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**Whose Truth Is It: Gender Inclusion in Post-
Conflict Reconciliation**

Reconstruction

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“Forgiving is not forgetting; it’s actually remembering – remembering and not using your right to hit back.”
– Desmond Tutu

The post- Cold War era has seen the rise of the concept of transitional justice as a central theme in post-conflict reconstruction. While transitional justice incorporates a variety of institutions, courts play an important role. Countries such as Yugoslavia and Rwanda utilized Criminal Tribunals, where other countries have chosen a hybrid of courts and tribunals or Truth and Reconciliation Committees (TRCs). Still others have gone through the International Criminal Court (ICC).¹ Transitional justice institutions serve to bringing closure to countries racked by human rights abuses and begin their peaceful transition after post-conflict situations. Human rights and feminist groups argue that these bodies provide women, in particular, a space in which to exercise agency and gain a voice². This paper examines the role of women, peace, and security in the post-conflict reconciliation process. It will demonstrate the need for women’s voices in transitional justice structures while at the same time stress the need for governments to diligently plan for how best to capture women’s voices after the reconciliation period.

This paper will explore the key differences between various transitional justice sectors, including the ICCs and TRCs. It will then discuss the concept of agency and the position of women in peace and security dialogue. It will provide a case study of lessons learned from the Solomon Islands. Finally, this paper will include recommendations for future transitional justice institutions on strengthening women’s agency.

Transitional Justice Bodies Defined

After the end of the Cold War in the 1990s, countries began calling for justice as for the crimes committed against their citizens. Countries like the former Yugoslavia (ICTY) and Rwanda held ad hoc International Criminal Tribunals to ensure liability for perpetrators of war

crimes, genocide, and crimes against humanity. Countries established these Tribunals to hear and try crimes committed within a certain conflict in a time-bound setting. For example, United Nations authorized the establishment of the ICTY in 1993 and this body heard cases of atrocities committed within Yugoslavia from 1991.

The next milestone for transitional justice occurred on July 17, 1998 when 120 States became party to the "Rome Statute." The Rome Statute provided the legal underpinning for the establishment of the ICC. The Rome Statute entered into force on July 1, 2002.³ The (ICC) is the, "first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community."⁴ The ICC is an independent international organization, seated in The Hague, Netherlands. States Parties primarily fund the ICC. To date, the ICC has heard 23 cases of individuals in 10 country related situations (Uganda, Democratic Republic of the Congo, Sudan, Central African Republic I & II, Kenya, Libya, Cote D'Ivoire, Mali, and Georgia). The court is also looking at including an investigation on seven additional countries, including Afghanistan and Iraq.⁵

The ICC is not the only institution providing transitional justice. TRCs are increasingly supported institutions for addressing post-conflict grievances by allowing survivors to testify about their experiences and acknowledge atrocities committed against them. They also serve to document the history and underlying causes of tensions as well as identify the individuals and institutions responsible for human rights violations.⁶ In general, TRCs look more broadly than the ICC. Rather than a sole examination of individual cases, TRCs typically work to investigate the underlying causes and enabling conditions of abuses. Based on the outcomes of the investigations and hearings, TRCs can make prosecutorial recommendations as well as policy

recommendations for reform and reparation. TRCs, however, are not judicial bodies in and of themselves.⁷

A third transitional justice mechanism that is similar to TRCs are Commissions of Inquiry. These have a more limited mandate than TRCs, limited to a specific event or geographic area of a country. They also serve to document underlying causes of conflict and bring human rights violations to light.⁸ To date since the early 1990s, 33 countries have conducted TRCs, with an additional 12 holding Commissions of Inquiry.⁹

Women, Peace, and Security

Conference participants at the United Nations' Fourth World Conference developed the Beijing Platform for Action in 1995. This seminal event resulted in meaningful discussion on the role of women in peace and security. The Platform for Action's mission was to create an agenda for, "removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making."¹⁰ This Platform for Action later developed into the United Nations Security Council's October 2000 resolution 1325 (S/RES/1325) on women, peace, and security.¹¹ Resolution 1325 discusses the important roles women play in the prevention and resolution of conflicts. It reaffirms their role as critical parties in post-conflict reconstruction and peacebuilding.¹² With this renewed emphasis on women's role in post-conflict reconstruction, the ICC and TRCs began looking at ways for countries to incorporate women's histories and testimonies in transitional justice proceedings.

The early experience of transitional justice looked at the experience of justice as "gender blind". The courts and commissions invited testimony from both men and women with little to no regard of underlying patriarchal biases in the pre-existing legal structures. Some of the

inherent biases in legal systems treat gender-based violence, including rape, as a violation of public decency and honor – thus blaming women for crimes committed against them. These biases tip the scales of justice towards women as passive victims rather than individuals with their own basic rights. Throughout the progression of transitional justice institutions, feminist groups have worked to shape the discourse away from the notion of “gender blind” justice to “gender informed”. This discussion has helped raise awareness of women’s ability and willingness to contribute meaningfully to the transitional justice process. Since the 1995 South Africa Truth Commission, transformational justice institutions are incorporating gender perspectives to varying degrees of success.¹³ S/RES/1325 hopes to raise additional awareness of case law for future ICCs and TRCs. The United Nations Office of the Special Advisor on Gender Issues and Advancement of Women (OSAGI) also published research for practitioners in the women peace and security field to better implement S/RES/1325. This report discusses ways to ensure that women have agency in the process of seeking, and participating in, transitional justice.¹⁴

Importance of Agency

When looking at how a community makes decisions, a focus on the incorporation women and minority groups into that processes poses unique challenges. The concept of agency is critical as it effects these groups most particularly. The World Bank Group defines agency as, “the ability to make decisions about one’s own life and act on them to achieve a desired outcome, free of violence, retribution, or fear.”¹⁵ Unfortunately, all too often, local laws and cultural norms discriminate against women. In many countries, legislation does not allow women inheritance or land rights. Women’s representation in public life is also limited.

While many countries now have seats reserved for women's participation in upper echelons of government, social norms and cultural practices do not allow women holding such office or be effective leaders once elected. National level governments typically fund ministries of gender and social issues at disproportionately low levels, making it almost impossible for these ministries to meet their mandates. By not prioritizing institutions that include women and issues that are important to them, minimizes women's agency.¹⁶

Where women tend to find more agency is in grass roots level rather than top down justice sector. In the traditional transitional justice paradigm, women must travel long distances to meet with the TRCs or the ICC. The local governments do not reimburse women for travel costs. Women also risk perpetrators learning of their identities when governments do not have the structures ensuring safety and security. The practice of some ICCs and TRCs has been to seat perpetrators with survivors of human rights violations in the same waiting areas. In some instances, women to testify, particularly about sexual violence perpetrated against them, face social stigma back home. Many societies still blame rape victims for sexual violence committed against them. These practices are not consistent with women's participation in transitional justice procedures.¹⁷

Gender Inclusion Best Practices

With every TRC, the body of best practices grows on how best to incorporate women into transitional justice and effect meaningful changes as a result. The first best practice is to include women in the ICC or as questioners for TRCs. Immediately, this practice changes the dynamic of women opening up more on their personal experiences. In front of male questioners and judges, research shows that women are more likely to discuss the experiences that happened to their families and friends, rather than themselves. Once women began the questioning process,

women will speak about their experiences in addition to those of their families and loved ones. For a more wholesome picture, it is essential for women to feel empowered to tell their own stories. In the case of ICC participation, seven of the nineteen judges are women and the 2015 election brought the first female ICC president to power.¹⁸

A second best practice is for community understanding of the role women played in conflict itself. All too often, the international community characterizes women as passive victims of war or conflict, rather than key players in working to attain peace. In almost every major conflict, you see women and women's groups mobilizing communities towards peace. By failing to recognize the important role women play, it reduces their agency. Not recognizing which individuals or groups helped grassroots peace efforts also minimizes sustainability efforts, as the power these groups hold will ebb over time. If officially recognized, these groups are more likely to maintain a seat at the table to build a collaborative peace process.¹⁹

Another best practice in transitional justice is to separate out women's experiences from men, but to look beyond a sole focus of sexual crimes committed. Looking through a lens of sexual violence minimizes other human rights violations that may have occurred disproportionately to women. It also does not take into consideration pre-conflict conditions of gender inequality and culture of gender based violence. Additionally, examining "rape as a weapon of war," looks at actions of rebel or warring forces, rather than incidences of sexual violence holistically.²⁰ In the case of the Sierra Leone Special Court (SLSC), the frame reference of the court was in identifying rape as a weapon of war and understanding who the perpetrators were to pursue prosecution. This frame of reference, however, skewed the facts that took place during the conflict. The Sierra Leone Civil Defense Forces (CDF) were military forces of the elected government during the 1991-2000 Sierra Leone Civil War. Their mission

was to support the government against various armed rebel groups. The CDF, however, committed grave human rights violations against women, including rape. Communities throughout the country celebrated the success of the CDF throughout the country at the end of the civil war. As a result, many women felt shamed or stigmatized if they reported rapes committed by these celebrated community “protectors”. The SCSL also did not include testimony of rape committed by CDF since the SCSL did not consider this form of rape a weapon of war.²¹

The Solomon Islands TRC incorporated many of these best practices into their transitional justice framework. While the framework itself yielded an all-encompassing perspective, the impact of gender inclusion in transitional justice mechanisms have not been enough to transform traditional societal beliefs. The next section will discuss the Solomon Islands Truth and Reconciliation Commission and then will look at recommendations for transitional justice initiatives in the future.

Case Study: Solomon Islands

The Solomon Islands Truth and Reconciliation Commission (SI-TRC) presented their findings and recommendations in a 1,300 page, five-volume report to the government of the Solomon Islands. Volume 3 focuses specifically on gender elements of the conflict. The government of the Solomon Islands, under the direction of the international community, established SI-TRC in April of 2009, with the mandate to examine the underlying causes of the “tensions” that occurred between January 1, 1998 and July 23, 2003. A second mandate of the SI-TRC was to document the human rights abuses that occurred during this time so that the country could prevent atrocities reoccurring in the future. This TRC was the first of its kind in

the Pacific and modeled after South Africa's post-apartheid TRC. Public Hearings began in March 2010. The SI-TRC interviewed approximately 4,000 people for the report.²²

The 2008 act establishing the SI-TRC mandates that Prime Minister present the report before Parliament and make it publically available. Despite the SI-TRC transmission in 2012, the Solomon Islands Government has not yet publically released the report. Reverend Dr. Terry Brown, the SI-TRC report editor, unofficially released the report on the internet in 2013 in a sign of protest for the government's inaction.²³

The SI-TRC worked to incorporate best practices into the formulation of the committee. Using S/RES/1325 principles on gender inclusion, the SI-TRC ensured the panel included women – two of the five members. The Prime Minister appointed members based on the recommendation of various groups, including the Solomon Islands Christian Association Federation of Women. The SI-TRC also devoted Volume 3 of the report solely on gender issues, including rape and other human rights violations. This volume specifically called out the large role women had in maintaining family life while men fought in the “tensions” and the power of women's organizations in pressing for peace negotiations. Therefore, the report highlighted the important role of women in attaining peace and maintaining family life. The SI-TRC not only presented these viewpoints in Volume 3 Gender, but in other areas of the report as well; thus, incorporating a gendered perspective throughout the report. The report also laid out the lower status of women prior to the “tensions” and the prevalence for gender based and domestic violence throughout the country. ²⁴

The SI-TRC embedded gendered components well throughout the report and really used the report as a vehicle for promoting women's participation in the peace process. The majority of the problems occur in the next step after release, government implementation and action.

Four years after the release of this report, the Solomon Islands Government has yet to take substantive action on even informing their citizenry of the report and its' recommendations. The Government has not set an action plan to implement change. It has done nothing proactive to reforming land rights and unemployment issues that exacerbated the “tensions;” ending tolerance for gender-based and domestic violence; or prosecuting perpetrator of human rights violations and sexual violence.

The recommendations outlined in the next section apply for the SI-TRC as well as other post-conflict transitional justice programs. The ICC and TRCs provide a certain role in moving countries towards healing old wounds, but are not a panacea. Governments still need to use the information responsibly to address underlying causes of conflict if they want to end

Recommendations:

The SI-TRC is not the only example in which a country pledges to its citizenry that it will hear women's concerns. Typically, these words are followed by a flurry of recognition and call to action by women's groups and non-governmental organizations immediately following conflict. The long term effect, however, is that unless governments make a strong commitment to elevating the status of issues that affect women, there is little to no change in cultures that suppress women's agency. The below recommendations are helpful in understanding better ways to embed gender difference into post-conflict environments.

Recommendation 1: Country Prioritization to Memory Restoration

The documentation of historical events is key to solidifying the truth about what actually happened to the population of all members of conflict-affected societies. Time dilutes and changes this memory of events. By memorializing the atrocities, societies can learn from the past and work on ways to heal and positively move forward. This memory restoration must

include human rights violations committed against all portions of the population, including gender-based crimes and violence. In turn, it must also give due credit to all those involved in the peace and assistance processes. Recognition of pre-conflict situations that allowed for gender-based crimes and domestic violence, as well as other institutional disparities that allowed for repression of rights of individual groups, is necessary for the success of the truth and national reconciliation process.

Recommendation 2: Create Government Accountability

Once formal transitional justice mechanisms are completed, governments need to be accountable to their citizenry. This occurs through various ways. First, if governments commit to share TRC reports with the public, they must do so promptly within a transparent timeframe 30-90 days after receipt of the report. In conjunction, governments need to work with TRCs to develop country action plans with clear deliverables and timeframes that they will then use to move forward post-conflict reforms. These reforms need to include review of institutions that create underlying tension (i.e. – in the case of Solomon Islands land use and inheritance). To help ensure a gendered perspective, key ministries need to include gender advisors. These advisors need not necessarily be women, but need to have a clear understanding on how women laws and institution affect women and be a strong advocate for women's inclusion. These key ministries include Justice, Defense, Public Security, and Foreign Affairs. Gender advisors should also be included in any committees or sub-groups that look at land rights; political/voting rights; disarmament, demobilization, and reintegration; and security/stabilization planning.

Recommendation 3: Prosecution for Human Rights Violations

Prosecution of human rights violations committed during times of conflict is essential. This includes prosecution for not only murder, but other abuses as well. In many post-conflict

Environments, security forces focus and police focus on prosecutions of those criminals that have committed murder. What post-conflict countries often do not prosecute, however, are crimes that *affect* women and children. Human rights violations typically are largest against these least protected populations. Crimes involving abuses such as sexual violence, forced marriage, trafficking in persons, and recruitment of child soldiers need to ensure equal emphasis under laws in post-conflict environments.

Recommendation 4: Enabling Environment for Civil Society Support

Perhaps most needed in countries around the world is attention from civil society groups to address underlying cultural injustice to women. Conflict situations amplify abuses to women most in countries where there is a pre-existing condoning of violence against women. In cultures that view violence against women, including domestic violence, as culturally acceptable, these conditions will arise during conflict, and post-conflict. Grassroots efforts by civil society groups can effect real change in culture on these issues over time. They need, however, strong backing and support by national governments and efforts need to be holistic. Efforts cannot be shelters only or public messaging, but must also include community based gender inclusion programming for both men and women.

Through the implementation of the four recommendations, countries can create institutions that will help bring recognition and closure to post-conflict environments, helping them move towards long-term stabilization and development. S/RES/1325 recognizes and carves out space for inclusion of women in peace and security environments. Entire societies benefit when institutions support women's rights. By bringing in elements of gender inclusion, men work alongside women for real cultural transformation.

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² Pillay, Navanethem. “Gender and Accountability in Conflict, Crisis, and Transition,” *Women on the Frontlines of Peace and Security*. NDU Press. Washington, DC.2014. P.149-162.

³ “About the Court” International Criminal Court. https://www.icc-cpi.int/EN_Menus/ICC/Pages/default.aspx.

⁴ Ibid

⁵ Ibid

⁶ “Truth Commission Digital Collection” U.S. Institute of Peace. <http://www.usip.org/publications/truth-commission-digital-collection>

⁷ “Truth and Reconciliation Commissions,” International Justice Resource Center. <http://www.ijrcenter.org/cases-before-national-courts/truth-and-reconciliation-commissions/>

⁸ “International Justice” Amnesty International. <https://www.amnesty.org/en/what-we-do/international-justice/>

⁹ “Truth Commission Digital Collection” U.S. Institute of Peace. <http://www.usip.org/publications/truth-commission-digital-collection>

¹⁰ “Platform on Women” United Nations Fourth Conference on Women. <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#concern>

¹¹ UN Security Council Resolution 1325. [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325\(2000\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325(2000))

¹² Ibid.

¹³ “Truth Commission Digital Collection” U.S. Institute of Peace. <http://www.usip.org/publications/truth-commission-digital-collection>

¹⁴ Nduwimana, Françoise. “United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security: Understanding the Implications, Fulfilling the Obligations” Office of the Special Adviser on Gender Issues and Advancement of Women. May 31, 2006. http://www.un.org/womenwatch/osagi/cdrom/documents/Background_Paper_Africa.pdf

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¹⁶ Nduwimana, Françoise. “United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security: Understanding the Implications, Fulfilling the Obligations” Office of the Special Adviser on Gender Issues and Advancement of Women. May 31, 2006. http://www.un.org/womenwatch/osagi/cdrom/documents/Background_Paper_Africa.pdf.

¹⁷ Björkdahl, Annika and Johanna Mannergren Selimovic. “Gendering Agency in Transitional Justice” April 2015, Vol.46, Issue 2p.165-182.

¹⁸ Askin, Kelly. “For the First Time, a Woman Judge Heads the International Criminal Court” Open Society Foundations. March 11, 2015. <https://www.opensocietyfoundations.org/voices/first-time-woman-judge-heads-international-criminal-court>

¹⁹ Björkdahl, Annika and Johanna Mannergren Selimovic. “Gendering Agency in Transitional Justice” April 2015, Vol.46, Issue 2p.165-182.

²⁰ Ni Aolain, Fionnuala. “Advancing Feminist Positioning in the Field of Transitional Justice.” *The International Journal of Transitional Justice*, Vol. 6, 2012. P.205-228.

²¹ St. Germain, Tonia and Susan Dewey. *Conflict Related Sexual Violence: International Law, local Responses*. Kumarian Press. Sterling, VA. 2012. P. 71-87.

²² Solomon Islands Truth and Reconciliation Commission. *Final Report: Confronting the Truth for a Better Solomon Islands*. February 2012 Honiara, Solomon Islands.

²³ Brown, Reverend Dr. “Solomons truth and reconciliation report released.” April 29, 2013
<http://www.radioaustralia.net.au/international/2013-04-29/solomons-truth-and-reconciliation-report-released/1123184>.

²⁴ Solomon Islands Truth and Reconciliation Commission. *Final Report: Confronting the Truth for a Better Solomon Islands*. February 2012 Honiara, Solomon Islands.