnesses, each obliged to adhere to the rules and procedures of the court.[25] This embodies what Bourdieu refers to as the 'appropriation effect.'[26] The narratives produced by lawyers and judges are imposed upon those they speak on behalf and this creates "a neutralizing distance without even willing or realizing it."[27] The rules and conventions of the field function to formalise judicial practice through a process of universalisation and formalisation. Universalisation imposes reductions upon the innumerable possibilities available in describing events, otherwise judges and lawyers would be entirely overwhelmed by the particularities of lived experience.[28] The process of judicial formalization universalises legal doctrine and procedure and contributes to "the establishment of their practical "universality."[29] The application of the rule of law is embodied in the concept of the universal, meaning that rules are deemed applicable upon and in light of the particularity of individual experiences. The universalisation of the particulars of women's experiences subsequently creates abstractions that are independent of time and space, generalisable and detached from the lived realities of the subjects upon which the rules are applied. The infinite number of interpretations and re-descriptions of an event that can occur are halted by the the institutional context of the legal institution within which they

[22] Smith (n 14)*;* W. Lance Bennett and Martha S. Feldman, Reconstructing Reality in the Courtroom (Rutgers University Press, 1981) 64-65; Chris Rideout, 'Storytelling, Narrative Rationality, and Legal Persuasion' (2008) 14 Legal Writing: J. Legal Writing Inst. 53, 54

[23] Ben W. Lance Bennett and Martha S. Feldman, Reconstructing Reality in the Courtroom (Rutgers University Press, 1981) 64-65.

[24] Doris Buss, 'Rethinking "Rape as a Weapon of War"' (2009) 17(2) *Feminist Legal Studies*145, X.

[25] Gordon (n 16) 14.

[26] Bourdieu (n 20) 819.

[27] ibid 830.

[28] Emilios Christodoulidis, 'The Irrationality of Merciful Legal Judgement: Exclusionary Reasoning and the Question of the Particular' (1999) 18 Law and Philosophy 215, 234-235.

[29] Bourdieu (n 20) 849.

are articulated.[30] Nonetheless, a judge's decision is contingent and could always have been otherwise.[31] This process creates what Massey calls an "an ideological closure" or "a picture of the essentially dislocated world as somehow coherent."[32] This symbolic representation is mistaken as representative of the real and is what Christodoulidis refers to as law's reductive achievement as it ensures that law's narratives boundaries are upheld in order for the field to function.[33]

As a consequence, judgments concerning rape achieve verisimilitude only in so far as they represent the reality of such violence through a singular cause and effect which overdetermines and represents the f/act of rape solely through the body.[34] Conklin notes that if the narrative forms articulated, whether in testimony or judgment, happen to represent social relations "as they are or as they ought to be, this a mere happenstance."[35] The causes and consequences of sexual violence are consistently excluded and the narrative produced inherently limited, "sterilised through the procedural and evidential limits of law."[36] Legal narratives subsequently supplement but are ultimately detached from the trauma enclosed within.[37] Women's narrative voice and perspective is secondary to the practice of law[38] and instead their lived experiences are re-narrated, translated through external focalisation whereby the narrative constructed is focused *upon* the victim-subject rather than through them, diminishing their thoughts and feelings.[39] Narratives emerge through the third-person perspective[40] presenting an external, omniscient, detached view circumscribed by legal language and legal narrative conventions.[41] Incommensurability arises from the lack of common language between the realm of the normative, universalised narrative and the

[30] Tsoukas and Hatch (n 8) 983
[31] Brett G. Scharffs, 'Law as Craft' (2001) 54(6) Vanderbilt Law Review 2245.
[32] Doreen Massey, *For Space* (Sage Publications 2008) 25.
[33] Christodoulidis (n 28) 233.
[34] See Chapter 3 (n 99).
[35] William Conklin, 'Derrida's Territorial Knowledge of Justice' in Ruth Buchanan, Stewart Motha, Sunday Pahuja (eds), *Reading Modern Law: Critical Methodologies and Sovereign Formations* (Routledge 2012) 109.
[36] Nicola Henry, *War and Rape: Law, Memory and Justice* (Routledge, 2011) 99.
[37] Doris Buss, 'Knowing Women: Translating Patriarchy in International Criminal Law' (2014) 23(1) Social & Legal Studies 73, 89.
[38] Gérard Genette, *Narrative Discourse: An Essay in Method* (Jane E. Lewin and Jonathan Culler trs, Cornell University Press 1983) 186.
[39] Emphasis added, ibid 170-171.
[40] ibid 213.
[41] Bruner (n 9) 13.

particularities of women's trauma. Walker highlights the consequences of this abstraction, noting that:

> ignoring incommensurability so profoundly misconceives the value and dignity of individuals that the resulting conception of persons and their motivations is better labelled a cartoon rather than a conception. To base our laws on such a distorted caricature is to misunderstand ourselves, our laws, and our relation to the state and to one another as citizens. If avoiding such a misunderstanding is not "practical," then such a myopically philistine "practicality" should not be our only concern.[42]

The attention provided to women's lived experiences of sexual violence emerges through institutional mandates that actively and readily categorise, diminishing the full humanity of those whom they represent and presenting 'distorted caricatures.' Consequently, incommensurability serves to forget the particularities of victim-survivors experiences of rape, institutionalising this forgetting through misrecognition yet imposing powerful normative representations that shape how conflict-related rape is understood. Incommensurability encompasses the competing paradigms of lived reality and legal representation whose subjects' practice "their trades in different worlds."[43] Women reside in the concrete reality of the aftermath of conflict whilst lawyers and judges straddle the fields of the social and legal realm immersed within abstractions and generalisations. Incommensurability, notes Firlej, is "neither abstract nor theoretical but is a particular instance of a conflict that arises in concrete, factual world"[44] and has tangible and practical implications for women in their pursuit of justice in the aftermath of sexual violence. The incommensurable nature of law to lived experience "masks an injustice, or violence, done to those who, due to the nature of discourse, cannot express their wants, needs, or situations in general."[45] Despite this, the particularities of the traumatic event are excluded because trauma resides in the realm of the concrete, complex and irreducible whilst the legal world of

[42] Emphasis added. Richard Warner, 'Does Incommensurability Matter? Incommensurability and Public Policy' (1998) 146 *University of Pennsylvania Law Review* 1287, 1288.
[43] Toril Moi, '"They Practice Their Trades in Different Worlds": Concepts in Poststructuralism and Ordinary Language Philosophy' (2009) 40(4) *New Literary History* 801.
[44] Mikołaj Firlej, 'Incommensurability of Law' (2014) 24 *Lingua ac Communitas* 143, 149.
[45] Jacob M. Held, 'Expressing the Inexpressible: Lyotard and the Differend' (2005) 36(1) Journal of the British Society for Phenomenology 76.

reason and objectivity is simplified, abstract, and consistent. The particular represents the realm of the individual: we are particulars as entities in reality belonging to particular places. Christodoulidis contends that the particular demands of trauma demand the move to the realm of ethics. This is because the particular is "the fundamental elision that allows a silence that finds no representation in law."[46] As Simmonds explains:

> it is this featureless substrate [particularity] that we are invited to consider as the role object of our moral concerns yet it slips beneath every description and escapes every act of judgment.[47]

To focus on the particular means that we must step outside of law because it is the "name for that void, for an absence that can never be named in law."[48] It is the most "abstract of abstractions."[49] To state that we must always leave the legal field if we are to represent the particular means that justice can never be fully achieved because it is always partial. We are forced to choose either the universal or the particular, justice or ethics, objectivity or subjectivity. If there is an implicit claim that law is attempting to provide justice to improve the lives of those affected by sexual violence, yet the particularity of lived experiences of rape cannot be represented in law's reduction, constantly over-determining and precluding any understanding of the totality of its causes and effects, this calls into question the centrality of judicial mechanisms as the predominant vehicle of justice for victims of conflict-related sexual violence.[50] What is lost in this reductive achievement? In the following section I turn to consider what paying attention can reveal and elucidate what underpins the universalisation of trauma and the power relations that continually result in the reduction of women's full humanity.

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[46] Emilios Christodoulidis, 'The Objection that Cannot Be Heard: Communication and Legitimacy in the Courtroom' in Duff A, Farmer L, Marshall S and Tadros V (eds.), The *Trial on Trial Volume 1: Truth and Due Process.* (Hart Publishing 2004) 187.

[47] Nigel Simmonds in Michael Detmold, 'The End of Morality: Radical and Descriptive Particularity' in Zenon Bankowski and James MacLean (eds), *The Universal and the Particular in Legal Reasoning* (Ashgate Publishing 2006)

[48] Christodoulidis (n 28) 239.

[49] ibid 223.

[50] McEvoy (n 19).

6.2. Paying Attention to Our Common Humanity

It is easier, and much more comfortable, to live with lies than to confront the truth, and with that truth the possibility of individual guilt – and collective responsibility.[51]

Paying attention differs from the practice of judging yet the latter is so often misconstrued as the former. Paying attention is not the act of categorisation, evaluation, or generalisation.[52] It is neutral, not constricted by temporal limits, predicated upon particular assumptions, derived from particular values, nor framed through a particular perspective. As Weil once beautifully explained, "attention is the rarest and purest form of generosity."[53] It is rare because it is so seldom achieved. Weil acknowledged that we must do more than merely be horrified for a fleeting moment and then forget about the very thing that horrified us. Attention to the lived experiences of victims of sexual violence in conflict within the field of transitional justice is often predicated upon particular values or perspectives that detract from the ability to pay attention in the terms that Weil speaks of. Paying attention is a fundamental element of feminist theorisation, steeped in the fight for the recognition of the full humanity of women. Rather than a means to a specific end, paying attention can become a gift. As the previous chapters have elucidated, the way in which law pays attention to lived experiences of rape is through a filter predicated upon particular institutional mandates and underpinned by the symbolic violence of gender. As such, the notion of paying attention denotes the need to recognise the aspects of our lives as human beings that are uncomfortable and that we would rather turn a blind eye to.

During conflict, the physical violation of sexual violence, the exposure to prolonged social violence, as well as witnessing the slaughter of loved ones and community members, can manifest into complex posttraumatic stress disorder (C-PTSD).[54] This arises as a consequence of the cumulative, underlying, and interpersonally generated nature of

[51] Drakulić (n 1) 17.
[52] Alison Bonds Shapiro, 'Paying Attention' (Psychology Today) <www.psychologytoday.com/us/blog/healing-possibility/201007/paying-attention>
[53] Simone Pétrement, *Simone Weil: A Life* by (Raymond Rosenthal tr, Pantheon Books1976) 462.
[54] Judith Herman, *Trauma and Recovery* (Basic Books, 1992) 121-122.

violence.[55] Trauma manifests as the oscillation between constrictive symptoms, such as dissociation, feelings of powerlessness, and states of feeling nothing at all, to intrusive symptoms, such as flashbacks, overwhelming emotions and feelings of hostility, irritability and impulsiveness.[56] This causes victim-survivors of sexual violence to become caught "between the extremes of amnesia or of reliving the trauma."[57] Traumatic events are, as Herman explains, "an affliction of the powerless" that devastate "ordinary systems of care that give people a sense of control, connection, and meaning."[58] This subsequently destroys trust between victim-survivors and their community.[59] As Stauffer notes:

> Common psychological effects of human rights violations include a loss of trust in the world, a sense of abandonment by humanity, and diminished confidence in one's ability to evaluate one's surrounding severe loss of the belief that the world functions in rational and comprehensible ways.[60]

Trauma ruptures connections between victim-survivors and breaching connections of "family, friendship, love and community" risking leaving them isolated and detached from the world around them. [61]

For survivors of conflict-related sexual violence and in the aftermath of conflict, the articulation of their narratives of trauma within the normative realm of the law gives rise to various challenges. Firstly, in order to be heard with the normative realm, they must break their silence, a silence purposefully inflicted upon them by those who rape. Sexual violence is, by its nature, intended to silence emerging as consequence of repression or shame or as an agential response as a strategy of survival in light of the risk of reprisal or the stigma

[55] Cathy Kezelman and Pam Stavropoulos, '"The Last Frontier": Practice Guidelines for Treatment of Complex Trauma and Trauma-informed Care and Service Delivery' (Adults Surviving Child Abuse 2012) 46 <www.recoveryonpurpose.com/upload/ASCA_Practice%20Guidelines%20for%20the%20Treatment%20of%20Complex%20Trauma.pdf> accessed 14 May 2016.
[56] Herman (n 54) 34.
[57] ibid 46.
[58] ibid 33.
[59] ibid 61.
[60] Jill Stauffer, A Hearing: Forgiveness, Resentment and Recovery in Law (2012) 30(1) Quinnipiac Law Review 517, 525. See also, Susan Brison, *Aftermath*: *Violence and the Remaking of the Self* (Princeton University Press 2002) 40.
[61] Herman (n 54) 51.

associated with such violence.[62] This is compounded by the way in which victim-survivors may be marginalised, ostracised, or forced to hide their experiences.[63] Despite the provision of trauma-based protective measures in some judicial mechanisms, legal narratives function to silence aspects of sexual violence As a consequence, women often feel that the system will fail, evidenced by low conviction rates coupled with the problematic rape myths that blame the victim rather than the rapist.[64]

Secondly, the imposition of singular hegemonic labels underpinned by the symbolic violence of gender frames their narratives within singular notions of victimhood that diminish recognition of their full humanity. Brison notes that one of the central elements to recovery is the need for survivors of sexual violence to regain "one's voice, one's subjectivity, after one has been reduced to silence, to the status of an object, or worse, made into someone else's speech, an instrument of another's agency."[65] In judicial mechanisms, however, whilst agency is played out as the provision of testimony, their narrative of trauma is re-constructed into an object of legal debate. By their nature, judicial processes are in contention with victim's needs. As Herman explains:

> Victims need social acknowledgement and support; the court requires them to endure a public challenge to their credibility. Victims need to establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and bureaucratic procedures that they may not understand and over which they have no control. Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes-or-no questions that break down any personal attempt to construct a coherent and

[62] Elisabeth Porter, 'Gendered Narratives: Stories and Silences in Transitional Justice' (2016) 17(1) Human Rights Review 35.
[63] Courtney E. Ahrens, 'Being Silenced: The Impact of Negative Social Reactions on the Disclosure of Rape' (2006) 38 American Journal of Community Psychology 263, 265; World Vision, 'No Shame in Justice Addressing Stigma Against Survivors to End Sexual Violence in Conflict Zones' (Report, 2016) <www.worldvision.org.uk/files/7214/5806/4579/Stigma_Summary_Report.pdf> accessed 5 June 2017. See also, UNSC 'Report of the Secretary-General on Conflict-related Sexual Violence' (15 April 2017) S/2017/249 21 <www.securitycouncilreport.org/atf/cf/%7b65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s_2017_249.pdf>
[64] Lindsay Kelland, 'A Call to Arms: The Centrality of Feminist Consciousness-Raising Speak-Outs to the Recovery of Rape Survivors' (2016) 31(4) *Hypatia* 730, 732.
[65] Susan Brison, *Aftermath*: *Violence and the Remaking of the Self* (Princeton University Press 2002) 55.

> meaningful narrative. Victims often need to control or limit their exposure to specific reminders of the trauma; the court requires them to relive the experience.[66]

Whilst victim-survivors may find the process of testifying a cathartic experience, the ability for both the victim and the transitional context to address the individual and collective trauma inflicted by conflict-related sexual violence finds no place in judicial mechanisms.[67] Framed through a therapeutic lens, in the field of transitional justice there has been a consistent "failure to deliver on promises of justice to the recovery of individuals and society from collective trauma."[68] It is clear that transitional contexts run the risk of exacerbating, as opposed to alleviating women's trauma. Shame and stigma readily diminish recognition of the need to establish safety, experiences are relegated to the private realm and unless women seek reconnection with others through, for example, civil society organisations, the disconnection from their community remains fractured by lack of social connection and support. Whilst singular concepts of victim and perpetrator may help us make sense of conflict, they "do not offer an instruction manual for what to do next."[69] The notion of what to do next, vital for recovery in the aftermath of rape, has not garnered sufficient attention. The trauma inflicted, and ideologies underpinning the resulting violence, continue to seep insidiously and continually evade capture in legal representations.

Thirdly, the legal language through which survivors' experiences are articulated is inadequate to their need to construct a coherent trauma narrative. Sterile and detached, legal language "does not include the traumatic imagery and bodily sensations is barren and incomplete."[70] Moreover, the symbolic violence of gender functions to diminish recognition of the impact of masculine domination upon legal narratives. For Hyde, this is because the shame surrounding sexual violence acts a trap. Women's position in society is presented as fixed and immovable:

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[66] Judith Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 574.
[67] Fionnuala Ní Aoláin, 'After Things Fall Apart: Challenges for Transitional Justice Futures' (2017) (forthcoming) <http://uir.ulster.ac.uk/37165/>
[68] ibid.
[69] Arthur Frank, *Letting Stories Breathe: A Socio-Narratology* (University of Chicago Press, 2010) 139
[70] Herman (n 54) 177.

> figured in terms of an unchangeable part of the body. Then by various means the tricks is to made to blend invisibly into the landscape… Once the verbal tricks are invisible, the artifice of social order becomes invisible as well, and begins to seem natural… to make the trap of shame we inscribe the body as a sign of wider worlds, then erase the artifice of that signification so that the content of shame becomes simply the way things are. [71]

In the aftermath of conflict, the trap of shame presents rape as a personal, private and individual trauma as opposed to being a manifestation of the pervasive and insidious male violence.[72] In the ICC, for example, use of possessive pronouns, framing rape as 'your rape' are subtle inferences that permit the trap of shame to diminish recognition of violence as male violence against women.[73] Instead, the relations between the powerful and those subordinated are hidden and the continued misrecognition of power and symbolic violence is presented as absolute rather than contingent. As a consequence, men's role in violence against women, the force they inflict and the trauma they create, is consistently overlooked. As Wiseman notes, "the word 'male' is often dropped from 'male violence against women'… those who have power are often missing from the discussion." [74] Instead, the trauma of rape is readily relegated to the private, the personal, diminishing recognition of the collective responsibility it holds. Shame presents the trauma of sexual violence as woman's own personal issue as opposed to it being the responsibility of the community to shift perceptions and acknowledge the underlying relations that give rise to sexual violence. This inhibits recognition of sexual violence as "group-based victimisation" against women committed intentionally.[75] Resilient in the face of unimaginable adversity, an individual victim-survivor is emblematic of the struggle and suffering so many women throughout the world have endured and continue to face resulting from the violence men inflict upon their body, mind and spirit. Degrading and limiting a woman's ability to live, the trauma men inflict knows no

[71] Lewis Hyde, *Trickster Makes This World: How Disruptive Imagination Creates Culture* (Canongate Books 2008) 170.
[72] Susan Brison, 'Everyday Atrocities and Ordinary Miracles, or Why I (Still) Bear Witness to Sexual Violence (But Not Too Often)' (2008) 36(1) *Women's Studies Quarterly* 188, 193.
[73] Pinpoint with signpost to chapter.
[74] Laura Wiseman, 'Introduction' in Charles Ades Fishman and Smita Sahay (eds), *Veils, Halos and Shackles* (Kasva Press 2016) xxiii.
[75] Brison (n 72) 193.

bounds, it seeps insidiously through generations, arising as both individual, intergenerational and collective trauma.[76] At its extreme, the trap of shame and stigma can kill. As Patten notes:

> Stigma can have lethal repercussions, including "honor killings", suicide, untreated diseases (such as HIV), traumatic fistula, unsafe abortion, maternal mortality, extreme poverty, and high-risk survival behaviour. Stigma and victim-blame give the weapon of rape its uniquely destructive power, including the power to *shred the social fabric*, and turn *victims* into *outcasts*. It is also the reason that sexual violence remains one of the *least-reported of all crimes*.[77]

Aggravated by the underlying perception of women's bodies as a vehicle through which to destroy and humiliate a society, men who inflict such violence understand that the resulting shame is readily placed upon those who are raped. Often, a victim's community may blame the woman because of particular social norms that fail to recognise that it should be the burden of those responsible to bear.

Paying attention to what is elided by the performance of power and the resultant categorisations and generalisations emerging from legal narratives allows that which is silenced to be brought to the fore. Under conflict conditions, the relational distance created between the actors involved and the multiplicity of perspectives this embodies, emerges as a consequence of the imposition of stereotypes that generalise and dehumanise, whether drawn along political, religious, ethnic, racial, or gendered lines.[78] "In order to rape the women (or to torture or kill them)," notes Drakulić, the men who raped during the war in BiH "had to degrade [the women], to deprive them of their human characteristics, to reduce them

[76] Nicola Jones and others, 'The Fallout of Rape as a Weapon of War: The Life-long and Intergenerational Impacts of Sexual Violence in Conflict' (Overseas Development Institute, June 2014) 5 <www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8990.pdf>; Barsalou (n 56).
[77] Original emphasis. Office of the Secretary-General on Sexual Violence in Conflict, 'Security Council Open Debate on Sexual Violence in Conflict: Statement by Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms. Pramila Patten (16 April 2018) <www.un.org/sexualviolenceinconflict/statement/security-council-open-debate-on-sexual-violence-in-conflict-statement-by-special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten/> accessed 2 May 2018.
[78] Raimond Gaita, *Thinking About Love and Truth and Justice* (Routledge 2002) 65.

to nonhumans, to "garbage" as they were called."[79] Instead, women's humanity is reduced and their bodies seen as objects to be touched, beaten, violated or murdered. Dehumanisation and the underlying misogyny that resides shrouds women in a "more or less thin veneer of false consciousness" that functions to diminish perpetrators recognition of those they rape as fellow human beings.[80] As Brison notes, "victims of human-inflicted trauma are reduced to mere objects by their tormentors: their subjectivity is rendered useless and viewed as worthless."[81] Whilst men endeavour to exert power over and upon women through the act of rape, their power is not absolute. As Weil explains that:

> The strong are, as a matter of fact, never absolutely strong, nor are the weak absolutely weak, but neither is aware of this. They have in common a refusal to believe that they belong to the same species: the weak see no relation between themselves and the strong, and vice versa.[82]

The trap of shame nevertheless functions to permit prevailing caricatures of rapists as 'monsters.' This serves to dehumanise that act of sexual violence from those who perpetrate it. Like the category of victim, the notion of a rapist as a monster circumvents recognition of their humanity and the propensity for evil that each of us, as human beings, hold.[83] Weil continues:

> The man who is the possessor of force seems to walk through a non-resistant element; in the human substance that surrounds him nothing has the power to interpose, between the impulse and the act, the tiny interval that is reflection. Where there is no room for reflection, there is none either for justice or prudence.[84]

Reducing rapists into 'monsters' inevitably allows the actions of another human being, acts so horrific and egregious that they often remain unspeakable, to be more easily understood

[79] Slavenka Drakulić, 'Censorship does not do justice to victims of mass rape' *Eurozine* (6 December 2010) 2-3 <www.eurozine.com/censorship-does-not-do-justice-to-victims-of-mass-rape/?pdf>
[80] Kate Manne, *Down Girl: The Logic of Misogyny* (Oxford University Press 2017) 168.
[81] Brison (n 65) 40.
[82] Simone Weil, 'The Iliad, or the Poem of Force' (1965) 18(2) *Chicago Review* 5, 8.
[83] Drakulić (n 79).
[84] Weil (n 82) 8.

because it presents a simplistic representation through a character.[85] The force exerted by those who rape reduces the rapist to a thing, or by Weil's account a stone, as no rapist is ever truly held to be a cultural hero because in that violent act their use of force negates their humanity.[86] Nevertheless, reducing them as such makes their actions easier to comprehend yet censorship diminishes their responsibility. The silence of perpetrators is actively permitted, from courtroom to community. Akin to Weil's contention of the refusal to recognise that they belong to the 'same species', Drakulić notes how in BiH perpetrators of sexual violence "were and remain monsters and animals, attributes often used for war criminals."[87] This prevents attention being paid to the fact that "monsters, as with all categories, are not universally one thing."[88] Men who rape may also be husbands, fathers, brothers and, perhaps most uncomfortable of all, they too may also be victims. The misrecognition of masculine domination and prevailing normative narratives that impose singular categorisations circumvents engagement with uncomfortable truths that pull at our tightly woven understandings of what it means to be good and bad, compassionate and evil, notions that become unravelled, knotted, blurred and broken during conflict.[89] Instead, misconceptions, misrepresentations, shame and stigma, actively silence the uncomfortable truths contained in women's testimonies of rape that the common thread between experiences of sexual violence in conflict is that whether the victim is a man, woman, or child, the perpetrator is most likely to be a man.[90]

In the normative realm of law, asking serious questions about rape, of why human beings commit such egregious acts, is harder to realise because it demonstrates the complex motivations underlying action that cannot be framed through a singular categorisation. The failure to recognise the common humanity of women emerges on two fronts: firstly, through the dehumanisation by those who rape and secondly, through the reduction of women into singular categorisations of victimhood. Conflict-related sexual

[85] Drakulić (n 79).
[86] Weil (n 82) 6.
[87] Drakulić (n 79).
[88] John Borrows, 'Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education' (2016) 61(4) *Indigenous Law and Legal Pluralism* 795, 840.
[89] Elizabeth Dauphinee, *The Politics of Exile* (Routledge 2013) 147.
[90] An exception to this general rule can be found in the case of Pauline Nyiramasuhuko who was the first and only woman to be indicted by the ICTR for 'rape as a crime against humanity' in the entirety of international criminal law. See *Prosecutor v Nyiramasuhuko et al.* (Butare) ICTR-98-42 (14 December 2015).

violence committed in war has been and continues to be consistently framed through notions of legality and illegality.[91] Attention through the normative lens inhibits recognition of the full humanity of women and those marginalised because justice narratives are framed through the symbolic violence of masculine domination. Within the normative realm, notions of justice and the imposed commonality between individuals privileges the singular legal narratives as superior and disregards women's voices.[92] Universalist presumptions demand an ethics of care that "cannot be achieved at the universal level" as a consequence of our nature as relational beings.[93] Yet the normative realm cannot recognise the relations that inhibit the full realisation of universal justice ideals. Justice, as a consequence, remains partial because women continue to fight to be seen as fully human, yet this resides on the periphery of legal boundaries. The plea to be seen as fully human made by women to men "is a demand or a plea for justice… for justice conceived as equality of respect… Only when one's humanity is fully visible will one be treated as someone who can intelligibly press claims to equal access to goods and opportunities."[94] Moving back to BiH, we see the failure to recognise the full humanity of women and the partial nature of universal justice ideals emerging in their lived realities. To this day, nearly a quarter of a century since the end of the war, women's plea for equality of respect, to be recognised as fully human, continues to be diminished. Despite the recognition of the sexual violence emerging in the ICTY, the incommensurable nature of legal representations to women's lived experience inhibited recognition of their trauma beyond the legal narratives produced. This meant that they returned to social, political and legal structures that encouraged society to ignore their suffering, falling into the trap of shame that renders the consequences of sexual violence as their burden whilst those who rape are permitted to remain silent. The invaluable work of civil society organisations such as The Mothers of Srebrenica and the Association of Women Victims of War have been central in the effort to turn women's plea into recognition. Nevertheless, their work and the challenges they face demonstrates how:

[91] Elizabeth Dauphinee, 'Narrative Voice and the Limits of Peacebuilding: Rethinking the Politics of Partiality' (2015) 3(3) *Peacebuilding* 261, 273.
[92] Klaus Krippendorff, 'Ecological Narratives; Reclaiming the Voice of Theorized Others' in Jose Ciprut (ed), *The Art of the Feud: Reconceptualizing International Relations* (Praeger Publishers 2001) 24.
[93] Jenneth Parker, 'Towards a Dialectics of Knowledge and Care in the Global System' in Roy Bhaskar and others (eds), Interdisciplinarity and Climate Change Transforming Knowledge and Practice for Our Global Future (Routledge 2010) 214.
[94] Gaita (n 78) xx-xxi.

> violence against women becomes a 'women's issue' rather than a cultural one and helping women in crisis becomes 'women's work' rather than essential action that is the responsibility of us all.[95]

Embodied within this work is the plea for institutions to "reveal rather than obscure, and then enhance rather than diminish" their full humanity.[96] Framed through the normative lens and underpinned by the insidious nature of symbolic violence, representations of women and their experiences of sexual violence mean that women remain "only partially visible to our moral faculties."[97] Justice is, instead, predefined, contained within existing frameworks that diminish any notion of collective responsibility for violence committed against women beyond the singular concepts of victim and perpetrator.[98] Both Gaita and Weil reveal the propensity of justice work to perceive victim-survivors as things spoke about. "Soon" notes Weil, "the very presence of the suffering creature is forgotten."[99] In the following section, I explore how the narrative lens can enrich representation, moving beyond singular categorisations and overcoming the binary and bounded view of the normative lens.

6.3. The Narrative Lens

Whether articulated in fact or fiction, different narrative forms can teach us about our lived experiences as human beings and the acceptability of particular ways of behaving because they are formed in ways that make references to life possible.[100] In contrast to the normative lens, in narrative terms verisimilitude extends beyond the domain of action because the narrative lens is concerned with "the subjective resonance that occurs between the listener's/reader's experience of the world and the narrator's rendition of it."[101] Throughout history, narratives, such as fairy-tales, fables, and myths, were used to guide

[95] Wiseman (n 72) xxiv.
[96] Gaita (n 78) xxi.
[97] Gaita (n 78) 282.
[98] Hayley Clark, 'Unearthed Concepts of Justice for Women Who Have Experienced Sexual Violence: Possibilities for Healing and Enhancing Criminal Justice' (2013) 3 *International Journal of Narrative Therapy & Community Work* 28, 30.
[99] Weil (n 82) 8.
[100] Bruner (n 3) 8.
[101] Tsoukas and Hatch (n 8) 1000.

society and culture in the Western world. Now, storytelling is perceived as "not something serious human beings do in the real world."[102] Swart notes that this is because, "In the quest to colonise and develop this world, we have lost track of the way we make sense and meaning of our world through stories."[103] Narrative is the common thread through which we as human beings make sense of the world yet the dominance of the normative lens has precluded recognition of the possibilities that the narrative lens holds. The narrative lens is a means through which we might look at our stories with the knowledge that our world is created through language and relations, allowing the examination of "how the taken-for-granted ideas and beliefs in a particular society inform and sustain" problematic narratives.[104] Representing human minds, experiences and memories is notoriously difficult and, like the normative lens, narrative representations cannot fully represent the world. Through the process of mimesis, the Aristotelian concept reconfigured by Ricoeur, narrative representation is "not 'the world,' nor an imitation of the world, but a new creation that allows us to comprehend the world."[105] It is, however, in the ability of narrative to "transcend false 'either/and' dichotomies and present a nuanced 'both/and' picture of social phenomena"[106] that a possibility of overcoming incommensurability arises. Narrative reminds us that the dichotomies and power underpinning the favouring of the universal over particular, objective over subjective, masculine over feminine are not distinct nor do they belong to separate realms but are, rather, dependent upon the other in order to make sense of the messy domain of life.[107]

Narrative is the mode through which we may begin to understand the importance of how violence against women is interpreted in law, the meaning endowed upon it and how this shapes the incommensurable nature of law and lived experience.[108] In doing so, narrative enables us to perceive the "pain beyond the words, the violence, both actual and potential,

[102] Swart (n 2) 20.
[103] ibid.
[104] ibid 1.
[105] Jenny Rankin, 'What is Narrative? Ricoeur, Bakhtin, and Process Approaches' (2002) 3 *Concrescence* 1, 4.
[106] Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013) 161.
[107] Lindsay Waters, 'The Age of Incommensurability' (2001) 28(2) *boundary 2* 133, 165.
[108] Michael Ryan, 'Meaning and Alternity' in Martha Minow, Michael Ryan, and Austin Sarat (eds), *Narrative, Violence, and the Law: The Essays of Robert Cover* (University of Michigan Press 1995) 273.

in the stories" that are told within contexts such as the field of law.[109] When narratives are constructed in different fields, it is necessary to pay attention to how the narrative was constructed, who it was constructed for and for what purpose, and to determine who has narrative control.[110] These narrative elements enable the articulation of memories, shape identities and determine how to manoeuvre between time, voice, and silence.[111] Does the narrative draw on particular cultural resources and are there gaps that might provide for counternarratives to be articulated?[112]

Throughout history, imagination has been used to challenge dominant paradigms and to subvert the status quo. Hooks draws attention to the role of imagination in critical fiction and what this can reveal about reality from the standpoint of the oppressed. She notes that, "All too often the colonized mind thinks of the imagination as the realm of the psyche that, if fully explored, will lead one into madness, away from reality… it is feared."[113] Yet imagination, "does not estrange us from reality but returns us to the real more fully, in ways that help has to confront and cope." [114] Consequently, the power of imagination enables us to ground ourselves and our perceptions in the real in ways that are more meaningful because it helps us to challenge elements of life that are uncomfortable. Hooks perceived imagination as an instrument to draw the mind closer to reality rather than constraining our narratives as singular, factual accounts or monological, one-dimensional theories. Literature holds the capacity to counter and subvert dominant, oppressive paradigms that silence and undermine marginalized standpoints. Moreover, both Sontag and Nussbaum demonstrate the ability for literature to evoke our common humanity because it endeavours to overcome the misconceived divisions that serve to reinforce the dichotomy of us/them.[115] Instead, imagination "can train, and exercise, our ability to weep for those who are not us or ours." [116] For Sontag, fiction is the connection between life as story and story as life through which we

[109] ibid.
[110] Anindita Bhattacharya, 'The Many Ways of Knowing: Embracing Multiplicity in Narrative Research' (2016) 15(5-6) *Qualitative Social Work* 705, 710.
[111] ibid 705.
[112] ibid.
[113] Bell Hooks, 'Narratives of Struggle' in Philomena Mariani (ed), Critical Fictions: The Politics of Imaginative Writing (Bay Press 1991) 55.
[114] ibid.
[115] Martha Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Beacon Press 1995) 6
[116] Susan Sontag, *At the Same Time* (Farrar, Straus and Giroux 2007) 204-205.

can identify commonalities between us and lives that are remote from our own. This can function to "educate our capacity for moral judgment.[117] Like Sontag, Nussbaum contends that literary imagination must be defended because it allows us to take an ethical stance that pushes us to recognise the virtue of others despite leading lives detached from our own existence and experience.[118] In doing so, literature sensitises us to our own lives because we are able to find a sense of our own experiential nature within fiction as imagination draws together the seemingly distinct elements of our lives into a unified whole. Imagination provides the reader with the ability to empathise and conceive of what it may be like to live the life of another whose situation is unlike ours but a circumstance in which we, or our loved ones, could find ourselves within.[119] This can break down the divisions that diminish the humanity of others.

Ostensibly, legal narratives appear incompatible with the visions of the world as embodied in literary storytelling because literature subverts the norms of universality.[120] Whilst the realms of literary storytelling and legal pleading may appear distinct, Bruner reveals the way in which they:

> share the medium of narrative, a form that keeps perpetually in play the uneasy alliance between the historically established and the imaginatively possible. Perhaps that's what some legal critics mean by storytelling giving the law back to the people.[121]

Imagination thus calls into question the common distinction between narrative truth and narrative fiction challenging ways of knowing.[122] In doing so, imagination presents itself as a means through which to humanise justice. Nussbaum notes, that "novel-reading will not give us the whole story about social justice, but it can be a bridge both to a vision of justice and to the social enactment of that vision."[123] It can be used to model judicial and social policy because storytelling can challenge dominant narratives, elucidating what is silenced and

[117] ibid 214.
[118] Nussbaum (n 114) xvi.
[119] ibid 5.
[120] ibid 1.
[121] Bruner (n 3) 62.
[122] Bruner (n 9) 13.
[123] Nussbaum (n 114) 12.

overlooked in a far more representative manner than the circumscribed realms of the normative. This is because the narrative lens allows for "a more concrete rendering of causality."[124] Power relations within a given context, for example, can be explored, inequalities brought into view, the marginalised provided the space to have a voice and to envision what justice would look like from their perspective. The literary imagination thus elucidates the power of narrative, challenging the perceived boundaries between a sense of life as lived and a vision of the world embodied within legal and political spheres. This is because it challenges the perceived boundaries between a sense of life as lived and a vision of the world that could be.

Narratives of rape elucidate the ways in which truth can be more difficult and shocking to comprehend than fiction because the human actions detailed move beyond the boundaries of our imagination. Such narratives, whether fact or fiction, "challenge not only sexual politics, but also ethnic and racial tensions, and the contested boundary between the real and imaginary."[125] Confronting the insistence that the real and imaginary are distinct from one another embodies the difficulties of bearing witness to such unimaginable horror.[126] Hearing, listening and feeling the narrative plight of another can become a template of experience that opens new possible worlds.[127] Evelyn Amony's memoir, for example, provides a first-person account of her experiences of being abducted at the age of twelve years old and forced to become one of the twenty-seven wives of the leader of the Lord's Resistance Army (LRA), Joseph Kony.[128] Amony notes that, "I just felt it was important to narrate these things. I experienced such terrible things, but I am not the only one to have had this experience. I also found courage from listening to other women who narrate their stories."[129] Her autobiographical account demonstrates the importance of storytelling in the lives of those who are affected by conflict. This is particularly pertinent for women whose voices are so

[124] Tsoukas and Hatch (n 8) 998.
[125] Sorcha Gunne and Zoe Brigley-Thompson (eds) *Feminism, Literature and Rape Narratives: Violence and Violation* (Routledge 2010) 5.
[126] Bruner (n 9) 13.
[127] Bruner (n 3) 34.
[128] See Evelyn Anomy, *I Am Evelyn Amony: Reclaiming My Life from the Lord's Resistance Army* (University of Wisconsin Press 2015); UN Women, 'In the words of Evelyn Amony: "I was forced to become one of his 27 'wives'"' (8 May 2014) <www.unwomen.org/en/news/stories/2014/5/in-the-words-of-evelyn-amony>
[129] ibid xiv.

readily subordinated in the aftermath of such violence.[130] Amony's autobiographical account allowed her to circumvent the inexpressibility she felt in verbally articulating the difficult stories to her children through the medium of written text.[131] As Cavarero notes, autobiographical narratives, "like an impossible game of mirrors present the self" as "the actor and spectator, the narrator and the listener, in a single person."[132] Rather than accepting the prevailing misconceptions surrounding the war and the lives of those abducted by the LRA, Amony's autobiographical story presented her with the means to represent her lived experiences and the trauma she endured through her own voice and perspective. This allowed her to reject misconceived identities, reclaim her temporal existence representing her life both before and after the conflict and restore a sense of connection with other women whose stories are similar to her own.[133]

Other works such as *A Woman in Berlin,*[134] an anonymised diary account of a Berlin woman raped multiple times during the Russian invasion in Second World War, or *S: A Novel About the Balkans,*[135] a novel formed from the flashbacks of the memory of a woman raped at the height of the war in BiH, provide nuanced accounts through the voice and perspective of the women. Such works demonstrate the power of the narrative lens, whether the stories told are real or imaginary, to challenge established stereotypes, gendered assumptions, and allow more commensurable representations to emerge.[136] Narrative representations of rape in such forms can detail the nuances and complexities that the normative lens does not permit including the impact trauma can have upon temporal experience, the impact of shame and stigma, as well as the disconnection trauma creates. However, the narrative lens can also bring the agency of women to the fore, articulate the underlying relations at play as well as blurring prevailing binaries of good/evil that are themselves blurred in conflict.[137] The narrative lens can thus place the reader in a position of an enlightened perspective,

[130] Erin Baines and Beth Stewart, 'I Cannot Accept What I have Not Done': Storytelling, Gender and Transitional Justice' (2011) 3(3) *Journal of Human Rights Practice* 245 248.
[131] Philipp Schulz, 'Evelyn Amony. I Am Evelyn Amony: Reclaiming My Life from the Lord's Resistance Army' (2016) 18(2) *International Feminist Journal of Politics* 312, 313.
[132] Adriana Cavarero, *Relating Narratives: Storytelling and Selfhood* (Routledge 2014) 40.
[133] Anomy (n 126) xxv.
[134] Anonymous, *A Woman in Berlin* (Virago Press Ltd 2005).
[135] Slavenka Drakulić, (2001) *S.: A Novel About the Balkans*. (Reprint edn, Penguin 2001).
[136] Gunne and Brigley-Thompson (n 124) 4.
[137] Schulz (n 130) 313.

temporarily descending into the world of the character, whether fictive or real. As the protagonist in A *Woman in Berlin* writes:

> What does it mean - rape? When I said the word for the first time aloud… it sent shivers down my spine. Now I can think it and write it with an untrembling hand, say it out loud to get used to hearing it said. It sounds like the absolute worst, the end of everything - but it's not.[138]

The protagonist draws attention to assumption surrounding rape as the worst crime and the ability of women to work through their trauma. Crucially, works such as these are stories told by women about women inviting nuance and recognising the multifaceted nature of women's lived experiences of conflict, challenging the normative lens that anchors thought in reason and rationality and paints a monochromatic and sterile view of lived experience. In the following section, I explore how the narrative lens has challenged the narrow focus upon universal justice ideals through judicial mechanisms instead turning to social forms of justice to actively promote meaningful change.

6.4. Challenging the Intractable: Law, Narrative, and Imagination

In the field of transitional justice, art and storytelling in the form of film,[139] fiction, and non-fiction have emerged as an alternate discourse to the detached international representations of rape and the limited legal narratives produced. Calling into question the fundamental assumptions underpinning representations of women's lived experiences, art and imagination has provided counter-narratives with real-world consequences that facilitate social justice through forcing the community to recognise, as oppose to ignore, women's suffering.[140] As Le Guin notes:

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[138] Anonymous (n 133) 63.
[139] Grbavica: The Land of My Dreams (2006), As If I Am Not There (2010), For Those Who Can Tell No Tales (2013).
[140] Helen Lock, 'Transformations of the Trickster' (2002) 18 *Southern Cross Review* 1 < https://southerncrossreview.org/18/trickster.htm>

> The exercise of imagination is dangerous to those who profit from the way things are because it has the power to show that the way things are is not permanent, not universal, not necessary. Having that real though limited ability to put established institutions into question, imaginative literature also has the responsibility of power.[141]

In BiH, Simic and Volcic note that in light of the narrow focus of the government, many local civil society organisations and artists have used various narrative forms to provide symbolic reparations to victim-survivors underpinned by the desire to move beyond judicial mechanisms and the focus upon accountability and encourage peace.[142] Film, in particular, has become a narrative medium that have been used to reveal the fundamental assumptions underpinning dominant representations of women's experiences of conflict-related sexual violence. In *Calling the Ghosts*, for example, the film followed the transformation of Jadranka Cigelj and Nusreta Sivac from their experience in the Omarska rape camp to their successful lobbying for the recognition of rape in international law. In the film, Sivac fights against the prevailing essentialist category of women as victim, stating that: "It bothers me when someone says 'raped women'… find some other appropriate term. But *raped women* - that hurts a person, to be marked as a raped woman, as if you had no other characteristic, as if that were your sole identity. *Raped women* - sounds horrible doesn't it?"[143] This encapsulated their experiences in an accessible medium and demonstrated "how rape is scripted by the politics, material conditions, and discourses of war, gender ideology, and biological essentialism."[144]

Žbanic's film, *Grbavica: The Land of My Dreams*, tells the story of a woman forced to reveal to her teenage daughter that she is the child of a rape committed during the war in BiH. The narrative provides insight into the consequences of rape as both physical and psychological harm but also extends recognition of the victim-survivor's needs beyond the

[141] Ursula K. Le Guin, *The Wave in the Mind: Talks & Essays on the Writer, the Reader & the Imagination* (Shambhala Publications 2004) 219.
[142] Olivera Simic and Zala Volcic, 'In the Land of Wartime Rape: Bosnia, Cinema and Reparations' (2014) 2(2) *Griffith Journal of Law & Human Dignity* 377, 384
[143] Wendy Hesford, 'Rape Stories' in Wendy Hesford and Wendy Kozol (eds), *Haunting Violations: Feminist Criticism and the Crisis of the "Real"* (University of Illinois Press 2000) 36.
[144] For discussion of Calling the Ghosts (1996) see ibid 35-37.

limited, short-term focus of existing responses. It highlights the long-term impact of sexual violence, the inter-generational transfer of trauma from family and community to the characters child and the needs of children borne of wartime rape.[145] Moreover, it demonstrates the limited access to reparations victims of sexualised violence were provided with as these were "granted only to the children of fallen war heroes."[146] Žbanic's narrative representations allows movement beyond the static category of 'woman as victim' to elucidate the realities for a mother and a child whose beginning in life emerged from the most traumatic of circumstances.

In 2006, following public outcry in support of the victims in the aftermath of the film's release, the government of BiH passed a law recognising victims of sexualised violence and providing them the right to benefits, making them eligible for compensation in a similar way to male combatants who fought in the war.[147] Following *Grbavica*, Žbanic directed *For Those Who Can Tell No Tales*. The film tells the true story of Kym Vercoe, an Australian woman, who takes a vacation to Bosnia. Vercoe inadvertently finds herself staying in Hotel Vilina Vlas in Višegrad within which a paramilitary group detained, raped, murdered, and tortured Bosniak men and women who they held prisoner. Approximately two hundred women were raped and many were either killed or committed suicide.[148] Vercoe slowly discovers what took place upon the beds those who visit the hotel sleep on and holds a private ceremony of remembrance and mourning in one of the hotel rooms for the women who were raped. De Pascalis notes that both Vercoe and Žbanic position themselves against the Višegrad community wherein the majority have, as many transitional communities do, attempted to erase the memory of sexual violence committed in their home town and diminish the apportionment of blame to those responsible.[149] Despite representing some of the most

[145] Romi Sigsworth, 'Gender-Based Violence in Transition' (Centre for the Study of Violence and Reconciliation 2008) 6.
[146] Tomasz Rawski and Katarzyna Roman, 'How to Escape? The Trap of the Transition in the Recent Cinema of Bosnia and Herzegovina (2000-2012)' (2014) 3 *Colloquia Humanistica* 193, 196.
[147] This excluded recognition of victims of sexualised violence in the Republika Srpska. Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women's Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press) 197.
[148] Emma Graham Harrison, 'Back on the Tourist Trail: The Hotel where Women were Raped and Murdered' *The Guardian* (28 January 2018) <https://www.theguardian.com/world/2018/jan/28/bosnia-hotel-rape-murder-war-crimes> accessed 12 March 2018.
[149] Ilaria A De Pascalis, 'The (In)visibility of Violence: Jasmila Žbanić's Post-War Cinema' (2016) 23(4) *European Journal of Women's Studies* 365, 375.

egregious elements of human nature and facing uncomfortable truths, Žbanic made the community pay attention to the very aspects and experiences that they wanted so adamantly to look away from. Instead, art presented a means through which to show that silence and suppression need not be the only way to address the past.

Both films represented how a just society could and should look for victims, representing the silence that so readily surrounds sexual violence and that evades capture in legal representations. Žbanic's art is an example of social action facilitated as a means through which to envisage justice beyond universal ideals, beyond judicial proceedings and into the community.[150] As Simic notes, Žbanić's films became "a facilitating agent for the mobilisation of social awareness, dedication, and commitment… Film as an art form has the power of reaching many more survivors than courts and retributive justice."[151] In doing so, imagination presented a means through which to humanise and envisage social justice. It forced the public to confront some of the most uncomfortable, unpleasant and shocking elements of the conflict through a medium they ultimately derived enjoyment from.[152] Whether or not the transformative effect was intentional, Žbanic suggested new possibilities and perspectives that would have otherwise been hidden. In her creative work, Žbanic provoked transformation and disrupted the dominant paradigm through her artistic representation.

The narrative form that each of the films embodies pays attention to the common humanity of those within, diminishing the prevailing singular concepts of victim or perpetrator or good and evil.[153] They elucidated what was lost in the law's reductive achievement in the ICTY and the impunity gap that resides in BiH. Instead, the films represent the women, and men, in the film as concrete beings. For victim-survivors, they represent their struggle to be recognised as fully human and, as a form of social justice, move beyond the incommensurable nature universal justice ideals to their lived actualities. This challenges the seemingly intractable boundaries between the real and imaginary because it demonstrates

[150] Olivera Simic and Zala Volcic, 'In the Land of Wartime Rape: Bosnia, Cinema and Reparations' (2014) 2(2) *Griffith Journal of Law & Human Dignity* 377, 384.
[151] ibid 396.
[152] Nussbaum (n 114) 6
[153] Schulz (n 130) 313.

the ability to manifest meaningful and transformative social change from narratives representations beyond the confines of law.

6.5. Conclusion

Alongside the shame and stigma that compounds women's suffering in the aftermath of conflict-related sexual violence, normative narratives continue to frame women's subjectivity and men's culpability through abstract and generalised categorisations of victim and perpetrator. Whilst incommensurability is immanent in the endeavour to represent another, the continued failure of powerful normative institutions to see women as fully human, beyond the abstract legal subject, has tangible consequences upon women's ability to heal from the trauma inflicted upon them.[154] In turning to consider what shifting the normative lens to a narrative lens may hold for transitional justice practice, I elucidated how art and imagination, through various narrative forms such as film and storytelling, have already been utilised as a means through which to challenge the narrative boundaries imposed by legal representations, bringing to the fore that which is lost in the reductive achievement of law. Looking at women's lived experiences through the narrative lens has elucidated its potential to disrupt law's boundaries through counter-narratives that represent and recognise trauma and the multi-faceted nature of lived experiences of conflict and sexual violence. The narrative lens can pay attention to women's lived experiences beyond the perception of victim-survivors as 'damaged goods' or 'raped women' but as human beings each worthy of our time, attention, and respect.

Through the three modes of thought used to analyse the case of *Bemba* in the ICC, the following chapters Seven and Eight make up the two parts of a narrative analysis that explore the extent to which incommensurability emerges in representations of conflict-related sexual violence in quasi-judicial mechanisms and extra-judicial mechanisms. The following chapter begins this analysis by exploring the narratives that emerged within and from quasi-judicial mechanism, such as the SATRC and the community-based Rwandan Gacaca courts. In doing

[154] Ruth Ronen, 'Incommensurability and Representation' (1998) 2(5) *Applied Semiotics* 177 <http://french.chass.utoronto.ca/as-sa/ASSA-No5/Vol2.No5.Ronen.pdf>

so, I pay particular attention to the ways in which such mechanisms address the trauma, shame and stigma surrounding sexual violence to consider whether such mechanisms represent more adequate avenues of justice for victim-survivors than the current legalistic focus.

Chapter Seven: Transitional Justice as Narrative: Representations of Sexual Violence in Quasi-Judicial Mechanisms

Homo-narrans: humankind the narrators and storytellers.[1]

Utilising the three modes of thought – temporality, spatiality, and genealogy - this chapter is the first of a two-part narrative analysis of the broader transitional justice field. Having revealed the incommensurable nature of the representations of conflict-related sexual violence that have been constructed through the normative lens in institutions such as the ICTY, ICTR and ICC, this chapter explores the extent to which incommensurability arises in the narratives articulated within and produced by the South African Truth and Reconciliation Commission (SATRC), the Truth and Reconciliation Commission for Sierra Leone (SLTRC), and the community-based Gacaca courts of Rwanda. Unlike solely retributive mechanisms, these mechanisms were seemingly focussed upon the particularities of lived experience. Building upon the previous chapter, I pay close attention to how women's stories of sexual violence have been constructed and how trauma is heard or silenced within these mechanisms. Are quasi-judicial and extra-judicial mechanisms better suited to representing women's lived experiences of sexual violence? Are they better able to deliver on promises of justice to the recovery of victim-survivors and society from the trauma endured? Or, conversely, does incommensurability arise in the representations produced in these mechanisms, too? Are restrictions placed upon what it means to pay attention within such mechanisms? Exploring these questions, each section begins by providing an overview of what the work of each mechanism entails then moving through the three modes to analyse the narratives of conflict-related sexual violence that have arisen within each context.

7.1. Truth and Reconciliation Commissions

Since the 1980s, more than thirty countries have chosen to establish truth commissions to investigate and report on historic human rights violations in order to facilitate

[1] Kenneth Plummer, *Telling Sexual Stories: Power, Change and Social Worlds* (Routledge, 1994) 5

a successful transition from conflict to peace. Truth commissions hold a quasi-judicial function underpinned by a legislative mandate which gives the truth commission the ability to carry out its mandate and limits it to the investigation of particular types of violations. Like tribunals, truth commissions have a powerful normative function, founded upon the notion of establishing truth and/or achieving reconciliation within the specific transitional context. They can help to uncover the truth through independent panels of inquiry that endeavour to establish facts and situate serious human rights abuses and violations within the context of the country's past.[2] Crucially, truth commissions are public forums, designed to enable the difficult confrontation of bearing witness to the most horrific of human actions. Minow notes that truth commissions provide:

> a detailed historical record; and the priority of healing for victims and entire societies after the devastation to bodies, memories, families, friendships, and politics caused by collective violence.[3]

The guiding principles of a truth commission are founded in independence, complementarity to criminal justice and reparations, empowerment of victims through testimony, and flexibility through creative and innovative thought to address the unique demands of the transitional context.[4]

Truth commissions differ from trials as the form of transitional justice pursued centres upon the disclosure of truth as opposed to accountability and prosecution. Unlike international tribunals, they are situated within the transitional context and, as was the case in the South African context, hearings are open to the public as community events. Truth commissions function upon the provision of public testimony from those who feel able to speak to the human rights violations committed against them, their relatives and community members allowing a greater level of freedom in relation to the articulation of the narrative

[2] ICTJ, 'Focus: Truth Commissions' (2008) 1 <https://www.ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf>
[3] Martha Minow, Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence (Beacon Press, 1998) 346.
[4] ICTJ (n 2)

produced. [5] They are designed to be a constructive environment, placing victim-survivors at the centre of the process to allow their voices to be heard through public testimony.[6] For Minow, truth commissions provide a chance to:

> tell one's story and be heard without interruption or scepticism… crucial to so many people, and nowhere more vital than for survivors of trauma... So, too is the commitment to produce a coherent, if complex, narrative about the entire nation's trauma, and the multiple sources and expressions of violence.[7]

As with any other transitional justice mechanism, the success of each truth commission is varied, dependent upon "people's need to see justice done" and the perceptions of whether this has been achieved which can shift over time. [8] Yasmin Sooka, a member of both the panel at the SATRC and SLTRC, notes that, for women in particular, the work of a truth commission:

> if it does its work properly, has a huge potential for promoting legal reform with respect to gender-based violence and the advancement of the rights of women during the transitional period. In formulating its recommendations, a truth commission can address a variety of legal issues in this regard.[9]

Once investigations have been conducted and testimonies gathered, truth commissions typically issue a comprehensive final report which forms "a compelling moral narrative."[10] In the following sections I apply the temporal, spatial, and genealogical modes through the narrative lens to elucidate how the particular narrative frame applied by the truth commission shaped narratives of sexual violence emerging from the SATRC and SLTRC.

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[5] Rebecca Horn, Saleem Vahidy and Simon Charters, 'Testifying in the Special Court for Sierra Leone: Witness Perceptions of Safety and Emotional Welfare (2011) 17(5) *Psychology, Crime & Law* 435, 440.
[6] Felicity Horne, 'Can Personal Narratives Heal Trauma? A Consideration of Testimonies Given at the South African Truth and Reconciliation Commission' (2013) 39(3) *Social Dynamics* 443, 446.
[7] Minow (n 3) 580.
[8] Jill Stauffer, 'Speaking Truth to Reconciliation: Political Transition, Recovery, and the Work of Time' (2013) 4(1) *Humanity* 27, 29.
[9] Yasmin Sooka, 'Dealing with the Past and Transitional Justice: Building Peace through Accountability' (2006) 88(862) *International Review of the Red Cross* 311, 323.
[10] ICTJ (n 2).

7.2. Through the Three Modes: The South African Truth and Reconciliation Commission

7.2.1. Temporality

Truth commissions are focused upon the past with a mandate that specifies a particular time period to be focused upon. In Sierra Leone, for example, the SLTRC set out to produce a record of the country's history from the beginning of the civil war in 1991 to the Lomé Peace Agreement of 7 July 1999. This supplemented the work of the SCSL, established in 2002 and dissolved in 2013, which was mandated to hold those with "the greatest responsibility for serious violations" to account under both international law and Sierra Leonean law for violations committed after 30 November 1996.[11] Unlike the complementary nature of the SCSL and SLTRC, in South Africa the SATRC's temporal mandate was far wider. The Promotion of National Unity Act allowed the commission to take account of gross violations of human rights committed between 1960 to 1994. Whilst complimentary to formal justice processes, Rushton highlights how the temporalities of reconciliation involve a focus upon horizontal reconciliation, the restoration of social relationships in the present day, and/or vertical reconciliation, restoration of the past with the present moment and the possibilities this holds for the future.[12] Truth commissions endeavour to produce a detailed historical record of the causes and consequences of violence. They attempt to allow individuals and collective society to absorb the pain of the past and move forward with the hope that this will diminish the risk of further conflict erupting in the future.[13] In doing so, truth commissions often provide recommendations, suggest a reparations mandate, help to shape commemoration activities, such as the establishment of memorials or specific days of remembrance, as well as producing archives of their investigation and reports.[14]

The temporal framework that underpins a truth commission, whilst important, is not as rigid as the strict temporal boundaries enforced by formal judicial mechanisms. Storytelling

[11] William Schabas, 'The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone' (2003) 25(4) *Human Rights Quarterly* 1035, 1040-1041.
[12] Beth Rushton, 'Truth and Reconciliation? The Experience of Truth Commissions' (2006) 60(1) *Australian Journal of International Affairs* 125, 133.
[13] ibid.
[14] ICTJ (n 2)

as testimony and the questions asked by commissioners can extend to the past and speak to the present. This highlights the potential for individual healing through the articulation, and subsequent recognition, of a victim-survivors trauma.[15] The following excerpts from the testimony of Thandi Shezi exemplify the temporal focus of the SATRC. Thandi was gang-raped by four police officers who, despite her reporting their violence, were not charged with any offence:

> MS SEROKE: So you started getting counselling in 1996. So it means from 1988 up until 1996 you have been keeping this inside, this painful experience inside yourself. How were you coping during this long time?
>
> ***
>
> CHAIRPERSON: How - I know that you've said that you're going for counselling now, but I'm very happy that you've in fact come forward to talk about your experiences. But how do you feel? Do you feel that openness in fact begins to heal? And how do you feel about other women sharing their experiences in this way? [16]

The questions put to Thandi Shezi by the Commissioners highlight the temporalities focussed upon as they ask about how she coped in the aftermath of the gang-rape by the four men. They ask about her past, "How were you coping" and her present, "How do you feel." Receiving official acknowledgment of one's pain and trauma can mark an important step along the long road to recovery providing victims with a sense of dignity and renewed control. The SATRC chairperson often acknowledged the pain the women endured, recognising the difficulties of testifying, "Please take your time", and highlighted to the audience in attendance the importance of the victim-survivor telling their story, "This is a moment for the witness to tell their story, and we'd ask you to respect that as well."[17] This allowed Thandi Shezi to speak openly about the consequences the actions of the four men had upon her, which the Commission focussed upon as the most painful of the experiences she went

[15] Dori Laub, 'An Event Without a Witness: Truth, Testimony and Survival' in Shoshana Felman and Dori Laub (eds)*Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (Routledge 2013) 79.
[16] Thandi Shezi, Special Hearings: Women's Hearings Day 1 (South African Truth and Reconciliation Commission 28 July 1997) <www.justice.gov.za/trc/special%5Cwomen/shezi.htm> (herein Shezi Transcript).
[17] ibid.

through. Nevertheless, whilst the narratives articulated within the Commission are less restricted in terms of their temporal focus, the mandate of the SATRC was limited in its focus upon the events of the past. In her testimony during at the SATRC, Thenjiwe Mtintso resisted the temporal boundaries of the SATRC highlighting the need to look to the future in order to address the relations of power underpinning the violence that was committed during Apartheid:

> Patriarchy has got to be eradicated in all its forms… We cannot hope that there is going to be yet another TRC to address that, because *in these sessions we're backward looking. We've got to take the process forward; we've got to look in the now and the future*… Democracy, reconciliation and nation-building remained threatened so long as patriarchy in all its forms… are violent forms of patriarchy. They are actually a violation of human rights. We cannot limit human rights to what is in the act…It does not necessarily mean that we must have the hearings, but it means we must have the process of eradicating that.[18]

Mtintso highlights how the narrative focus upon the past diminishes the truth commissions ability to look beyond this and the ramifications this has upon meaningful change. In looking solely to the past, the commission fails to adequately represent the way in which the trauma that rape and sexual violence inflicts traverses the boundaries of the period the Commission is focussed upon. The ability for women to narrate their experiences within the truth commission failed to reconcile between their past, present and future. Instead, it maintains the distinction between these temporal realms.[19] Her testimony articulates that whilst truth commissions are focussed upon establishing the truth of the past, the forms of violence articulated within the confines of the public forum do not address nor subvert the continued operation of patriarchy upon the bodies of women.[20] Without focussing the process upon the

[18] Emphasis added. SATRC, 'Truth and Reconciliation Commission of South Africa Report Volume 4 Chapter 10' 418 <www.justice.gov.za/trc/report/finalreport/Volume%204.pdf> (herein SATRC Final Report).
[19] Elizabeth Dauphinee, 'Narrative Voice and the Limits of Peacebuilding: Rethinking the Politics of Partiality' (2015) 3(3) *Peacebuilding* 261, 271.
[20] Christine Bell and Catherine O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) 1(1) The International Journal of Transitional Justice 23, 44.

future, beyond reconciliation with the past, truth commissions risk excluding the hegemonic masculinities that manifest as gendered inequality and violence from the official narrative.

Whilst the truth commission may acknowledge the impact of trauma upon the past and present of the individual's life, the temporal framework also endeavours to recognise their hopes, needs and wants for the future. In the SLTRC, Fatmata Kamara explained how she witnessed the murder of her best friend, sister, mother and father and was subsequently raped multiple times by a commando and two child soldiers of the Revolutionary United Front (RUF) who then chopped off both of her feet. Following this, during her time in a camp for amputees, Fatmata completed a course at a local hairdressing salon but was left without tools to do the job. Unable to earn money to eat she had to beg for food.[21] During their questioning the Commissioners asked how she was coping in the aftermath of her experiences:

> Comm. Marcus Jones – Do you have peaceful night rests?
> Fatmata – I do not have peaceful nights because I am always thinking of my hairdressing tools.
> Comm. Marcus Jones – Have you been able to contact any of your family members?[22]

> Comm. Sooka - After the incident, how are you feeling now?
> Fatmata - I am not feeling good.
> Commissioner Sooka - Are you able to sleep at night?
> Fatmata - My problem now, is that I don't have my tools for me to practice my hairdressing.
> Comm. Sooka - The time you were raped, you felt guilty and started crying "why me."[23]

> Martien - Can you tell the Commission all that you would need to go ahead with your practice?

[21] Sierra Leone Truth and Reconciliation Commission, 'Appendix 3: Transcripts of TRC Public Hearings' (Closed Hearing, 23 April 2003) 96 <www.sierraleonetrc.org/index.php/appendices/item/appendix#> (herein SLTRC Transcript) accessed 25 March 2017.
[22] ibid 97.
[23] ibid 99.

> Fatmata - There is no light at my saloon, If I can have Le200 or Le300,000 to start with it will be appreciated. [24]

Throughout her testimony, Fatmata refers to her desire to continue practicing to become a hairdresser in the aftermath of the conflict. The shop that she took her course in was badly burnt and the owner left the country leaving her without the ability to continue her practice.[25] However, when each Commissioner asks how she sleeps and how she feels in the present day following the trauma she endured, they immediately move to a different line of questioning subsequent to her response. Instead, they state that "We would like to know your personal circumstances before the incidence."[26] It is not until the end of the Commissioner's questions that Martien Schotsmans, leader of evidence during the proceedings, looked to the future by asking what Fatmata needed to continue her practice. However, as Williams and Opdam highlight, the SLTRC could not, in fact, award individual reparations yet this was not clarified from the outset of the Commission or during any of the proceedings.[27] Conversely, in the SATRC, many women found themselves in a space that did not coincide with what they wished or needed from the forum.[28] For victim-survivors like Fatmata, the temporal boundaries of truth commissions focussed upon the past created a disjuncture between individuals expectations and hopes for the future yet are readily undermined by what the mandate underpinning a truth commission can in actuality achieve.

7.2.2. Spatiality

In East Timor, Sierra Leona, and South Africa, each truth commission implemented special protective measures to encourage women to come forward and speak to their experiences of sexual violence. In South Africa, however, following a series of workshops and lobbying by feminist scholars, women's civil society groups, legal organisations and the media, the Commission implemented special hearings for women at the Human Rights Violation

[24] ibid 102-103.
[25] ibid 98.
[26] ibid 99.
[27] Sarah Williams and Jasmine Opdam, 'The Unrealised Potential for Transformative Reparations for Sexual and Gender-Based Violence in Sierra Leone' (2017) 21(9) *The International Journal of Human Rights* 1281, 1287.
[28] Annalisa Oboe, 'The TRC Women's Hearings as Performance and Protest in the New South Africa' (2007) 38(3) *Research in African Literatures* 60, 64.

committee.[29] These included specific women's hearings, training of commissioners on issues concerning gender and cultural sensitivity, gender specific reparations projects, as well as attention being paid to women as perpetrators.[30] In order to break the silence surrounding rape, the SATRC recommended that the Commission "act as a facilitator to empower women to tell their stories" and break down the divide between the public and private lives of victim-survivors.[31] Closed, female only, proceedings were conducted by female Commissioners whilst some were allowed to provide their testimony in camera to facilitate a more constructive and accommodating environment for survivors to enable specific violations committed against and/or by women to come to light.[32] However, Kapur and Muddell note that comparable special measures were not made for men who had been raped and sexually violated.[33] This demonstrates the tendency to associate certain types of trauma as being inherently gendered. Whilst the endeavour to create a safe and secure environment promoted women's participation, this oversight reinforces the notion that only women can be raped or only they can testify about the nature of such violence despite the fact that 60% of the statements coded as involving sexual abuse and that explicitly specified the sex of the victim were from men.[34]

The focus upon empowering victims and the special hearings for women intended to facilitate a space in which women's stories, including their experiences of sexual violence, will be heard and documented. Durbach and Geddes note that these spaces function to act as a reminder of the nature of atrocities women faced and:

[29] Barbara Russell, 'A Self-Defining Universe? Case Studies from the 'Special Hearings: Women' of South Africa's Truth and Reconciliation Commission' (2008) 67(1) *African Studies* 49.
[30] SATRC, 'South Africa: TRC and Gender' (Statement, 15 August 1996) <www.africa.upenn.edu/Urgent_Action/apic_823.html>
[31] Ayumi Kusafuka, 'Truth Commissions and Gender: A South African Case Study' (2009) 9(2) African Journal on Conflict Resolution 45, 55.
[32] ibid.
[33]Amrita Kapur and Kelli Muddell, 'When No One Calls It Rape Addressing Sexual Violence Against Men and Boys in Transitional Contexts' (ICTJ 2016) < www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf>
[34] SATRC Final Report (n 19) 298.

> revers [e] the blatant disregard of the bodily integrity, inherent dignity, and, indeed, the very humanity of women' by offering 'alternative discourses of the past and fill[ing] in the gaps left by formal justice processes'[35]

Though they may not overcome "the unequal political, social, economic and cultural conditions which often enable sexual violence," they draw attention to existing social relations, highlighting the gendered inequalities and violence women face in their everyday lives. Nevertheless, the difficulties of bearing witness to their trauma continued to emerge despite these special measures. In the SATRC, women from all intersections of society were the highest number in attendance yet of 21,000 testimonies provided rape was explicitly mentioned in only 140 cases.[36] Despite women representing the majority of those testifying, they often chose instead to talk about violations that occurred to those that they knew, their family, friends, community, as opposed to telling their own stories as direct victims.[37] Conversely, "most of the men spoke as direct victims."[38] In terms of experiences of sexual violence, Oboe notes that women often responded "mechanically about rape when repeatedly questioned" and purposefully lacked detail.[39] Winnie Makhubela's testimony demonstrates the reluctance of women to disclose their own stories:

> MS MKHIZE: Winnie, I know how difficult it is to take you back and make your mind to remember that day, but it would help a lot if you can indicate to us as to - you were three; with whom did they start? Did they start by shooting, kicking, raping? Where did they start? For our record, it's important for you to try and create a picture.
>
> MS MAKHUBELA: They started off by raping us. After they raped us, they threw us out of the window and they started shooting.

[35] Andrea Durbach and Lucy Geddes, 'To Shape Our Own lives and Our Own World': Exploring Women's Hearings as Reparative Mechanisms for Victims of Sexual Violence Post-conflict' (2017) 21(9) *The International Journal of Human Rights* 1261.
[36] SATRC Final Report (n 18) 298.
[37] SATRC Final Report (n 18) 285; Oboe (n 29) 61.
[38] SATRC Final Report (n 18) Chapter 10: 6.
[39] Oboe (n 28) 65.

MS MKHIZE: Your own experiences in particular; do you still remember how many people actually raped you?

MS MAKHUBELA: There were lots of them. It was a huge group of them, I cannot remember, I could not recognise any of them.[40]

As the excerpt demonstrates, the clipped and limited response by Winnie Makhubela to the Commissioner's questions is indicative of the reluctance to articulate in detail her experiences of the trauma of being raped. Oboe notes that, "behind their shuttered sentences clearly lay depths of personal suffering that were glimpsed but would never fully find their way into language."[41] Recovery in the aftermath of trauma and finding a language through which to articulate lived experiences of traumatic events can take weeks, months, or even years, if women ever feel ready to address their experiences. A commission is a public forum within which women have to articulate their stories in front of commissioners, the community, and potentially those who harmed them. Oboe notes that despite the SATRC attempting to enable the women testifying with space "to let their stories loose and free themselves from the burden of the past" the women instead found themselves in a space that for many of the women did not coincide with what they wished or needed from the forum.[42] This highlights the importance of recognising that simply because a story has been told and the trauma revealed, "the process of healing depends on how we reveal, the context of the revealing, and what it is that we are revealing."[43] The repercussions of testifying and fear for one's safety and reputation were a reality. In publicly testifying, women may feel that their reputation will be questioned by the wider community, humiliating their partner, preventing future relationships, or fear rejection from their family and friends, too ashamed to testify as a consequence of the trap of shame placed upon victims of rape. Silence can represent safety for some whilst the internalisation of shame and blame can lead others to believe it is their own fault. As Thandi Shezi stated, "I didn't tell a single soul about it. I thought I was a person

[40] Gloria Ella Mahlophe and Winnie Makhubela, 'Special Hearings: Women's Hearings Day 1' (South African Truth and Reconciliation Commission 28 July 1997) <www.justice.gov.za/trc/special/women/mahlophe.htm>
[41] Oboe (n 28) 66.
[42] ibid 63-64.
[43] Brandon Hamber and others, 'Telling It Like It Is: Survivors' Perceptions of the Truth and Reconciliation Commission' (2000) 26 *Psychology in Society* 18, 34.

who had a problem. That is why they raped me. That's why they did what they did to me."[44] It was not until she received counselling that she recognised she was not to blame. In her testimony, she demonstrates the need for her to represent the multifaceted nature of her experiences beyond the category of victim:

> MS MKHIZE: .... You don't see yourself as a person who needs any pity. You see yourself as a hero.
>
> MS SHEZI: I do want people to empathise with me and share the pain with me, but I do not want them to reduce me to an object and see me as just nothing… I realise that in many times that when an actor is - when an actor is acting in a story they tend to identify that character the actor's doing. People associate that person with that story. But I also think that I will fall into that role of being identified with that kind of character, you sort of seen a story where people identify with the particular character.[45]

Reflecting Pulchérie Makiandakama's testimony at the ICC, Thandi Shezi endeavours to reject the category of 'woman as victim'. In sharing her story of her involvement in the violence alongside the violence committed against her, she asks that her community does not pity her. Despite her trauma, she does not want her community to feel shame for her nor place her into a single character. This demonstrates her need to tell her story through her own voice, to orient those who hear and read it from her perspective as a multifaceted individual whose experience of rape does not define her worth. Her awareness of the characterisation of her identity into a particular role elucidates the impact of representation in the production of narratives of sexual violence within the Commission. She recognises that in telling her story of trauma her articulation extends beyond the spatial boundaries of the Commission and once it does so, she has little control over how and in what ways people perceive her.

Moreover, the SATRC stood within a social context that had historically devalued women's bodies. During Apartheid a large proportion of the male population were "bonded in a violent and highly militarised context" culminating in a culture where "'tough, aggressive,

[44] Shezi Transcript (n 16).
[45] Shezi Transcript (n 16).

brutal and competitive masculinity is promoted' and weakness regarded, with contempt, as 'feminine.'"[46] Whilst the Commission endeavoured to establish a safe environment for women to testify within, this was undermined by the culture of violence against women raging outside of the TRCs walls. In 2014, for example, 53,617 sexual offences were reported to the South African police services, translating to 147 cases per day. Sigsworth and Valji highlight how South Africa, "a country whose experience is generally portrayed as a successful 'model' of transitional justice," is host to some of the highest rates of 'femicide' in the world."[47] As Mtintso warned the Commission, "the major problem in the society is violence against women. It is probably the single most shared experience of women across class, across race, across culture."[48] Despite some of the testimonies at the special women's hearings alluding to the link between the political context and domestic violence, the focus upon the past meant that the Commission did not analyse the connections to gender and violence.[49] Whilst the articulation of narratives in the aftermath of trauma is crucial for women, the necessity of listening is crucial.[50] Without hearing and recognising the connections between women's traumatic experiences and the broader social context in which it is enacted, the ability for justice and healing to emerge is undermined. Despite the multifaceted and complex nature of the intersections of race, gender, and class challenging the reduction of women into a singular categorisation in the SATRC, the Truth Commissions report on gender presented little recommendation as to how society could rectify the gender-based issues surrounding violence thereby limiting its ability to articulate the full truth of violence.

7.2.3. Genealogy

[46] Rape Crisis, 'Rape in South Africa' (Capetown Trust 2015) <https://rapecrisis.org.za/rape-in-south-africa/> accessed 21 March 2016.
[47] Romi Sigsworth and Nahla Valji, Continuities of Violence against Women and the Limitations of Transitional Justice: The Case of South Africa' in Susanne Buckley-Zistel and Ruth Stanley (eds)*, Gender in Transitional Justice* (Palgrave Macmillan 2011) 120
[48] Sheila Masote, 'Special Hearings: Women's Hearings Day 1' (South African Truth and Reconciliation Commission 28 July 1997) <www.justice.gov.za/trc/special/women/masote>
[49] SATRC Final Report (n 18)
[50] Olivera Simic, 'Drinking Coffee in Bosnia: Listening to Stories of Wartime Violence and Rape' (2017) 18 (4) *Journal of International Women's Studies* 321, 324.

The question of power in truth commissions is predominantly underpinned by the legislative mandate that limits the focus of its work. Truth is valued over other transitional forms of justice through the implementation of a restorative framework. Nonetheless, the weight that is given to truth over justice provides a singular framework through which the ethnic, racial, and gendered intersections that manifest divisions are framed within a specific legal mandate. Due to the multitude of violations committed during periods of violence and conflict, this can risk women's experiences becoming circumvented by the institutional pursuit of truth and reconciliation and the focus upon providing an overarching narrative instituted from a particular perspective. In the SATRC, for example, Hamber et al. note that the TRC recognised justice as a process, providing institutional retribution in the form of trials for those who did not apply for or were not granted amnesty as well as institutional forgiveness in the form of amnesty.[51] However, whilst based in the community, truth commissions often reflect formal, court-like contexts, undermining their potential for them to be locally managed structures. The SATRC, for example, remained "steeped in law" engaging "legal interpretations of key notions" such what constituted a crime against humanity and the category of victim and ultimately had the provide to grant amnesties.[52] This created risks in relation to the mandate of commission which focussed upon reconciliation over retribution. Christodoulidis notes that the tensions of the quasi-legal function of the SATRC rendered it being perceived as too formal, too perpetrator friendly along with perpetrators demanding that they be heard within the same hearing as their victims.[53] Its restorative function was undermined, creating tension between the SATRC as a reductive, legal tribunal and an open and reflexive confessional space in which the particularities of both victim and perpetrator could be articulated in full.[54] This reflects Herman's concerns that restorative justice models of justice, and the TRC's basis in *Ubuntu*, presented itself as focussed predominantly upon:

> religious or progressive concerns for the fate of criminal defendants, an abhorrence of punishment, and an idealistic longing for harmony and community consensus" over and above recognition of the needs of victims of sexual violence.[55]

[51] Hamber (n 43) 34.
[52] Emilios Christodoulidis, 'Truth as Reconciliation as Risks' (2000) 9(2) *Social & Legal Studies* 180, 186.
[53] ibid 187.
[54] ibid.
[55] Judith Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 598.

In the SATRC, gendered experiences of sexual violence were subsequently included in a separate chapter. The report took a reflective view, noting that the separation of gender was likely to be "understood by some readers as sidelining, rather than mainstreaming, the issue. Women will again be seen as having been portrayed as a 'special interest group', rather than as 'normal' members of the society." Despite this awareness, however, the Commission simply stated that, "to integrate gender fully… would have required the Commission to amend its understanding of its mandate and how it defined gross human rights violations."[56] Underpinned by narrow legislative mandate, sexual violence and women's gendered experiences of Apartheid instead became an "afterthought."[57] Nevertheless, the narrow legal lens through which women's experiences emerged was predominantly through their experiences of sexual violence. Rape and sexual violence were elevated to the worst crime women suffered:

> MS MKHIZE: Thandi, it does show that in all the painful experiences you went through, it seems the rape experience was the most painful one, that you cannot be able to go through… what do you think should be done to help other women who could be in the same position, or went through that same position?... One of the things that you don't want the community to see them as bad people since they raped, but as a person who has been involved in counselling and you have played a role in counselling other women; what do you think will help other women in a similar situation?
>
> MS SHEZI: I think what could help them, is that our Government must make a women centre where women can go and voice their innermost feelings and concern, because it would seem in most cases our Government looks after male needs and I think we played a very important role in the struggle and the history... And some of our guys, the males who were beaten up, but then they didn't have to go through that sore that we went through, but if there could be… counselling centres and give women something to do, give them an opportunity to express themselves… I'll go home with

[56] 'SATRC Final Report (n 18) 289.
[57] Margot Wallström, 'Introduction: Making the Link Between Transitional Justice and Conflict-Related Sexual Violence' (2012)19 *William & Mary Journal of Women and the Law* 1, 2.

> this trauma, but fortunately I have been receiving this counselling, but what about somebody else who have experienced similar situations and they just go back with the wound having been opened and thereafter they don't get any assistance in the form of counselling and support.[58]

Perceiving healing as a singular articulation of trauma before a commission undermines the complexity inherent in surviving violent acts such as rape and the consequences that emerge from this. The negative impact upon the mental health of the survivor, and the wider community, is often disregarded. Although coming to terms with the past is of particular importance to the narratives produced in truth commissions, providing testimony to a commission does not negate the need for ongoing support services to be available to survivors of rape once the truth commission has completed its mandate. Thus, it is difficult to reconcile the compelling narrative produced by a TRC when their function serves as a space within which the tensions of the setting are hampered by lack of focus upon social recovery from trauma, in whichever form this may take. This means that the option of justice as reconciliation is circumscribed. In the following section I turn to consider how women's experiences of rape during the Rwanda genocide were framed within the community-based Gacaca courts.

7.3. Community-Based Mechanisms: The Gacaca Process

In an effort to rectify the dominance of international law and the precarious nature of retributive justice, the transitional justice field has endeavoured to include more localised, traditional forms of justice.[59] Agency is intended to lie with the grass-roots community in how they approach restoration in post-conflict societies. Such measures intend to restore a sense of agency returned to the powerless and the voiceless, presenting them with the space to articulate their vision of justice in their own terms.[60] Narratives may then emerge from the individual's construction as opposed to the institutional narrative developed solely for the

[58] Shezi Transcript (n 16).
[59] Susan Thomson and Rosemary Nagy, 'Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's *Gacaca* Courts' (2011) 5(11) *International Journal of Transitional Justice* 11, 29.
[60] Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34(4) *Journal of Law and Society* 411, 432.

purpose of informing and developing the collective conscience of what took place during such atrocities. The Gacaca process in Rwanda emerged as an example of a local, restorative mechanism. These community-based courts would meet once a week in public areas, facilitated as a means through which to enforce punishments ranging from prison sentences to community service orders. Bringing the community together to promote reconciliation, and promoting truth to allow victims to find out about what happened to their loved ones. The Gacaca courts elected around 160,000 community judges with more than 12,000 courts hearing 1.2 million cases throughout the country until 2012.[61]

Due to the overwhelming number of accused in the aftermath of the genocide, transitional justice responses spanned three levels from the ICTR, to the national court system, through to Gacaca courts, a system of community-based justice loosely translated as 'justice amongst the grass.'[62] In 1996, Rwanda passed a law separating the genocide crimes committed, dividing these between the three tiers. Category one was for the most serious crimes which included "persons who committed acts [of] sexual torture. [63] Categories two, three and four included crimes deemed to be of a lesser severity to Category one. As a consequence of the strain upon the judicial system, a subsequent law was passed which transferred Category one offences to the national courts and Categories two, three and four to the Gacaca jurisdiction. [64] However, despite the judgment in *Akayesu,* Nowrojee notes that, "an overwhelming 90 per cent of those judgments [handed down by the ICTR] contained no rape convictions…there were double the number of acquittals for rape than there were rape convictions."[65] In 2008, the Rwandan Parliament adopted a law that transferred all of the cases before the conventional courts to its Gacaca counterpart except for those accused who

[61] BBC, 'Rwanda 'Gacaca' Genocide Courts Finish Work' *BBC News* (18 June 2012) <ww.bbc.co.uk/news/world-africa-18490348> accessed 16 June 2015.
[62] Phil Clark, *The Gacaca Courts: Post-Genocide Justice and Reconciliation: Justice without Lawyers* (Cambridge University Press 2010) 3
[63] Republic of Rwanda. 1996. "Organic Law 08/1996 of 30/08/1996 on the Organization of Prosecutions of Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990." Official Gazette of the Republic of Rwanda, Kigali, 1 September.
[64] Republic of Rwanda. 2001. "Organic Law 40/2000 of 26/01/2001 Setting up Gacaca Jurisdictions and Organising Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed between 1 October 1993 and 31 December 1994." Official Gazette of the Republic of Rwanda, Kigali, October.
[65] Binaifer Nowrojee, '"Your Justice is Too Slow": Will the ICTR Fail Rwanda's Rape Victims?' (United Nations Research Institute for Social Development (UNRISD), Occasional Paper 10 2005) 3.

had held the highest-ranking government positions.[66] Of those transferred, over 8,000, or 90%, of cases involved rape or sexual violence.[67] The transference of cases to the gacaca process had a contrasting impact upon victim-survivors.

7.4. Through the Three Modes: The Gacaca Courts

Gacaca presented a unique opportunity for women to have their voices heard in their local community, circumventing the detached internationalised ICTR and the national courts to which they had limited access. Gacaca undoubtedly went some way to providing a therapeutic function that the national and international prosecutorial bodies were simply unable to provide. Some women were allowed to submit their testimony in writing, to avoid having to attend the public hearings in person.[68] Women were also permitted to bring a trauma counsellor, friend, or relative to accompany and support them in the hearing.[69] The 2008 legislation allowed the women's cases to heard behind closed doors in attempt to encourage their participation. Due to the closed nature of the proceedings and the community-based practice, transcripts of the victim's testimonies are unavailable. However, the testimonies collected following victim's testified reveal potential and pitfalls of the Gacaca process.

7.4.1. Temporality

Temporally, the Gacaca process aimed to reconcile Rwandan society with the past, balance values of justice, truth, peace, and security to prevent a return to the horror of genocide. In 1999, it instituted a National Unity and Reconciliation Commission which remains open to this day. The jurisdiction of the Gacaca process was concerned with crimes

[66] Republic of Rwanda. 2008. "Organic Law 13/2008 of 19/05/2007 Modifying and Complementing Organic Law no. 16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, committed between October 1, 1990 and December 31, 1994 as Modified and Complemented to Date." Official Gazette of the Republic of Rwanda, Kigali, May.
[67] HRW, 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts' (Report, 2011) 113 <www.globalpolicy.org/images/pdfs/rwanda0511webwcover.pdf>
[68] Karen Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Re-traumatization in the Rwandan Gacaca Courts' (2008) 39(1) *Security Dialogue* 55, 72.
[69] HRW (n 67) 116.

committed between 1 October 1990 and 31 December 1994.[70] This compares to the restrictive jurisdiction of the ICTR which was limited the period between 1 1 January 1994 and December 31 1994. The main aims of the process were to:

> reveal the truth about what happened, accelerate genocide trials, eradicate the culture of impunity, reconcile Rwandans and reinforce their unity, and prove that Rwanda has the capacity to resolve its own problems. [71]

This demonstrates the backward and forward-looking function of the process. Reconciliation endeavours to heal past wounds and divisions, whilst eradicating the culture of impunity looks to the future through punishment as a means of deterrence. However, as will be explicated below, the rape cases undermined many of these aims for women who were raped.

7.4.2. Spatiality

Spatially, Gacaca allowed women to confront their local community, demanding that community members listen and respond to their stories of sexual violence committed by those who had engaged in the genocide. The community spirit of the Gacaca courts was underpinned by notions of truth, justice, and healing. Whilst testifying and sharing experiences publicly can be a painful experience, whether or not the sharing will be beneficial is dependent upon a multitude of factors, such as the provision, or lack of, ongoing support and the implementation of protective and security measures.[72] Moreover, the importance of communal recognition and the increased sense of community that Gacaca endeavoured to provide was designed to foster reconnection and heal divisions.[73] Generally speaking, however, the risk of negative mental health outcomes, such as depression or PTSD rose exponentially for survivors who witnessed during the Gacaca process. Witnessing coupled

[70] Republic of Rwanda. 2001. "Organic Law 40/2000 of 26/01/2001 Setting up Gacaca Jurisdictions and Organising Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed between 1 October 1993 and 31 December 1994." *Official Gazette of the Republic of Rwanda*, Kigali, October.
[71] HRW (n 67) 16.
[72] Karen Brounéus. 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health' (2010) 54(3) *Journal of Conflict Resolution* 408, 423.
[73] Clark (n 62) 73.

with the process of testifying before the community presented a number of problematic barriers to the justice aims of the Gacaca process for victim-survivors of sexual violence.[74]

The transference of the rape cases emerged as the antithesis of the Gacaca process. Problems surrounding the disclosure of victim identities and threats of further violence left women feeling unsafe in their communities.[75] Unlike the protections afforded by the legal process, Gacaca was marred by intimidation. As Brounéus notes, the community audience shouted insults and interrupted their testimonies. As one woman who was raped multiple times and has a child borne of rape noted:

> I am not safe because the people who hurt me have been released from prison. They often pass by my house. I think they have bad intentions… I was afraid when I gave testimony in the Gacaca because the people were yelling… Afterwards, they came; they broke my windows. I was afraid. I thought I would be killed... I do not go to Gacaca any longer. I am scared to be attacked or killed. My sister was killed in February after she had given testimony.[76]

Despite the protective measures afforded by the legislation, many victim-survivors did not want to testify in the Gacaca setting because of fears for their safety due to the lack of privacy they afforded.[77] As Herman notes in order for recovery, the establishment of safety must be paramount, particularly in relation to the provision of restorative justice.[78] In 2008, Brounéus observed that the impact of traumatisation such as:

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[74] This included problematic rape myths prevailed with government officials arguing that "'an adult woman often participates in her own victimization' and that, in such cases, 'there are two perpetrators [the attacker and his victim].'' See HRW, 'Struggling to Survive: Barriers to Justice' (Report, 30 September 2004) <www.hrw.org/report/2004/09/30/struggling-survive/barriers-justice-rape-victims-rwanda> accessed 15 October 2015; Brounéus (n 72) 423.
[75] HRW (n 67) 112.
[76] Brounéus (n 68) 68.
[77] Clark (n 62) 70.
[78] Judith Herman, *Trauma and Recovery* (Basic Books, 1992) 155; Judith Herman, 'The Mental Health Outcomes of Crime Victims: Impact of Legal Intervention' (2003) 16(2) *Journal of Traumatic Stress* 159, 163.

> ill-health, isolation, and insecurity dominate the lives of these testifying women. They are threatened and harassed before, during, and after giving testimony in the Gacaca. This is a picture of a reconciliation process we seldom see.[79]

Despite closed sessions, Gacaca hearings involved full disclosure of the identities of witness and victims to those in the community. As Pozen notes, this made the decision to anonymise identities in the internationalised ICTR somewhat nonsensical because the sheer number of victims, and the risks subsequently facing them, vastly outweighed those accessing the ICTR located in a remote location from Rwanda.[80] It left many survivors concerned for their confidentiality, particularly as the judges were members of the community and many had affiliations with those who had been accused of rape. As Pascasie Mukasakindi, a victim-survivor of the genocidal rape, reflects:

> I hate all men and I do not want to hear about them. I feel the Interahamwe militia and FAR soldiers killed what I would have become. I am HIV positive. I am not able to work… Some of the Interahamwe militiamen who raped me were imprisoned, but they are now being released. This is not justice. *Gacaca* courts were supposed to bring justice and reconciliation, but they are bringing more tears than smiles. The men who killed me should be better trained on how to treat survivors after they return to society. Soon, I will accuse some of the perpetrators myself in *Gacaca* court. I am afraid of testifying against them, but I will not allow fear to get in the way. Despite all that has happened to me, I can forgive those who ask for forgiveness from the bottom of their hearts.[81]

Pacasie's testimony highlights how the multiple rapes she experienced have affected her life in irreparable ways. For many women, Gacaca presented the only means through which justice could be done before the HIV/AIDS contracted from the man/men who raped them meant they would no longer be alive to testify.[82] De Brouwer describes this as "the legacy left

[79] Brounéus (n 68) 72.
[80] Joanna Pozen, 'Justice Obscured: The Non-Disclosure of Witness' Identities in ICTR Trials' (2005-2006) 38(281) *International Law and Politics* 282, 283-284.
[81] Anne-Marie de Brouwer and Sandra Ka Hon Chu (eds), *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (Douglas & McIntyre 2009) 77.
[82] HRW (n 67) 113.

to women raped during the genocide."[83] Despite the deliberate spreading of HIV and the detrimental impact this will have upon her life, Pacasie Mukasakindi demonstrates her propensity to forgive, if those who hurt her would show her remorse. Sentences were lowered if the accused repented for their crimes and demonstrated remorse before the judges. Like Hildegarde Nyampinga explains:

> The killers of my parents apologized; those who looted our properties paid back what they took. But still the rapists were not brought back from where they are. I wish that Gacaca would bring all perpetrators to justice so that I can then benefit from the justice I am entitled to. Forgiving the rapists will be difficult as long as they do not seek forgiveness from me. They could do so even without me seeing them face-to-face. [84]

This demonstrates the burden placed upon women who are willing to forgive those who raped them yet are confronted by a lack of remorse. Human Rights Watch found that many of the survivors were left disappointed by the lack of apology and repentance exhibited by the men.[85] Gacaca became a space within which women were to seek reconciliation through their own forgiveness. Moreover, Thomson and Nagy highlighted how the provision of justice in Rwanda became scripted whereby, "(Hutu) perpetrators [told] the truth about what they did, to whom and how, during the genocide and (Tutsi) survivors, in turn, [forgave] perpetrators."[86] As Clark discovered interviewing a local merchant, like the ICTR, the Gacaca courts reinforced the distinction between Hutu and Tutsi women.[87] This meant that although Hutu women put forward their complaints to community judges, the Gacaca process ignored them and only permitted Tutsi women to talk about the rape they experienced during the genocide. Whilst the broader community endeavoured to reconcile the ethnic differences amongst Hutu and Tutsi people, the ICTR tribunal and Gacaca courts adamantly refused to recognise Hutu women raped, expelling an entire section of the population from having their traumatic experiences heard within such spaces.

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[83] de Brouwer and Hon Chu (n 81) 146.
[84] Hildegarde Nyampinga, 'I Died and was Resurrected' (2014) 24(1) *TORTURE* 21, 23.
[85] HRW (n 67) 124.
[86] Thomson and Nagy (n 59) 22.
[87] Clark (n 62) 123.

7.4.3. Genealogy

Genealogically, women were permitted little control over the avenues of justice available to them in the aftermath of the genocide. Whilst punishment of perpetrators endeavoured to end impunity for the crimes committed, other forms of justice, such as reparations, both material and symbolic, were consistently overlooked. Human Rights Watch found that most of the genocide survivors cited the lack of compensation as one of the main shortcomings of the Gacaca process.[88] This resulted in many Rwandan's falling into poverty potentially exacerbating the emotional and psychological trauma felt by survivors and inhibiting their ability to recover.[89] Illuminée Munyabugingo notes that:

> Because other women with rape experiences whom I accompanied to the Gacaca courts did not receive any positive results from it, I decided not to testify against the rapists. Instead of getting the justice the women needed, the public started to gossip openly about them. The rights of the women were not met. Instead, they exposed themselves to the public for nothing. In Gacaca, rapists used to ask the victim of rape to bring witnesses of the rape. Where can I find those witnesses? Could I bring my children who observed everything during the genocide, and ask them to repeat face-to-face whatever those rapists did? … What Gacaca has done is to release the rapists instead of imprisoning them. We did not want to expose ourselves in public for nothing. I was disappointed by the judges of Gacaca who were appointed as such, because they were supposed to have integrity. Instead they accepted bribes and released perpetrators. In addition, the truth has only been told partially and Gacaca did not finish all of the trials it should judge.[90]

Illuminée highlights the disjuncture between the rhetoric of impunity and the inability of the Gacaca process to deliver this to victim-survivors in practice. Like national courts and international tribunals, the Gacaca process could not try each and every man who committed rape. During the chaos of the genocide, many people were dispersed meaning that the rapists

[88] ibid 80.
[89] ibid 275.
[90] Illuminée Munyabugingo, 'Women, we need to be courageous' (2014) 24(1) *TORTURE* 12, 15.

were physically distanced from the women they had raped. Nonetheless, the release of prisoners into the local community and the corruption Illuminée speaks of undermines the notions of truth and justice underpinning the Gacaca process. Whilst the difficulties of the Gacaca process exacerbated many of the existing problems women face in accessing justice in the aftermath of rape, the process embodied a form of community justice, demonstrating the possibilities of embedding a localised justice mechanism, accessible to survivors with both restorative and retributive functions. Nonetheless, the lack of focus upon the barriers facing justice for victims of rape during the genocide demonstrates the inherently political nature of the process reflective of the conflict between victim's interests and the broader values underpinning it forcing the provision of a collective memory yet failing to recognise the gendered elements of the genocide. For Sontag, collective memory is "not a remembering, but a stipulating: that *this* is what is important and this is the story about how it happened."[91] One means through which to combat this emerged ten years after the genocide. The NGO *Sociotherapy Rwanda* established a nationwide socio-therapy programme. This uses a community-centred approach to enables survivors to speak about their experiences, and the experiences of their family, as part of a nation-wide process of rehabilitation in the aftermath of the genocide.[92] The following testimonies from survivors of rape demonstrate the importance of facilitating recovery through the provision of psychological support services. Mameritha Nyiramana notes the importance of letting other survivors of rape know that recovery from the trauma inflicted upon them is possible:

> I shared my story here in order to inform other women who are like me that healing is possible. Wherever you are, do not feel guilty. I advise all women to get together, sit somewhere in an intimate place and share your sadness. After being listened to and sharing advice, every woman will feel strength and hope for the future.[93]

Whilst Charlotte Uwera articulates the importance of sociotherapy:

> When other women were sharing their stories of rape in sociotherapy, I realised that there were other people who had the same problems as mine. Their discussions took

[91] Susan Sontag *Regarding the Pain of Others* (Picador 2003) 76-77.
[92] See *Socio-therapy Rwanda* <www.sociotherapy.org/> accessed 14 March 2016.
[93] Mameritha Nyiramana, 'I Found a Family Through Sociotherapy' (2014) 24(1) *TORTURE* 1, 28.

> me out of my shame. We had good moments together. We cried freely as if nobody was looking at us. We were the same. These moments reminded me of how we had been abused and how Hutus had deprived us of our value. Before, I was frittering away money. I did not have a plan for my life. But today, I am thinking about my future instead of thinking about my past.[94]

The narratives a woman provides and the stories they share amongst one another can help them to make sense of their experiences, standing as a marker against the imposition of a particular identity and the stereotypical assumptions that underpin these. Such narratives represent the importance of reconnection for women who have been raped and sexually violated, as the trauma inflicted can render them alienated and estranged from others "leaving them to reside in worlds that are incommensurable" to those around them.[95] Herman notes that collective recovery processes, as exemplified by sociotherapy, allows women to know that they are not alone, restoring their sense of connection with a community responsive and understanding to the experiences allowing a new meaning to emerge from their narrative that "that transcends the limits of personal tragedy. Most commonly, women find this meaning by joining with others in social action."[96] Such mechanisms, often instituted by civil society organisations, demonstrates the importance of creating a community of victim-survivors whom are provided with a safe space to articulate their stories, supported in the knowledge that they are not alone.

7.5. Conclusion

During the work of SATRC, SLTC and Gacaca courts, storytelling was central to the endeavour to seek justice beyond the retributive paradigm. Compared to legal representations, the narrative produced within and by the mechanisms endeavoured to provide more nuance, closer to home, in ways that brought together the collective responsibility of the community. In each mechanism, women were provided with a space, whether in public or private, to share their stories, to speak to the individual and collective

[94] Charlotte Uwera, 'Coming Out of a Deep Hole After a Life of Trials' (2014) 24(1) *TORTURE* 49, 52.
[95] Robert Stolorow, *Trauma and Human Existence: Autobiographical, Psychoanalytic, and Philosophical Reflections* (Taylor & Francis, 2011) 20
[96] Judith Herman (n 78) 73.

trauma they or their loved ones endured, holding their communities to account for the violence committed. In the SATRC, for instance, women were permitted to speak in as much detail as they needed, providing fuller, more detailed representations of the trauma inflicted and the impact that this has had upon their lives. In each mechanism, locating the mechanisms within the affected communities, to varying degrees, along with allowing the community to attend hearings, placed the stories within their context and demonstrated the endeavour to restore and rebuild connections between victims and perpetrators and individuals and their community.

Nonetheless, despite the differences in the processes and practice of truth and reconciliation commissions and community-based mechanisms, the testimonies provided by women exemplify the similarity in the difficulties that women face in speaking to their experiences of rape and sexual violence within their communities. Women's reticence to testify in each mechanism elucidates their understanding of the risks associated with engaging with the transitional justice process. In the SATRC, despite the dominance of masculinity present throughout South African society being recognised and represented in the Commission, the attention paid to the socio-cultural environment that gave rise to the perpetration of sexual violence was provided little attention. The lack of accountability in implementing the recommendations provided by the Commissions demonstrates a missed opportunity to unravel the harmful gendered norms that have since given rise to some of the highest rates of femicide throughout the world. In the Gacaca courts, the lack of protective measures and the failure of the courts to shift the narrative focus to those who committed sexual violence undermined the ability of the Gacaca process to reconcile the past with a future based upon justice, peace and security. Instead, women were forced to endure the shame and stigma surrounding sexual violence, facing re-traumatisation by their own communities.

Throughout the narratives produced in each quasi-judicial mechanism, incommensurability prevailed as the disjuncture between rhetoric and action, between representation and recovery, endured. In answer to the questions outlined in the chapter's introduction, it is unfortunate that the limits placed upon paying attention to conflict-related sexual violence within such mechanisms is circumscribed by an inability to consider what

justice outside of institutional mandates and fixed processes may look like from the perspective of those deemed central to their work. The fact that victim-survivors of sexual violence are forced to fight the trap of shame, bringing attention to the violence committed against them in the hope that in breaking their silence their community will listen and fight with them demonstrates the continued devaluing of women's experiences. As such, the claim that quasi-judicial mechanisms present a restorative and reconciliatory function for victim-survivors of sexual violence beyond the confines of legal representation risks being undermined by the unrealistic expectations placed upon victim-survivors in the processes and mandates of such mechanisms. Whilst their experiences may be acknowledged and recognised, they cannot be expected to continue the fight alone as the temporary nature of the transitional justice mechanism comes to an end.[97] In the following chapter I turn to consider the narratives constructed in extra-judicial mechanisms. It asks whether such mechanisms are able to provide a more accurate representation of women's lived experiences of conflict-related sexual violence as alternative forms of justice beyond the prevailing restorative and retributive models embodied in judicial and quasi-judicial mechanisms.

[97] Elisabeth Porter, 'Gendered Narratives: Stories and Silences in Transitional Justice' (2016) 17(1) *Human Rights Review* 35, 37.

Chapter Eight: An Enduring Silence: Apologies, Memorialisation and The True Value of Reparations

This chapter commences the second part of the narrative analysis and turns to consider the extra-judicial mechanisms of apology, memorialisation and reparations. Applying the three modes of thought to each mechanism, I explore whether and in what ways such mechanisms have been employed to represent women's lived experiences of conflict-related sexual violence in the aftermath of conflict in each transitional context. I begin by analysing the official apologies made by Prime Minister Abe and the Japanese Government and President Koroma in Sierra Leone. Following this, I explore the 'Comfort Women' memorials in Busan and San Francisco and the 'Heroinat' and 'Thinking of You' memorials in Kosovo. Subsequently, I turn to consider the true value of reparations and the disparity that continues to arise between representations of sexual violence within mechanisms and the lived realities of women following the completion of mechanisms work.

8.1. Apologies

In contexts where transitional justice has been pursued, official apologies made by individuals, governments or state groups have become a mechanism in their own right. Over the years, a number of public apologies have been made as part of transitional processes, such as the apology made to Australia's Indigenous peoples by Prime Minister Kevin Rudd in 2008 and President Koroma's apology to Sierra Leonean women in 2010. They are symbolic narrative gestures that attempt to redress past actions. Apologies have also emerged from criminal and truth-seeking mechanisms, such as those made during the SATRC as part of the amnesty process.[1] Temporally, apologies often denote the outcome of a transitional justice process and indicate "future intentions to prevent the return to pre-transition conditions marking the "start of the end" and are used to represent the wish to heal or repair past

[1] Audrey R. Chapman, 'Truth Commissions and Intergroup Forgiveness: The Case of the South African Truth and Reconciliation Commission' (2007) 13(1) *Peace and Conflict: Journal of Peace Psychology* 51

wrongs.[2] The symbolic significance of an apology can vary depending upon the seniority of the person providing it along with whether it is made in person via a speech or through a disseminated text.[3] Official apologies by governments or state actors present a different paradigm to personal apologies provided by perpetrators to survivors of atrocities. The ICTJ notes that due to the public nature of official apologies as a form of communal reparation, "the content, delivery, tone, and proper timing of an apology are crucial."[4] As history progresses, the need for apologies for past actions has become more apparent. The case of a formal apology provided by a government or state department has the potential to mark a turning point, providing a narrative that begins to heal past divisions and reconcile society.

8.1.1. Official Apologies for Conflict-Related Sexual Violence: The Silence Remains

Apologies for the perpetration of mass rape in post-conflict settings remains.[5] A seeming reluctance to recognise the sexual violence committed against women is apparent from state level to community through to those who commit such violence particularly in terms of an explicit acknowledgment in clear and unequivocal language that recognises the harm(s) inflicted and resulting trauma. An apology should involve both parties yet for victims of rape forgiveness often begins and ends with them because the perpetrators of rape may be unknown or unwilling, notwithstanding the fact that a survivor may not want an apology from them.[6] This draws attention the importance of official apologies to adequately represent conflict-related sexual violence because an apology from the rapist is so rarely provided. By definition, Herman defines a full apology as "an acknowledgment of the offense and the harm, an assumption of responsibility, without qualifications or excuses, an

[2] Stephen Savage, 'Restoring Justice: Campaigns Against Miscarriages of Justice and the Restorative Justice Process' (2007) 4(2) *European Journal of Criminology* 195, 209.
[3] ibid.
[4] ICTJ 'More Than Words: Apologies as a Form of Reparation' (2015) 2 <www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf> accessed 15 March 2016.
[5] Interestingly, we have seen a proliferation of public apologies following the post-Harvey Weinstein era which has begun pulling off the thin veil masking the pervasive and insidious sexual harassment being committed by men in powerful positions in the West. Arguably, this brings sexual violence into sharper focus. Whilst a cultural shift emerges, it is important that this lens encompasses a global view of the pandemic of sexual and gender-based violence irrespective of whether this is committed in times of peace or under conflict conditions.
[6] Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Beacon Press, 1998) 114.

expression of remorse, and an offer to make amends."[7] Importantly, an apology should provide space for the acceptance or rejection of its substance. A number of questions arise in relation to apologies for conflict-related rape such as: does the victim want to engage in this way with the perpetrator? What is the victim expecting or hoping the apology will address? If provided by an official body, who is the most appropriate person to articulate the public apology? When should the apology be made? What will be said and acknowledged? If time has passed, is it still appropriate to issue an apology? Does issuing an apology risk re-traumatisation? Are underlying tensions likely to be exacerbated? Is the language and tone used genuine and sincere?[8]

In recent years, two official apologies concerning conflict-related sexual violence have been made. The first was provided by the Japanese government on the seventieth anniversary of the end of WW2. As noted in Chapter 2, sexual violence during WW2 was a common occurrence though consistently overlooked by legal and political institutions on both national and international levels in the aftermath of the war.[9] In 1937, Japanese soldiers attacked the city of Nanking, the capital of the Republic of China. Over a period of six weeks, the soldiers went on a rampage of mass murder and mass rape resulting in the phrase the 'Rape of Nanking.' Takokoro Kozozo a former soldier in the 114th Division of the Japanese army explained frankly the forms of violence committed against women during the massacre:

> We took turns raping them. It would be all right if we only raped them. I shouldn't say all right. But we always stabbed and killed them. Because dead bodies don't talk.[10]

> Women suffered most… No matter how young or old, they all could not escape the fate of being raped. We sent out coal trucks from Hsiakwan to the city streets and

[7] Judith Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 586.
[8] Lynn M. Harter, Ronald J. Stephens, Phyllis M. Japp, 'President Clinton's Apology for the Tuskegee Syphilis Experiment: A Narrative of Remembrance, Redefinition, and Reconciliation' (2000) 11(1) *Howard Journal of Communication* 19.
[9] See Ch 2 (n 9).
[10] ibid.

> villages to seize a lot of women. And then each of them was allocated to 15 to 20 soldiers for sexual intercourse and abuse.[11]

Following the 'Rape of Nanking' and in response to international criticism of the magnitude of rape being committed, the Japanese Expeditionary Force in Central China distributed adverts requesting women to voluntarily engage in sex work with the soldiers. Though some women had responded to adverts initially distributed and were compensated for their work, when an insufficient number volunteered the Japanese troops turned to kidnapping and enslaving them.[12] Their aim was to establish what the soldiers termed "facilities of sexual comfort"[13] or 'comfort stations' that aimed to draw international attention away from the public mass rape being committed.[14] Within these facilities, the soldiers drugged and repeatedly raped the women and girls held captive. When kidnapped and forced into the 'comfort stations' the victims were young women and girls, some no older than fifteen years old. As a consequence of their time in the stations, many of the young girls and women committed suicide, were murdered by the soldiers, or died from diseases they contracted from living in the squalid conditions.[15] Sexually transmitted diseases rendered many of the women infertile, whilst the shame and stigma associated with rape meant that numerous women never returned home, or never married, for fear of having to speak of what had happened to them and the consequences of telling their story. Many of those who survived are now no longer living. The consequences of being confined within a context where your sole purpose was to be used as a vessel for men to rape you stretches far beyond physical wounds.

Fifty years passed before the first woman felt able to break her silence. Kim Hak Sun, a South Korean woman, was sixty-seven years old when she became the first woman to testify in 1991 about the sexual violence she endured and to request recognition and reparation

[11] Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (Basic Books 1997) 89
[12] There is evidence that advertisements titled 'Comfort Women Wanted' appeared in Asian newspapers during the War with the intention of employing women. See Yae-Jin Ha, 'Comfort Women Wanted": Uncovering Violent Past and Entering New Age of Activism Through Visual Language' (2014) Undergraduate Humanities Forum 2013-2014 <http://changjinlee.net/cww/> accessed 14 March 2016.
[13] Chang (n 11) 52-53
[14] Ibid.
[15] ibid 53.

from the Japanese government.[16] Her testimony paved the way for the world to learn about what had happened to the thousands of women at the hands of the Japanese soldiers. After years of demands from survivors and activist groups, Prime Minister Abe provided a statement in July 2015. He stated:

> We must never forget that there were women behind the battlefields whose honour and dignity were severely injured… We will engrave in our hearts the past, when the dignity and honour of many women were severely injured during wars in the 20th century. Upon this reflection, Japan wishes to be a country always at the side of such women's injured hearts. Japan will lead the world in making the 21st century an era in which women's human rights are not infringed upon.[17]

Seventy years after the end of the war, the Government of Japan came to an agreement on the so-called 'comfort women' with the Government of South Korea in December 2015. In a joint statement, the Government of Japan stated:

> (1) The issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women, and the Government of Japan is painfully aware of responsibilities from this perspective. As Prime Minister of Japan, Prime Minister Abe expresses anew his most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.
>
> (2) The Government of Japan has been sincerely dealing with this issue. Building on such experience, the Government of Japan will now take measures to heal psychological wounds of all former comfort women through its budget. To be more specific, it has been decided that the Government of the ROK establish a foundation

[16] See Paula Allen, '70 years on, the "comfort women" speaking out so the truth won't die' (Amnesty International Campaign, 2015) <www.amnesty.org/en/latest/campaigns/2015/09/70-years-on-comfort-women-speak-out-so-the-truth-wont-die/> accessed 15 March 2016.

[17] Prime Minister Shinzo Abe, 'Statement by Prime Minister Shinzo Abe "On the occasion of the 70th anniversary of the war's end"
(14 August 2015) <https://japan.kantei.go.jp/97_abe/statement/201508/0814statement.html>

> for the purpose of providing support for the former comfort women, that its funds be contributed by the Government of Japan as a one-time contribution through its budget, and that projects for recovering the honor and dignity and healing the psychological wounds of all former comfort women be carried out under the cooperation between the Government of Japan and the Government of the ROK.
>
> (3) While stating the above, the Government of Japan confirms that this issue is resolved finally and irreversibly with this announcement, on the premise that the Government will steadily implement the measures specified in (2) above. In addition, together with the Government of the ROK, the Government of Japan will refrain from accusing or criticizing each other regarding this issue in the international community, including at the United Nations.[18]

These two statements formed the first agreement-cum-apology to specifically address the involvement of Japanese authorities in the mass rape committed against women during WW2.

The second apology was provided by President Koroma to Sierra Leonean women for the sexual violence committed during the country's eleven year long civil war. It is estimated that approximately 250,000 women and girls experienced sexual or gender-based violence, including multiple and gang rapes as well forced pregnancy.[19] In his apology, President Koroma stated:

> We have… as a nation fallen short of our obligations to women. For decades women have had to battle it out with the constraints of culture to get justice and education… and for a whole decade during the war we fell short in our obligation to adequately protect women from the brutalities of armed conflict. We will never as a nation move

[18] Foreign Minister Kishida, 'Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion' (Ministry of Foreign Affairs of Japan, December 2015) <www.mofa.go.jp/a_o/na/kr/page4e_000364.html> accessed 14 March 2016.

[19] Elizabeth Mills and others, 'They Call Me Warrior': The Legacy of Conflict and the Struggle to End Sexual and Gender-based Violence in Sierra Leone' (Institute of Development Studies and Men's Association for Gender Equality-Sierra Leone 2015) 10 <https://core.ac.uk/download/pdf/30267169.pdf>

> forward if we do not apologize to the women of this country for letting them down during the war; we will never as nation know better days if we do not ask for the forgiveness of our mothers, sisters, partners, and female compatriots for what we let them go through during the war. It is almost a decade now since the war ended, but we must apologise for the wrongs of the war. As Head of State I apologise for the wrongs wrought on women, as Commander-in-Chief I ask for forgiveness for the armed forces, as Fountain of Honour and Justice I pledge this country's commitment to honour, protect, defend and defend the rights and aspirations of the women of this country. As a Sierra Leonean man, I urge all men of this nation to stand by women to defeat these long-standing injustices suffered by more than half our population… Fellow Sierra Leoneans, we owe it to our country to make right the wrongs we have committed against women.... There is no way we could bring glory to this nation without women. Ensuring the rights of women is one of the greatest ways of being patriotic.[20]

In the following section I will compare these two apologies analysing them through the three modes of thought in order to elucidate what is captured and elided by the two narrative representations. Whilst both agreements acknowledge the psychological wounds inflicted, a number of problematic aspects arise when viewed through the narrative lens.

8.1.2 Through the Three Modes

Comparatively, the apology made by President Koroma adheres to Herman's definition of an apology in a more encompassing manner than the statement provided by Prime Minister Abe and Japanese government. His address used the pronoun 'we' demonstrating the required assumption of responsibility of Sierra Leonean men to denote the violence they committed. It endeavoured to make amends through the provision of future education and the ending of injustices against women. Moreover, President Koroma's apology acknowledged the number of years that had passed since the Lomé Peace Accord

[20] 'Statement by His Excellency Doctor Ernest Bai Koroma on international Women's Day' (27 March 2010) <http://sierraexpressmedia.com/?p=6911>

was agreed in 1999 and expressed remorse for the time lapsed without acknowledgment of the violence committed against the Sierra Leonean women affected. It was also made on International Women's Day, a symbolically significant day throughout the world. Commencing from the articulation of the apology, he addressed the past with a view to 'better days' for the future and encouraged men to seek forgiveness for the harm they committed. However, the use of the term 'our' in the phrase "our mothers, sisters, partners, and female compatriots" identifies women as property. Women should not have to be associated with these terms in order to be worthy of being seen as fully human, their value lies in their own being not in their relation to others. This reflects Moffett's observations that men are often positioned through mostly patriarchal solutions to the problem of their own violence: if they are not to be predators, they are urged to be protectors.[21]

The agreement-cum-apology from the Japanese government contrasts with President Koroma's address. It was made over half a century after the end of the war and in questioning the belatedness and reluctance of the state to apologise for the sexual violence committed it is necessary to ask how late is too late for an apology to be made. As *Harter et al.* consider, "is there a ''statute of limitations'' for public apology?"[22] Despite assurances that the lived experience of the women affected will never be forgotten, the past engraved in the hearts of the Japanese government, the statement in Paragraph 3 that confirms the "issue of comfort women" is resolved finally and irreversibly turns the apology into a declarative statement. It failed to respect their agency or place them in a position of strength from which they could accept, refuse, or ignore the apology.[23] Some of the women have rejected the agreement-cum-apology. As Kim Bok-dong, a prominent survivor, has stated, "Did you think we were fighting up until now, in order to receive some funds?"[24] The declarative nature of the apology places women in a subordinate position, as opposed to being on an equal footing upon. The difficulty inherent with the narrative promulgated by the Japanese government is that the perspective taken has little interest in whether or not this is deemed adequate in the

[21] Helen Moffett, 'These Women, They Force Us to Rape Them': Rape as Narrative of Social Control in Post-Apartheid South Africa' (2006) 32(1) *Journal of South African Studies* 129, 144.
[22] Harter, Stephens and Japp (n 8) 30.
[23] Minow (n 6) 115.
[24] Elizabeth Shim, 'Japan reparations not the answer, former 'comfort woman' says' (UPI, 2016) <www.upi.com/Top_News/World-News/2018/09/04/Japan-reparations-not-the-answer-former-comfort-woman-says/5211536053748/> accessed 14 April 2016.

eyes of those whom it is supposed to address. Some of the remaining survivors have demanded a personal apology from Prime Minister Abe, perceived as a more meaningful. Unlike his predecessor Prime Minister Koizumi, however, Prime Minister Abe has refused to write personal apology letters to the remaining women, stating that that "future generations should not be 'predestined' to apologise themselves."[25] Whilst physical wounds may heal over time, this statement demonstrates Prime Minister Abe's unwillingness to recognise the trauma inflicted by the Japanese soldiers, on authority from the government, as a recurrent and temporally ignorant harm that women endure in their past, present and future.

In both apologies, the language used fails to acknowledge sexual violence in clear, unequivocal and explicit terms. The narrative framing that the two apologies provide are conservative responses to a serious and insidious form of violence. In President Koroma and Prime Minister Abe's apology, the phrase sexual violence or rape is never explicitly used. Instead, phrases such as "women's injured hearts", "grave affront to honour and dignity", and "the wrongs wrought on women" remove acknowledgment of the forms of violence inflicted by the men responsible. This detracts attention from the who – the perpetrator - and the why – perceptions of women, misogynist behaviour, militarised violent masculinity and so forth – which are absent from the narrative. Moreover, in the Japanese context, the omission of responsibility diminishes the potential legal culpability of the Japanese government.[26] This is clearly a political decision underpinned by cultural norms that render the shame and stigma of sexual violence unmentionable. As Lundy and Rolston note:

> Despite the claim at the heart of transitional justice programmes of 'victim-centredness', many transitional justice processes have acted to disempower victims and impede agency and 'voice'. Apologies are no exception; despite the rhetoric of forgiveness there is the possibility that they 'may facilitate perpetrators' ability to do

[25] Justin McCurry, 'Japanese PM Shinzo Abe stops short of new apology in war anniversary speech' (The Guardian, 2015) < www.theguardian.com/world/2015/aug/14/shinzo-abe-japan-no-new-apology-second-world-war-anniversary-speech> accessed 14 March 2016; Kyodo, 'Abe confirms Japan not considering apology letters for 'comfort women' (Japan Times, 2016) <www.japantimes.co.jp/news/2016/10/03/national/politics-diplomacy/abe-confirms-japan-not-considering-apology-letters-comfort-women/#.WxaL2lMvztx> accessed 16 April 2016; See also, Letter from Prime Minister Junichiro Koizumi to the former comfort women <www.mofa.go.jp/policy/women/fund/pmletter.html> accessed 14 April 2016.

[26] Naoko Kumagai, 'Asia Women's Fund Revisited' (2014) 21(2) *Asia-Pacific Review* 117, 123.

> harm, teach victims to make peace with oppression and reinforce structures of inequality.'[27]

Instead, sexual violence is framed through moral language with connotations of modesty that are representative of the cultural values underpinning how violence against women is understood, as a shame for the woman to bear and not the men who perpetrate such violence. The use of the term 'comfort women' is problematic, arising as a form of symbolic violence. The word 'comfort' has connotations of easing or alleviating pain or distress. Such euphemistic language detracts from the agency and responsibility of those who perpetrated the violence along with the physical and mental torture the women endured, through no fault of their own. Despite the violence, the term 'comfort women' has consistently been used throughout the world, softening the severity and cruelty committed. The harm caused by rape and inflicted by the soldiers has created a social boundary that has been upheld by the cultural norms imposed upon women's lived experiences of violence. This has isolated the women both spatially and socially and relegated their experiences to private as opposed to the public space.[28] Chang explains that:

> Asian Confucianism—particularly Korean Confucianism—upheld female purity as a virtue greater than life and perpetuated the belief that any woman who could live through such a degrading experience and not commit suicide was herself an affront to society.[29]

This culture of shame and stigma has not abated. In the film *The Apology: Before It's Too Late*, for example, some of the women making their way to testify in Japan are hounded by protestors who shout, "What do you think you doing here? Go home, dirty old bitches. Get out you shameless Korean hags. Go home, you Korean whores. Get out of here, you

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[27] Patricia Lundy and Bill Rolston 'Redress for past harms? Official apologies in Northern Ireland' (2016) 20(1) *The International Journal of Human Rights* 104, 107; See also, Simon Robins, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' (2017) 11(1) *Human Rights and International Legal Discourse* 41.

[28] Dana Chetrinescu. 'Rethinking Spatiality: The Degraded Body in Ian McEwan's *Amsterdam*' (2001) 7 *B. A. S.: British and American Studies/Revista de Studii Britanice si Americane*, 157-165 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.694.4267&rep=rep1&type=pdf> accessed 16 April 2016.

[29] Chang (n 11) 53.

prostitute."[30] Their words are emblematic of the culture surrounding the women's experiences that have placed blame upon their shoulders, steeped their experiences in shame and silenced their voices for so long.

In both apologies, the women's lived experiences, trauma, and pain is corroded by a broader political narrative that "attempts to redefine past experiences in order to serve present needs and future goals."[31] In President Koroma's apology reference to ensuring the rights of women as a form of patriotism fails to recognise the violence but rather represents the sexual violence as an affront to national identity, homogenising the heterogenous experiences of victims under the umbrella of state interests. As Buss notes, rape is often refracted through the prism of nationalism and rape becomes an attack on the home front as opposed to a pervasive injustice against women.[32] In Japan, the social, historical and geographical environment in which the apology was made has defined how conflict-related rape is represented. In Paragraph 3 of the agreement, it states that both governments must "refrain from accusing or criticizing each other regarding this issue." The declarative nature of the apology undermines the women's ability to reject the apology with dignity, instead their rejection is perceived as an affront to the political agreement. The power dynamics underpinning the apology diminished its sincerity shrouding the real issue of violence against women. The women endured fifty years of silence before they felt able to articulate the traumatic experiences they endured yet this continues to be silenced, pushed aside by the political responses of governments as secondary to political relations. The apology and agreement emerged within a political fray that has focussed upon political relations over and above the interests of those who have actively and systematically fought to have their voice heard and an adequate response to their suffering made. It demonstrates the failure to see the full humanity of women throughout the world. The real issue – male violence against women – is instead shrouded by and framed within a political furore concerning state interests.

[30] *The Apology* (2017) <https://misc.icarusfilms.com/press/pdfs/ap_pk.pdf>
[31] Harter, Stephens and Japp (n 8) 30.
[32] Doris Buss, 'The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law' (2007) 25(1) *Windsor Yearbook of Access to Justice* 3, 21.

Though these are only two apology texts, they are indicative of the wider silence that prevails in communities throughout the world. Each demonstrates how cultural norms, values and perceptions of women shape how the narrative is framed, demonstrating the fine balance that is trodden between the need to explicitly acknowledged rape or to refer to this in ways that do not offend the sensibilities of the wider public. For traumatised survivors, though an apology may denote an element of closure and recognition, unless this is followed by constructive and meaningful action the apology risks reducing the past. Victims have acknowledged the importance and significance of symbolic reparations and public apology but at the same time underscore the need for "tangible benefits to address the more concrete needs of victims, to which a symbolic component might be attached."[33] As will be discussed in the following section, one way in which the survivors of the brutality inflicted by the Japanese soldiers have rejected the apology is through the demand for memorialisation.

8.2. Memorialisation

From commemorative monuments, parks and museums, ceremonies, public days of remembrance, or the marking of mass graves, forms of memorialisation are varied and dependent upon the specific context and particular perspective that is used to frame the memorialisation project. Having recognised the "power and potential of memorialization, NGOs, victims' groups, and truth commissions from Peru to Sierra Leone have advocated for memorialization as a key component of reform and transitional justice."[34] As a consequence, projects such as the The Memorial to the Murdered Jews of Europe in Berlin, the Srebrenica-Potočari Memorial and Cemetery for the Victims of the 1995 Genocide, or the Day of Remembrance in Cambodia on 20 May each year have been established throughout the

[33] Fionnuala Ní Aoláin, Catherine O'Rourke, Aisling Swaine, 'Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice' (2015) 28 *Harvard Human Rights Journal* 97, 122 <http://harvardhrj.com/wp-content/uploads/2009/09/transforming-reparations-for-conflict-related-sexual-violence-principles-and-practice.pdf> accessed 15 April 2016.

[34] Sebastian Bret and others, 'Memorialization and Democracy: State Policy and Civic Action' (International Center for Transitional Justice, 2007) 1 <https://ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English_0.pdf>

world. They provide post-conflict societies with a means to acknowledge and remember the mass human rights violations committed so as to deter any recurrence in the future.[35]

Whilst memories of war and conflict are passed on through storytelling, personal artefacts and letters, the individualised passing of memories contrasts with collective memorialisation endeavours "instituted through law-making and transitional justice initiatives."[36] Crucially, memorialisation can fulfil some of the demands and needs of victims and their families through a permanent site of commemoration. Memorials embody spaces that can be used as a means through which to promote healing and rituals in the form of remembrance.[37] Such spaces make the invisible visible, physical representations of particular lived experiences that honour the memories of survivors and those who lost their lives. Their form traverses the temporal boundaries of the past, holding it in the present and moving forward into the future in the hope that the stories and people they represent will never be forgotten. Nevertheless, memorialising the experiences, stories and memories of atrocities and conflict is a complex endeavour, balancing a multitude of perspectives and narratives pertaining to who and what should be remembered. Often, multiple narratives conflict with one another making it difficult to memorialise particular people or experiences. Memorial projects can instead raise tensions between balancing the individual and collective narratives and memories with the politicized narratives of the state and other groups involved within the conflict. This makes the particular narrative framing important as it dictates what is remembered, what is forgotten, and whose narratives become the collective lens for commemoration.[38] Like apologies, their establishment alone as a symbolic reparation must not be viewed as sufficient in terms of addressing past wrongs.[39]

[35] Carla De Yeaza and Nicole Fox, 'Narratives of Mass Violence: e Role of Memory and Memorialization in Addressing Human Rights Violations in Post-Conflict Rwanda and Uganda' (2013) 8(3) *Societies Without Borders* 344, 347.
[36] ibid.
[37] ibid.
[38] Janet Jacobs, 'The Memorial at Srebrenica: Gender and the Social meanings of Collective Memory in Bosnia-Herzegovina' (2017) 10(4) *Memory Studies* 423
[39] Jude Sweeney, 'Post-war Memorialisation and Dealing with the Past in the Republic of Kosovo' (Centre for Research, Documentation and Publication, 2015) 7 <http://crdp-ks.org/wp-content/uploads/2016/03/Post-war-Memorialisation-and-Dealing-with-the-Past-in-the-Republic-of-Kosovo.pdf>

8.3. Memorialising Conflict-Related Sexual Violence

In 1992, Herman noted the distinct absence of public monuments for rape survivors.[40] Whilst the male experience of war is readily memorialised in, for instance, statues and museums, the female experience of war is often entirely overlooked. Lived spaces for women to collectively mourn their own trauma, are overlooked, excluded or minimised.[41] Women's narratives of rape are instead relegated to legal testimony as state-sponsored collective memorialisation efforts actively ignore and overlook women's experiences of war and violence. The disjuncture remains: though their experiences may be recognised by the international community, such acts are relegated to the private dimensions of society through the mass erasure from the public conscience. Coundouriotis notes, that "the silencing of survivors of rape… is deeply ironic as it duplicates the original violence against them, which was intended to destroy their capacity to speak."[42] Memorialising mass rape brings forth a multiplicity of tensions. Whose narratives will be represented by the memorial? Is the community actively engaged in denial? What are the broader political tensions between, for example, different groups and how might a memorial for rape survivors be interpreted? Will it be deemed an adequate response to rape or will it be perceived as intentionally inflammatory and antagonising? Conflict-related sexual violence is a contentious issue for many societies, with various intersections, such as history, politics, culture, and social perceptions surrounding gender and violence against women, shaping what is and is not recognised in memory projects, whether this be local-level or broader transitional justice projects.[43]

BiH is a prime example where women's lived experiences of rape have been excluded from memorialisation projects in public spaces, instead they are relegated to the private realms. Small memorial projects arise in private spaces, such as in the office of the Association of Women Victims of War, an NGO that campaigns for the rights of women victims of rape. Jacobs notes that here, "it is not the memory of fathers and sons that is recalled but of

[40] Judith Herman, *Trauma and Recovery* (Basic Books, 1992) 73
[41] Jacobs (n 38) 424.
[42] Eleni Coundouriotis, 'You Only Have Your Word: Rape and Testimony' (2013) 35(2) *Human Rights Quarterly* 365, 471.
[43] De Yeaza and Fox (n 35) 352.

mothers and daughters who, as survivors, live with physical pain, social stigma, and unresolved trauma."[44] This small memorial is juxtaposed against the prevailing silence that lingers outside of the office space. Compared to the experiences of men engaged in combat, sexual violence is actively denied a place in memorial projects. As Ní Aoláin et al. note, "conflict memory work elevates the masculinity of action" as men's lived experiences of conflict are actively represented yet "if women appear at all, they do so in marginal and highly essentialized ways."[45] Those responsible are allowed to remain silent, whilst women's lived experiences of rape are actively erased and silenced by stigma and shame. Their position as storyteller is circumscribed by a viewpoint that perceives masculinity as worthy of memorialisation. The human story of war is not solely a story of men yet women's stories are often not considered sufficiently appropriate or relevant to the collective narrative of war. This is not limited to BiH, this erasure has led to an absence of memorials for women in societies throughout the world. Memorialisation means that a whole society must remember and often the social relations of power dictate what is remembered and what is erased, "collective representations cannot be understood apart from the social relations of power and control."[46] Consequently, public memorialisation of women's lived experiences of sexual violence remains rare.

The lived experiences of the women who were raped and enslaved by the Japanese military during the Second World War have become one particular period of conflict-related rape that has been readily represented in memorial projects in an otherwise overwhelming absence throughout the world.[47] A number of memorials for the women have been installed in South Korean cities such as Seoul and Busan, and in various locations in America, such as Atlanta, Fairfax, Glendale, and San Francisco. Their installation has not been without issue, highlighting the politics of representation that continues to surround experiences of rape in conflict. In the same year as the Japanese agreement, the Heroinat memorial – the plural form of heroine in the Albanian language – was inaugurated in Kosovo. Following the work of

[44] Jacobs (n 38) 433.
[45] Ní Aoláin, O'Rourke, and Swaine (n 33) 121.
[46] Jacobs (n 38) 424.
[47] "Comfort Women" Justice Coalition, 'SF Memorial' <http://remembercomfortwomen.org/sf-memorial/> accessed 14 March 2016.

parliamentarian Alma Lama, the government sponsored the building of the memorial.[48] On the same day that Heroinat was inaugurated, Mendoj për Ty' or 'Thinking of You' was installed in the Prishtina football stadium. Kosovan born, London-based artist Xhafa-Mripa engaged directly with survivors to curate Thinking of You as a temporary memorial for Kosovan survivors and other survivors of war-related rape around the world. An estimated 5,000 dresses and skirts were donated. Nevertheless, "few memorials speak of women, even less of their suffering, courage, endurance and determination to achieve justice."[49] Women remain excluded from commemorative projects, excluded from the multitude of narratives that embody the memorial landscape in many transitional contexts, diminishing their connection to memorialisation processes.[50] In the following section, I will explore the memorials in San Francisco and Busan as well as Heroinat and Thinking of You for wartime rape victims in Kosovo.

8.3.1. 'Comfort Women' Memorials

On the first anniversary of the 2015 agreement, South Korean activists installed a statue of a victim outside the Japanese consulate in Busan, South Korea's second-largest city, protesting against the perceived inadequacy of the response by the Japanese government to the surviving 'Grandmothers.' The statute embodied the plea for the Japanese state to accept full legal responsibility as well as the provision of a formal reparations programme beyond the single deposit of 1 billion yen made by Japan to the South Korean foundation perceived as circumventing the focus upon the potential legal responsibility of Japan for the harm caused. In response, Japan recalled its ambassador to South Korea and temporarily suspended various high-level economic talks between the two countries.[51] The designers of the statute in Busan contended that:

[48] Adem Ferizaj, 'Wartime Rape is No Longer Kept Under Wraps in Kosovo' (50.50, 2015) <www.opendemocracy.net/5050/adem-ferizaj/wartime-rape-is-no-longer-kept-under-wraps-in-kosovo> 14 March 2016.
[49] "Comfort Women" Justice Coalition (n 47).
[50] Ní Aoláin, O'Rourke, and Swaine (n 33) 121.
[51] See Reiji Yoshida and Ayako Mie, 'Japan recalls envoys over new 'comfort women' statue in Busan' (Japan Times, 2017) <www.japantimes.co.jp/news/2017/01/06/national/politics-diplomacy/japan-pulls-envoy-south-korea-comfort-women-dispute/#.Wxf1GVMvztw> accessed 13 August 2017; Chloe Sang-Hun, ''Comfort Woman' Statue Reinstated Near Japan Consulate in South Korea' (The New York Times, 2016)

> if Japan were sincerely apologetic and remorseful, it should be putting a statue like this in front of its government complex in Tokyo… The very idea of taking down the statue as a precondition [for an apology] is dishonest.[52]

Subsequently, the activists installed five more statues around the country with money raised through donations.[53] In San Francisco, the purported agreement to establish a memorial ignited tension between the city and its Japanese sister city causing the mayor of Osaka to cut ties with San Francisco. San Francisco subsequently officially accepted the monument into St Mary's Square. The memorial resembles Kim Hak Sun who is stood looking up at three young girls mounted on a tall plinth. Her hands are clasped together and her gaze is fixed, looking up towards them. The young girls stand with their backs to one another though each holds the others hand. Their clothes are stained in a bronze colour that fades as it reaches their waists, their faces are grey as clay, their expressions steely and determined. The memorial was installed as a permanent representation of the stories of those captured and enslaved by the Japanese troops and a physical embodiment of the traumatic memories thousands of women endured. The young girls represent the ages that many of the women were when they were enslaved as the older woman looks back at representations of her past. In San Francisco, the curators of the memorial intended for the memorial to be "an activator of safety and justice for women and girls"[54] utilized with the purpose of drawing attention to the fight for "women's freedom from sexual violence, especially from rape and assault during wartime."[55] The inscription on the statue reads:

> This monument bears witness to the suffering of hundreds of thousands of women and girls euphemistically called 'Comfort Women,' who were sexually enslaved by the Japanese Imperial Armed Forces in thirteen Asian-Pacific countries from 1931 to 1945.

<www.nytimes.com/2016/12/30/world/asia/south-korea-comfort-women-wwii-japan.html> accessed 13 August 2017.

[52] Sarah Cascone, 'Japan Recalls South Korean Ambassador in Protest of 'Comfort Women' Memorial' (Artnet, 2017) <https://news.artnet.com/art-world/comfort-women-statue-south-korea-japan-814244> accessed 13 August 2017.

[53] Choe Sang-Hun, 'Comfort Woman' Statue Reinstated Near Japan Consulate in South Korea' *The New York Times* (30 December 2016) <www.nytimes.com/2016/12/30/world/asia/south-korea-comfort-women-wwii-japan.html> accessed 13 August 2017.

[54] ibid

[55] Chairwoman of the Comfort Women Justice Coalition. <http://remembercomfortwomen.org/> 15 April 2017.

Use of the term 'euphemistically' denotes the way in which the term has detracted from the severity of the crimes. The Comfort Women Justice Coalition (CWJC) unveiled the statue, stating that the "memorial symbolizes our international resolve never to let that atrocity be repeated, and… is also a reverent testament to all those who have been victims of sexual violence and sex trafficking.[56] In light of Japan's response, the Coalition noted that the memorial was not intended to be an affront to the Japanese government but to draw attention to the lack of justice for the women still alive.[57] The memorials actively endeavour to give a voice to the 'Grandmothers' guided through their leadership and approval.[58]

Spatially and genealogically, the active efforts of the Japanese government to deny and exclude the memorials from public spaces and the tensions arising between the Japanese government and the cities they are installed in has been rather illusory. Prime Minister Abe's continued denial of women's experiences undermines his assertion that Japan will always be at the side of "women's injured hearts."[59] The memorials embody a permanent acknowledgment of the women's experiences standing in stark contrast to the culture of denial promulgated by the Japanese government.[60] Instead, Prime Minister Abe has stated, "History is harsh. What is done cannot be undone."[61] History may be harsh but the consequences of what took can place can be mediated. Tanaka equates Prime Minister Abe's continued denial of women's lived experiences with "Japan's social formation of hegemonic masculinity" that actively functions to deny women's voices within Japan and beyond.[62] It demonstrates the politics of representation underpinning the recognition of women's trauma in public spaces. As Sherman and Nardin note:

[56] Comfort Women Justice Coalition (n 47).
[57] They are demanding Japan own up to its past and offer official apology, legal compensation and ongoing education to protect the next generation from the same egregious crimes that they endured.
[58] Comfort Women Justice Coalition, 'About CWJC' <http://remembercomfortwomen.org/about-cwjc/> 15 April 2017.
[59] Prime Minister Shinzo Abe (n 17).
[60] Reiji Yoshida and Ayako Mie, 'Japan recalls envoys over new 'comfort women' statue in Busan' (Japan Times, 2017) <www.japantimes.co.jp/news/2017/01/06/national/politics-diplomacy/japan-pulls-envoy-south-korea-comfort-women-dispute/#.Wxf1GVMvztw> accessed 13 August 2017.
[61] McCurry (n 25).
[62]Yuki Tanaka, 'A Critique of Prime Minister Abe's Policy on the 'Comfort Women' Issue and Japan's Social Formation of Hegemonic Masculinity' (Hiroshima Peace Institute) 14 <www.snabber.se/files/monicabraw/a_critique_of_prime_minister_abes_policy_.pdf> accessed 20 June 2017.

> The question of which category of victim deserves a monument is fundamentally political, and the answer depends on the meanings that society assigns to their trauma. The severity of the trauma is not the crucial factor, but rather its collective significance… to justify its very existence, the therapeutic monument must assign, implicitly or explicitly, a meaning to the traumatic event that makes it worthy of a collective response. [63]

The power relations undergirding the continued exclusion from women's lived experience from public spaces reveals the continued efforts of governments to deny collective acknowledgment of the broader issues relating to sexual violence against women. McCarthy notes that the memorials present an opportunity for the parties involved to collaborate, working together to resolve the issue and bring it into the broader context of global violence against women, overcoming political difference to emphasise "the human component."[64] Nevertheless, the cultural norms and continued devaluing of women's lived experiences upheld by the Japanese government is fundamentally incommensurable to the assignment of collective significance and recognition of women's experiences by civil society. As Knop notes, "One of the lessons of twenty years of global activism leading to the recent agreement is that states can no longer hold onto issues as theirs alone to resolve, to prosecute, to apologize for, or to compensate."[65] In light of the retaliation by the Japanese government, the groups have continued to pursue social justice through the memorials, actively seeking to fight against the singularly imposed political narrative that the Japanese government has used to undermine the validity of the trauma endured by the Grandmothers. Through their use of memorialisation, social justice movements demonstrate the capacity for such projects to reveal and bring to the fore women's voices,

representing the dissonance between survivors and the failure of the government to implement a formal reparations programme from the Japanese government as opposed to the singular payment made.

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[63] Daniel Sherman and Terry Nardin, *Terror, Culture, Politics: Rethinking 9/11* (Indiana University Press, 2006) 109.

[64] Mary McCarthy, 'US Comfort Women Memorials: Vehicles for Understanding and Change' (2014) 275 *Asia Pacific Bulletin* 1, 3 <www.eastwestcenter.org/sites/default/files/private/apb275.pdf> accessed 15 October 2016.

[65] Karen Knop and Annelise Riles, 'Space, Time, and Historical Injustice: A Feminist Conflict-of-Laws Approach to the Comfort Women Agreement' (2017) 102(1) *Cornell Law Review* 853, 926-927.

8.3.2. Heroinat - Heroine

Twenty years after the end of the Kosovan war, the *Heroinat* memorial was installed by Kosovo's Ministry of Environment and Spatial Planning. Ilir Blakçori designed the piece for the 20,000 Kosovar women who were sexually violated and raped during the Kosovan war from 1998 to 1999. The conceptual underpinning of the memorial elucidates some of the issues surrounding the representation of women's lived experiences of conflict in public spaces. Blakçori noted that:

> *Despite their tremendous sacrifice*, the contribution and pain of Kosovo women during the war has, for the most part, remained anonymous and unacknowledged. While hundreds of monuments and memorials were erected for Kosovar men, the architectural landscape and the history books have neglected the contribution and sacrifice of women. They remain the unacknowledged *anonymous heroines* of Kosovo's history…I needed a huge number to build up this representing heroic face... I took this tragic number of victims, and transformed it into medals. Medals dedicated to each and every woman's *contribution and sacrifice* for this country, no matter what age.[66]

Whilst Blakçori rightly acknowledges the prevailing absence of memorials for women, he frames the conceptual framework through the notion of 'contribution and sacrifice.' The word sacrifice means to "Give up (something valued) for the sake of other considerations"[67] whilst the term contribution means "The part played by a person or thing in bringing about a result or helping something to advance."[68] This implies that the sexual violence inflicted was predicated upon a choice made by the women affected or that the violence inflicted upon them was a support to the war effort. This demonstrates the problematic assumptions surrounding rape an inevitable aspect of conflict. Despite the recognition of rape within the

[66] Emphasis added. 'Heroinat Memorial by Ilir Blakçori' (A' Design Award and Competition, 2014) <https://competition.adesignaward.com/design.php?ID=33265> accessed 3 April 2017.
[67] Oxford Dictionary, 'Sacrifice' <https://en.oxforddictionaries.com/definition/sacrifice> accessed 5 April 2017.
[68] Oxford Dictionary, 'Contribution' <https://en.oxforddictionaries.com/definition/contribution> accessed 5 April 2017.

memorial, the implication that sexual violence was a sacrifice or contribution made by women was found to be offensive by survivors and city inhabitants alike.[69] As a permanent memorial, the memorial is an enduring reminder to survivors of their lived experiences through a narrative frame that they do not agree with.

Heroinat was inaugurated in 2015 by the Prime Minister of Kosovo, allowing a state-wide recognition of the plight of women during the War. Despite this, the sexual violence committed against violence was not explicitly mentioned within the inauguration speech. The memorial was installed in a public park without a commemorative plaque. This has resulted in confusion surrounding specifically who the memorial was for and the experiences it represents, undermining the symbolic meaning of its installation. Despite the intention of the Government and the designer, Heroinat demonstrates the complexities of bringing conflict-related rape into the public consciousness. A UN Women report found that "memorialization for victims and survivors of conflict-related sexual violence is a topic that has produced mixed results which are subject to change."[70] Memorials occupy public spaces and as such are open to scrutiny from the public. Survivors are best positioned to comment on possible negative impacts of awareness campaigns and facilitate effective message delivery.

In attempting to represent the huge number of women, Blakçori submits to a process of 'deindividuation.' This means that each victim-survivor is represented as a "member of a category or group rather than as an individual."[71] A UN Women report published in 2016 discovered that victim-survivors were in fact entirely excluded from the process as they were not consulted prior to its establishment.[72] This results in the further silencing of their voices. The erasure of rape from the public consciousness of Kosovan society is exacerbated through a framing of collective remembrance that speaks on behalf of those it is endeavouring to represent. Rather, the government deemed it necessary to speak on behalf of women as

[69] UN Women, 'The Conflict Did Not Bring Us Flowers: The Need for Comprehensive Reparations for Survivors of Conflict-Related Sexual Violence in Kosovo' (Technical Report, 2016) 47-48 <www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/the-conflict-did-not-bring-us-flowers_eng.pdf?la=en&vs=5055> accessed 14 September 2016.
[70] ibid 47.
[71] Kelly Wilz, 'Rehumanization through Reflective Oscillation in "Jarhead"' (2010) 13(4) *Rhetoric and Public Affairs* 581, 583.
[72] UN Women (n 69).

opposed to actively engaging with those the memorial intended to represent. Therefore, it has been accused of being "a throwaway political gesture rather than an offer of genuine support for the victims of sexual violence." [73] The lack of clear narrative alongside the perceived limited representation of only Kosovar Albanian women to the exclusion of men, boys, as well as members of other ethnic groups, who were victimised by the conflict-related rape and sexual violence committed is problematic. As Sweeney pertinently notes, "to deny the victims local ownership over this sort of memorial is a colonization of their experience of pain."[74] The memorial is demonstrative of how commemorative efforts can lack direct engagement with those whom it is dedicated to.[75] Heroinat embodies both the potential and pitfalls of memorialisation projects concerning conflict-related sexual violence. It is a reminder of the necessity to centre women's voices in order to develop connections between them and their community framed through and informed by their perspective. Whilst recognising the women's experiences, the memorial stands as a reminder to open space for women to speak to their own wants and needs. Heroinat stands in stark contrast Thinking of You, the temporary memorial installed on the same day and explored in the following section.

8.3.3. Mendoj për Ty - Thinking of You

Kosovo born an artist Alketa Xhafa-Mripa curated *Mendoj për Ty* or *Thinking of You* as a memorial to both Kosovar women affected by wartime rape and victim-survivors throughout the world. It was installed in the Prishtina football stadium on 12 June 2015. Explaining the narrative and conceptual basis of the art installation, Xhafa-Mripa stated:

> It was 16 years after the war ended… and I saw a small piece in the news where one of the survivors was talking behind a curtain, and she was saying how their voices were not being heard and nothing is being done for them. How can the society, institutions

[73] Sweeney (n 39)
[74] ibid 15.
[75] James Tyner, Gabriela Brindis Alvarez, Alex Colucci, 'Memory and the Everyday Landscape of Violence in Post Genocide Cambodia' (2012) 13(8) *Social & Cultural Geography* 853, 867.

> and government fail them after 16 years? For me, that was the point where I asked, what can I do to involve the whole of society?[76]

An estimated 5,000 dresses and skirts were donated during open meetings in which women and their relatives would come to donate these items to Xhafa-Mripa which were subsequently hung on washing lines within the stadium. The stories held in the clothes hung on the lines contrast greatly with the 'medals of sacrifice and contribution' used in *Heroinat*. The clothes are a raw and visual reminder of the pain and trauma inflicted upon the women, the shame and stigma that still permeates society, but also their resilience. As a message on one of the skirts read, "this skirt carries a hidden story from spring 1998."[77] Dresses and skirts were used to signify "femininity, beauty, fragility" whilst the symbolism of airing laundry to dry was intended to be "a way of saying 'Talk about your private issues in public', but in this case the laundry is washed, clean, like the women survivors who are clean, pure – they carry no stain."[78] It symbolised the washing away of shame and stigma.[79]

The number of dresses and skirts provided recognition of the collective and individual nature of women's lived experiences of sexual violence without reducing them; their experiences were represented through the donated dresses and skirts without re-traumatisation or co-option of their stories. The artist has noted that the purpose of the installation was:

> To help, support, and consider them as women, not as "the victims," as the "other" women… for them to know that society supports them. I'm supporting them in the

[76] Bob Dickinson, 'SOLIDARITY' (2016) 400 *Art Monthly* 1, 40 <https://reader.exacteditions.com/issues/53786/page/42> accessed 18 February 2017.
[77] Fatos Bytyci, 'Stadium of Skirts Targets Stigma Attached to Victims of Wartime Rape' (Reuters, 2015) <www.reuters.com/article/us-kosovo-rape-exhibition idUSKBN0OS1KB20150612?feedType=RSS&feedName=artsNews> accessed 17 March 2015.
[78] Mark Tran, 'Dresses on washing lines pay tribute to Kosovo survivors of sexual violence' *The Guardian* (11 June 2015) <www.theguardian.com/world/2015/jun/11/kosovo-sexual-violence-survivors-art-dresses> accessed 14 March 2018.
[79] Karen McVeigh, '" I didn't want this to be a taboo": The fight for Kosovan women raped during the war' *The Guardian* (4 August 2018) <www.theguardian.com/global-development/2018/aug/04/didnt-want-taboo-fight-kosovan-women-raped-war> accessed 14 March 2019.

> sense that I give them self-esteem, and there is respect to who they are. They've been fed with guilt.[80]

Unlike *Heroinat*, its temporary nature did not perpetually frame the women solely through the categorisation of victim, rather it acknowledged and provided the women with the agency as to whether or not to engage with the memorial. Compared to Heroinat, this represents a narrative of humanisation in which the women are represented "not as abstract masses, but as individual human beings who, while they share substance, still remain uniquely individual."[81] It demonstrates the power of narrative and the importance of telling stories that negate singular mono-dimensional memories from becoming the central focus of representations of victimhood.[82] Xhafa-Mripa worked collaboratively with NGOs, speaking directly with survivors and listening to their lived experiences. From this, the installation emerged through her relationship with survivors, using their donations as a collective call to act in the face of mass rape committed throughout the country and beyond. From conception until it was dismantled, *Thinking of You* was a memorial of collaborative and commemorative effort and meaning for survivors. Genealogically, each element of the installation found a means through which to engage with survivors. Xhafa-Mripa worked alongside NGOs to speak directly with survivors, subsequently holding open meetings where women and their relatives, including their sons and husbands, could donate their address in person. They also helped to construct and dismantle the memorial. It was grounded in a call to action demonstrative of the power and spirit of women and the ability of social action to bring women together in solidarity irrespective of their differences. As Xhafa-Mripa notes, "the way society perceives the survivors of sexual violence is about "us" and "them," and for me it was about being one."[83] The artist understood this and allowed each of the dresses to represent a narrative and visually represented the unveiling of their hidden and silenced story to the world. *Thinking of You* thus centred women's voices at the very heart of the memorial, subverting and challenging existing gender norms. Xhafa-Mripa purposefully placed the

[80] Cristina Marí, 'Thinking of You" – A Collective Healing Among Skirts' (*Kosovo 2.0.*, 2015) <http://kosovotwopointzero.com/en/thinking-of-you-a-collective-healing-among-skirts/>
[81] Wilz (n 71) 603.
[82] Jacobs (n 38) 424
[83] Marí (n 80).

memorial in the football stadium to disrupt the spatial boundaries between feminine and masculine spaces, bringing women's experiences into a public space symbolic of masculinity, "a macho territory… a man's world" in which women are often excluded in the patriarchal Albanian society.[84] This drew attention to the relegation of women's experiences into private spaces away from public life and disrupted the spatial boundaries women's experiences had been confined to. Unlike Heroinat, *Thinking of You* began and ended with the survivors of sexual violence with Xhafa-Mripa merely acted as the facilitator and designer. Instead, the power was placed in the hands of the women who had been raped. This encapsulated the narrative in a public space through a medium that could be understood by all, irrespective of language.[85]

Despite the temporary nature of the installation, the support it had garnered from Kosovo's then-President Atifete Jahjaga, whose council sponsored the art installation, created momentum that has subsequently facilitated institutional support for survivors of sexual violence in Kosovo.[86] As Xhafa-Mripa has noted, "since then things have started to move forward. The rape victims are slowly getting their status and benefits from the state."[87] In 2018, the Kosovan government's Committee for the Verification and Recognition of Violence Victim Status began accepting applications allowing victims of wartime sexual violence to be officially verified enabling them to receive reparations from the state.[88] Paying attention to Kosovan women's past experiences Xhafa-Mripa brought their enduring trauma and injustice into the present day, having a lasting impact in their future through the ability of them to receive recognition and reparation for their victimhood. In the following section I consider the true value of reparations for victim-survivors.

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[84] ibid.
[85] Tran (n 78).
[86] Dafina Halili, 'Atifete Jahjaga: All the activism that was synchronised from one side of the globe to the other shows that enough is enough – the time has come to act' (*Kosovo 2.0.*, 2019) <https://kosovotwopointzero.com/en/atifete-jahjaga-i-gjithe-ky-aktivizem-qe-u-sinkronizua-nga-njeri-cep-i-globit-ne-tjetrin-tregon-qe-cka-eshte-mjaft-eshte-mjaft-koha-ka-ardhur-te-veprojme/> accessed 14 March 2019.
[87] Dickinson (n 76).
[88] UN Women, 'In Kosovo, Legal Recognition of War-time Sexual Violence after 18 Years' (19 October 2017) <www.unwomen.org/en/news/stories/2017/10/feature-kosovo-legal-recognition-of-war-time-sexual-violence-survivors> accessed 12 November 2017; Die Morina, 'Kosovo Urges Wartime Rape Survivors to Register' <www.balkaninsight.com/en/article/kosovo-war-raped-to-apply-for-their-legal-status-01-30-2018> accessed 3 February 2018.

8.4. Reparations

In transitional justice practice, reparations arise in various forms. This includes, but is not limited to, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[89] They may have a symbolic function, focussed upon healing, or 'justice as redress' to remedy the violence committed.[90] Reparations mandates can also include an apology, a public statement of recognition and specified days of remembrance, the return of property taken, or a symbolic or monetary payment. Reparations are often perceived as a more victim-centred response to violations committed in conflict societies because their implementation focuses upon restoring hope for the future at an individual and collective level.[91] Through a therapeutic lens, reparations are vital to allow those who have experienced conflict-related sexual violence to begin or assist in their recovery. This includes their psychological, financial, and medical needs, as well as their economic needs in terms of employment and skills. In 2007, the 'Nairobi Declaration on Women's and Girl's Right to Remedy and Reparation' was signed,[92] reiterating the need for transformative measures as well as socio-cultural change to address of the causes of violence against women and girls.[93] It highlighted the need to remove temporal boundaries for women and girls to come forward when they feel ready,[94] the need for women and girls to have the autonomy, choice, and power to determine which reparations are best suited to their needs, [95] to recognise the specific environments that create different reparative demands, and the responsibility of all actors, from individuals to foreign governments, need to be held account.[96] The rhetoric of the Nairobi Declaration presented a nuanced examination of the need to extend beyond retribution to remedy and restore women's lives and enable them to recover from the violence committed against them.

[89] UNGA, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations' A/RES/60/147 (21 March 2006).
[90] UN, 'Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence' (June 2014) 8 <www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>
[91] Luke Moffett, 'Transitional Justice and Reparations: Remedying the Past?' in Cheryl Lawther, and Luke Moffett, and Dov Jacobs (eds) *Research Handbook on Transitional Justice* (Edward Elgar Publishing, 2017) 377.
[92] Herein Nairobi Declaration.
[93] United Nations, 'Nairobi Declaration on Women's and Girl's Right to Remedy and Reparation' (2007) 2 <www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf>
[94] ibid 3(G).
[95] ibid 1(D).
[96] Ibid 6.

Moreover, the report highlights the key role that women's rights NGOs play in filling the resulting justice gap in representing victim's needs. In 2010, Manjoo noted that:

> adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence… Reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience before, during and after the conflict.[97]

Subsequently, the UN reiterated that under international law, all victims of war crimes, including survivors of rape and sexual violence, have a right to remedy and reparation, which must be proportional to the gravity of the violation and effective both in law and in practice.[98]

Since the signing of the Nairobi Declaration, the transformative potential of reparations for victim-survivors has been plagued by the lack of implementation of reparations mandate within the transitional justice field.[99] Achieving such mandates in transitional contexts is a complex endeavour, often realised through legal structures and typically becoming intertwined with continuing social, political, and moral issues.[100] Whether framed through notions of ending impunity or reconciliation with the past, transition is often measured through the linearly time-imposed normative lens that presents a beginning, middle and end to justice processes. For victim-survivors, this creates temporal conflicts between the linearly imposed notion of transition, or the justice requirements of society, and the varying temporalities within which women reside in the aftermath of conflict and sexual violence. There is limited recognition of the non-linear disruption of survivor's past, present and future by the resulting trauma of sexual violence often exacerbated by "the persistence

[97] UNGA, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo' A/HRC/14/22 (23 April 2010) 11 <www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.pdf> accessed 14 November 2014,
[98] UN (n 90).
[99] ICTJ, 'Recommendations for Victim Reparations in Cote d'Ivoire' (2016) <www.ictj.org/publication/recommendations-victim-reparations-cote-ivoire>; Sarah Williams and Jasmine Opdam, 'The Unrealised Potential for Transformative Reparations for Sexual and Gender-based violence in Sierra Leone' (2017) 21(9) *The International Journal of Human Rights* 1281.
[100] Moffett (n 91).

of multiple forms of violence and inequalities." [101] The duration of rape and sexual violence is not confined to the physical pain endured in that moment but extends into the past and into present and future moments. Women must contend with a number of temporal discontinuities all the while being told that it is time "to forget the past and move on."[102] As a consequence, survivor's face temporal marginalisation as they become confined to these imposed temporalities, waiting for mechanisms to be established, waiting for mechanisms to complete their work, and waiting for reparations to be implemented.[103] As Mueller-Hirth has noted, "waiting mirrors unequal power relations," as temporal discontinuities are maintained that stand in contradiction to victim-survivors' justice interests. In doing so, the imposition of linear temporality inhibits recovery in the aftermath of trauma, diminishes the importance of reparations to facilitate their survivors needs in the present and future, and impedes upon the capacity for transformative change.

Despite the responsibility of the state to act and the explicit stipulation of the right to remedy and reparations in international law, the reality is that most transitional justice mechanisms do not have the power to guarantee that reparations will be made beyond the narratives produced, compounded by the consistent failure of transitional contexts to implement them.[104] In Sierra Leone, for example, the narrative produced by the Commission provided thorough recommendations for reparations concerning victims of sexual violence. This included providing free support services and reproductive health services to address the physical, psychological and social consequences of such violence, as well as the establishment of a directory of services and skills programmes that survivors could engage with to restore their sense of purpose and connection with the community.[105] Emerging as a direct consequence to the SLTRCs recommendations, the Sierra Leonean Parliament passed three women's rights bills specifically addressing gender inequality.[106] However, an absence of any adequate follow up mechanism to compel the government to implement the other recommendations has meant that the long-term treatment processes beyond the confines of

[101] Natascha Mueller-Hirth, 'Temporalities of Victimhood: Time in the Study of Postconflict Societies' (2017) 32(1) Sociological Forum 186, 197.
[102] ibid 187.
[103] ibid 188.
[104] Moffett (n 91).
[105] Williams and Opdam (n 99) 1289.
[106] UN (n 90) 9.

the temporary Commission remain unimplemented.[107] In Timor Leste, the Commission for Reception, Truth and Reconciliation in East Timor (CAVR) implemented a reparations scheme for 712 victims with urgent needs following the conflict-related sexual violence committed against them during the country's crisis in 1999. Despite the Commission providing $200 to each of the victims and supporting some of them through public hearings and healing workshops organised by the CAVR, when the work of the CAVR was completed, no further rehabilitation to victims was provided.[108] Whilst In BiH, a lack of accountability means that no body nor institution is holding the government and wider society to account to make sure that the legally binding promises made to survivors in the Dayton Peace Agreements are enforced, making the assurances empty rhetoric. As Simic has noted, many Bosnian women "were betrayed by their government so many times and had their hopes raised high, only to have them fall again and again, with no support apart from what they occasionally receive from each other. [109] From BiH, to Sierra Leone, Timor Leste to Nepal, whilst women's experiences of sexual violence are acknowledged in rhetoric, reparations are typically delayed or fail to be fully implemented.

8.4.1. The True Value of Reparations

Discussion surrounding the provision of reparations for survivors of conflict-related rape has stirred in recent years as jurisprudential developments in the ICC have emerged. Law, namely international criminal law, has become a central point of access for the provision of reparations orders in the transitional justice field. *Bemba* and *Lubanga* demonstrated the Courts willingness to recognise the gender specific nature of the violence suffered by the victims and trauma endured. In *Lubanga*, the Appeal Chamber held that, the success of the ICC "is, to some extent, linked to the success of its system of reparations."[110] Using powerful normative institutions as the central means through which victims can access reparations for

[107] Williams and Opdam (n 99) 1295.
[108] UN (n 86) 13.
[109] Olivera Simic, 'Drinking Coffee in Bosnia: Listening to Stories of Wartime Violence and Rape' (2017) 18 (4) *Journal of International Women's Studies* 321, 328.
[110] *Prosecutor v. Thomas Lubanga Dyilo* (Order for Reparations) ICC-01/04-01/06-3129-AnxA (3 March 2015) [3] <www.icc-cpi.int/RelatedRecords/CR2015_02633.PDF>

sexual violence has been problematic as the provision of reparations from legal mechanisms are notoriously slow, delayed by convoluted formal processes and proceedings.[111]

In 2017, FIDH consulted with victim-survivors of sexual violence in the CAR collating narratives that were to be presented as evidence during the reparations hearings that were to be held in the case of *Bemba*. The stories provided by survivors elucidated the wide-reaching consequences of sexual violence within the community. Despite FIDH's finding that the majority of survivors they consulted found that telling their stories within the court provided them with a positive and potentially cathartic experience, Pulchérie Makiandakama's response in the aftermath of her testimony at the ICC demonstrates the incommensurable nature of legal representation, rhetoric and lived reality. Her words exemplify the consequences of international criminal legalism remaining central to representations of conflict-related sexual violence:

> When we went to the ICC, the Court guaranteed us that they would do something, and nothing is happening. We are all going to die. What can the Court do for me? My health is gone (crying). It's too far away, the only one who helps us is our lawyer. In all this time, all the ICC does is observe, it's just going around in circles. I am not okay with this. I have never seen anyone from the ICC here. It has taken too long for the decision to come down. I wish they could give me some money so that I could set up a store, so that I could take care of my children, to get care for myself, or to have a house of my own where I could live with my children. Tell the ICC that we are all going to die. We have waited for too long and this is the point we have gotten to."[112]

Despite the progressive normative advancements made within the ICC in relation to reparations policies addressing conflict-related sexual violence, the disjuncture between victim communities the limited reach of detached institutions endures. Conceptual gaps

[111] In *Lubanga,* it took five years for the ICC to complete the Order for Reparations of 3 March 2015 to determine his monetary liability, see ICC, 'Lubanga Case: Trial Chamber II Issues Additional Decision on Reparations (Press Release 15 December 2017) <www.icc-cpi.int/Pages/item.aspx?name=pr1351> accessed 21 December 2017.

[112] FIDH, '«All I want is reparation» Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court' (Report 705a, November 2017) 23 <www.fidh.org/IMG/pdf/rca705ang.pdf>

remain in its framework limiting the transformative nature of the representations made by the international community within internationalised justice mechanisms.[113] The impact of this is not abstract, it is real and tangible and remains a quotidian reality for women. On 3 August 2018, ICC Trial Chamber III issued its final decision on the reparations proceedings in *Bemba* noting that due to his acquittal no reparations order could be made by the ICC. As a consequence, the Trust Fund for Victims (TFV) has endeavoured to accelerate its assistance programme.[114] Funded by donors, the TFV is separate and independent from the ICC tasked with its dual reparations mandate: "1) to provide assistance to victims within the Court's jurisdiction and 2) to implement Court ordered reparations." [115] Despite the positive work of the TFV, the failure to recognise the true value of reparations for victims continues. The difficulty begins in their reparations mandate being adjunct to and a part of a powerful institutional and normative mandate and the limited resources of the TFV within the transitional contexts concerned. As Moffett notes, ultimately "the ICC remains a criminal court with reparations copied and pasted at the end, leaving them dependent on which perpetrators and charges are convicted."[116] As the following excerpt demonstrates, to be transformative reparations must pay attention to the "political, economic, social, and cultural context"[117] but also to individual needs, whether in the form of rehabilitation, restitution, and/or compensation:

> What we want is not projects, hospitals, schools that everyone can use. We will not get the benefit of them. We want to build a house for our children, we want to farm. If you only do something for the population, it's not going to benefit us. Even if it's free today, it won't last, and tomorrow we will have to pay. They will sell everything and steal everything. They are always doing backroom deals behind the scenes. We

[113] Ní Aoláin, O'Rourke, and Swaine (n 33) 122.
[114] *Prosecutor v Jean-Pierre Bemba Gombo* (Final Decision on Reparations Proceedings) ICC-01/05-01/08 (3 August 2018) <www.icc-cpi.int/CourtRecords/CR2018_03967.PDF>
[115] Egidie Murekatete and others, 'The Trust Fund for Victims: Annual Report' (2016) <www.trustfundforvictims.org/sites/default/files/reports/Annual%20Report-2016_ENG_September_Online.pdf>
[116] Luke Moffett, 'Reparations for Victims at the International Criminal Court: A New Way Forward?' (2017) 21(9) *The International Journal of Human Rights* 1204.
[117] ibid 1212.

> want something individually for us, so that each of us can leave something that is guaranteed for our children.[118]

This demonstrates the need for women to have their ethical demand as concrete beings heard within the transitional field. It highlights the disparity between international rhetoric, the lack of political will, and corruption that can emerge detracting the ability for women to access the things needed to allow them and their children to live. Their want to make a home for their children, to farm and to move forward demonstrates that victims desire to be seen as capable agents and not just passive recipients in these processes, as they too have a lot to offer.[119] Rhetoric surrounding the need to establish comprehensive reparative mandates for survivors of sexual violence is often given heightened visibility in judicial and quasi-judicial mechanisms yet as the narratives above have shown, these experiences are silenced when the narratives articulated draw attention to survivor demands for reparations.[120] Reparations are perceived as secondary to retributive justice despite the inherently slow nature of legal proceedings. Victim-survivors want the process to move quickly. This makes expectations difficult to balance. In Kosovo, survivors are now permitted begin to receive restitution in the form of monetary reparations whilst in the CAR victim-survivors are still waiting for a form of reparation after the decade long case of *Bemba* ends. The result of the delays in the provision of reparations to the victim-survivors in the CAR elucidates a seemingly widespread and particularly problematic reality in relation to reparations for sexual violence – they are simply not a priority.

8.5. Conclusion

Memorials, apologies and reparations are three transitional justice mechanisms that hold the possibility of representing women's lived experiences of conflict-related sexual violence in ways that attend to their lived actualities. They speak to justice beyond legalism and demonstrate the importance of reconnecting women with their communities from within

[118] FIDH (n 112) 24.
[119] Moffett (n 91) 380-381.
[120] See Doris Buss, 'Rethinking "Rape as a Weapon of War"' (2009) 17(2) *Feminist Legal Studies*145; Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013)

and the recognition of their experience's women within the collective memory of their society. Despite this potential, the absence of memorialisation projects, the lack of official apologies for conflict-related rape, and the continued failure to implement adequate reparative measures is underpinned by the reluctance to take collective responsibility for such crimes and the persistent deference of transitional justice practice to the dominant paradigm focussed upon the prosecution and prevention of conflict-related sexual violence.

The dearth of apologies, memorials and reparations for victim-survivors of conflict-related sexual violence speaks to the continued reticence to face, head on, the uncomfortable truth that it is men whom are responsible for the perpetration of the majority of such violence. Such reticence becomes reinforced the fact that men typically hold positions of power, thus feeding into the lack of political will to bring those responsible to the fore and challenge the shame and stigma surrounding such violence. To recognise their responsibility is to recognise the need for change to avoid such violence being repeated, as it is on a daily basis throughout the world whether in conflict or times of peace. Such change denotes the likelihood of having to cede some of this power, whether in, for instance, allowing women to hold space in positions of power in peace processes or responding to the calls to address harmful gendered norms beyond legalism. If the sheer number of individual perpetrators cannot be brought to justice in the aftermath of conflict, the focus upon making sure that such violence does not occur again should be a priority.

Paying attention to how women's lived experience of sexual violence is represented in these examples is important because it reveals the cost of incommensurability and the dominance of legalism upon the lived experiences of victim-survivors of sexual violence. A hierarchical recognition of conflict-related sexual violence has emerged whereby such violence is acknowledged within the international community yet so readily silenced in transitional situations. Unwilling to hold one another to account, the continued silencing and exclusion of women's justice needs within and amongst states remains. The centrality of legal representation in internationalised justice mechanisms far from home has, for the most part, meant justice remains unrealised in the very contexts they are intended to address. Justice rarely moves beyond the individual case; recognition of trauma rarely moves beyond legal categorisations. The same relations of power dominate, leaving women with little to no

control over the forms of justice available to them. Instead, the denial of recognition remains. If recognition does take place it is focussed upon those who have suffered, rather than those responsible. This is exacerbated by the trap of shame and stigma that continues to envelop sexual violence as sociocultural stigma, coupled with a lack of political will to overcome this, compounds the problem of universal underreporting of sexual violence. Whilst internationalised law has endeavoured to address the trap of shame through the recognition of sexual violence, this is marred by the prioritisation of prosecution and the distanced nature of its practice. The distanced nature of internationalised justice sends women away from their community within which they are owed apologies and the right to accept, reject, or make demands, where their experiences should be remembered and mourned, and their emotional, material, and physical needs are met.[121] The centrality of internationalised justice permits those responsible to relinquish responsibility. Connection, prevention, dignity, voice, recognition, accountability so readily falls into the justice gap that remains. This fundamentally precludes women from being seen as fully human.

The focus upon the fight to ending impunity for sexual violence has impeded alternative justice processes emerging, as more innovative approaches that perceive justice outside of the confines of the legalistic, retributive paradigm are commonly, "viewed as exceptions, on the margins, and often subject to considerable challenge."[122] The importance of community, bringing together victim-survivors and activists, exemplified by *Thinking of You* and the use of memorials by activists in Busan, denotes the significance of social justice movements in the fight for justice from the victim's perspective. This speaks to the desire to build connection, challenging the othering of those subjected to sexual violence. In paying attention to the consequences of incommensurability upon transitional justice practice outside of the legalistic paradigm, this chapter, along with Chapter Seven, underscores the need for a paradigm shift to occur. Beginning from experience as opposed to representation, drawing together a healing lens within feminist thought, the following chapter explores how, in adjusting the narrative lens, we can envisage the possibility of overcoming

[121] Olivera Simic, 'Drinking Coffee in Bosnia: Listening to Stories of Wartime Violence and Rape' (2017) 18 (4) *Journal of International Women's Studies* 321, 323.
[122] Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) Social & Legal Studies 179, 181.

incommensurability, challenging existing boundaries to redraw representation of lived-experiences of sexual violence in more commensurable manner.

Chapter Nine: Overcoming Incommensurability: Adjusting the Narrative Lens in the Field of Transitional Justice

It is not just a legal issue. It is about people's lives.[1]

Reflecting upon the cost of incommensurability and the dominance of law, this chapter explores the potential that the adjustment of the narrative lens holds for future transitional justice practice in the representation of conflict-related sexual violence. Having explored the work of quasi-judicial and extra-judicial mechanisms, the preceding chapters demonstrated the ways in which the normative lens draws attention away from the lived actualities of women's experiences impeding upon justice emerging beyond legalism. Chapters Seven and Eight elucidated how the continued deference to legalism contributes to the "denial, repression, and disassociation" of lived experiences of conflict-related sexual violence in transitional contexts, as knowledge of such violence is "rarely retained for long."[2] This is exemplified in the failure to implement the recommendations of the SLTRC, in the reluctance to hold States accountable to reparations mandates, and the fight for women's lived experiences to be respected and remembered in the aftermath of conflict. In turn, this inhibits recognition that sexual violence is part of a much broader, more complex narrative than those constructed in legal representations, one that turns the focus upon those responsible and the communities within which survivors and perpetrators reside. Women's voices and perspectives remain circumscribed as they fight tirelessly for their experiences to be recognised and for justice to be done. Yet existing representations of conflict-related sexual violence fail to recognise the "actual concrete singularity" of women's lived experiences of war and sexual violence, incommensurability curtailing the possibility of moving out from the shadow of law.[3]

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[1] Megan Bastick, Karin Grimm, and Rachel Kunz, 'Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector' (Geneva Centre for the Democratic Control of Armed Forces, 2007) 155 <www.dcaf.ch/sites/default/files/publications/documents/sexualviolence_conflict_full.pdf> accessed 14 November 2015.

[2] Judith Herman, *Trauma and Recovery* (Basic Books 1992) 2.

[3] Jenneth Parker, 'Towards a Dialectics of Knowledge and Care in the Global System' in Roy Bhaskar and others (eds), Interdisciplinarity and Climate Change Transforming Knowledge and Practice for Our Global Future (Routledge 2010) 214; Patricia Lundy and Mark McGovern, ''Whose Justice? Rethinking Transitional Justice from the Bottom Up' (2008) 35(2) *Journal of Law and Society* 265.

Within this chapter, it is not my intention to consider how to overcome the violent acts of sexual violence committed by men during conflict. Rather, in thinking meaningfully about the possibility of overcoming incommensurability, this final chapter considers the need for imaginative responses that challenge the dominance of legalistic practice. "When you get all enlightened and superior as with the recent tradition of logic in the West," notes Fairclough, "you need 'a boundary-crosser'… a little blurring of the borders, to bring you down to earth, to reactivate imagination and feeling for the 'other.'[4] Reflecting Herman's tripartite model, the chapter notes the importance of opening rather than foreclosing new frameworks of justice and representation that prioritise establishing safety, allowing individuals and communities to mourn the past and reflect upon the future, and reinstitute those affected by sexual violence amongst and within supportive communal practices.[5] In the connections drawn from ''synergies and similarities" of healing and justice needs in the aftermath of the individual and collective trauma inflicted by conflict-related sexual violence, new avenues of justice can emerge. In shifting from the focus of the normative to the narrative lens, what happens if justice is expressed in ways that are unfamiliar? Centred upon paying attention and restoring connections, I consider how future transitional justice practice may begin the process of overcoming incommensurability, challenging existing structures of power by developing a vision of transitional justice that adequately represents women's stories of sexual violence.[6] Finally, the chapter explores the practical implications of adjusting the narrative lens to overcome the incommensurable representations of conflict-related sexual violence constructed in the existing transitional justice paradigm.

9.1. Disrupting Boundaries, Restoring Connections

Incommensurability arises in the continued value of the normative lens upon universality without particularity, the public without the private, the individual without community, masculine without feminine, and retribution without reconciliation in the aftermath of conflict-related sexual violence. As the preceding chapters have elucidated, the cost of incommensurability upon women's lived experiences of violence and conflict and the

[4] Matthew Fairclough, 'A Creative Healing Aspect within the Arts?' (2005) 4(1) *Trickster's Way* 1, 4.
[5] Herman (n 2) 155.
[6] Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6 (2) *International Journal of Transitional Justice* 205, 225

ability to receive justice is not a theoretical problem. Women's agency in constructing narratives within the transitional justice field is often predicated upon ceding to the temporal, spatial and genealogical boundaries of powerful normative institutional mandates underpinned by gendered subjectivities, hierarchies and generalisations.[7] Whilst testifying may be a cathartic experience for an individual, the narratives produced, whether in judicial, quasi-judicial or extra-judicial mechanisms readily frame women through the lens of victimhood suppressing their voice and perspective and inflicting further injustice.[8] The focus upon ending impunity and of representing sexual violence through legal representation has resulted in retributive justice and prosecution becoming "culturally embedded as to what justice is and should be" for victim-survivors in the aftermath of conflict and sexual violence.[9] This holds the risk of transitional justice becoming a "linear, one-directional, process."[10] Whilst lauded developments in the international legal field are celebrated, these often do not translate to the transitional context nor secure justice for victim-survivors.[11] This has meant that the trauma and suffering caused by conflict-related sexual violence has rarely ruptured into transitional practice in discernibly transformative ways.[12] As Dauphinee has noted, there is an urgent need to pay attention to conflict-related sexual violence "as a problem not because it is legal or illegal" but "because it results in the devastation of people's lives."[13] Without attending to the trauma women suffer, the capacity for transitional justice mechanisms to facilitate social order and healing is compromised.

Adjusting the narrative lens means confronting the uncomfortable truth that existing transitional justice responses to sexual violence and the value placed upon the former of each duality above may in fact reproduce and replicate representations of sexual violence that are no longer wholly appropriate, or conducive, to facilitating justice for victim-survivors of

[7] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Polity Press 1992) 28.

[8] Jennifer Fleetwood, 'Narrative Habitus: Thinking Through Structure/Agency in the Narratives of Offenders' (2016) 12(2) *Crime Media Culture* 173, 187

[9] Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) Social & Legal Studies 179, 180.

[10] ibid 180.

[11] ibid 187.

[12] Suet-Lin Hung and David Denborough, 'Unearthing New Concepts of Justice: Women Sexual Violence Survivors Seeking Healing and Justice (2013) 3 *International Journal of Narrative Therapy & Community Work* 18, 25.

[13] Elizabeth Dauphinee, 'Narrative Voice and the Limits of Peacebuilding: Rethinking the Politics of Partiality' (2015) 3(3) *Peacebuilding* 261, 273.

rape.[14] This requires scholars and practitioners "to eschew the traditional universalist expectation that the categories we already possess" for representing and responding to such violence "are adequate."[15] In a growing body of literature, scholars concerned with trauma, healing and justice have endeavoured to push at the boundaries maintained between these seemingly differing dualities "without losing sight of either."[16] Situating themselves from the justice perspectives of survivors, scholars have endeavoured to pay attention to what is elided in the static and rigid systems of representation imposed. Herman, for instance, explored the conceptions of justice of twenty-two victims of sexual violence finding that her informants' vision of justice "combined retributive and restorative elements." [17] Despite her small sample size and her focus upon the US adversarial system, she noted that the visions of justice emerging from the survivors perspective cannot be represented either by a "prosecution oriented agenda" nor by a "defense-oriented agenda of reconciliation."[18] The retributive element of her informants responses emerged in their wish to see the offenders exposed but this was not to inflict pain nor exact revenge, "Rather, they sought vindication from the community as a rebuke to the offenders' display of contempt for their rights and dignity."[19] The restorative element focussed upon "the harm of the crime rather than on the abstract violation of the law and in their preference for making things as right as possible in the future, rather than in avenging the past."[20] These restorative and retributive elements emerged "in the service of healing a damaged relationship, not between the victim and the offender but between the victim and his or her community."[21] Rebuilding connections in the aftermath of conflict-related sexual violence is critical because a "lack of connectedness and belonging" reinforces "victim-survivors' sense of an absence of recognition, dignity, voice; and ultimately a keenly felt sense of injustice."[22] This sense of injustice can subsequently

[14] John Borrows, 'Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education' (2016) 61(4) *Indigenous Law and Legal Pluralism* 795, 832.
[15] Paul Healy, 'Overcoming Incommensurability Through Intercultural Dialogue', (2013) 9(1) Cosmos and History: The Journal of Natural and Social Philosophy 265, 274
[16] Ricki Stefanie Tannen, The Female Trickster: The Mask That Reveals, Post-Jungian and Postmodern Psychological Perspectives on Women in Contemporary Culture (Routledge 2007) 248.
[17] Judith Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 598.
[18] ibid.
[19] ibid.
[20] ibid.
[21] ibid.
[22] McGlynn and Westmarland (n 9) 195.

"hinder healing,"[23] demonstrating the intertwined nature of these elements. Woodhead and Wessley agree noting that in the aftermath of conflict-related sexual violence "rebuilding community cohesion" and addressing the "socio-political factors framing the context in which such atrocities occur" are crucial interventions for victim-survivors.[24] More recently, McGlynn and Westmarland found that the focus of the normative lens upon "the individual 'case', incident or experience" simply cannot attend to nor encapsulate "the totality of victim-survivors' perspectives."[25] In exploring concepts of justice from survivor's perspectives, what becomes apparent is the importance of "complexity and nuance", recognition of "the variability of the justice interests" and "the challenge to commonly held assumptions that victim-survivors seek personal justice and punitive outcomes."[26] Instead, prevention and connectedness are brought to the fore as central elements of the narratives articulated by victim-survivors highlighting the importance of addressing the disjuncture that downplays the importance of these elements.[27]

In the failure of transitional justice to look beyond the focus of the normative lens, collective action and autonomous feminist organisation has become the central vehicle through which to disrupting existing practice.[28] "The community support that victims so ardently desire" Herman has noted, "does not presently exist. Active political organizing and advocacy are still required to create it."[29] Emerging from the connections between women, the efforts of victim-survivors, artists, and activist movements have continually provided counter narratives within transitional justice practice that disrupt imagination and remind the existing structures of power that preserve their subordination not to become complacent in accepting the dualities, subjectivities and narratives constructed because there is always work to be done. In the ICTY, for instance, Nusreta Sivac and Jadranka Cigelj used their own experiences of sexual violence as a catalyst through which to encourage others to tell their

[23] Suet-Lin Hung and David Denborough, 'Unearthing New Concepts of Justice: Women Sexual Violence Survivors Seeking Healing and Justice (2013) 3 *International Journal of Narrative Therapy & Community Work* 18, 25.
[24] Charlotte Woodhead and Simon Wessley, 'Commentary: What Interventions Work for Victims of Conflict Related Rape?' (2010) 341(7785) *British Medical Journal* 1263 < www.bmj.com/content/341/bmj.c7038>
[25] McGlynn and Westmarland (n 9) 196.
[26] ibid 197.
[27] Ibid 182.
[28] Pierre Bourdieu, *Masculine Domination* (Richard Nice Trs, Stanford University Press 2002) ix.
[29] Herman (n 17) 599.

stories in the fight for justice. Representative of Herman's notion of a 'survivor mission', Sivac and Cigelj transformed the meaning of their trauma, transcending the limits of their personal tragedy "by making it a gift to others" [30] as a basis for social action.[31] Retributive justice became a secondary aspect of their collective mission as they sought justice "beyond their individual experiences" and targeted "broader patterns of social justice."[32] In doing so, Sivac and Cigelj wrestled with the "impersonality of law" as well as the privilege of silence provided to perpetrators'.[33] In Kosovo, conceptual artist and activist Alketa Xhafa-Mripa, disrupted the boundaries that had been imposed in the aftermath of the Kosovan war between the individual and community, women and men, and victim-survivors of different ethnic groups. Using her creativity as a means to bring women's together in collective collaboration to challenge abstract, universal archetypes of victimhood, Xhafa-Mripa allowed survivors to "create their own living monument" through which they were able to refuse to be hidden or silenced, "insisting that rape is a public matter… demanding social change."[34] She stirred change, demanding that the gaps left by dominant legal processes and the dearth of national responses be filled.[35] This builds upon Herman's assertion that visions of meanings of justice for survivors are often "best represented by the movement for victims' rights, a diverse, grassroots movement in which women have played a leadership role."[36] Moreover, recent collective action, such as the #MeToo and 'Time's Up' movements, demonstrate "the capacity of women who are victims of sexual violence to also be agents of social change,"[37] underpinned by the sentiment captured in Serisier's statement that "producing and disseminating a genre of personal experiential narratives can end sexual violence."[38] Each alternative narrative contests the unity of law and existing structures of power pointing "in their trajectory toward other meanings, other possible worlds."[39] This is why making space

[30] Herman (n 2) 207.
[31] ibid 208.
[32] McGlynn and Westmarland (n 9) 196.
[33] Herman (n 2) 207.
[34] ibid 73.
[35] See Chapter 8 s.8.3.2.
[36] Herman (n 17) 599.
[37] Dianne Otto, 'Power and Danger: Feminist Engagement with International Law Through the Security Council' (2010) 32 *The Australian Feminist Law Journal* 97, 117; Niamh Reilly 'Seeking Gender Justice in Post-conflict Transitions: Towards a Transformative Women's Human Rights Approach' (2007) 3(2) *International Journal of Law in Context* 155, 164.
[38] Tanya Serisier, *Speaking Out: Feminism, rape and narrative politics* (Palgrave, 2018) 4.
[39] Michael Ryan, 'Meaning and Alternity' in Martha Minow, Michael Ryan, and Austin Sarat (eds), *Narrative, Violence, and the Law: The Essays of Robert Cover* (University of Michigan Press 1995) 271.

for the stories told by those who survive matters so much because stories challenge the abstract, universalised representations of lived experience and contest the centrality of law in facilitating justice.

Nonetheless, without attending to the consequences of incommensurability and in continuing to present institutional change as the responsibility of those who call for change, the capacity for the transitional justice field to facilitate justice for victim-survivors is circumscribed. The fight for institutions and transitional justice mechanisms to recognise victim-survivors as fully human endures for feminist scholars, judges, and activists alike. Whilst scholarship and activism by women for women has been integral in creating narratives that challenge the existing paradigm, fighting for more accurate representation and adequate justice measures cannot remain the sole responsibility of victim-survivors and those that represent their calls for justice. Building upon the work of trauma, healing, and justice scholars, such as Herman and McGlynn and Westmarland, the connections drawn between healing and justice implore scholars and practitioners to recognise the cracks that have been created by the dominant Western-centric focus upon legalism. The challenge to overcome incommensurability lies in the acceptance that abstraction and universalisation alone do not and cannot adequately grapple with the array of women's lived experiences and their justice interests in the aftermath of conflict-related sexual violence. Justice is inherently complex, unpredictable and multifaceted, different for each victim-survivor and can fluctuate in form over time.[40] Because there is no singular way to experience conflict-related sexual violence, there should be no singular transitional justice solution.[41] As such, if other possible worlds are to be brought to the fore, the challenge in overcoming incommensurability demands the need for practitioners and scholars to pay attention to women's narratives and to think intently and imaginatively about the kinds of connections, relationships, and forms of justice needed in the aftermath of conflict-related sexual violence. "Law" Snyder *et al.* have noted, "should never be the only system discussed or applied in dealing with violence against

[40] McGlynn and Westmarland (n 9)196.

[41] Kathleen Daly, 'Reconceptualizing sexual victimization and justice' in Inge Vanfraechem, Antony Pemberton, Felix Mukwiza Ndahinda (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Oxford: Routledge 2014) 387.

women."[42] This does not mean that transitional justice must abandon its legalistic faculties in response to sexual violence entirely, rather the realms of universality, abstraction, and retribution in the representation of conflict-related sexual violence must be complemented by particularity, attention, and healing. Building these connections entails confronting and reconciling with the notion that accepted practices and understanding of conflict-related sexual violence are, in fact, "partial and limited."[43] The importance of reconnecting the realms of individual and community, public and private, men and women cannot be undermined.[44] Disrupting the temporal, spatial and genealogical modes of thought currently imposed by the normative lens calls for a paradigmatic shift in how representations of conflict-related sexual violence emerge in the aftermath of conflict, centred upon the importance of rebuilding a victim-survivors sense of order, control and justice. In the following sections, I explore some of the practical implications emerging from the challenge to incommensurability through the adjustment of the narrative lens upon future transitional justice responses to conflict-related sexual violence.

9.2. Temporality

Conflict halts temporal, spatial and genealogical relations creating a liminal space. Within these spaces, the potential for transformative change emerges from the chaos that such conditions generate. Thinking temporally through the narrative lens in the aftermath of conflict-related sexual violence challenges understandings of time that represent women's lived experiences as singular, static understandings of the past through simplistic notions of 'before and after' conflict imposed by finite and temporary mechanisms. Having elucidated how the dominant justice virtues of Western-centric legalism represent time, there is a need for scholars and practitioners to challenge the temporal discontinuities created by dominant temporal mandates constructed in temporary mechanisms such as time-imposing criminal trials and time-limited commissions, each preoccupied with the notion of closure.[45] These pre-conceived temporalities do not fit the same transition for survivors of sexual violence

[42] Emily Snyder, Val Napoleon and John Borrows, 'Gender and Violence: Drawing on Indigenous Legal Resources' (2015) 48 *University of British Colombia Law Review* 593, 597.
[43] Borrows (n 14) 831.
[44] Herman (n 2) 2-3.
[45] Ray Nickson and John Braithwaite, 'Deeper, broader, longer transitional justice' (2014) 11(4) *European Journal of Criminology* 445, 454.

whom are often overwhelmed by the non-linear disruption of their past, present, and future as a consequence of the trauma inflicted. Traumatised survivors are often those who take the longest to "be ready" to participate in transitional justice processes.[46] Constructing temporality through the narrative lens thus requires the expansion of temporal horizons along two fronts, moving beyond the linear narratives imposed. First, adjusting temporality requires practitioners and scholars to pay considerable attention to the potential held in establishing open, permanent justice processes or mechanisms for victim-survivors of conflict-related sexual violence within transitional contexts. In their permanency, victim-survivors could then access these practices when they feel emotionally and physically ready to record their narrative and seek forms of justice.[47] The expansion of these temporal horizons provides recognition of the implications of trauma upon survivors rather than demarcating strict temporal boundaries within which they can receive justice. Second, rather than making women wait, confining them to their past trauma and reinforcing unequal power relations, adjusting the narrative lens requires asking how the women affected were harmed, what they need in the present moment, and what they will need from the future, determining who is obligated to respond. If the past cannot be changed, recognising the present and future temporalities of survivors lived experiences centres upon the prioritisation of recognition and restitution in the form of material societal support. Reparations and financial assistance are fundamental to restoring a survivor's sense of order and justice through the rebuilding of their lives.[48] Expanding temporality through the narrative lens unravels the destructive power of the shame and stigma associated with rape. It encourages transitional justice practices that prioritise reinstituting victim-survivors within their community, reinstating a sense power to make and shape their future.[49] As Safwan and Masoud note, this could encourage more women "to speak out, ensuring more testimonies to proceed with justice mechanisms that are to address sexual crimes committed by all sides."[50] Additionally, this also encourages recognition of the inter-generational or trans-generational trauma that shifts and stretches

[46] ibid.
[47] ibid.
[48] Herman (n 2) 15.
[49] McGlynn and Westmarland (n 9) 192; Fionnuala Ní Aoláin, Catherine O'Rourke, Aisling Swaine, 'Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice' (2015) 28 *Harvard Human Rights Journal* 97, 122.
[50] Luna Safwan, Sama Masoud, 'Rape: A Weapon of War with Long-term Consequences' *Women's Media Center: Women Under Siege* (13 September 2017) <www.womensmediacenter.com/women-under-siege/rape-a-weapon-of-war-with-long-term-consequences> accessed 30 October 2017.

beyond the temporalities imposed by existing practice calling for the need for permanent community-based support services.[51] Reflecting Herman's understanding that "resolution of the trauma is never final" and "recovery is never complete", transitional justice can then emerge as a process rather than an ending or result to be achieved.[52] In doing so, transitional justice practice can overcome the tendency of Western-centric traditions to "brush past things" instead recognising time as a means through which to encourage connection with one another as human beings.[53]

9.3. Spatiality

Paying attention to spatiality encourages different visions for the coming together of victim-survivors, perpetrators, and transitional justice processes in the aftermath of conflict related sexual violence. First, thinking spatially challenges the distanced nature of justice processes and the assumption that local and nationally embedded justice practices outside of the prevailing, Western-centric paradigm are unable to respond to conflict-related sexual violence. As the thesis has elucidated, many victim-survivors fall outside of the purview of the normative lens, their lived experiences overlooked by the practices of internationalised or distanced judicial mechanisms, leaving a large proportion of survivors without recognition or restitution. In attempting to overcome the gaps created by incommensurability, it is necessary to expand temporal and spatial boundaries, taking a closer look at each transitional context as its own ecology replete with its own social relations, differences, commonalities and communities residing within the particular post-conflict situation. As such, important to note that simply because women may experience conflict-related sexual violence as a consequence of their gender, the perpetration of sexual violence is often instituted along ethnic, racial, or religious lines. Any attempt to transcend such differences faces a lack of either individual or collective common interest in transitional justice processes, as well as issues concerning the capacity of victim-survivor's capacity to engage and the exclusion of

[51] See Myriam Denov, 'The Intergenerational Legacy of Genocidal Rape: The Realities and Perspectives of Children Born of the Rwandan Genocide' (2017) *Journal of Interpersonal Violence* 1.
[52] Chené Swart, *Re-Authoring the World: The Narrative Lens and Practices for Organisations, Communities and Individuals* (Knowres Publishing, 2013) 147.
[53] ibid.

those who are less able to participate.[54] As Ingabire *et al.* have noted, being in the presence of 'the other' may preclude women from engaging due to mistrust, suspicion or re-traumatisation causing women to disengage or choose not to participate.[55] This highlights the importance of centring ongoing, individual access to support as well as collective spaces.

Despite these potential difficulties, creating spaces where the "many different worlds" of victim-survivors of conflict-related rape in post-conflict situations can be "brought into contact with each other" holds the potential to create new possibilities for justice and representations of conflict-related sexual violence.[56] Community-based spaces may facilitate difficult conversations about sexual violence, agency and dignity, about gender and ethnicity, and about power and abuse within each particular transitional situation. Bringing together individual and community, embedded justice processes that attend to the importance of restoring connections could encourage victim-survivors to share the "narrative, dialogical, restorative and moral truths" surrounding their lived experiences of conflict-related sexual violence.[57] Creating transitional justice processes that confront social relations in this way encourages a dialogical engagement with individual women's narrative of sexual violence, one that commemorates their past lived experiences and motivates victim-survivors to look to the future facilitating new connections from their reinstituted position in the community.[58] For instance, spatiality through the narrative lens centres upon building a sense of connectedness that in turn presents a means through which to deconstruct the trap of shame in the recognition of shared experience.

Second, "expanding the stories that are heard" or "changing the contexts in which contested storytelling occurs," not only attends to the multifaceted nature of sexual violence,

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[54] Rachel Ball, 'When I Tell My Story, I'm in Charge: Ethical and Effective Storytelling in Advocacy' (Victoria Law Foundation CLC Fellowship Report 2013) 9 <www.victorialawfoundation.org.au/sites/default/files/attachments/VLF%20-%20CLC%20final%20report%2012-13%20_Final_web.pdf> accessed 7 June 2018.

[55] Chantal Marie Ingabire and others, 'Trauma informed restorative justice through community based sociotherapy in Rwanda' (2017) 15(3) Intervention 2017 241, 246.

[56] Klaus Krippendorff, 'Ecological Narratives; Reclaiming the Voice of Theorized Others' in Ciprut J (ed), *The Art of the Feud: Reconceptualizing International Relations* (Praeger Publishers 2001) 14.

[57] Ingabire and others (n 55) 250.

[58] Diana Tietjens Meyers, 'Victims Stories of Human Rights Abuse: The Ethics of Ownership, Dissemination, and Reception' (2018) 49(1-2) *Metaphilosophy* 40.

it holds the capacity for transformative change, encouraging a more holistic, multidimensional conception of transitional justice.[59] Through the narrative lens, justice processes must respond to each new set of circumstances and the kaleidoscope understandings of sexual violence that demand the need for justice to have "multiple beginnings and possible endings."[60] In allowing women to make an informed decision as to what justice means to them, they can decide whether they wish to engage in the processes of justice offered to them, reflecting together upon the barriers to justice they face from a position of strength, connection, and support. Rather than justice being perceived as a final destination, adjusting the narrative lens holds the potential to facilitate new avenues of justice from the connections drawn. Whilst these forms of justice may be considered partial or incomplete under the normative lens, disrupting the temporal and spatial boundaries makes it an imperative to listen to and hear the justice demands of a victim-survivor and respond in a way that "makes some sense to her" from the space within which she resides.[61] This may mean their story being heard in an international tribunal but it could also mean a trial under state law or within restorative, reparative, or traditional and indigenous forms of justice. Thinking spatially in this way encourages transitional justice practice to recognise the interplay between of restorative, procedural, social, and retributive forms of justice and local justice processes that victim-survivors can understand to carefully calibrate responses to conflict-related sexual violence that attend to their lived actualities.[62]

9.4. Genealogy

Adjusting the narrative lens has implications upon existing conceptualisations of power in the transitional justice field. Law remains a powerful and distinct mode of representation but, in ceding power to legal representation as the central vehicle through which women's stories are narrated and understood, transitional justice practice has presented the existing structures of power as finite and immutable. Whilst a global commitment to end sexual violence has emerged, the imposition of Western-centric

[59] Doug Smith, 'Order (For Free) in the Court: Legal Systems as Sites for Creating Emergent Order Out of Agent's Narratives' (2005) 7(3/4) *Emergence: Complexity & Organization 53,* 59.
[60] McGlynn and Westmarland (n 9) 186.
[61] Nickson and Braithwaite (n 45) 449.
[62] Borrows (n 14) 837.

distanced universal justice ideals in response to violence against women imposed by global institutions such as the ICC has failed to address the disjuncture between narratives as they are lived and narratives as they are told. This is underpinned by an assumption that transitional contexts are unable to adequately respond to such violence. In turn, this has fed into a culture of impunity and created gaps in the provision of justice to victim-survivors. These emerge in the failure to adequately translate, redefine and adapt normative norms and practices for local justice practices creating space for further violence against women to emerge.[63] In the endeavour the close the disjuncture, there is a need for:

> new ways of creating, framing, understanding and applying international law, which enhance rather than diminish the importance and power of local, national and transnational movements for social justice and liberatory change. [64]

In shifting the spatial and temporal boundaries, implications upon existing structures of power emerge as beginning from experience rather than abstract representation, from social struggle as opposed to a legal issue means that those engaged in transitional justice practice, particularly lawyers and judges, may be called to take on a subordinate role. This reflects the view that, "the lawyer's role is more the oiler of the social change machine than its motor; the motor of the machine remains masses of people."[65] Allowing women to speak to their lived experiences in the own language, or vernacular space, centres their voices and provides women with the power to decide how their stories of sexual violence will be used, holding narrative control of when, where, how and why their story of war and sexual violence is told. In turn, restoring connections and creating spaces that centre the voices of victim-survivors holds the potential for survivors to "subvert and transcend" the "dominant hegemonies" imposed during conflict and reproduced in existing structures of power. This is because the vernacular space avoids the imposition of a 'second language' that cannot adequately express

[63] Peggy Levitt and Sally Engle Merry, 'The Vernacularization of Women's Human Rights' in Leslie Vinjamuri, Jack Snyder, and Stephen Hopgood (eds) *Human Rights Futures* (Cambridge University Press 2017) 213.
[64] Anna Grear and Dianne Otto, 'International Law, Social Change and Resistance:
A Conversation Between Professor Anna Grear (Cardiff) and Professorial Fellow Dianne Otto (Melbourne)' (2018) 23(3) *Feminist Legal Studies* 351. 352.
[65] Bachman in Ball (n 54).

women's multiple subjectivities beyond the confines of categorisation and archetype.[66] Nonetheless, as Radin has noted, "For a group subject to structures of domination, all rods thought to be progressive can pack a backlash."[67] Transitional justice practice has the capacity to engage with existing collective action to create collaborative efforts, minimising the severity of the backlash by bringing justice processes closer to home to shake the institutions that play a role in the preservation of women's subordination.[68] Paying attention to women "less as objects of dispassionate curiosity" but rather "as collaborators in a shared cause" holds the possibility of eliciting transformative and meaningful change within the field.[69] Men rape under the pretence that this makes them powerful. Until transitional justice shifts the focus of the narrative lens in ways that confront and bring forth the power of women and the powerlessness of rapists before the eyes of community, these existing structures of power will remain.[70]

From individual stories brought into collective, community-based spaces, women's voices can become central to the transitional justice process, encouraging communities to reflect upon the causes, conditions and practices underlying acts of sexual violence, paying attention to these acts "as effects whose causes must be cured by a somewhat different" framework as opposed to deferring to what is "available to the singular model of the judge."[71] Adjusting the narrative lens means disrupting the structures of power that present international law and legal practice as the zenith of justice for survivors of sexual violence in conflict. Rather than submitting to dominant conceptions of power, the creation of holistic, relational understandings of transitional justice necessitate regularly re-examining the lines that the dominance of law and criminal justice draws around transitional justice responses to conflict-related sexual violence.[72] This means that law and formal justice processes may no longer reside front and centre as the seemingly natural and logical response to conflict-

[66] Sorcha Gunne and Zoe Brigley-Thompson (eds) *Feminism, Literature and Rape Narratives: Violence and Violation* (Routledge 2010) 17.
[67] Margaret J. Radin, 'The Pragmatist and the Feminist' (1990) *Southern California Law Review* 1699, 1701.
[68] Pierre Bourdieu, *Masculine Domination* (Richard Nice Trs, Stanford University Press 2002) ix.
[69] Herman (n 2) 240.
[70] Susan Thomson and Rosemary Nagy, 'Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's *Gacaca* Courts' (2011) 5(11) *International Journal of Transitional Justice* 11, 29.
[71] Ryan (n 39) 275-276.
[72] Toni M. Massaro, 'Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?' (1989) 87 *Michigan Law Review* 2099, 2127.

related sexual violence. Law, in particular international criminal law, can no longer be the singular representative force and often only point of access for survivors of sexual violence into the transitional justice field. Pushing at existing conceptual frameworks, understandings and language, holds the potential to "envisage ways of knowing that surpass our own imagination."[73] A failure of imagination in the field risks undermining the legitimacy and value of the transitional justice endeavour in the lives of victim-survivors of sexual violence in conflict. In privileging women's experiential knowledge and paying attention to the connections between justice and healing, priorities in transitional justice shift from legal reforms and jurisprudential achievements to recognise the full humanity of women as concrete beings in the world.[74]

9.5. Conclusion

From the incorporation of conflict-related sexual violence in international criminal law during the early 1990s the recent Global Summit to End Sexual Violence in 2014, the past twenty-five years have undoubtedly seen a considerable shift in how conflict-related sexual violence is understood, no longer perceived as an inevitable element of conflict. As the continued engagement of feminist scholars and activists with legal avenues of representation and redress demonstrates, law holds a considerable amount of transformative potential. To date, the international community and practice of international criminal law has demonstrated a willingness to openly communicate about conflict-related sexual violence and to engage with lived experiences of sexual violence. Law has played an instrumental role in the recognition of conflict-related sexual violence; where once such violence was considered an inevitability of conflict, now it is codified as a war crime, prosecuted as such under international law and underpinned by a global commitment to end sexual violence against women. The recognition of sexual violence within the international framework embodies a global desire to end such violence against women, whilst the justice measures implemented to respond to sexual violence thus far demonstrate how this world desire can be interpreted and practically implemented in its current paradigm.

[73] Stephanie Vieille 'Transitional Justice: A Colonizing Field?' (2012) 4(3) *Amsterdam Law Forum* 58, 67.
[74] Eddie Soulier, 'Territory as Narrative' (2015) CS-DC'15 World e-conference

In light of this global commitment, the thesis commenced upon the question of how effective existing judicial, quasi-judicial and extra-judicial transitional justice practices are in their ability to capture the women's lived experiences of conflict-related sexual violence. Building upon the work of feminist legal theorists and transitional justice scholars, the thesis began by exploring the representations that have emerged in legal mechanisms such as the ICTY, ICTR and ICC. Paying attention to conflict-related sexual violence through legal language, categorisations and generalisations that focus upon "one label, class or categorisation" has, the thesis has argued, diminished recognition of the multifaceted nature of sexual violence, the intersections that feed into its perpetration, and the underlying conditions that reproduce "individual and institutional violence against women."[75] Despite the recognition of conflict-related sexual violence in law providing a language and conceptual framework through which to speak and represent sexual violence, those affected by sexual violence and those who perpetrate such violence become abstract subjects rigidified into singular, universalised narratives incommensurable to lived actualities mistaking the abstractions it constructs as real. This has functioned to silence other ways of thinking about sexual violence and approaching what transitional justice means for victim-survivors.[76] Framed through the normative lens, the notion of incommensurability was used to encapsulate the disjuncture that has emerged between legal representations and women's lived experiences of sexual violence. Exploring the legal narratives emerging from powerful, globalised institutions such as the ICC, the thesis explored the nature, extent and dimensions of incommensurability as a problem for law bringing to the fore that which is lost and silenced in the narrative constructions emerging within and from normative spaces. In doing so, the thesis endeavoured to pay attention to women's trauma and suffering and the importance of recognising victim-survivors beyond abstraction and universalisation.

Responding to the calls made by feminist scholars such as Karen Engle and Nicola Henry of the continued deference of feminist scholarship and transitional justice practice to power of law, the thesis confronted the basis upon which the centrality of law is founded in the field of transitional justice. Since the early 1990s, the force of ICL upon the transitional justice field has focussed responses to sexual violence through criminalisation and the

[75] Snyder and others (n 42).
[76] Vieille (n 73) 67.

rhetoric of ending impunity. Whilst laudable and necessary, this has created a paradigm whereby women's agency and participation are predicated upon ceding to the power of law to recognise, represent and provide access to justice. Providing a novel and comprehensive analysis of the cost of incommensurability upon transitional justice practice, the thesis demonstrated how the continued deference to legal representation has impeded upon the capacity for quasi-judicial and extra-judicial mechanisms to attend to women's lived experiences. Meaningful change in the aftermath of the South African TRC was undermined by its limited mandate and the lack of political will to implement recommendations. Reparations mandates for victim-survivors are slow and although the rhetoric is consistently repeated, in practice women throughout the world are still waiting for promises to be fulfilled. Silence endures in state-sponsored memorials whilst civil society, activists and social justice movements fight for those affected to be remembered and apologies are circumscribed by cultural norms that fail to address the underlying problems of violent and militarised masculinities.

As such, the thesis, within this final chapter, posed the question as to whether the incommensurability of representations of conflict-related sexual violence can be overcome. The challenge of incommensurability encompasses finding a way to draw together the disjuncture between distanced, abstract representations of sexual violence and the lived actualities of women affected by such trauma. Paying attention to its cost encourages those engaged in transitional justice practice to take a step back from the current paradigm, loosening the grip upon the ostensibly rigid and embedded understandings of conflict-related sexual violence imposed by the centrality of law. It is of course perfectly rational to find approaches to conflict-related sexual violence that are entirely objective in the pursuit of justice. But, as the calls from victim-survivors in BiH to CAR elucidate, without reflecting upon what is elided and repressed in existing representation the field risks the transitional justice process falling "into disrepute."[77] If it is to be overcome, the adjustment of the narrative lens demonstrates the importance of commencing from the lived experiences of those affected

[77] James Arguin, 'Prosecution of Sexual Violence: Reducing the Risk of Re-Traumatization of Survivor Witnesses' (A Compendium on the Legacy of the ICTR and the Development of International Law 2014) 21 <http://unictr.unmict.org/sites/unictr.org/files/publications/compendium-documents/i.-reducing-risk-of-retraumitization-survivors-witnesses-arguin.pdf>

by conflict-related sexual violence, bringing to the fore multifaceted representations that challenge existing categorisations and hegemonic narratives. The adjustment of the narrative lens need not be grandiose and revolutionary, rather, in the challenge to incommensurability "small changes… can have large scale effects."[78] Creating connections between healing and justice holds the possibility of a paradigmatic shift wherein attention is focussed upon women's voices, upon restoring connections between victim-survivors and their community, without presupposing their capacity to speak to their wants and needs in the aftermath of suffering. Paying attention to women's suffering in the aftermath of sexual violence will entail asking difficult questions and listening to uncomfortable answers that focus upon the ability for ordinary men to engage in violence so egregious it causes them to be perceived not as humans but as monsters.

Taking trauma seriously through the integration of a trauma-informed approach entails reflecting upon the "optimal spaces, agents and timeframes" effective in responding to and representing conflict-related sexual violence.[79] In challenging existing boundaries through a theoretical analysis, I do not wish to "overestimate the ease with which change may be accomplished" nor "underestimate the difficulties of breaking loose of patriarchal shackles" within the field.[80] A lack of political will beleaguers the ability of transitional justice to facilitate appropriate justice responses within transitional contexts. This is confounded by the fact that transitional justice deals with extremely vulnerable and complex situations. Adjusting the narrative lens embodies the demand for increased political will, substantial funding, revised (gendered) reparative structures, and the consistent overhaul of entrenched norms and practices within the field.[81] Yet, as Chambers notes, "we cannot change our institutions without first theorizing the need for change. Only once theorized can change go beyond consciousness and into institutions."[82] Like Snow, I admit that, "all of this is, of course, highly idealistic." But, through this "ethical vision… the idealistic notion that, with patient

[78] Kuhn in Lindsay Waters, 'The Age of Incommensurability' (2001) 28(2) *boundary 2* 133.
[79] Clark in Ingabire (n 55) 251.
[80] Toril Moi 'Appropriating Bourdieu: Feminist Theory and Pierre Bourdieu's Sociology of Culture' (1991) 22(4) *New Literary History* 1017, 1032
[81]Louise Ellison and Vanessa Munro, 'Taking Trauma Seriously: Critical Reflections on the Criminal Justice Process (2017) 21(3) *The International Journal of Evidence & Proof* 183, 200
[82] Clare Chambers, 'Masculine Domination, Radical Feminism and Change' (2005) 6(3) *Feminist Theory* 325, 337.

attention, we can come to discover the good" is a means through which to hope and envision a paradigm shift.[83] This is not intended to suggest a new justice mechanism but is, rather, a call to attention and a precursor to action for scholars and practitioners to push at existing boundaries and reflect more critically upon the role of law within the field of transitional justice and what to do in the aftermath of the infliction of individual and collective trauma. In bringing to the fore the cost of incommensurability, the importance of the thesis lies in its call to facilitate the recognition of victim-survivors not as abstractions but as human beings each deserving and worthy of our full and undivided attention.

[83] Nancy E. Snow, 'Learning to Look: Lessons from Iris Murdoch' (2013) 13(2) *Teaching Ethics* 1.

Bibliography

Treaties and Agreements

Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1331 (entered into force Dec. 7, 1978);

Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, **S.**TREATY Doc. No. 100-2, 1125 U.N.T.S. 609 (entered into force Dec. 7, 1978)

Beijing Declaration and Platform for Action, Fourth World Conference on Women (adopted 15 September 1995) A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995)

Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948) United Nations, Treaty Series, vol. 78, p. 277.

Convention on the Elimination of All Forms of Discrimination Against Women (8 December 1979, entry into force 3 September 1981) 34/180;

Declaration on the Elimination of Violence against Women (20 December 1993) A/RES/48/104;

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 U.S.T. 3114; 75 U.N.T.S. 31

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 6 **U.S.T.** 3217, 75 U.N.T.S. 85

Geneva Convention (III) Relative to the Treatment of Prisoners of War, 6 **U.S.T.**3316, 75 U.N.T.S. 135

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, 75 U.N.T.S. 287

Statute of the International Tribunal for Rwanda Security Council (adopted 8 November 1994 by UNSCR 955 (8 November 1994) as last amended by UNSCR 1717 (2006) of 13 October 2006).

Statute of the International Criminal Tribunal for the Former Yugoslavia (adopted 25 May 1993 by UNSCR 827 (25 May 1993) as last amended by UNSCR 1877 (2009) of 7 July 2009).

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)

United Nations Commission on Human Rights, Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women, Res 1994/45

United Nations General Assembly, Rome Statute of the International Criminal Court (opened for signature 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (last amended 2010) <www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

United Nations, 'Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence' (June 2014) <www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

United Nations Human Rights Council, Elimination of violence against women, Res 7/24 <http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_7_24.pdf>

United Nations Security Council, Statute *of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006)*, 8 November 1994 <http://legal.un.org/avl/pdf/ha/ictr_EF.pdf>

United Nations Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (*as last amended 7 July 2009) 25 May 1993

United Nations Security Council Resolution 1325 S/RES/1325 (31 October 2000)

United Nations, Security Council Resolution 1820 S/RES/1820 (June 19, 2008).

United Nations Security Council Resolution 1889 S/RES/1889 (5 October 2009)

United Nations, Security Council Resolution 1960 S/RES/1960 (19 December 2010).

United Nations Security Council Resolution 2106 S/RES/2106 (24 June 2013)

United Nations Security Council Resolution 2122 S/RES/2122 (18 October 2013)

United Nations Security Council Resolution 2242 S/RES/2242 (13 October 2015)

Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights held in Vienna from 14 to 25 June 1993 A/CONF.157/24 (13 October 1993)

Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal (1950)
<http://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf>

Legislation

Republic of Rwanda. 1996. "Organic Law 08/1996 of 30/08/1996 on the Organization of Prosecutions of Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990." Official Gazette of the Republic of Rwanda, Kigali, 1 September.

Republic of Rwanda. 2001. "Organic Law 40/2000 of 26/01/2001 Setting up Gacaca Jurisdictions and Organising Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed between 1 October 1993 and 31 December 1994." Official Gazette of the Republic of Rwanda, Kigali, October.

Republic of Rwanda. 2008. "Organic Law 13/2008 of 19/05/2007 Modifying and Complementing Organic Law no. 16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed between October 1, 1990 and December 31, 1994 as Modified and Complemented to Date." Official Gazette of the Republic of Rwanda, Kigali, May.

International Criminal Court

Prosecutor v. Thomas Lubanga Dyilo (Order for Reparations) ICC-01/04-01/06-3129-AnxA (3 March 2015)

Prosecutor v. Jean-Pierre Bemba Gombo (Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims) ICC-01/05- 01/08-2138 (22 February 2012)

Prosecutor v Jean-Pierre Bemba Gombo (Sentencing Hearing) ICC-01/05-01/08-T-369-Red-ENG WT 17-05-2016 40/72 NB T (17 May 2016)

Prosecutor v. Jean-Pierre Bemba Gombo (Judgment) ICC-01/05-01/08-3343 (21 March 2016)

Prosecutor v. Jean-Pierre Bemba Gombo (Judgment) ICC-01/05-01/08 A (8 June 2018)

Prosecutor v Jean-Pierre Bemba Gombo (Trial Hearing) ICC-01/05-01/08-T-220-ENG CT WT 01-05-2012 1/56 NB T (1 May 2012)

Prosecutor v Dominic Ongwen (Decision on the Confirmation of Charges) ICC-02/04-01/15 (23 March 2016)

International Criminal Tribunal for Rwanda

Prosecutor v Akayesu (Judgment) ICTR-96-4-T, T Ch I (2 September 1998

Prosecutor v Nyiramasuhuko et al. (Butare) ICTR-98-42 (14 December 2015).

International Criminal Tribunal for Former Yugoslavia

Prosecutor v Delalic, *Mucic*, Delic, Landzo (Judgment) ICTY IT-96-21-T (16 November 1998)

Prosecutor v. Dusco Tadić Decision of the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses IT-94-1-T (10 August 1995).

Prosecutor v. Dusko Tadic (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) IT-94-1-A (2 October 1995)

Prosecutor v Furundzija (Judgment) IT-95-17/1-T (10 December 1998).

Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic IT-96-23-T & IT-96-23/1 (22 February 2001)

Prosecutor v *Kvočka et al*. (Judgment) IT-98-30/1 (2 November 2001)

Prosecutor v. Fatmir Limaj (Judgment) IT-03-66-T (30 November 2005)

ICTY, Rules of Procedure and Evidence as amended on 8 July 2015 IT/32/Rev.50 (2015) <www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf>

Official Materials

Al Hussein ZR., 'Backlash against women's rights progress hurts us all - Statement by UN High Commissioner for Human Rights' (08 March 2017) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21305>

International Criminal Court, 'Mental Health Outcomes of Rape, Mass Rape, and other Forms of Sexual Violence' ICC-01/05-01/08-3417-Conf-AnxA (22 September 2016) <www.icc-cpi.int/RelatedRecords/CR2016_06768.PDF>

International Criminal Court, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the opening of Trial in the case against Dominic Ongwen' (6 December 2016) <www.icc-cpi.int/Pages/item.aspx?name=2016-12-06-otp-stat-ongwen>

International Criminal Court, Elements of Crimes, ICC-PIDS-LT-03-002/11_Eng (2011) <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

International Criminal Court, Rules of Procedure and Evidence, ICC-ASP/1/3 (2nd edn, 2013) <www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>

Office of the Prosecutor, Policy Paper on Victim Participation (April 2010) <www.icc-cpi.int/iccdocs/otp/Policy_Paper_on_Victims_Participation_April_2010.pdf>

International Criminal Tribunal for Former Yugoslavia, Rules of Procedure and Evidence as amended on 8 July 2015 IT/32/Rev.50 (2015) <www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf>

Rules of Procedure and Evidence (as amended on 22 May 2013) ICC-PIDS-LT-02-002/13_Eng <www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>
United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations' A/RES/60/147 (21 March 2006).

United Nations Office of the High Commissioner for Human Rights, Opening Statement by Ms. Navi Pillay United Nations High Commissioner for Human Rights at the 22nd session of the Human Rights Council (25 February 2013) <https://reliefweb.int/report/world/opening-statement-ms-navi-pillay-united-nations-high-commissioner-human-rights-22nd> accessed 5 March 2019.

Women's Caucus Gender Justice, 'Recommendations and Commentary to the Elements Annex and Rules of Procedure and Evidence' (Submitted to the Preparatory Commission for the International Criminal Court, 12-30 June 2000) <http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/icc/iccpc/062000pc/elementsannex.html>

Books

——, *A Woman in Berlin* (Virago Press Ltd 2005).

Alam M, *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes* (Palgrave 2014)

Allen B, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (University of Minnesota Press 1996)

Akram S, Emerson G, Marsh D, '(Re)Conceptualising the third face of power: insights from Bourdieu and Foucault' (2015) 8(3) Journal of Political Power 345

Ambos K**,** *Treatise on International Criminal Law Volume II: The Crimes and Sentencing* (Oxford University Press 2014)

Amsterdam AG and Jerome S. Bruner JS, *Minding the Law* (Harvard University Press 2009)

Anomy E, *I Am Evelyn Amony: Reclaiming My Life from the Lord's Resistance Army* (University of Wisconsin Press 2015)

Arendt H, *The Life of the Mind* (Harcourt Inc 1978)

Askin K, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Martinus Nijhoff Publishers 1997)

Auge M, *Non-places: Introduction to an Anthropology of Supermodernity* (John Howe tr, 2nd edn, Verso Books 2009)

Bachmann S, *Lawyers, Law and Social Change* (Unlimited Publishing 2001)

Bellantoni L, Moral Progress: A Process Critique of MacIntyre (SUNY Press 2000)

Bennett WL and Feldman MS, *Reconstructing Reality in the Courtroom* (Rutgers University Press, 1981)

Bianchi A, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford University Press 2016)

Bergson H, Time and Free Will: An Essay on the Immediate Data of Consciousness (Routledge 2014)

Brison S, *Aftermath*: *Violence and the Remaking of the Self* (Princeton University Press 2002)

Brownmiller S, *Against Our Will* (Ballantine Books 1975)

Bruner J, *Actual Minds, Possible Worlds* (Harvard University Press 1986)

— *Acts of Meaning* (Harvard University Press 1990)

— *Making Stories: Law, Literature, Life* (Harvard University Press 2003)

Bourdieu P, *Outline of Theory of Practice* (Richard Nice tr, Cambridge University Press 1977)
— *Distinction: A Social Critique of Judgement of Taste* (Richard Nice tr, Harvard University Press 1984)
— *In Other Words: Essays Towards a Reflexive Sociology* (Matthew Adamson tr, Stanford University Press 1990)
— *The Logic of Practice* (Richard Nice tr, Stanford University Press 1992)
— *Language and Symbolic Power* (Polity Press 1994)
— *Pascalian Meditations* (Richard Nice Tr, Stanford University Press, 2000)
— *Masculine Domination* (Richard Nice tr, Stanford University Press 2002)
— and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Polity Press 1992)

Cavarero A, *Relating Narratives*: Storytelling and Selfhood (Routledge 2014)

Chang I, *The Rape of Nanking: The Forgotten Holocaust of World War II* (Basic Books 1997)

Cover R, *Narrative, Violence, and the Law: The Essays of Robert Cover* (Martha Minow, Michael Ryan, and Austin Sarat (eds), University of Michigan Press 1995)

Chappell L, *The Politics of Gender Justice at the International Criminal Court* (Oxford University Press 2016)

Clandinin DJ, Connelly FM, *Narrative Inquiry: Experience and Story in Qualitative Research* (Jossey Bass Publishers 2000)

Clandinin JD, *Handbook of Narrative Inquiry: Mapping a Methodology* (SAGE 2006)

Clark P, *The Gacaca Courts: Post-Genocide Justice and Reconciliation: Justice without Lawyers* (Cambridge University Press 2010

Dauphinee E, *The Politics of Exile* (Routledge 2013)

De Brouwer AM, Chu S (eds), *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (Douglas & McIntyre 2009)

Drakulić S, *S.: A Novel About the Balkans*. (Reprint edn, Penguin 2001)
— Drakulić S, *They Would Never Hurt a Fly: War Criminals on Trial in the Hague* (Abacus 2004)

Drèze J and Sen A, *An Uncertain Glory: India and Its Contradictions* (Princeton University Press, 2013)

Fishman CA, Sahay S (eds), *Veils, Halos and Shackles* (Kasva Press 2016)

Frank A, *Letting Stories Breathe*: A Socio-Narratology (University of Chicago Press 2010)

Gaita R, *Thinking About Love and Truth and Justice* (Routledge 2002)

Genette G, *Narrative Discourse: An Essay in Method* (Jane E. Lewin and Jonathan Culler trs, Cornell University Press 1983)

Gordon R, *Rehumanizing Law: A Theory of Law and Democracy* (University of Toronto Press 2011)

Gunne S, Brigley-Thompson Z (eds), *Feminism, Literature and Rape Narratives: Violence and Violation* (Routledge 2010)

Hedgepeth S and Saidel R, Sexual Violence Against Jewish Women During the Holocaust (Brandeis University Press 2010)

Helms E, *Innocence and Victimhood: Gender, Nation, and Women's Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press)

Henry N, *War and Rape: Law, Memory and Justice* (Routledge, 2011)

Herman J, *Trauma and Recovery* (Basic Books 1992)

Hesford W and Kozol K (eds), *Haunting Violations: Feminist Criticism and the Crisis of the "Real"* (University of Illinois Press 2000)

Hesse-Biber SN (ed), *Handbook of Feminist Research: Theory and Praxis* (2nd edn, SAGE Publications 2012)

Hooks B, 'Narratives of Struggle' in Philomena Mariani (ed), Critical Fictions: The Politics of Imaginative Writing (Bay Press 1991)

Hooks B, *Feminist Theory: From Margin to Center* (Routledge 1984)
—*Feminism is for Everybody: Passionate Politics* (South End Press 2000)

Hunter R, McGlynn C, Rackley E, Feminist Judgments: From Theory to Practice (Bloomsbury Publishing 2010)

Hyde L, *Trickster Makes This World: How Disruptive Imagination Creates Culture* (Canongate Books 2008)

Kate Manne, *Down Girl: The Logic of Misogyny* (Oxford University Press 2017)

Plummer K, *Telling Sexual Stories: Power, Change and Social Worlds* (Routledge, 1994)

Le Guin UK, The Wave in the Mind: Talks & Essays on the Writer, the Reader & the Imagination (Shambhala 2004)

Letherby G, Feminist Research in Theory and Practice (Open University Press 2003)

Leydesdorff S, *Surviving the Bosnian Genocide: The Women of Srebrenica Speak* (Kay Richardson tr, Indiana University Press 2015)

Luhmann N, *Theory of Society: Volume 2* (Rhodes Barrett tr, Stanford University Press 2013)

Mackinnon C, *Toward a Feminist Theory of State* (Harvard University Press 1989)

Malešević S, The Sociology of War and Violence (Cambridge University Press 2010)

Massey D, *For Space* (Sage Publications 2008)

Massey D, *Space, Place and Gender* (University of Minnesota Press 1994)
— Massey D, *For Space* (Sage Publications 2008)

McNay L, *Gender and Agency: Reconfiguring the Subject in Feminist and Social Theory* (John Wiley & Sons 2013)

Meyers D, *Victims' Stories and the Advance of Human Rights* (Oxford University Press 2016)

Minow M, Between Vengeance and Forgiveness**:** Facing History After Genocide and Mass Violence (Beacon Press 1998)

Minow M, *Breaking the Cycles of Hatred: Memory, Law, and Repair* (Nancy Rosenblum ed, Princeton University Press 2002)

Munro V, *The Ashgate Research Companion to Feminist Legal Theory* (Routlege 2016)

Ngozi Adichie C, *We Should All Be Feminists* (Fourth Estate 2014)

Nussbaum M, *Poetic Justice: The Literary Imagination and Public Life* (Beacon Press 1995)

Onega S and Garcia Landa JA, *Narratology: An Introduction* (1st edn, Pearson 1996)

Pétrement S, *Simone Weil: A Life* by (Raymond Rosenthal tr, Pantheon Books1976)

Polkinghorne D, *Narrative Knowing and the Human Sciences* (State University of New York Press 1988)

Reinharz S, *Feminist Methods in Social Research* (Oxford University Press 1992)

Rich A, *On Lies, Secrets, and Silence: Selected Prose 1966-1978* (W.W Norton Company 1979)

Ricoeur P, *Time and Narrative Vol 1* (Kathleen McLaughlin and David Pellauer trs, University of Chicago Press 1984)

— Ricoeur P, *Time and Narrative Vol 3* (Kathleen Blamey and David Pellauer trs, University of Chicago Press 1988)

Robertson G, *Crimes Against Humanity: The Struggle for Global Justice* (Penguin 2006)

Salome Mibenge C, *Sex and International Tribunals: The Erasure of Gender from the War Narrative* (University of Pennsylvania Press 2013)

Sherman D and Nardin T, *Terror, Culture, Politics: Rethinking 9/11* (Indiana University Press, 2006)

Simic O, *Silenced Victims of Wartime Sexual Violence* (Routledge 2018)

Skjelsbæk I, *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina* (Routledge 2012)

Smart C, *Feminism and the Power of Law* (Routledge 1989)

Sontag S, *At the Same Time* (Dilonardo P and Jump A (eds), Farrar Straus Giroux 2007)

Sontag S, *Regarding the Pain of Others* (Picador 2003)

Stauffer J, *Ethical Loneliness: The Injustice of Not Being Heard* (Columbia University Press 2015)

Stolorow R, *Trauma and Human Existence:* Autobiographical, Psychoanalytic, and Philosophical Reflections (Taylor & Francis, 2011)

Swart C, *Reauthoring the World: The Narrative Lens and Practices for Organisations, Communities and Individuals* (Knowres Publushing 2013)

Tannen RS, The Female Trickster: The Mask That Reveals, Post-Jungian and Postmodern Psychological Perspectives on Women in Contemporary Culture (Routledge 2007)

Teitel R, *Transitional Justice* (Oxford University Press 1997)

Vranić S, *Breaking the Wall of Silence: The Voices of Raped Bosnia* (Antibarbarus Zagreb, 1996)

Weil S, Gravity and Grace (Emma Crawford and Mario von der Ruhr trs, Routledge Classics 2002)

WuDunn S and Kristof N, *Half the Sky: Turning Oppression into Opportunity for Women Worldwide* (Virago 2010)

Zehr H and Gohar A, *The Little Book of Restorative Justice* (Good Books 2003

Chapters in Edited Books

Askin K, 'Can the ICC Sustain a Conviction for the Underlying Crime of Mass Rape without Testimony from Victims?' in Steinberg RH (ed), *Contemporary Issues Facing the International Criminal Court* (Martinus Niijhoff Publishers 2016)

Bourdieu P, 'The Forms of Capital' in Richardson J (ed) Handbook of Theory and Research for the Sociology of Education (Greenwood 1986)

Brubaker R, 'Social Theory as Habitus' in *Calhoun C*, LiPuma E, and *Postone* M (eds) Bourdieu: Critical Perspectives (2nd edn, University of Chicago Press 1993)

Chappell L. 'The Role of the ICC in Transitional Gender Justice: Capacity and Limitations' in Susanne Buckley-Zistel and Ruth Stanley, *Gender in Transitional Justice* (Springer 2011)

Chia R, 'Rediscovering Becoming**:** Insights from an Oriental Perspective **on** Process Organization Studies' in Hernes T and Maitlis S(eds), *Process, Sensemaking, and Organizing* (Oxford University Press 2010)

Christodoulidis E, 'The Objection that Cannot Be Heard: Communication and Legitimacy in the Courtroom' in Duff A, Farmer L, Marshall S and Tadros V (eds.), The *Trial on Trial Volume 1: Truth and Due Process.* (Hart Publishing 2004)

Conklin W, 'Derrida's Territorial Knowledge of Justice' in Ruth Buchanan, Stewart Motha, Sunday Pahuja (eds), *Reading Modern Law: Critical Methodologies and Sovereign Formations* (Routledge 2012)

Couto Soares ML, 'The Narrative of the Man Who Suffers' in *Isabel Fernandes* and others (eds), *Creative Dialogues: Narrative and Medicine* (Cambridge Scholars Publishing 2015)

Daly K, ‘Reconceptualizing sexual victimization and justice’ in Vanfraechem I, Pemberton A, Mukwiza Ndahinda F (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Oxford: Routledge 2014)

Engle K, ‘A Genealogy of the Centrality of Sexual Violence to Gender and Conflict’ in Fionnuala Ní Aoláin, Naomi Cahnm Dina Francesca Haynes and Nahla Valji (Eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press, 2017)

Godwin Phelps T, ‘The Symbolic and Communicative Function of International Criminal Tribunals’ in M Albertson Fineman and E Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice (*Intersentia 2013)

Grenfell MJ, ‘Biography’ in Michael J. Grenfell (ed), Bourdieu: Key Concepts (2nd edn, Routledge 2012)

Hesford W, ‘Rape Stories’ in W Hesford and W Kozol (eds), *Haunting Violations: Feminist Criticism and the Crisis of the "Real"*(University of Illinois Press 2000)

Hooks B, ‘Narratives of Struggle’ in Philomena Mariani (ed), *Critical Fictions: The Politics of Imaginative Writing* (Bay Press 1991)

Igreja V, ‘Negotiating Temporalities of Accountability in Communities in Conflict in Africa’ in Mueller-Hirth N, Rios Oyola S (eds), *Time and Temporality in Transitional and Post-conflict Societies* (Routledge 2018)

Kelly L, ‘The Continuum of Sexual Violence’ in Hanmer J, Maynard M (eds) *Women, Violence and Social Control. Explorations in Sociology* (Palgrave Macmillan1987).

Kerr R, ‘Transitional Justice in Post-Conflict Contexts: Opportunities and Challenges’ in Roger Duthie and Paul Seils (eds) *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Center for Transitional Justice 2017)

Krippendorff K, ‘Ecological Narratives; Reclaiming the Voice of Theorized Others’ in Ciprut J (ed), *The Art of the Feud: Reconceptualizing International Relations* (Praeger Publishers 2001)

Kruks S, ‘Women's ‘Lived Experience’: Feminism and Phenomenology from Simone de Beauvoir to the Present’ in Evans M, Hemmings C, Henry M, Johnstone H, Madhok S, Plomien A and Wearing S (eds) *The SAGE Handbook of Feminist Theory* (SAGE 2014)

Laub D, 'An Event Without a Witness: Truth, Testimony and Survival' in Shoshana Felman S, Laub D (eds) *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (Routledge 2013)

Lawler S, 'Symbolic Violence' in Southerton D (ed), *Encyclopoedia of Consumer Culture* (Sage 2012)

Levitt P and Engle Merry SE, 'The Vernacularization of Women's Human Rights' in Vinjamuri L, Snyder J and Hopgood S (eds) *Human Rights Futures* (Cambridge University Press 2017)

Luhmann N, 'The Autopoiesis of Social Systems' in F. Geyer and J. Van d. Zeuwen (eds), *Sociocybernetic Paradoxes: Observation, Control and Evolution of Self-Steering Systems* (Sage 1986)

Luhmann N, A Sociological Theory of Law (Elizabeth king and Martin Albrow tr, Martin Albrow ed, Routledge & Kegan Paul 1985).

Moffett L, 'Transitional Justice and Reparations: Remedying the Past?' in Cheryl Lawther, and Luke Moffett, and Dov Jacobs (eds) *Research Handbook on Transitional Justice* (Edward Elgar Publishing, 2017)

Naimark NM, 'The Russians and Germans: Rape during the War and Post-Soviet Memories' in Branche R and Virgili F (eds), *Rape in Wartime* (Palgrave Macmillan 2012)

Otto D, 'Lost in translation: Re-scripting the sexed subjects of international human rights law' in Anne Orford, *International Law and Its Others* (Cambridge University Press, 2006)

Pankhurst D, 'Sexual Violence in War' in Laura Shepherd (ed), *Gender Matters in Global Politics* (Routledge 2010)

— 'Post-War Backlash Violence against Women: What Can "Masculinity" Explain?' in Donna Pankhurst (Ed) Gendered Peace: Women's Struggles for Post-War Justice and Reconciliation (Taylor & Francis 2012).

Parker J, 'Towards a Dialectics of Knowledge and Care in the Global System' in Roy Bhaskar, Cheryl Frank, Karl Høyer G, Næss P and Parker J(eds), Interdisciplinarity and Climate Change Transforming Knowledge and Practice for Our Global Future (Routledge 2010)

Rask Madsen M, 'Transnational Fields and Power Elites: Reassembling the International with Bourdieu and Practice Theory' in Basaran T, Bigo D, Guittet D, Walker RBJ (eds), *International Political Sociology: Transversal Lines* (Routledge 2016)

Rose S, 'Naming and Claiming: The Integration of Traumatic Experience and the Reconstruction of Self in Survivors' Stories of Sexual Abuse' in Dawson G, Rogers KL, Leydesdorff S (eds), *Trauma and Life Stories* (Routledge 2002)

Rothenberg D, 'The Complex Truth of Testimony A Case Study of Human Rights Fact-Finding in Iraq' in Alston P and Knuckey S, *The Transformation of Human Rights Fact-Finding* (Oxford University Press 2016)

Ryan M, 'Meaning and Alternity' in Martha Minow, Michael Ryan, and Austin Sarat (eds), Narrative, Violence, and the Law: The Essays of Robert Cover (University of Michigan Press 1995)

Salome Mibenge C, 'Human Rights, Women and Gender' in Anja Mihr and Mark Gibney, *The SAGE Handbook of Human Rights* (SAGE Publications 2014)

Sigsworth R and Valji N, Continuities of Violence against Women and the Limitations of Transitional Justice: The Case of South Africa' in Buckley-Zistel S and Stanley R (eds)*, Gender in Transitional Justice* (Palgrave Macmillan 2011)

Simic O, 'Rape, Silence and Denial' in Fischer M, Simic O (eds), '*Transitional Justice and Reconciliation: Lessons from the Balkans* (Routledge 2015)
.
Simmonds N in Detmold M, 'The End of Morality: Radical and Descriptive Particularity' in Bankowski Z and MacLean J (eds), *The Universal and the Particular in Legal Reasoning* (Ashgate Publishing 2006)

Totani Y, 'Legal Responses to World War II Sexual Violence: The Japanese Experience' in Elizabeth Heineman (ed), *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* (University of Pennsylvania Press 2011)

Vizenor G, 'A Trickster Discourse: Comic and Tragic Themes in Native American Liteature in Mark A. Lindquist and Martin Zanger (eds) *Buried Roots and Indestructible Seeds: The Survival of American Indian Life in Story, History, and Spirit* (University of Wisconsin Press 1994)

Wacquant L, 'Habitus' in Becket J and Milan Z (eds), *International Encyclopaedia of Economic Sociology* (Routledge 2005)

Wacquant L, 'Overcoming the Antinomy of Objectivism and Subjectivism' in Stones R (ed), *Key Contemporary Thinkers* (2nd edn, Palgrave Macmillan 2008)

Journal articles

Ackerman B, 'Temporal Horizons of Justice' (1997) 94(6) *The Journal of Philosophy* 299

Adler M, 'Law and Incommensurability: Introduction' (1998) 146(5) *Pennsylvania Law Review* 1169

Adkins L, 'Introduction: Feminism, Bourdieu and After (2004) 52(2) *The Sociological Review* 3, 6.

Ahrens CE, 'Being Silenced: The Impact of Negative Social Reactions on the Disclosure of Rape' (2006) 38 *American Journal of Community Psychology* 263

Aigbedion I, 'Tricksters: Change Through Chaos' (2009) *(2010 – present) The First-Year Papers* 1

Askin K.D., 'Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles' (2003) 21(2) Berkeley J. Int'l Law 288.

— 'Gender Crimes Jurisprudence in the ICTR' (2005) 3 *Journal of International Criminal Justice* 1007

Ba O, 'International Justice and the Postcolonialist Condition' (2017) 63(4) *Africa Today* 44

Baines E and Stewart B, 'I Cannot Accept What I have Not Done': Storytelling, Gender and Transitional Justice' (2011) 3(3) Journal of Human Rights Practice 245

Barsalou J, 'Trauma and Transitional Justice in Divided Societies' (2005) United States Institute of Peace Special Report 135 <www.usip.org/sites/default/files/sr135.pdf>

Barthes R, 'An Introduction to the Structural Analysis of Narrative' (1975) 6(2) *New Literary History* 237

Bell C and O'Rourke C, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) 1 (1) *International Journal of Transitional Justice* 23

Bell C, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'' (2009) 3 *The International Journal of Transitional Justice* 5

Bensouda F, 'Reflections from the International Criminal Court Prosecutor' (2012) 45(4) *Vanderbilt Journal of Transnational Law* 955.

— 'Gender Justice and the ICC' (2014) 16(4) *International Feminist Journal of Politics* 538.

Bhattacharya A, '*The Many Ways of Knowing: Embracing Multiplicity in Narrative Research' (2016) 15(5-6) Qualitative Social Work* 705

Borrows J, 'Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education' (2016) 61(4) *Indigenous Law and Legal Pluralism* 795

Bourdieu P, '*The Force of Law*: *Toward a Sociology of the Juridical Field*' (1987) 38 *Hastings Law Journal* 814

— 'Social Space and Symbolic Power' (1989) 7(1*) Sociological Theory* 17

Bradley S, 'Domestic and Family Violence in Post-Conflict Communities: International Human Rights Law and the State's Obligation to Protect Women and Children' (2016) 20(2) *Health and Human Rights* 123.

Brison S, 'Everyday Atrocities and Ordinary Miracles, or Why I (Still) Bear Witness to Sexual Violence (But Not Too Often)' (2008) 36(1&2) *Women's Studies Quarterly* 188

Brooks P, 'Narrative Transactions – Does the Law Need a Narratology?' (2006) 18(1) *Yale Journal of Law & the Humanities* 1

Brooks, P, 'Law, Therapy, Culture' (2001) 13(1) Yale Journal of Law & the Humanities 227

Brown G, Langer A, Stewart F, (2011) 'A Typology of Post-Conflict Environments' Centre for Research on Peace and Development CRPD Working Paper 1 <https://soc.kuleuven.be/crpd/files/working-papers/wp01.pdf>

Brown S and Reavey P, 'Memory in the Wild: Memory in the wild: Life space, setting-specificity and ecologies of experience' (2017) (forthcoming) <www.ccp.aau.dk/digitalAssets/270/270632_brown---reavey---memory-in-the-wild.pdf>

Brounéus K, 'Truth-Telling as Talking Cure? Insecurity and Re-traumatization in the Rwandan Gacaca Courts' (2008) 39(1) *Security Dialogue* 55

— Brounéus K, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health' (2010) 54(3) *Journal of Conflict Resolution* 408

Brown S and Reavey P, 'False Memories and Real Epistemic Problems' (2017) 23(2) *Culture and Psychology* 171

Bruner J, 'The Narrative Construction of Reality' (1991) 18(1) *Critical Inquiry* 1

— Bruner J, 'Life as Narrative' (2004) 71(3) *Social Research* 691

Burnham Sedgwick J, 'Memory on Trial: Constructing and Contesting the 'Rape of Nanking' at the International Military Tribunal for the Far East, 1946-1948' (2009) 43(5) *Modern Asian Studies* 1229

Buss D, 'The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law' (2007) 25(1) Windsor Year Book of Access to Justice 3

—'Rethinking "Rape as a Weapon of War"' (2009) 17(2) *Feminist Legal Studies* 145

— Knowing Women: Translating Patriarchy in International Criminal Law' (2014) 23(1) *Social & Legal Studies* 73

Campbell K, 'The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia' (2007) 1 *The International Journal of Transitional Justice* 411

Campbell K, 'The Trauma of Justice: Sexual Violence, Crimes Against Humanity and the International Criminal Tribunal for the Former Yugoslavia' (2004) 13(3) *Social & Legal Studies* 329

Chambers C, 'Masculine Domination, Radical Feminism and Change' (2005) 6(3) *Feminist Theory* 325

Chapman AR, 'Truth Commissions and Intergroup Forgiveness: The Case of the South African Truth and Reconciliation Commission' (2007) 13(1) *Peace and Conflict: Journal of Peace Psychology* 51

Chappell L and Durbach A, 'The International Criminal Court' (2014) 16(4) International Feminist Journal of Politics 533, 535.

Chappell L, 'Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court' (2003) 22(1) Policy and Society 3.

—'Gender and Judging at the International Criminal Court' (2010) 6(3) *Politics & Gender* 484

Charlesworth H, 'Feminists Critiques of International Law and Their Critics (1995) 13(1) *Third World Legal Studies* 1

Charlesworth H, Chinkin C, and Wright S, 'Feminist Approaches to International Law' (1991) 85(4) *The American Journal of International Law* 613

Charlesworth H, 'Feminists Critiques of International Law and Their Critics (1995) 13(1) *Third World Legal Studies* 1

— 'Feminist Methods in International Law' (1999) 93(2) *The American Journal of International Law 379, 394;*

Charman S and Savage S, 'Mothers for Justice?: Gender and Campaigns against Miscarriages of Justice' (2009) 49 British Journal of Criminology 900

Chetrinescu D, 'Rethinking Spatiality: The Degraded Body in Ian McEwan's *Amsterdam*' (2001) 7 *B. A. S.: British and American Studies/Revista de Studii Britanice si Americane* <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.694.4267&rep=rep1&type=pdf >

Chia R, ‘Essai: Time, Duration and Simultaneity: Rethinking Process and Change in Organizational Analysis’ (2002) 23(6) *Organization Studies* 863

Chinkin C, ‘Rape and Sexual Abuse of Women in International Law’ (1994) 5(3) *European Journal of International Law* 326

— ‘Feminist Interventions into International Law’ (1997) 19 *Adelaide Law Review* 13

— ‘Women's International Tribunal on Japanese Military Sexual Slavery’ (2001) 95(2) *The American Journal of International Law* 335

— ‘Women's International Tribunal on Japanese Military Sexual Slavery’ (2001) 95(2) *The American Journal of International Law 335.*

Christodoulidis E, ‘The Irrationality of Merciful Legal Judgement: Exclusionary Reasoning and the Question of the Particular’ (1999) 18 *Law and Philosophy* 215

— Christodoulidis E, ‘Truth as Reconciliation as Risks’ (2000) 9(2) *Social & Legal Studies* 180

— Christodoulidis E, ‘Strategies of Rupture’ (2009) 20(1) *Law and Critique* 3

Clark H, ‘Unearthed Concepts of Justice for Women Who Have Experienced Sexual Violence: Possibilites for Healing and Enhancing Criminal Justice’ (2013) 3 *International Journal of Narrative Therapy & Community Work* 28

Clark J, ‘Working with Survivors of War Rape and Sexual Violence: Fieldwork Reflections from Bosnia-Hercegovina’ (2017) 17(4) *Qualitative Research* 424

Cole B, ‘Gender, Narratives, and Intersectionality: Can Personal Experience Approaches to Research Contribute to “Undoing Gender”?’ (2009) 55 *International Review of Education* 561

Conaghan J, ‘Reassessing the Feminist Theoretical Project in Law’ (2000) 27(3) *Journal of Law and Society* 351

Copelon R, ‘Women and War Crimes’ (1995) 69(1) *St. John’s Law Review* 61

— ‘Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law’ (2000) 46(1) *McGill Law Journal* 217

— ‘Violence Against Women, Rape and Gender Violence: From Impunity to Accountability in International Law’ (2003) 2(10) Human Rights Dialogue <www.carnegiecouncil.org/publications/archive/dialogue/2_10/articles/1052>

Coundouriotis, E, ‘You Only Have Your Word: Rape and Testimony’ (2013) 35(2) *Human Rights Quarterly* 365

Cover R, ‘The Supreme Court, ‘1982 Term -- Foreword: Nomos and Narrative’ (1983-1984) 97 *Harvard Law Review* 1

— Cover R, 'Violence and the Word' (1986) 95 *Yale Law Journal* 1601

Crenshaw K, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1 *University of Chicago Legal Forum* 139

— Crenshaw K, 'Mapping the Margin: Intersectionality, Identity Politics and Violence against women of Color' (1991) *Stanford Law Review* 1241

Culbertson R 'Embodied Memory, Transcendence, and Telling: Recounting Trauma, Re-Establishing the Self' (1995) 26(1) *New Literary History* 169

Dauphinee E, 'Narrative Voice and the Limits of Peacebuilding: Rethinking the Politics of Partiality' (2015) 3(3) *Peacebuilding* 261

Davies M, 'Unity and Diversity in Feminist Legal Theory' (2007) 2(4) *Philosophy Compass* 650

— 'Feminism and the Idea of Law' (2011) 1(1) *feminists@law* 1

De Pascalis IA, 'The (In)visibility of Violence: Jasmila Žbanić's Post-War Cinema' (2016) 23(4) *European Journal of Women's Studies* 365

De Yeaza C and Fox N, 'Narratives of Mass Violence: e Role of Memory and Memorialization in Addressing Human Rights Violations in Post-Conflict Rwanda and Uganda' (2013) 8(3) *Societies Without Borders* 344

Denov M, 'The Intergenerational Legacy of Genocidal Rape: The Realities and Perspectives of Children Born of the Rwandan Genocide' (2017) *Journal of Interpersonal Violence* 1

Dezalay Y and Rask Madsen M, 'The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law' (2012) 8(52) Annual Review of Law and Social Science 433

Dickinson B, 'SOLIDARITY' (2016) 400 *Art Monthly* 1, 40 <https://reader.exacteditions.com/issues/53786/page/42>

Donovan P, 'Rape and HIV/AIDS in Rwanda' (2002) 360 *The Lancet* 17

Dotson K, '"Thinking Familiar with the Interstitial": An Introduction' (2014) 29(1) *Hypatia* 1

Dunn H, 'The Transitional Justice Gap: Exploring 'Everyday' Gendered Harms and Customary Justice in South Kivu, DR Congo' (2017) 25(1) *Feminist Legal Studies* 71

Durbach A and Geddes L, 'To Shape Our Own lives and Our Own World': Exploring Women's Hearings as Reparative Mechanisms for Victims of Sexual Violence Post-conflict' (2017) 21(9) *The International Journal of Human Rights* 1261

Ellison L and Munro V, 'Taking Trauma Seriously: Critical Reflections on the Criminal Justice Process (2017) 21(3) *The International Journal of Evidence & Proof* 183

Engle K, 'Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99(4) *The American Journal of International Law* 778

— 'Anti-Impunity and the Turn to Criminal Law' (2015) 100(2) *Cornell Law Review* 1069, 1113.

Fairclough M, 'A Creative Healing Aspect within the Arts? ' (2005) 4(1) *Trickster's Way* 1

Firlej M, 'Incommensurability of Law' (2014) 24 *Lingua ac Communitas* 143

Fleetwood J, Narrative Habitus: Thinking Through Structure/Agency in the Narratives of Offenders (2016) 12(2) *Crime Media Culture* 173

Flinterman C, 'Vienna Declaration and Programme of Actions: 20 Years Later' (2013) 31(2) Netherlands Quarterly of Human Rights 129, 130

Fuchs T, 'Psychotherapy of the Lived Space: A Phenomenological and Ecological Concept (2007) 61(4) American Journal of Psychotherapy 430

Garbett C, 'From Passive Objects to Active Agents: A Comparative Study of Conceptions of Victim Identities at the ICTY and ICC, Journal of Human Rights' (2016) 15(1) *Journal of Human Rights* 40

— Garbett C, 'The International Criminal Court and Restorative Justice: Victims, Participation and the Processes of Justice' (2017) 5(2) *Restorative Justice* 198

Grossman N, 'Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?' (2012) 12(2) *Chicago Journal of International Law* 647

Ha Y, 'Comfort Women Wanted": Uncovering Violent Past and Entering New Age of Activism Through Visual Language' (2014) Undergraduate Humanities Forum 2013-2014 <http://changjinlee.net/cww/>

Hamber B, Nageng D and O'Malley G, 'T*elling It Like It Is: Survivors' Perceptions of the Truth and Reconciliation Commission' (2000)* 26 *Psychology in Society* 18

Harter L, Stephens RJ, Japp PM, 'President Clinton's Apology for the Tuskegee Syphilis Experiment: A Narrative of Remembrance, Redefinition, and Reconciliation' (2000) 11(1) *Howard Journal of Communication* 19

Haslam E and Edmunds R, 'Common Legal Representation at the International Criminal Court: More Symbolic than Real?' (2012) 12 (5) *International Criminal Law Review* 871

Mueller-Hirth N, 'Temporalities of Victimhood: Time in the Study of Postconflict Societies' (2017) 32(1) Sociological Forum 186.

Healy P, 'Overcoming Incommensurability Through Intercultural Dialogue', (2013) 9(1) *Cosmos and History: The Journal of Natural and Social Philosophy* 265

Heaton L, 'The Risks of Instrumentalizing the Narrative on Sexual Violence in the DRC: Neglected Needs and Unintended Consequences' (2014) 96(894) *International Review of the Red Cross* 625

Held JM, 'Expressing the Inexpressible: Lyotard and the Differend' (2005) 36(1) Journal of the British Society for Phenomenology 76

Helms, 'Rejecting Angelina: Bosnian War Rape Survivors and the Ambiguities of Sex in War' (2014) 73(3) *Slavic Review* 612

— 'The Challenges of Gendering Genocide: Reflection on a Feminist Politics of Complexity' (2015) 22(4) *European Journal of Women's Studies* 463.

Henderson H, 'Feminism, Foucault, and Rape: A Theory and Politics of Rape Prevention' (2007) 22 *Berkeley Journal of Gender, Law & Justice* 225

Henry N, 'Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence' (2009) *International Journal of Transitional Justice* 114

— 'The Impossibility of Bearing Witness: Wartime Rape and the Promise of Justice' (2010) 16(10) *Violence Against Women* 1098

— 'The Fixation on Wartime Rape: Feminist Critique and International Criminal Law' (2014) *Social & Legal Studies* 93

— 'Theorizing Wartime Rape: Deconstructing Gender, Sexuality, and Violence' (2016) 30(1) *Gender and Society* 44

Herman J, 'The Mental Health Outcomes of Crime Victims: Impact of Legal Intervention' (2003) 16(2) *Journal of Traumatic Stress* 159

— Herman J, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571

Horn R, Vahidy S and Charters S, 'Testifying in the Special Court for Sierra Leone: Witness Perceptions of Safety and Emotional Welfare (2011) 17(5) Psychology, Crime & Law 435

Horne F, 'Can Personal Narratives Heal trauma? A Consideration of Testimonies Given at the South African Truth and Reconciliation Commission' (2013) 39(3) Social Dynamics 443.

Htun M, Laurel Weldon S, 'The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975-2005' (2012) 106(3) *American Political Science Review* 548, 553.

Hung SL and Denborough D, 'Unearthing New Concepts of Justice: Women Sexual Violence Survivors Seeking Healing and Justice (2013) 3 *International Journal of Narrative Therapy & Community Work* 18

Ingabire CM, Kagoyire G, Karangwa D, Ingabire N, Habarugira N, Jansen A, Richters A, 'Trauma informed restorative justice through community based sociotherapy in Rwanda' (2017) 15(3) Intervention 2017 241.
Jacobs J, 'The Memorial at Srebrenica: Gender and the Social Meanings of Collective Memory in Bosnia-Herzegovina' (2017) 10(4) *Memory Studies* 423

Jean-Charles RM, 'Toward a Victim-Survivor Narrative: Rape and Form in Yvonne Vera's Under the Tongue and Calixthe Beyala's Tu t'appelleras Tanga' (2014) 45(1) *Indiana University Press* 39

Johnson P.C, and Obiora L, 'How Does the Universal Declaration of Human Rights Protect African Women' (1999) 26(2) *Syracuse Journal of International Law and Commerce* 195, 207.

Kaushik A, 'Rights of Children: A Case Study of Child Beggars at Public Places in India' (2014) 2(1) Journal of Social Welfare and Human Rights 1

Kelland, L, 'A Call to Arms: The Centrality of Feminist Consciousness-Raising Speak-Outs to the Recovery of Rape Survivors' (2016) 31(4) Hypatia 730

Kivlahan C, **'**Rape as a Weapon of War in Modern Conflicts: Families and Communities Are Victims, As Well As Individuals' (2010) 341(7771) *MJ: British Medical Journal* 468

Knop K and Riles A, 'Space, Time, and Historical Injustice: A Feminist Conflict-of-Laws Approach to the Comfort Women Agreement' (2017) 102(1) *Cornell Law Review* 853, 926-927

Krais B, 'Gender, Sociological Theory and Bourdieu's Sociology of Practice' (2006) 23(6) *Theory, Culture & Society* 119, 121.

Kumagai N, 'Asia Women's Fund Revisited' (2014) 21(2) *Asia-Pacific Review* 117
Kusafuka A, 'Truth Commissions and Gender: A South African Case Study' (2009) 9(2) African Journal on Conflict Resolution 45,

Lang P, Little M, Cronen V, 'The Systemic Professional: Domains of Action and the Question of Neutrality' (1990) 1 *Human Systems: The Journal of Systemic Consultation and Management* 39

Lock H, ‘Transformations of the Trickster’ (2002) 18 *Southern Cross Review* 1 <https://southerncrossreview.org/18/trickster.htm>

Lundy P and McGovern M, ‘‘Whose Justice? Rethinking Transitional Justice from the Bottom Up’ (2008) 35(2) *Journal of Law and Society* 265

Lundy P and Rolston B, ‘Redress for past harms? Official apologies in Northern Ireland’ (2016) 20(1) *The International Journal of Human Rights* 104

MacKinnon C, ‘Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence’ (1983) 8(4) *Signs* 635
‘

- ‘Violence Against Women--A Perspective’ (1982) 33 *Aegis* 51
- ‘From Practice to Theory, or What is a White Woman Anyway’(1991) 4(1) *Yale Journal of Law & Feminism* 13
- ‘Rape, Genocide, and Women's Human Rights’ (1994) 17 *Harvard Women's Law Journal* 5.
- ‘Defining Rape Internationally: A Comment on *Akayesu* (2006) 44(3) *Columbia* 940
- ‘Women's September 11th: Rethinking the International Law of Conflict’ (2006) 47 Harvard International Law Journal 1.
- ‘The ICTR’s Legacy on Sexual Violence’ (2008) 14(2) *New England Journal of International and Comparative Law* 211.
- ‘Creating International Law: Gender and Leading Edge’ (2013) 36 Harvard Journal of Law and Gender 105

Mahoney M.R., ‘Whiteness and Women, In Practice and Theory: A Reply To Catharine MacKinnon’ (1992) 5(2) *Yale Journal of Law & Feminism* 217.

Marcus M, Chappell L, and Durbach A, ‘“Nothing About Us, Without Us, is for Us”: Victims and The International Criminal Justice System’ (2017) 21(9) *The International Journal of Human Rights* 1337

Mardorossian C, ‘Toward a New Feminist Theory of Rape’ (2002) 27(3) *Signs* 743

Massaro TM, ‘Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?’ (1989) 87 *Michigan Law Review* 2099

Mawani R, *‘Law as Temporality: Colonial Politics and Indian Settlers’ (2014) 4 U.C. Irvine Law Review* 65

McArdle A, 'Using a Narrative Lens to Understand Empathy and How it Matters in Judging' (2012) 3 Legal Communication & Rhetoric: JALWD 176

McAuliffe P, 'Transitional Justice's Expanding Empire: Reasserting the Value of the Paradigmatic Transition' (2011) 2(2) *Journal of Conflictology* 32

McCall L, 'Does Gender Fit? Bourdieu, Feminism, and Conceptions of Social Order' (1992) 21(6) *Theory and Society* 837

McCarthy M, 'US Comfort Women Memorials: Vehicles for Understanding and Change' (2014) 275 *Asia Pacific Bulletin* 1, 3 <www.eastwestcenter.org/sites/default/files/private/apb275.pdf>

McEvoy K, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34(4) *Journal of Law and Society* 411

McGlynn C, Westmarland N, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) Social & Legal Studies 179.

McQuigg R, 'Is it Time for a UN Treaty on Violence Against Women?' (2018) 22(3) *The International Journal of Human Rights* 305

McNay L, 'Agency and experience: gender as a lived relation' (2004) 52(2) The Sociological Review 175.

Moffett H, 'These Women, They Force Us to Rape Them': Rape as Narrative of Social Control in Post-Apartheid South Africa' (2006) 32(1) *Journal of South African Studies* 129

Moffett L, 'Elaborating Justice for Victims at the International Criminal Court Beyond Rhetoric and The Hague' (2015) 13 *Journal of International Criminal Justice* 281 < https://pure.qub.ac.uk/portal/files/13870551/Moffett_final_130115.pdf>

— 'Reparations for Victims at the International Criminal Court: A New Way Forward?' (2017) 21(9) *The International Journal of Human Rights* 1204

Moi T, 'Appropriating Bourdieu: Feminist Theory and Pierre Bourdieu's Sociology of Culture' (1991) 22(4) *New Literary History* 1017

—, '"They Practice Their Trades in Different Worlds": Concepts in Poststructuralism and Ordinary Language Philosophy' (2009) 40(4) *New Literary History* 801

Moncrieffe J, 'The Power of Stigma: Encounters with 'Street Children' and 'Restavecs' in Haiti' (2006) 37(6) IDS Bulletin 34.

Moodrick-Even Khen H, Hagay-Frey A, 'Silence at the Nuremberg Trials: The International Military Tribunal at Nuremberg and Sexual Crimes against Women in the Holocaust' (2013) 35(1) *Women's Rights Law Reporter* 43

Morrill C, 'Institutional Change through Interstitial Emergence: The Growth of Alternative Dispute Resolution in U.S. Law, 1970-2000' (2017) Brazilian Journal of Empirical Legal Studies 10

Mukerji C, 'The Cultural Power of Tacit Knowledge: Inarticulacy and Bourdieu's Habitus' (2014) 2(3) *American Journal of Sociology* 348

Mulinari D, Sandell D, 'Exploring the Notion of Experience in Feminist Thought' (1999) 42(4) *Acta Sociologica* 287.

Munyabugingo I, 'Women, we need to be courageous' (2014) 24(1) *TORTURE* 12

Nagy R, 'Transitional Justice as Global Project: Critical Reflections' (2008) 29(2) Third World Quarterly 275

Navarro Z, 'In Search of a Cultural Interpretation of Power: The Contribution of Pierre Bourdieu' (2005) 37(6) *Institute of Development Studies Bulletin* 11

Ndulo M, 'The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions' (2009) 27(1) *Berkeley Journal of International Law* 127

Neocosmos M, 'Transition, Human Rights and Violence: Rethinking a Liberal Political Relationship in the African Ne-Colony' (2011) 3(2) *Interface* 359

Nespor J, 'Anonymity and Place in Qualitative Inquiry' (2000) 6(4) *Qualitative Inquiry* 546

Ní Aoláin F, 'Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War' (1997) 60 *Albany Law Review* 883

- 'Rethinking the Concept of Harm and Legal Categorizations of Sexual Violence during War' (2000) 1 *Theoretical Inquiries in Law* 307
- 'Women, Security, and the Patriarchy of Internationalized Transitional Justice' (2009) 31(4) *Human Rights Quarterly* 1055
- 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6 (2) *International Journal of Transitional Justice* 205
- 'More Women – But Which Women? A Reply to Stéphanie Hennette Vauchez' (2015) 26(1) *The European Journal of International Law* 229
- Catherine O'Rourke and Aisling Swaine, 'Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice' (2015) 28 *Harvard Human Rights*

Journal 97, 122 <http://harvardhrj.com/wp-content/uploads/2009/09/transforming-reparations-for-conflict-related-sexual-violence-principles-and-practice.pdf>
— 'After Things Fall Apart: Challenges for Transitional Justice Futures' (2017) (forthcoming) <http://uir.ulster.ac.uk/37165/>

Niarchos C, 'Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia' (1995) 17(4) *Human Rights Quarterly* 649

Nickson R, Braithwaite J, 'Deeper, broader, longer transitional justice' (2014) 11(4) *European Journal of Criminology* 445

Nyampinga H, 'I Died and was Resurrected' (2014) 24(1) *TORTURE* 1, 23

Nyiramana M, 'I Found a Family Through Sociotherapy' (2014) 24(1) *TORTURE* 1

Obiora L, 'Feminism, Globalization and Culture: After Beijing' (1997) 4(2) *Indiana Journal of Global Legal Studies* 355

Oboe A, 'The TRC Women's Hearings as Performance and Protest in the New South Africa' (2007) 38(3) *Research in African Literatures* 60

Ong A, 'Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia' (1996) 4(1) *Indiana Journal of Global Legal Studies* 107

Oosterveld V, 'The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?' (2005) 18 *Harvard Human Rights Journal* 55
— 'Sexual Violence Directed Against Men and Boys in Armed Conflict or Mass Atrocity: Addressing a Gendered Harm in International Criminal Tribunals' (2014) 10 *Journal of International Law and International Relations* 107

Otto D, 'Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference' (1996) 5(3) *Social and Legal Studies* 337
— 'Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law' (1997) 18 Australian Yearbook of International Law 1
— 'Power and Danger: Feminist Engagement with International Law Through the Security Council' (2010) 32 *The Australian Feminist Law Journal* 97
— 'Celebrating Complexity' (2012) 106 Proceedings of the American Society of International Law 169.

Pieslak S, 'The International Criminal Court's Quest to Protect Rape Victims of Armed Conflict: Anonymity as the Solution' (2004) 2 *Santa Clara Journal of International Law* 138

Porter E, ''Gendered Narratives: Stories and Silences in Transitional Justice' (2016) 17(1) *Human Rights Review* 35

Porter HE, 'Justice and Rape on the Periphery: The Supremacy of Social Harmony in the Space Between Local Solutions and Formal Judicial Systems in Northern Uganda' (2012) 6(1) *Journal of Eastern African Studies* 81

Pozen J, Justice Obscured: The Non-Disclosure of Witness' Identities in ICTR Trials' (2005-2006) 38(281) *International Law and Politics* 282

Radin MJ, 'The Pragmatist and the Feminist' (1990) *Southern California Law Review* 1699

Rankin J, 'What is Narrative? Ricoeur, Bakhtin, and Process Approaches' (2002) 3 *Concrescence* 1

Manjoo R, McRaith C, 'Gender-Based Violence and Justice in Conflict and Post-Conflict Areas' (2011) 44 *Cornell International Law Journal* 11

Manjoo R, Nadj D, 'Bridging the Divide: An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence against Women' (2015) 23(3) *Feminist Legal Studies* 329

Piknerová L, Rybáková E, 'The "celebritization" of development – Bono Vox and Angelina Jolie as actors in development' (2017) 3(1) *Development, Environment and Foresight* 20.

Rawski T and Roman K, 'How to Escape? The Trap of the Transition in the Recent Cinema of Bosnia and Herzegovina (2000-2012)' (2014) 3 Colloquia Humanistica 193

Reilly N, 'Seeking Gender Justice in Post-conflict Transitions: Towards a Transformative Women's Human Rights Approach' (2007) 3(2) *International Journal of Law in Context* 155

Rideout C, 'Storytelling, Narrative Rationality, and Legal Persuasion' (2008) 14 *Legal Writing: J. Legal Writing Inst.* 53

Robins S, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' (2017) 11(1) *Human Rights and International Legal Discourse* 41

Robinson D, 'Inescapable Dyads: Why the ICC Cannot Win' (2015) 28 *Leiden Journal of International Law* 323,

Ronen R, 'Incommensurability and Representation' (1998) 2(5) Applied Semiotics 177 <http://french.chass.utoronto.ca/as-sa/ASSA-No5/Vol2.No5.Ronen.pdf>

Ruebottom T and Auster E, 'Reflexive dis/embedding: Personal narratives, empowerment and the emotional dynamics of interstitial events' (2018) 39(4) *Organization Studies* 467

Rushton B, 'Truth and Reconciliation? The experience of Truth Commissions' (2006) 60(1) *Australian Journal of International Affairs* 125

Russell B, 'A Self-Defining Universe? Case Studies from the 'Special Hearings: Women' of South Africa's Truth and Reconciliation Commission' (2008) 67(1) *African Studies* 49

Russell-Brown S, 'Rape as an Act of Genocide'(2003) 21(2) *Berkeley Journal of International Law* 350

Saltzman Chafetz J, (2004) 'Bridging Feminist Theory and Research Methodology (2004) 25(7) *Journal of Family Issues* 963

Savage S**,** 'Restoring Justice: Campaigns Against Miscarriages of Justice and the Restorative Justice Process' (2007) 4(2) *European Journal of Criminology* 195

Schabas W, 'The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone' (2003) 25(4) *Human Rights Quarterly* 1035

Schaffer K and Smith S, 'Venues of Storytelling: The Circulation of Testimony in Human Rights Campaigns' (2004) 1(2) Life Writing 3

Scharffs BG, 'Law as Craft' (2001) 54(6) Vanderbilt Law Review 2245

— 'Adjudication and the Problems of Incommensurability' (2001) 42 William and Mary Law Review 1367

Schoon E, 'Why does armed conflict begin again? A new analytic approach' (2018) 59(5-6) International Journal of Comparative Sociology 480.

Schulz P, 'Evelyn Amony. I Am Evelyn Amony: Reclaiming My Life from the Lord's Resistance Army' (2016) 18(2) *International Feminist Journal of Politics* 312

Seidl D, 'Luhmann's Theory of Autopoietic Social Systems' (2004) Ludwig-Maximilians-Universität München-Munich School of Management

Sellars K, 'Imperfect Justice at Nuremberg and Tokyo' (2011) 21(4) The European Journal of International Law 1085

Sheinberg M and Brewster KM, 'Thinking and Working Relationally: Interviewing and Constructing Hypotheses to Create Compassionate Understanding' (2014) 53(4) *Family Process* 618

Simic O, 'Challenging Bosnian Women 's Identity as Rape Victims, as Unending Victims: The 'Other' Sex in Times of War' (2012) 13(4) *Journal of International Women's Studies* 129

— 'Engendering Transitional Justice: Silence, Absence and Repair' (2016) 17(1) *Human Rights Review* 1.
— 'Drinking Coffee in Bosnia: Listening to Stories of Wartime Violence and Rape' (2017) 18 (4) *Journal of International Women's Studies* 321
— and Volcic Z, 'In the Land of Wartime Rape: Bosnia, Cinema and Reparations' (2014) 2(2) *Griffith Journal of Law & Human Dignity* 377

Sivakumaran S, 'Sexual Violence Against Men in Armed Conflict' (2007) 18 (2) *The European Journal of International* Law 253

— 'Lost in Translation: UN Responses to Sexual Violence Against Men and Boys in Situations of Armed Conflict' (2010) 92:877 *International Review of the Red Cross* 259

Skjelsbæk I, 'Sexual Violence and War: Mapping Out a Complex Relationship' (2001) 7(2) *European Journal of International Relations* 211

— 'Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina' (2006) 16(4) *Feminism and Psychology* 373

Smith CJ, 'History of Rape and Rape Laws' (1975) 6(1) *International Bar Journal* 33

Smith D, 'Order (For Free) in the Court: Legal Systems as Sites for Creating Emergent Order Out of Agent's Narratives' (2005) 7(3/4) *Emergence: Complexity & Organization 53*

Snow NE, 'Learning to Look: Lessons from Iris Murdoch' (2013) 13(2) *Teaching Ethics* 1

Snyder E, Napoleon V and Borrows J, 'Gender and Violence: Drawing on Indigenous Legal Resources' (2015) 48 *University of British Colombia Law Review* 593

Sooka Y, 'Dealing with the Past and Transitional Justice: Building Peace through Accountability' (2006) 88(862) International Review of the Red Cross 311

Spees P, 'Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power' (2003) 28(4) *Signs* 1233

St. Germain T, Dewey S, 'Justice on whose terms? A critique of international criminal justice responses to conflict-related sexual violence' (2013) 37 Women's Studies International Forum 36.

Stauffer J, A Hearing: Forgiveness, Resentment and Recovery in Law (2012) 30(1) Quinnipiac Law Review 517.

— ‘Speaking Truth to Reconciliation: Political Transition, Recovery, and the Work of Time’ (2013) 4(1) *Humanity* 27

Stewart J, ‘Overdetermined Atrocities’ (2012) 10(5) *Journal of International Criminal Justice* 1189

Stolorow R ‘Trauma and Temporality’ (2003) 20(1) *Psychoanalytic Psychology* 158

Tawa M, ‘Being (in the Midst of) Two: Interstice and De-constitution in Cinema and Architecture’ (2012) *INTERSTICES* 13

Teitel R, ‘Transitional Justice Genealogy’ (2003)16(1) *Harvard Human Rights Journal* 69

— ‘Transitional Justice: Postwar Legacies’ (2006) 27(4) *Cardozo Law Review* 1615

Terdiman R, ‘Translator’s Introduction’ (1987) 38 *Hastings Law Journal* 805

Thomas D and Beasley M, ‘Domestic Violence as a Human Rights Issue’ (1993) 15(1) Human Rights Quarterly 36

Thomson S and Nagy R, ‘Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda’s *Gacaca* Courts’ (2011) 5(11) *International Journal of Transitional Justice* 11

Tietjens Meyers D, ‘Victims Stories of Human Rights Abuse: The Ethics of Ownership, Dissemination, and Reception’ (2018) 49(1-2) *Metaphilosophy* 40

Tsoukas H and Hatch M J, ‘Complex Thinking, Complex Practice: The Case for a Narrative Approach to Organizational Complexity’ (2001) 54 (8) *Human Relations* 979

Tyner J, Brindis Alvarez G, Colucci A, ‘Memory and the Everyday Landscape of Violence in Post Genocide Cambodia’ (2012) 13(8) *Social & Cultural Geography* 853

Uwera C, ‘Coming Out of a Deep Hole After a Life of Trials’ (2014) 24(1) *TORTURE* 49

Van Rijswijk H, ‘Towards a Feminist Aesthetic of Justice: Sarah Kane's Blasted as Theorisation of the Representation of Sexual Violence in International Law’ (2012) 36(1) *Australian Feminist Law Journal* 107

Verovšek P, ‘Verovšek, ‘Against International Criminal Tribunals: Reconciling the Global Justice Norm with Local Agency’ (2017) *Critical Review of International Social and Political Philosophy* 1

Vieille S, 'Transitional Justice: A Colonizing Field?' (2012) 4(3) *Amsterdam Law Forum* 58

Wald P., 'Strategies to Promote Women's Participation in Shaping International Law and Policy in an Era of Anti-Globalism' (2017) 46(1) *Georgia Journal of International and Comparative Law* 141

Wallström M, 'Introduction: Making the Link Between Transitional Justice and Conflict-Related Sexual Violence' (2012)19 *William & Mary Journal of Women and the Law* 1

Warner R, 'Does Incommensurability Matter? Incommensurability and Public Policy', (1998) 146 *University of Pennsylvania Law Review* 1287

Waters L, 'The Age of Incommensurability' (2001) 28(2) *boundary 2* 133

Weil S, 'The Iliad, or the Poem of Force' (1965) 18(2) Chicago Review 5

Westendorf JK and Searle L, 'Sexual Exploitation and Abuse in Peace Operations: Trends, Policy Responses and Future Directions' (2017) 93(2) *International Affairs* 365

Wielenga C, Harris G, (2011) Building peace and security after genocide: the contribution of the gacaca courts of Rwanda (2011) 20(1) *African Security Review* 15

Williams S and Opdam J, 'The Unrealised Potential for Transformative Reparations for Sexual and Gender-Based Violence in Sierra Leone' (2017) 21(9) *The International Journal of Human Rights* 1281

Wilz K, 'Rehumanization through Reflective Osciliation in "Jarhead"' (2010) 13(4) *Rhetoric and Public Affairs* 581

Wood E, 'Rape is Not Inevitable in War' (2010) *Yale Journal of International Affairs* 161.

Woodhead C and Wessley S, 'Commentary: What Interventions Work for Victims of Conflict Related Rape?' (2010) 341(7785) *British Medical Journal* 1263 < www.bmj.com/content/341/bmj.c7038>

Zarkov D, Handmaker J, Hintjens H, 'Rhonda Copelon: Activist, Lawyer, Feminist' (2011) 42(1) *Development and Change* 387

Newspaper Articles

BBC News, 'India rape: 17 men accused of multiple attacks on 11-year-old girl in Chennai' *BBC News* (18 July 2018) <www.bbc.co.uk/news/world-asia-india-44877729>

Cascone S, 'Japan Recalls South Korean Ambassador in Protest of 'Comfort Women' Memorial' (Artnet, 2017) <https://news.artnet.com/art-world/comfort-women-statue-south-korea-japan-814244>

Chamberlain G, Bhabani S, 'Five Years After the Gang-Rape and Murder of Jyoti Singh, What has Changed for Women in India?' *The Guardian* (Delhi, 3 December 2017) <https://www.theguardian.com/society/2017/dec/03/five-years-after-gang-murder-jyoti-singh-how-has-delhi-changed>

Cigelj J, 'A Chilling Smile from My Torturer…' *The Guardian* (The Hague, 17 December 2002) <www.theguardian.com/world/2002/dec/17/warcrimes>

DW, 'Outrage in India over Gang-rape and Murder of Young Woman in Haryana' *DW* (15 May 2017) <www.dw.com/en/outrage-in-india-over-gang-rape-and-murder-of-young-woman-in-haryana/a-38851226>

Fisk R, 'Bosnia War Crimes: 'The Rapes Went on Day and Night': Robert Fisk, in Mostar, Gathers Detailed Evidence of the Systematic Sexual Assaults on Muslim Women by Serbian 'White Eagle' Gunmen' *The Independent* (8 February 1993) <www.independent.co.uk/news/world/europe/bosnia-war-crimes-the-rapes-went-on-day-and-night-robert-fisk-in-mostar-gathers-detailed-evidence-of-1471656.html>

Graham. Harrison E, 'Back on the Tourist Trail: The Hotel where Women were Raped and Murdered' *The Guardian* (28 January 2018) <https://www.theguardian.com/world/2018/jan/28/bosnia-hotel-rape-murder-war-crimes>

Kyodo, 'Abe confirms Japan not considering apology letters for 'comfort women' (Japan Times, 2016) <www.japantimes.co.jp/news/2016/10/03/national/politics-diplomacy/abe-confirms-japan-not-considering-apology-letters-comfort-women/#.WxaL2lMvztx>

McCurry J, 'Japanese PM Shinzo Abe stops short of new apology in war anniversary speech' (The Guardian, 2015) <www.theguardian.com/world/2015/aug/14/shinzo-abe-japan-no-new-apology-second-world-war-anniversary-speech>

McVeigh K, '"I didn't want this to be a taboo": The fight for Kosovan women raped during the war' *The Guardian* (4 August 2018) <www.theguardian.com/global-development/2018/aug/04/didnt-want-taboo-fight-kosovan-women-raped-war>

Musumeci N, '16-year-old Victim of Gang Rape in India Commits Suicide' *New York Post* (3 May 2018) <https://nypost.com/2018/05/03/16-year-old-victim-of-gang-rape-in-india-commits-suicide/>

Pelz Daniel and Deanne Corbett, 'Rwanda: Why the International Community Looked Away' *DW* (7 April 2009) <www.dw.com/en/rwanda-why-the-international-community-looked-away/a4157229>

Safwan L and Masoud S, 'Rape: A weapon of war with long-term consequences' *Women's Media Center: Women Under Siege* (13 September 2017) <www.womensmediacenter.com/women-under-siege/rape-a-weapon-of-war-with-long-term-consequences>

Sang-Hun C, ''Comfort Woman' Statue Reinstated Near Japan Consulate in South Korea' (The New York Times, 2016) <www.nytimes.com/2016/12/30/world/asia/south-korea-comfort-women-wwii-japan.html>

Tran M, 'Dresses on washing lines pay tribute to Kosovo survivors of sexual violence' *The Guardian* (11 June 2015) <www.theguardian.com/world/2015/jun/11/kosovo-sexual-violence-survivors-art-dresses>

Turton S, 'Bosnian War rape survivors speak of their suffering 25 years on' *The Independent* (21 July 2017) <www.independent.co.uk/news/long_reads/bosnia-war-rape-survivors-speak-serbian-soldiers-balkans-women-justice-suffering-a7846546.html>

Udwin L, 'Delhi Rapist Says Victim Shouldn't Have Fought Back' BBC (3 March 2015) <www.bbc.co.uk/news/magazine-31698154>

Winston R, 'The Rites of Rape' *Huffington Post* (25 March 2015)

<www.huffingtonpost.com/womens-rights-news/the-rites-of-rape_b_6898796.html>

Wolfe L, 'Syria Has A Massive Rape Crisis' *The Atlantic* (3 April 2013) <www.theatlantic.com/international/archive/2013/04/syria-has-a-massive-rape-crisis/274583/>

Yoshida R and Mie A, 'Japan recalls envoys over new 'comfort women' statue in Busan' (Japan Times, 2017) <www.japantimes.co.jp/news/2017/01/06/national/politics-diplomacy/japan-pulls-envoy-south-korea-comfort-women-dispute/#.Wxf1GVMvztw>

Websites

—— 'Women's Caucus Advocacy in ICC Negotiations' <http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/icc/pcindex.html>

—— 'Hear Hillary Clinton's Women's Rights are Human Rights' (Transcript, Museum of Fine Arts Boston) <www.mfa.org/exhibitions/amalia-pica/transcript-womens-rights-are-human-rights>

—— 'Heroinat Memorial by Ilir Blakçori' (A' Design Award and Competition, 2014) <https://competition.adesignaward.com/design.php?ID=33265>

—— “Comfort Women” Justice Coalition, ‘SF Memorial’ <http://remembercomfortwomen.org/sf-memorial/>

—— ‘Statement by Prime Minister Shinzo Abe "On the occasion of the 70th anniversary of the war's end"(14 August 2015) <https://japan.kantei.go.jp/97_abe/statement/201508/0814statement.html>

—— *Socio-therapy Rwanda* <www.sociotherapy.org>

——Letter from Prime Minister Junichiro Koizumi to the former comfort women <www.mofa.go.jp/policy/women/fund/pmletter.html>

——Statement by His Excellency Dr. Ernest Bai Koroma on international Women’s Day 27 March 2010 <http://sierraexpressmedia.com/?p=6911>

Aftab K, ‘Into that Darkness in Bosnia’ *The National* (18 September 2013) <https://www.thenational.ae/arts-culture/into-that-darkness-in-bosnia-1.283285>

Allen P, ‘70 years on, the “comfort women” speaking out so the truth won’t die’ (Amnesty International Campaign, 2015) <www.amnesty.org/en/latest/campaigns/2015/09/70-years-on-comfort-women-speak-out-so-the-truth-wont-die/ >

Amnesty International, ‘CAR: Acquittal of Bemba a Blow to Victims’ (8 June 2018) <www.amnesty.org/en/latest/news/2018/06/car-acquittal-of-bemba-a-blow-to-victims/>

Andreas Wiseman, ‘Jasmila Zbanic, For Those Who Tell No Tales’ *Screen Daily* (7 September 2013) <https://www.screendaily.com/interviews/jasmila-zbanic-for-those-who-can-tell-no-tales/5060158.article>

Bavier J, ‘Militia commits mass rape in Central African Republic – MSF, *Reuters* (8 March 2018) <https://uk.reuters.com/article/uk-centralafrica-rape/militia-commits-mass-rape-in-central-african-republic-msf-idUKKCN1GK2U6>

BBC, ‘Rwanda ‘Gacaca’ Genocide Courts Finish Work’ *BBC News* (18 June 2012) <ww.bbc.co.uk/news/world-africa-18490348>

BBC, ‘US Election: Read Michelle Obama Address in Full’ *BBC News* (14 October 2016) <www.bbc.co.uk/news/election-us-2016-37651657>

Berkeley B, ‘Judgement Day’ (Washington, 11 October 1998) < www.washingtonpost.com/archive/lifestyle/magazine/1998/10/11/judgement-day/3ae2490b-c3c7-4c17-b43c-e96bbfc064e5/?utm_term=.584efd1476c8>

Berman N, ‘Sexual Violence in Bosnia’ *Remembering Srebrenica* (7 December 2014) < <www.srebrenica.org.uk/what-happened/sexual-violence-bosnia/>

Brunger Y, 'ICC's Bemba Ruling is a landmark, but falls short of a big leap' *The Conversation* (25 March 2016) <https://theconversation.com/iccs-bemba-ruling-is-a-landmark-but-falls-short-of-a-big-leap-56687>

Bytyci, F 'Stadium of Skirts Targets Stigma Attached to Victims of Watime Rape' (Reuters, 2015) <www.reuters.com/article/us-kosovo-rape-exhibition idUSKBN0OS1KB20150612?feedType=RSS&feedName=artsNews>

Chinkin C, '*Giving voice and visibility to victims of sexual violence has the potential to drive cultural change in Colombia' Women, Peace and Security* (04 May 2017) < http://blogs.lse.ac.uk/wps/2017/05/04/giving-voice-and-visibility-to-victims-of-sexual-violence-has-the-potential-to-drive-cultural-change-in-colombia/>

Dasgupta P, 'Why Are We Still Calling Sexual Harassment 'Eve-Teasing' In India?' *Huffington Post* (4 July 2017) <www.huffingtonpost.in/2017/07/04/why-are-we-still-calling-sexual-harassment-eve-teasing-in-indi_a_23015316/>

Ferizaj A, 'Wartime Rape is No Longer Kept Under Wraps in Kosovo' (50.50, 2015) </www.opendemocracy.net/5050/adem-ferizaj/wartime-rape-is-no-longer-kept-under-wraps-in-kosovo>

Foreign Minister Kishida, 'Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion' (Ministry of Foreign Affairs of Japan, December 2015) <www.mofa.go.jp/a_o/na/kr/page4e_000364.html>

Frère M.S., Wilen N, 'INFOCORE Definitions: Post-Conflict' (INFOCORE 2015) <www.infocore.eu/wp-content/uploads/2016/02/def_post-conflict.pdf>

Gallagher K, 'On the Cutting Edge: CUNY Law's International Women's Human Rights Clinic' (CUNY School of Law Magazine) 17 <www.law.cuny.edu/wp-content/uploads/page-assets/faculty/directory/emeriti/copelon/cutting-edge.pdf> accessed 31 March 2019.

Halili D, 'Atifete Jahjaca: All the activism that was synchronised from one side of the globe to the other shows that enough is enough – the time has come to act' (*Kosovo 2.0.*, 2019) <https://kosovotwopointzero.com/en/atifete-jahjaga-i-gjithe-ky-aktivizem-qe-u-sinkronizua-nga-njeri-cep-i-globit-ne-tjetrin-tregon-qe-cka-eshte-mjaft-eshte-mjaft-koha-ka-ardhur-te-veprojme/> accessed 14 March 2019.

ICC, 'About' < www.icc-cpi.int/about>

International Committee of the Red Cross, 'International Humanitarian Law' (2000) 2 <www.icrc.org/en/doc/assets/files/other/icrc_002_0703.pdf>

- ICRC, 'How is the Term 'Armed Conflict' Defined in International Humanitarian Law?' (Opinion paper, 2008) <www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>

International Center for Transitional Justice, 'Focus: Truth Commissions' (2008) 1 <www.ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf>

- International Center for Transitional Justice, 'Gender Justice' <www.ictj.org/our-work/transitional-justice-issues/gender-justice>
- International Center for Transitional Justice, 'What is Transitional Jusitce?' < https://www.ictj.org/about/transitional-justice>

International Criminal Court, 'ICC President tells World Parliamentary Conference "ICC brings retributive and restorative justice together with the prevention of future crimes"' (Press Release, 2012) <www.icc-cpi.int/Pages/item.aspx?name=pr860>

International Federation for Human Rights, 'Acquittal of Jean Pierre Bemba on Appeal: An Affront to Thousands of Victims' (8 June 2018) <www.fidh.org/en/region/Africa/central-african-republic/acquittal-of-jean-pierre-bemba-on-appeal-an-affront-to-thousands-of>

International Justice Monitor, 'Who's Who' (Open Society Justice Initiative) <www.ijmonitor.org/jean-pierre-bemba-gombo-whos-who/>

Kersten M, 'Making a Distinction: the Rome Statute is not the ICC; it is much more than that' (Justice in Conflict, 2017) <https://justiceinconflict.org/2018/07/17/making-a-distinction-the-anniversary-of-the-rome-statute-not-just-the-international-criminal-court/>

Lamony S, 'What are the Benefits and Difficulties of Victim Participation at the ICC? (Humanity United, 4 May 2015) <https://humanityunited.org/what-are-the-benefits-and-difficulties-of-victim-participation-at-the-international-criminal-court-icc/>

Marí C 'Thinking of You" – A Collective Healing Among Skirts' (Kosovo 2.0., 2015) <http://kosovotwopointzero.com/en/thinking-of-you-a-collective-healing-among-skirts/>

Mbiko O, Central African Republic: Rebels Perpetrate Mass Rapes, *Caj News Africa* (12 March 2018) < https://allafrica.com/stories/201803120597.html>

Morina D, 'Kosovo Urges Wartime Rape Survivors to Register' <www.balkaninsight.com/en/article/kosovo-war-raped-to-apply-for-their-legal-status-01-30-2018>

Office for National Statistics, '*Homicide in England and Wales: year ending March 2017' (Report, 2018) < https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2017>*

Office for National Statistics, 'Sexual Offences in England and Wales: year ending March 2017' (Report, 2018)

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>

Office of the Secretary-General on Sexual Violence in Conflict, 'Security Council Open Debate on Sexual Violence in Conflict: Statement by Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms. Pramila Patten (16 April 2018) <www.un.org/sexualviolenceinconflict/statement/security-council-open-debate-on-sexual-violence-in-conflict-statement-by-special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten/>

Oxford Dictionary, 'Sacrifice' <https://en.oxforddictionaries.com/definition/sacrifice>.

Oxford Dictionary, 'Conftribution' <https://en.oxforddictionaries.com/definition/contribution>

Pelz Daniel and Deanne Corbett, 'Rwanda: Why the international community looked away' Deutsche Welle (7 April 2009) <www.dw.com/en/rwanda-why-the-international-community-looked-away/a4157229>

PRS Legislative Research, 'All About the Criminal Law Bill' <www.prsindia.org/pages/155/>

PRS Legislative Research, 'Justice Verma Committee Report Summary' <www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-report-summary-2628/>

REDRESS, 'Efforts to Afford Justice for Sexual Crimes in CAR Must Not Stop with Bemba's Acquittal' (8 June 2018) < https://redress.org/news/efforts-to-afford-justice-for-sexual-crimes-in-car-must-not-stop-with-bembas-acquittal/>

Restorative Justice Council, 'Restorative Justice Principles'<https://restorativejustice.org.uk/sites/default/files/resources/files/Principles%20of%20restorative%20practice%20-%20FINAL%2012.11.15.pdf>

Shapiro AB, 'Paying Attention' (Psychology Today) <https://www.psychologytoday.com/us/blog/healing-possibility/201007/paying-attention>

Slavenka Drakulić, 'Censorship does not do justice to victims of mass rape' *Eurozine* (6 December 2010) 2-3 <www.eurozine.com/censorship-does-not-do-justice-to-victims-of-mass-rape/?pdf>

Stamoulis K*,* 'Teaching Our Sons Not to Rape' *Psychology Today* (21 January 2015) <www.psychologytoday.com/gb/blog/the-new-teen-age/201501/teaching-our-sons-not-rape>

Streiff F, 'The Bemba Acquittal: Checks and Balances at the International Court' (18 July 2018)

<www.ijmonitor.org/2018/07/the-bemba-acquittal-checks-and-balances-at-the-international-criminal-court/>

UN Women, 'In Kosovo, Legal Recognition of War-time Sexual Violence after 18 Years' (19 October 2017) <www.unwomen.org/en/news/stories/2017/10/feature-kosovo-legal-recognition-of-war-time-sexual-violence-survivors>

UN Women, 'In the words of Evelyn Amony: "I was forced to become one of his 27 'wives'"' (8 May 2014 UN Women) <www.unwomen.org/en/news/stories/2014/5/in-the-words-of-evelyn-amony>

United Nations Office of the High Commissioner for Human Rights, 'Navanethem Pillay' <www.ohchr.org/EN/AboutUs/Pages/NaviPillay.aspx>

United Nations Peacekeeping, 'Empowering Women' <https://peacekeeping.un.org/en/empowering-women>

United Nations Women, 'In Brief Safe Cities Global Initiative' (2014) 2 <www.unwomen.org/en/what-we-do/ending-violence-against-women/~/media/44F28561B84548FE82E24E38E825ABEA.ashx>

Wakabi W, 'Q&A with Marie-Edith Douzima-Lawson, Lawyer for Victims in the Bemba Trial' (*International Justice Monitor,* 24 June 2011) <www.ijmonitor.org/2011/06/qa-with-marie-edith-douzima-lawson-lawyer-for-victims-in-the-bemba-trial/>

World Health Organisation, 'Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-partner Sexual Violence' (Report, 2013) <http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1>

World Health Organization and London School of Hygiene and Tropical Medicine, 'Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence (Geneva, World Health Organization 2010) <www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pd>

Reports

Amnesty International, 'Breaking the Silence: Sexual Violence in Cambodia' (Report, 2010) <www.amnesty.org/download/Documents/36000/asa230012010en.pdf>

Amnesty International, 'Rwanda: Arming the Perpetrators of Genocide' (Report, 1995) <www.amnesty.org/download/Documents/172000/afr020141995en.pdf>

Amnesty International, 'We Need Support, Not Pity' Last Chance for Justice for Bosnia's Wartime Rape Survivors (Report 2017) <www.amnesty.org/download/Documents/EUR6366792017ENGLISH.PDF>

Amnesty International, (2009) *Whose Justice? Bosnia and Herzegovina's Women Still Waiting* (2009) <www.amnesty.org/en/documents/EUR63/006/2009/en/>

Arguin J, 'Prosecution of Sexual Violence: Reducing the Risk of Re-Traumatization of Survivor Witnesses' (A Compendium on the Legacy of the ICTR and the Development of International Law 2014) <http://unictr.unmict.org/sites/unictr.org/files/publications/compendium-documents/i.-reducing-risk-of-retraumitization-survivors-witnesses-arguin.pdf>

Bastick M, Grimm K, and Kunz R, 'Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector' (Geneva Centre for the Democratic Control of Armed Forces, 2007)

Bickford L, Ševčenko L, and Rios M, 'Memorialization and Democracy: State Policy and Civic Action' (International Center for Transitional Justice, 2007) 1 <https://ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English_0.pdf>

Center for Human Rights and Humanitarian Law, 'Gender Perspectives on Torture: Law and Practice' (Washington College of Law 2018) <www.wcl.american.edu/impact/lawwire/gender-perspectives-on-torture-law-and-practice/gender-perspectives-on-torture/>

Cody Smith S, Koenig A, and Stover E, 'Bearing Witness at the International Criminal Court: An Interview Survey of 109 Witnesses' (Human Rights Center University of California Berkeley School of Law, June 2014) 68 <www.law.berkeley.edu/files/HRC/Bearing-Witness_FINAL(3).pdf>

Damski N, 'Victim testifies publicly in the Bemba trial: "I lost my dignity"' (Access Victims' Rights Working Group Bulletin, Issue 20 Access, REDRESS Trust, 2012) <www.vrwg.org/ACCESS/ENG20Rev.pdf>

FIDH, 'Five Myths About Victim Participation in ICC Proceedings' (Report, 2014) <www.fidh.org/IMG/pdf/cpi649a.pdf>

Hennessey T and Gerry F, 'International Human Rights Law and Sexual Violence Against Men in Conflict Zones' (Halsbury's Law Exchange 2012) <https://blogs.lexisnexis.co.uk/wp-content/uploads/sites/25/2012/12/policy-paper-sexual-violence-main.pdf>

Howard N and Lunn J, 'Sexual and Gender-based Violence: Global Trends and Perspectives SN/IA/5011 (House of Commons Library, 13 March 2009)

Human Rights Watch, 'Struggling to Survive: Barriers to Justice' (Report, 30 September 2004) <www.hrw.org/report/2004/09/30/struggling-survive/barriers-justice-rape-victims-rwanda>

Human Rights Watch, 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts' (Report, 2011) <https://www.globalpolicy.org/images/pdfs/rwanda0511webwcover.pdf>

Human Rights Watch, 'Shattered Lives' (Report, 1996) <www.hrw.org/reports/1996/Rwanda.htm>

Human Rights Watch, 'Who Will Stand for Us? Victims' Legal Representation at the ICC in the Ongwen Case and Beyond' (Report 2017) <https://reliefweb.int/sites/reliefweb.int/files/resources/ijongwen0817_web.pdf>

ICTJ 'More Than Words: Apologies as a Form of Reparation' (2015) <www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf>

ICTJ, 'Recommendations for Victim Reparations in Cote d'Ivoire' (2016) <www.ictj.org/publication/recommendations-victim-reparations-cote-ivoire>;
India Census 2011 <https://www.censusindia.gov.in/2011-prov results/data_files/india/Final_PPT_2011_chapter5.pdf>

International Commission of Jurists, 'Women and the Judiciary' (Geneva Forum Series no 1, September 2014) <www.icj.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf>

International Commission of Jurists, 'Women's Access to Justice for Gender-Based Violence: A Practitioners' Guide' (February 2016) <www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf

International Federation for Human Rights, '«All I want is reparation» Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court' (Report 705a, November 2017) <www.fidh.org/IMG/pdf/rca705ang.pdf>

Jones N and others, 'The Fallout of Rape as a Weapon of War: The Life-long and Intergenerational Impacts of Sexual Violence in Conflict' (Overseas Development Institute, June 2014) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8990.pdf>

Sweeney J, 'Post-war Memorialisation and Dealing with the Past in the Republic of Kosovo' (Centre for Research, Documentation and Publication, 2015) 7 <http://crdp-ks.org/wp-content/uploads/2016/03/Post-war-Memorialisation-and-Dealing-with-the-Past-in-the-Republic-of-Kosovo.pdf>

Kapur A and Muddell K, 'When No One Calls It Rape Addressing Sexual Violence Against Men and Boys in Transitional Contexts' (ICTJ 2016) < www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf>

Kersten M, Mudukuti A and Benedict M (ed)**, '**Building bridges and reaching compromise: Constructive engagement in the Africa-ICC relationship' (Wayamo Foundation Policy Report, 2018) <www.wayamo.com/wp-content/uploads/2018/05/ICC-Africa-Paper_May-2018-1.pdf>

Kezelman C and Stavropoulos P, '"The Last Frontier": Practice Guidelines for Treatment of Complex Trauma and Trauma-informed Care and Service Delivery' (Adults Surviving Child Abuse 2012) 46 <www.recoveryonpurpose.com/upload/ASCA_Practice%20Guidelines%20for%20the%20Treatment%20of%20Complex%20Trauma.pdf>

King K and others, 'Echoes of Testimonies: A Pilot Study into the Long-term Impact of Bearing Witness before the ICTY' (University of North Texas (UNT) and the VWS Victims at the ICTY 2016) 50.

Mills E, Nesbitt-Ahmed Z, Diggins J, Mackieu TD, 'They Call Me Warrior': The Legacy of Conflict and the Struggle to End Sexual and Gender-based Violence in Sierra Leone'(Institute of Development Studies and Men's Association for Gender Equality-Sierra Leone 2015)

Ministry of Justice, Home Office and the Office for National Statistics, 'An Overview of Sexual Offending in England and Wales' (Statistics bulletin, 10 January 2013) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf>

Murekatete E, Rosenberg E, Lamonge M, Nadalutti M, and Lachere M, 'The Trust Fund for Victims: Annual Report' (2016) <www.trustfundforvictims.org/sites/default/files/reports/Annual%20Report-2016_ENG_September_Online.pdf>

National Crime Records Bureau, 'Chapter – 5 Crimes Against Women (Crime in India 2015) 83 < http://ncrb.gov.in/StatPublications/CII/CII2015/chapters/Chapter%205-15.11.16.pdf>

Nowrojee B, '"Your Justice is Too Slow": Will the ICTR Fail Rwanda's Rape Victims?' (United Nations Research Institute for Social Development (UNRISD), Occasional Paper 10 2005)

Simic O, 'Distinguishing Between Exploitative and Non-Exploitative Sex involving UN Peacekeepers: The Wrongs of Zero Tolerance' (Expert Analysis, Norwegian Peace Building Resource Centre 2013) <www.files.ethz.ch/isn/173192/18283244a25599f4883ec5e6ea0d255d.pdf>

Open Society Justice Initiative, 'The Trial of Jean-Pierre Bemba at the ICC: Judgment' (Briefing Paper, March 2016) 6 <www.opensocietyfoundations.org/sites/default/files/briefing-bemba-judgment-20160315.pdf>

Organisation for Security and Co-operation in Europe, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (OSCE Mission to Bosnia and Herzegovina, June 2017) <https://www.osce.org/mission-to-bosnia-and-herzegovina/324131?download=true>

Rachel Ball, 'When I Tell My Story, I'm in Charge: Ethical and Effective Storytelling in Advocacy' (Victoria Law Foundation CLC Fellowship Report 2013) 9 <www.victorialawfoundation.org.au/sites/default/files/attachments/VLF%20-%20CLC%20final%20report%2012-13%20_Final_web.pdf>

REDRESS, 'Representing Victims before the ICC: Recommendations on the Legal Representation System' (Report, April 2015) 15 <https://redress.org/wp-content/uploads/2017/12/1504reprentingvictims.pdf>

Rukeyser M, 'The Speed of Darkness' (Poetry Foundation) <https://www.poetryfoundation.org/poems/56287/the-speed-of-darkness>

SATRC, 'Truth and Reconciliation Commission of South Africa Report Volume 4 Chapter 10' 418 <www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>

Shaw R, 'Rethinking Truth and Reconciliation Commissions Lessons from Sierra Leone' (United States Institute of Peace Special Report 130 2005) 4 <www.usip.org/sites/default/files/sr135.pdf>

Sigsworth R, 'Gender-Based Violence in Transition' (Centre for the Study of Violence and Reconciliation 2008) 6.

Soulier E, 'Territory as Narrative' (CS-DC'15 World e-conference 2015) 4 < https://hal.archives-ouvertes.fr/hal-01291117/document>

Tanaka Y, 'A Critique of Prime Minister Abe's Policy on the 'Comfort Women' Issue and Japan's Social Formation of Hegemonic Masculinity' (Hiroshima Peace Institute) 14 <www.snabber.se/files/monicabraw/a_critique_of_prime_minister_abes_policy_.pdf>

UN Women, 'In Brief Safe Cities Global Initiative' (2014) <www.unwomen.org/en/what-we-do/ending-violence-against-women/~/media/44F28561B84548FE82E24E38E825ABEA.ashx>

UN Women, 'The Conflict Did Not Bring Us Flowers: The Need for Comprehensive Reparations for Survivors of Conflict-Related Sexual Violence in Kosovo' (Technical Report, 2016) 47-48 <www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/the-conflict-did-not-bring-us-flowers_eng.pdf?la=en&vs=5055>

World Vision, 'No Shame in Justice Addressing Stigma Against Survivors to End Sexual Violence in Conflict Zones' (Report, 2016) <www.worldvision.org.uk/files/7214/5806/4579/Stigma_Summary_Report.pdf>

Womankind, 'Standing with the Changemakers: Lessons From Support Women's Movements' (Womankind Worldwide 2017) <www.womankind.org.uk/docs/default-source/default-document-library/standing-with-the-changemakers32b5501e0c8663e39143ff00009d7e70.pdf?sfvrsn=0> accessed 1 May 2019.

Transcripts

Prosecutor v. Naser Oric 050824IT ***(****24 August 2005)* <www.icty.org/x/cases/oric/trans/en/050824IT.htm>

Prosecutor v. Jean-Pierre Bemba Gombo (Sentencing Hearing) ICC-01/05-01/08 (16 May 2015) <www.icc-cpi.int/Transcripts/CR2016_04026.PDF>

Mahlophe GE and Makhubela W 'Special Hearings: Women's Hearings Day 1' (South African Truth and Reconciliation Commission 28 July 1997) <www.justice.gov.za/trc/special/women/mahlophe.htm>

Shezi T, 'Special Hearings: Women's Hearings Day 1' (South African Truth and Reconciliation Commission 28 July 1997) < www.justice.gov.za/trc/special%5Cwomen/shezi.htm>

Sierra Leone Truth and Reconciliation Commission, 'Appendix 3: Transcripts of TRC Public Hearings' (Closed Hearing, 23 April 2003) <www.sierraleonetrc.org/index.php/appendices/item/appendix#>

Snyder E, Borrows L, Napoleon V*,* '*Mikomosis and the Wetiko*: A Teaching Guide for Youth, Community, and Post-Secondary Educators' (Indigenous Law Research Unit, University of Victoria 2013) 15 <www.indigenousbar.ca/indigenouslaw/wp-content/uploads/2013/04/Mikomosis-and-the-Wetiko-Teaching-Guide-Web.pdf> accessed 14 April 2017

International Criminal Tribunal for Former Yugoslavia, 'Witness 87' < www.icty.org/en/content/witness-87>

Other

Grbavica: The Land of My Dreams (2006)

As If I Am Not There (2010)

For Those Who Can Tell No Tales (2013).

The Apology (2017) <https://misc.icarusfilms.com/press/pdfs/ap_pk.pdf>