

# Occasional Paper Series



## Women and Transitional Justice



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The Georgetown Institute for Women, Peace and Security examines and highlights the roles and experiences of women in peace and security worldwide through cutting edge research, timely global convenings, and strategic partnerships. The Institute is led by Melanne Verwee, who previously served as the inaugural U.S. Ambassador for Global Women's Issues. Former U.S. Secretary of State Hillary Rodham Clinton serves as its honorary founding chair. Located in Washington, D.C., the Institute leverages Georgetown University's global reach to connect academia and practice, pioneer evidence-based and policy-oriented analysis, and inspire the next generation of leaders. To learn more, visit <https://giwps.georgetown.edu/>.



### **Occasional Paper Series: Women and Transitional Justice**

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## INTRODUCTION

The Georgetown Institute for Women, Peace and Security seeks to enhance global security by examining and highlighting women's participation to improve peacemaking, peacekeeping, and peacebuilding, to strengthen conflict prevention and resolution initiatives, to mitigate humanitarian emergencies, to foster democratic political transitions, and to reconstruct war-torn societies. To this end, the Institute aims to produce and disseminate a constant stream of sharp analysis on the role and impact of women in these varied but intersecting arenas. In doing so, we intend to serve as a repository of knowledge that can inform and grow best practices for gender mainstreaming through a worldwide network of students, scholars, practitioners, and policymakers. Our ultimate goal is to help build a world where women's contributions to peace and security are better reported, understood, valued, and promoted.

As a Georgetown University institute, we emphasize the essential role research plays in fulfilling the vision of United Nations Security Council Resolution (UNSCR) 1325, and furthering the status of women as agents within peace and security processes. Yet, we also recognize that if research is not attuned to the practical challenges in the field, it is unlikely to have its intended impact. With this understanding, one of our primary goals is to equip practitioners and policymakers with the evidence-based research they need to make informed decisions about global peace and security processes. To do so, the Institute makes every effort to convene stakeholders from the U.S. and international governments, representatives from the military sector and grassroots organizations, thought leaders, and global trailblazers for invigorating and forward-looking discussions. Our hope is that improved communication and closer ties between scholars and practitioners will lead to more innovative strategies, sharper and more impactful research, better allocated resources, and tangible results on the ground.

It is with this intention that the Bridging Theory and Practice Series, one of the Institute's signature initiatives, was born. The Series facilitates in-depth conversations and collaboration between "thinkers" and "doers" who are working on issues related to women, peace and security. Following an annual Bridging Theory and Practice symposium in 2013 and 2014, the Institute launched a thematic workshop series in 2015 to focus on key issues, in accordance with the Institute's research priorities and the implementation of UNSCR 1325. Each workshop aims to result in a paper series that can inform policy and practice, highlight new thinking or important trends, identify challenges, and map solutions. Through this Occasional Paper Series, the Institute will explore the critical and unique ways

women contribute to and participate in a multitude of activities under its larger research framework, which includes conflict prevention, peacemaking, humanitarian emergencies, political transitions and state-building, and post-conflict reconstruction.

One such subtopic within the women, peace and security field is the vital role women play within transitional justice processes. Transitional justice comprises a range of mechanisms to achieve redress for mass human rights violations. It has become a critical component of efforts to strengthen post-conflict rule of law, and is an integral element of the peacebuilding agenda. These mechanisms, which can include prosecutions, reparations, truth-seeking, institutional reform, and others, are also relevant for furthering the implementation of Security Council resolution 1325 (2000), and related resolutions 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), and 2122 (2013), with respect to ensuring women's involvement in all aspects of post-conflict recovery and peacebuilding, and providing justice and redress for conflict-related abuses of women's rights. As research shows, women play a central role in rebuilding war-torn societies and are, all too often, victimized during conflict. And yet, women are rarely consulted in the formulation of transitional justice mechanisms, and are poorly supported throughout the lifespan of these processes. Understanding the needs of women and girls before, during, and after a conflict is essential to ensuring that these mechanisms lead to transformative change for women and the societies they help rebuild. Interventions are needed that do not simply add women into the existing processes of transitional justice bodies, but intentionally and strategically address the underlying structural inequalities that prevent women from participating in and benefiting from these processes.

This second volume of the Institute's Occasional Paper Series is rooted in the dual, complementing frameworks of its Bridging Theory and Practice initiative and the Gender and Transitional Justice workshop. As part of Bridging Theory and Practice, this workshop brought together leading practitioners and academics to problematize the varied ways in which women's agency in transitional justice processes is hampered by myriad political, cultural, and structural barriers. At the workshop, practitioners and scholars compared cases from across the globe, gained valuable insights from successful approaches, and uncovered lessons on how to overcome remaining barriers. Presenters covered a range of issues within the field, from gendered violence to restorative justice and peace education, and from grassroots peacebuilding organizations to institutional and legal innovations with regard to reparations. There was also significant discussion on the data that is missing and still needed, how that research can be pursued in the future, and how

integral these missing pieces are to fully understanding the unique challenges that women face during conflict, as well as the opportunities that arise out of these difficult times.

While it would be nearly impossible to detail the entirety of the thought-provoking discussions that occurred, this volume attempts to share some of the ideas outlined in that symposium. In the following pages, Jennifer Moore presents a useful framework for how to conduct qualitative research that focuses on the work of women-led, community-based organizations in Uganda, Sierra Leone, and Burundi, and in doing so helps construct a research model that can be adapted across contexts. Rebekka Friedman provides reflections on women's experiences in culturally mediated grieving and recovery processes in northern Sri Lanka. Anna Applebaum and Briana Mawby discuss the opportunities and challenges to engendering transitional justice processes in Kenya after the 2007-2008 post-election violence, paying particular attention to the ongoing and yet-to-be fully implemented Restorative Justice Fund.

We hope this volume provides policymakers, practitioners, and academics a unique understanding of the critical tools needed to engender transitional justice mechanisms.



Roslyn Warren  
Series Editor



Mayesha Alam  
Volume Editor

**Engendering Peace and  
Justice After Armed Conflict:  
A Call for Qualitative  
Research Among Women's  
Community Networks**

Jennifer Moore

# Introduction

Transitional justice refers to a variety of mechanisms established to help post-conflict societies account for the war and build the peace, including war crimes tribunals, truth and reconciliation commissions, and reparations programs.<sup>1</sup> The framework of transitional justice, while responsive to local actors and local realities, was largely constructed by external actors, including foreign states, international organizations, non-governmental agencies, advocates, and academics working in the fields of human rights and rule of law promotion. The gender dilemma for global and local transitional justice practitioners is the increasing awareness that most women in war-affected countries have not been well-served by the considerable analysis, resources, and programming devoted to post-conflict transition.<sup>2</sup> Too often, women are worse off in the period after armed conflict than they were during the war, due to heightened risks of physical violence, deepening social misery, or extreme political marginalization. This paper argues for a rethinking of the logic, rhetoric, and direction of transitional justice so that it better serves the whole society, women and men alike. It offers one approach to this re-envisioning by proposing qualitative research among women engaged in grassroots peacebuilding working within country-specific contexts.

A certain amount of ambition is required to design and build the complex web of institutions and policies devoted to post-conflict reconstruction. However, ambition turns into arrogance when transitional justice mechanisms become ends in themselves, dedicated to the fulfillment of their mandates, regardless of the continuing germination of the seeds of conflict and the compounding of women's subordination in individual societies. If transitional justice is to move from form to greater substance, global actors need to collaborate with local activists to help transform societies brutalized by civil war into communities whose members enjoy human security and gender equality in greater measure.<sup>3</sup>

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<sup>1</sup> "What is Transitional Justice?," *International Center for Transitional Justice (ICTJ)*, <https://www.ictj.org/about/transitional-justice>.

<sup>2</sup> Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War and the Post-Conflict Process* (Oxford, United Kingdom: Oxford University Press, 2011). See the authors' concern that the transitional justice movement has failed women and must be refocused to prioritize gender equity; Mayesha Alam, *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes* (London, United Kingdom: Palgrave Macmillan, 2014). See the author's call for gender mainstreaming and a commitment to gender equality in all aspects of transitional justice.

<sup>3</sup> Sally Merry Engle, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago, Illinois: University of Chicago Press, 2006). The author identifies the essential role of "translators" who bridge the gap between the global human rights culture and local "traditional" cultures by helping transnationalists to understand non-elite women's experiences, and by helping non-elite women to appropriate human rights language in order to engage in life-changing legal and social advocacy.

This paper explores the relationship between global and local visions of post-conflict transition by considering the perspectives of non-elite women who dedicate themselves to women's empowerment and post-conflict reconciliation at the community level in Uganda, Sierra Leone, and Burundi. While examples are drawn from these three African countries, the approach is relevant to peace and justice work around the world. The research starts with one central question: How do women in rural localities describe and understand the transformative work that they do, and do their understandings of justice resonate with the language and culture of the global human rights movement?

This paper contemplates interview-based qualitative research with grassroots women activists in particular African countries to explore the synergies and dissonances between certain local and global conceptions of justice. A similar model of qualitative research might be adapted in other settings. There is an important normative perspective underlying this research model, namely that if there is a disconnect between the theory of transitional justice and the lives of women doing peace and justice work in community settings, then the rhetoric, priorities, and/or mechanisms of post-conflict transition need to change. The qualitative research model proposed in the following pages will help illuminate the perspectives of grassroots women activists as guidance for how this transformation might occur.

## Methodology and context

The country studies referenced in this paper are drawn from the author's initial research for a monograph on women's grassroots peace activism in three African countries. The examples are presented as illustrations of the broader proposal for qualitative research on women-centric transitional justice at the local level. This model entails participant observation and interviews with the leaders, staff, and volunteers of women-led peacebuilding organizations. The project grows out of the author's established connections with community-based organizations in Uganda, Sierra Leone, and Burundi. The author's research will unfold over a three-year period from the headquarters of each organization in Kampala, Freetown, and Bujumbura, to the district or provincial capitals, and to the chiefdom or village levels. Researchers in other countries and regions of the world would adapt this approach to their chosen geographical and cultural settings.

The proposed research model utilizes focus groups, snowball sampling, and individual interviews to engage with local women peace activists. At the initial stages, the leaders and senior staff of each organization will take part in focus groups to assist in the process of refining the research questions so that their meaning is clear in the local vernacular. For example, "employment opportunities"

might become “livelihood support” and “transitional justice” might become “peacebuilding.” Second, the research will utilize snowball sampling, which describes the organic way in which preliminary research participants help in the identification of additional interviewees in a multi-tiered process, from metropolitan to more rural locales. Finally, most of the individual interviews at the grassroots level will be conducted with local women who have chosen to become active in peace and justice work in their own communities. Translators, fluent in English and the local languages, will serve as members of the research teams. The author’s in-country research teams will include translators fluent in English and Acholi (Uganda); English, Krio, Mende, and Temne (Sierra Leone); and English, French, and Kirundi (Burundi). Other researchers adapting this model would engage translators with the appropriate language facility for their chosen research setting.

Preliminary research questions are presented at the end of the paper, which the author will further refine as her field research unfolds. The basic script will be adapted for each country. In Uganda, specific questions may address justice issues facing women returning from displaced persons camps; in Sierra Leone, women’s involvement in Ebola prevention and treatment; and in Burundi, the barriers to women’s inheritance of land. Researchers utilizing this model would need to do something similar in their own country contexts. The questions in their current form are articulated at a fairly general level to apply to diverse research settings. Overall, the questions are designed to explore the ways in which women working at the village level in post-conflict societies think and speak about transitional justice and gender equality, as well as identify the ways they put these concepts to work in their daily lives. Ultimately, their perspectives will provide critical insights into the effectiveness of institutionalized transitional justice mechanisms. This better appreciation of the working vocabulary and practical objectives of grassroots women activists will help guide the support of global actors for localized programs of transitional justice to better ensure that external assistance is responsive to these women’s concrete experiences of oppression, and resonates with their striving toward greater empowerment.<sup>4</sup>

This paper undertakes a modest initial step by tracing the application of the proposed community-based qualitative research model in the three aforementioned African countries. After generally characterizing post-conflict transition in each country to date, it identifies at least one particular women-centered civil society organization in each country whose members engage in peacebuilding activities, and suggests further lines of research that might be pursued with members of each

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<sup>4</sup> Engle, *Human Rights and Gender Violence*.

organization through participant observation and interviews at the community level.

## Conceptual framework

Most definitions of transitional justice contemplate the establishment of formal institutions to prosecute war criminals, reconcile victims and offenders, and distribute reparations to members of communities injured by civil war atrocities.<sup>5</sup> Rather than choosing *between* retribution, reconciliation, and restoration, post-conflict justice requires the integration of criminal justice, historical justice, and social justice.<sup>6</sup> But transitional justice is not one-size-fits-all, and integration unfolds differently in individual societies.<sup>7</sup> There is much to be gained from testing and reformulating the three-stranded views of transitional justice through qualitative research among grassroots women peacebuilders in Uganda, Sierra Leone, and Burundi.

## Why Uganda, Sierra Leone, and Burundi?

Uganda, Sierra Leone, and Burundi possess two fundamental similarities regarding their conflict and post-conflict experiences: all three countries recently experienced more than a decade of armed conflict characterized by widespread attacks on civilians, and they share a rhetorical and operational commitment to transitional justice, particularly in the long-term. Resting on those commonalities are certain geographic, colonial, and linguistic differences. First, Uganda and Burundi are in Central Africa, whereas Sierra Leone is in West Africa. Second, Sierra Leone and Uganda are former British Protectorates, whereas Burundi was first a German and then a Belgian colony. Finally, Sierra Leone and Uganda are members of the British Commonwealth, whereas Burundi is part of the French Francophonie. Each

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<sup>5</sup> “Guidance Note of the Secretary General: United Nations Approach to Transitional Justice,” *United Nations*, last modified March 2010, [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf); “What is Transitional Justice?,” *ICTJ*. The UN and ICTJ definitions of transitional justice emphasize criminal prosecutions, truth commissions, reparations, and institutional reforms as mechanisms to redress massive human rights abuses, including but not limited to armed conflict situations; Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge, United Kingdom: Cambridge University Press, 2006), 2. The authors set forth the book’s focus on “truth and justice,” particularly prosecutions, truth commissions, reparations programs, and “vetting” or “cleansing” of security forces.

<sup>6</sup> Jennifer Moore, *Humanitarian Law in Action within Africa* (Oxford, United Kingdom: Oxford University Press, 2012), 177-207. The author presents a three-pronged approach to transitional justice after armed conflict, entailing criminal-retributive justice, historical-reconciliative justice, and social-restorative justice.

<sup>7</sup> George Wachira, Prisca Kamungi, and Kalie Sillah, *Stretching the Truth: The Uncertain Promise of TRCs in Africa’s Transitional Justice* (Nairobi, Kenya: Nairobi Peace Initiative [NPI-Africa] and the West African Network for Peacebuilding [WANEP], 2014), 10-12. See the authors’ concern that the “copy-cat” application of truth commission models from one country to another without adaptation to realities on the ground has resulted in lost opportunities for truth and reconciliation in various African countries.

society's particular blend of ethno-cultural, linguistic, and political traits contributes to a dynamic comparative framework from which to draw important insights about durable peacebuilding and transitional justice in conflict-emergent countries throughout the world.

A few additional historical facts will further illustrate the rich comparative analysis of transitional justice that these three countries inspire. Uganda, with its British colonial heritage and Commonwealth legal culture, experienced more than twenty years of civil war characterized by the brutal militancy of the Lord's Resistance Army (LRA) in northern Uganda, accompanied by the government's campaign of anti-LRA counter-insurgency and forced displacement of Ugandan civilians. Sierra Leone, with its British and freed slave-settler colonial heritage and unifying Krio national language, endured a civil conflict marked by both competitive and collaborative brutality on the part of three major militant groups: the Revolutionary United Front, the Armed Forces Revolutionary Council, and the Civil Defense Forces. Despite intense factionalism between warring factions, neither Uganda's civil conflict nor Sierra Leone's rebel war emanated from a predominant ethnic or religious fault-line.

By contrast, Burundi has a German-Belgian colonial history, and the legacy of an apartheid-like racialized caste hierarchy between the Tutsi and Hutu ethnic communities. Burundi has not fully emerged from a conflict characterized by a decade of rolling genocides. Increasing governmental repression of popular opposition to third-term President Nkurunziza bodes ill for the consolidation of the peace process. Of the three countries, Burundi's civil war is most readily described in ethnic terms. Nevertheless, this easy characterization belies the reality that Hutu and Tutsi speak the same Kirundi language, affiliate with the Catholic faith in equal proportion, and often define themselves as members of two communities with one common culture. For these reasons, there is much to be gained by continuing to compare and contrast post-conflict transition in Uganda, Sierra Leone, and Burundi. The following three sections provide more detail on the post-conflict experiences in each of the three countries, ending with a focus on one women-led, community-based peacebuilding organization in each country.

## Uganda

Since the Juba Peace Accords, the post-conflict approach of the Government of Uganda has been to focus on the retributive or criminal-accountability strand of transitional justice, demonstrated by Uganda's "self-referral" to the International Criminal Court (ICC) on account of the situation in northern Uganda. The ICC's northern Uganda case has led to the issuance of arrest warrants against five LRA

leaders, one of whom was taken into custody in 2015, but no indictments against members of the Ugandan People's Defense Forces have been issued. The Ugandan Parliament also passed a statute in 2010 domesticating the Rome Statute of the ICC and creating the International Crimes Division (ICD), a specialized chamber of the Ugandan High Court.<sup>8</sup> As of 2015, the ICD is still in the process of trying former LRA commander Thomas Kwoyelo, the first defendant charged under Uganda's Geneva Conventions Act.<sup>9</sup>

Ugandan civil society organizations such as the Beyond Juba Project have criticized the nature of war crimes prosecutions in Uganda and the fact that, since 2010, the Ugandan ICD has not initiated prosecutions of any state actors for war crimes.<sup>10</sup> This state of affairs calls into question Uganda's predominantly retributive approach to transitional justice, and prompted civil society demands for alternative approaches in the restorative and social realms. For example, the Refugee Law Project (RLP) of the Makerere University School of Law in Kampala leveled a powerful critique of Uganda's disproportionate reliance on criminal justice as a mechanism for post-conflict transformation and its to-date exclusive prosecution of non-state actors.<sup>11</sup> The RLP calls for more even-handed prosecutions of civil war offenders, on the one hand, and for greater attention to reconciliation, on the other, through programs dedicated to the restoration of collective memory, as well as the rebuilding of healthy communities.<sup>12</sup>

Given its rigorous study of Uganda's national program of transitional justice, RLP is a natural research partner for a women-centered qualitative field study. The organization combines a traditional academic framework with a dynamic community service orientation.<sup>13</sup> The RLP has initiated a Gender and Sexuality Project that focuses on the particular experiences of women and sexual minorities in

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<sup>8</sup> Uganda High Court, *International Crimes Division Practice Directions Legal Notice* 6, no. 10 (2011), <http://www.judiciary.go.ug/data/smnu/18/International%20Crimes%20Division.html>; Moore, *Humanitarian Law*, 98, 136.

<sup>9</sup> "Is Uganda's Judicial System Ready to Prosecute Serious Crimes?," *ICTJ*, <https://www.ictj.org/news/uganda-kwoyelo-case>.

<sup>10</sup> Moore, *Humanitarian Law*, 137. The author describes the insights of the Beyond Juba Project, affiliated with the Law School of Makerere University in Kampala.

<sup>11</sup> "Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation," *Refugee Law Project Working Paper*, no. 15 (February 2005), [http://refugeelawproject.org/files/working\\_papers/RLP.WP15.pdf](http://refugeelawproject.org/files/working_papers/RLP.WP15.pdf).

<sup>12</sup> Moore, *Humanitarian Law*, 98, 221-222. See the author's citation of the former director of the Refugee Law Project.

<sup>13</sup> "Working Papers," *Refugee Law Project*, <http://refugeelawproject.org/resources/working-papers.html>. Over the past 16 years, RLP has published a series of scholarly working papers on issues related to the civil war, forced migration, and access to justice, with a particular focus on the war-affected communities of northern Uganda.

northern Uganda.<sup>14</sup> RLP will be a potential base for recruiting women in the war-affected Gulu and Kitgum districts of northern Uganda to participate in interviews and other interactions at the local level. Another important resource will be the RLP-affiliated National Memory and Peace Documentation Centre, based in Kitgum district, northern Uganda.<sup>15</sup>

## Sierra Leone

As foreseen in the Lomé Peace Accord,<sup>16</sup> Sierra Leone's signature accountability plus truth-telling approach manifested in the twin institutions of the Special Court for Sierra Leone and the Truth and Reconciliation Commission. Nevertheless, civil society organizations have been critical of the modest impacts of these two institutions, and continue the work of transformative justice throughout the country.

The founding of Fambul Tok, a grassroots organization devoted to community healing and reconciliation, reflects the concern of Sierra Leonean civil society that transitional justice should not be merely symbolic and formal, nor should it stop at the national level.<sup>17</sup> Fambul Tok facilitates village-level cleansing ceremonies between individual victims and offenders, while also organizing collective agricultural development projects among community members. The organization exemplifies a deep commitment to a long-term process of social healing and economic revitalization on the part of women and men living in rural communities throughout the country.

The Peace Mothers project is an offshoot of Fambul Tok, formed in part as a response to the concern that women are too often sidelined, if not manipulated, in the typical grassroots reconciliative process.<sup>18</sup> In particular, feminist critics of the village-level ceremonial cleansing model stress that rituals of public reconciliation may pressure women to forgive their offenders without demanding that the perpetrators in turn atone for their abuses or re-commit themselves to responsible participation in their communities.<sup>19</sup> The Peace Mothers program is an attempt to

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<sup>14</sup> "Gender and Sexuality Project," *Refugee Law Project*, <http://refugeelawproject.org/our-work/gender-and-sexuality-programme.html>.

<sup>15</sup> "The National Memory and Peace Documentation Centre (NMPDC)," *Refugee Law Project*, [http://refugeelawproject.org/our-work/index.php?option=com\\_content&view=article&id=298&catid=31&Itemid=163](http://refugeelawproject.org/our-work/index.php?option=com_content&view=article&id=298&catid=31&Itemid=163).

<sup>16</sup> "Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone," *The Government of Sierra Leone*, last modified May 18, 1999, <http://www.sierraleone.org/lomeaccord.html>.

<sup>17</sup> "About Us," *Fambul Tok*, <http://www.fambultok.org/about-us>.

<sup>18</sup> "Peace Mothers," *Fambul Tok Blog*, <http://www.fambultokblog.org/tag/peace-mothers>.

<sup>19</sup> Ní Aoláin et al., *On the Frontlines*, 184. Ní Aoláin et al. make a related point: "Public silences are a persistent feature of women's testimonial presentations in truth-telling contexts. Those silences should not be read as nonstatements about the experiences of women."

create space for women-centered conversations about the meaning of peace, non-violence, reconciliation, and empowerment.<sup>20</sup>

Since 2009, 200 Peace Mothers collectives have been established throughout Sierra Leone.<sup>21</sup> A major focus of activity for these groups has been the establishment of women's community development projects, from collective farming and construction, to education and micro-finance activities.<sup>22</sup> During the 2014-2015 Ebola emergency in Sierra Leone, high rates of infection led to breakdowns of trust within and among civil society organizations. In this climate of fear, Peace Mothers groups in various parts of the country resolved to focus their energies on very practical activities, such as soap making and public health education, thereby rebuilding channels of communication and collective enterprise.<sup>23</sup>

Peace Mothers is a compelling research partner because it has international links, a parent organization based in Freetown, and a focus on rural communities.<sup>24</sup> The organization also operates at both district and village levels throughout Sierra Leone. This network provides essential qualitative research opportunities to interact with women peacebuilders and to learn about their perspectives on the meaning of transitional justice in their communities.<sup>25</sup>

## Burundi

While the Arusha Peace Accords referenced the creation of both a truth commission and a criminal tribunal, in the first decade of its post-conflict period, Burundi

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<sup>20</sup> *The Peace Mothers*, directed by Libby Hoffman (New York, New York: Mind Hive Films, 2014), <https://vimeo.com/93511555>. Interestingly, in addition to these gender-specific groups, as of 2013, 63 percent of the leadership of Fambul Tok was composed of women, suggesting that the Peace Mothers have been a force for women's leadership development in Sierra Leone overall.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid. The philosophy of the Peace Mothers is that collective development is linked to reconciliation. As Lilian Morsay, Peace Mothers District Coordinator, explains, "Reconciliation is not an event. It is a process. It won't happen spontaneously. It goes on as long, as long, as long as you live."

<sup>23</sup> Nancy Koroma, "Fambul Tok Donate Soap Making Machine to Kono District," *Awoko*, last modified February 25, 2015, <http://awoko.org/2015/02/25/sierra-leone-news-fambul-tok-donate-soap-making-machine-to-kono-district/>.

<sup>24</sup> "Staff Profiles," *Fambul Tok International*, <http://www.fambultok.org/about-us/staff-profiles>. For more information, see profiles of Fambul Tok Co-Founder and Director John Caulker, a Sierra Leonean with 20 years of human rights and transitional justice experience, as well as the profile of Co-Founder Libby Hoffman, President of the U.S.-based Catalyst for Peace; Hoffman, *Peace Mothers*. See film for footage of Peace Mothers leader Lilian Morsay speaking about women and grassroots reconciliation in Sierra Leone.

<sup>25</sup> Fionnuala Ní Aoláin, "Advancing a Feminist Analysis of Transitional Justice," in *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice*, eds. Martha Albertson Fineman and Estelle Zinsstag (Cambridge, United Kingdom: Intersentia, 2013), 51. One question to ask will be the extent to which the very moniker "Peace Mothers" serves to reinforce stereotypes about women's maternal qualities and relegation to the private sphere, or if, on balance, such nods to tradition increase women's political agency within their communities. Ní Aoláin and others have described the phenomenon of "strategic essentialism" in which women emphasize their roles as mothers, nurturers, and caregivers in order to incrementally increase their power in communities with entrenched gender inequality.

operated without the creation of formal transitional justice institutions at the national level. As exemplified by *le Centre d'Alerte et de Prévention des Conflits* (CENAP), a prominent and broad-based Burundian civil society organization, Burundian transitional justice activists focused instead on ending the violence and reconciling the Hutu and Tutsi ethnic communities. From 2007-2012, CENAP and other Burundian civil society organizations prioritized disarming the citizenry, alleviating staggering levels of poverty and youth unemployment, holding peaceful elections, and memorializing of lives lost among the Hutu and Tutsi ethnic communities, rather than establishing formal transitional justice institutions at the national level.<sup>26</sup>

CENAP partners with numerous community-based organizations in Burundi, including *l'Association des Femmes Rapatriées du Burundi* (AFRABU). AFRABU was founded to serve repatriated Burundian women who had been refugees in Tanzania and other countries during the war. AFRABU's initial mission was to help women resettle on their land, rejoin their families, and reintegrate into their local subsistence economies.<sup>27</sup> Believing that everyone shares the challenges of economic reintegration, AFRABU began to encourage the formation of cooperatives for women and men in order to stimulate collective micro-enterprise and micro-finance at the community level. AFRABU operates in 10 out of 17 Burundian provinces, and has inaugurated upwards of 350 cooperative organizations.<sup>28</sup> AFRABU also encourages lending institutions to develop financial products that serve subsistence farmers and informal merchants, drawing on their own research demonstrating that women tend to be particularly good credit risks.<sup>29</sup>

AFRABU staff suggest that women-centered transformational justice is vitally linked to informal, collective, social welfare, and entrepreneurial initiatives at the local level. AFRABU's community-based cooperatives provide an excellent base for participant observation and interviews with women peacebuilders throughout Burundi in order to explore their ways of talking about and implementing transitional justice at the local level.

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<sup>26</sup> "Conflict Alert and Prevention Center," *Insight on Conflict*, <http://www.insightonconflict.org/conflicts/Burundi/peacebuildingorganisations/cenap>.

<sup>27</sup> GM, interview by Jennifer Moore, 2014, author's field notebook, 30(a) – 32(a). The founders of AFRABU soon realized that internally displaced persons, former combatants, and those who had never fled faced similar challenges to those confronting the returning refugees. GM and her colleagues concluded that all these categories were created by the war, and therefore should not be used in the transition to peace. (Author's note: AFRABU Co-Founder GM is identified by initials only in light of current political unrest in Burundi.)

<sup>28</sup> Author's field notebook, 31(b).

<sup>29</sup> *Ibid.*

### *Recent developments in Burundi (2014-2016)*

In 2014, CENAP's emphasis on violence prevention, economic subsistence, and the preservation of historical memory remained strong, with guarded enthusiasm towards the creation of a long-heralded Burundi Truth and Reconciliation Commission (TRC). In September 2014, the Burundian TRC was formally mandated by an act of Parliament, followed by the selection of those parliamentarians who would, in turn, be called upon to select the commissioners.

Despite the importance of the government's stated commitment to the independence of the TRC, resurgent political violence in Burundi over the past two years has overshadowed the transitional justice process. In early 2015, popular demonstrations against President Nkurunziza's running for a third term in defiance of constitutional term limits led to repression of the political opposition by the ruling party, and targeted attacks by its armed youth wing. The Hutu President's opposition includes prominent individuals within the Hutu community, hence, the government's response at that time was regarded to have a predominant political, rather than ethnic, character.<sup>30</sup> Nevertheless, by the time Nkurunziza was reelected in July 2015, upwards of 150,000 Burundians had fled political unrest, and sought refuge in Tanzania, Rwanda, and the Democratic Republic of the Congo.<sup>31</sup>

By the early months of 2016, nearly 250,000 Burundians were in exile and more than 400 killed as political violence increased, with daily accounts of bodies discovered in the streets of Bujumbura and reports of the discovery of mass graves.<sup>32</sup> Despite UN Security Council condemnation of widespread arbitrary killings and other human rights abuses, efforts to dispatch African Union peacekeepers were stymied by the intransigence of the Burundian government.<sup>33</sup> Most alarming is the lingering fear that the violence has taken on an increasingly ethnic character, with official statements that the opposition is Tutsi-dominated, and evidence that most victims of government repression are indeed people of Tutsi ethnicity.<sup>34</sup>

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<sup>30</sup> Michael Cohen and Desire Nimubona, "Specter of Civil War Haunts Burundi as Violence Escalates," *Bloomberg Business*, last modified November 10, 2015, <http://www.bloomberg.com/news/articles/2015-11-11/specter-of-civil-war-haunts-burundi-as-fatal-violence-escalates>.

<sup>31</sup> "Thousands of Refugees Continue to Flee Burundi," *United Nations High Commissioner for Refugees*, last modified June 30, 2015, <http://www.unhcr.org/55929f206.html>.

<sup>32</sup> Sam Jones, "Burundi: 'all alarm signals flashing red' warns UN as reports of atrocities mount," *The Guardian*, last modified January 15, 2016, <http://www.theguardian.com/global-development/2016/jan/15/burundi-all-alarm-signals-flashing-red-warns-un-as-reports-of-atrocities-mount>.

<sup>33</sup> Michelle Nichols, "US urges African leaders to sway Burundi on peacekeepers," *Reuters*, last modified January 23, 2016, <http://www.reuters.com/article/us-burundi-unrest-un-idUSKCN0V10UC>.

<sup>34</sup> Jones, "Burundi."

Clearly, peaceful and inclusive politics in Burundi is a dream deferred. Fears of a return to armed conflict are not unfounded. At the same time, CENAP and other civil society organizations continue their work to forge a Burundian national identity that is pan-ethnic and non-violent, to demand accountable leadership, and to empower women and youth. While qualitative research among women-centered peacebuilding organizations in Burundi requires conditions of overall security, AFRABU continues to be an important point of contact. After all, AFRABU was founded by Burundian refugee women returning from exile at the end of the civil war. Their commitment to peacebuilding began during the war, continued after their repatriation, and is ongoing, even as Burundi faces the prospect of renewed conflict. Depending on ongoing developments, the focus of qualitative research with Burundian women may shift to countries of asylum, at least in the short-term. Women living in the new Burundian refugee communities forming in Tanzania and other neighboring countries will have valuable perspectives to share regarding the path to peace in their country.

## Questions for ongoing field research

The author will conduct interactive and interview-based qualitative field research among grassroots women activists in all three of the aforementioned countries. Essential to this chosen methodology will be the development of questions to help guide conversations with women about the ways they define and practice transitional justice in their daily peacebuilding activities in each country. Some initial questions are listed below. These questions will be revised and refined as the research unfolds:

- (1) How do women characterize their peacebuilding work? Do they speak of transitional justice or human rights? To what extent do they define their work in other terms?
- (2) Do women peacebuilders identify criminal justice as one of their top priorities? If so, do they define it in terms of retribution, accountability, or something else? In the criminal justice realm, how do these activists characterize the roles of women – as victims, offenders, survivors, and/or actors? Do they believe that women are able to testify in such a way that they are empowered in their daily lives, or that participating in trials leads to their re-traumatization or stigmatization? How do they believe that trials might be reformed to empower women as members of their communities?
- (3) Do women peacebuilders identify reconciliative justice as one of their top priorities? If so, do they define it in terms of forgiveness, relationship restoration, or

something else? Do they believe that women are valued for their capacity to give and receive pardon and compassion? Do they believe that women are pressured to forgive those who wronged them, or that they are able to participate willingly? How do they believe that reconciliation activities might be improved to empower rather than weaken women in their communities?

(4) Do women peacebuilders identify restorative justice as one of their top priorities? If so, do they define it in terms of individual reparations, social service programs, institutional reform, or something else? Do they believe that, through individualized assistance or structural changes, women may become strengthened in their capacities as heads of families, caretakers of children, generators of income, political activists, or other roles in their communities? What kinds of individual and structural reparations do these activists consider most essential in enhancing the socioeconomic security of women and their families?

(5) Do women peacebuilders speak of “justice” or “healing,” or something else as the most important defining principle underlying their peacebuilding activities? What kinds of entities require justice or healing — individuals, relationships, economic systems, political institutions, or something else?<sup>35</sup> What do they consider to be the relationship between justice and healing?

## Conclusion

Two essential concerns animate the proposed program of qualitative research among women peacebuilders working in communities in Uganda, Sierra Leone, and Burundi. The first is whether and how the situation for women – as survivors of violence and trauma, heads of families, economic actors, and political agents – is improving in a meaningful sense as their countries proceed through the post-conflict period. The second is whether and how women can contribute to alleviating the profound social misery and class divisions that contributed to armed conflict in all three societies. Preliminary discussions with community activists suggest a steep uphill climb for transitional justice and women’s empowerment. It is a tall order to expect qualitative research and engagement with women peacebuilders in the three countries to result in detailed blueprints for social transformation and gender equality. That said, a crucial first step towards achieving these long-term goals is to meet and talk with women participating in the demanding, incremental, and sometimes exhilarating process of social transformation at the grassroots level. The

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<sup>35</sup> Moses Chasieh, Burundi Office of American Friends Service Committee, interview by Jennifer Moore, 2014, author’s field notebook, 9(a)-13(a); Louis-Marie Nindorera, Burundi Global Rights, interview by Jennifer Moore, 2014, author’s field notebook, 19(a)-21(a); and GM, Association des Femmes Rapatriées de Burundi, interview by Jennifer Moore, 2014, author’s field notebook, 30(a)- 32(a). Both Chasieh and GM spoke of healing, in relationships or networks of collective subsistence.

stories and perspectives of women peacebuilders will shed light on the accomplishments and unfinished business of gender justice in their communities, providing meaningful comparative insight into the kindred struggles of women peacebuilders in conflict-emergent societies throughout the world.

**Culturally Mediated  
Grieving and Recovery:  
Reflections on Women's  
Experiences in Northern  
Sri Lanka**

Rebekka Friedman

## Introduction<sup>36</sup>

What are the challenges facing female survivors in northern Sri Lanka, and to what extent have formal and local transitional justice and recovery processes addressed the gendered legacies of the war? The article's starting point is that protracted violence leaves lasting and highly gendered effects on communities and societies. Women and girls often bear many of the everyday legacies of violence, and are expected to conform to patriarchal post-war social structures and economies, which rest on the reinstatement of gendered practices and norms. As Sri Lankan feminist scholars have detailed, the experiences of Tamil women in the North during the Sri Lankan civil war were multifaceted. The war provided both an opportunity for female political agency as women participated in conflict and took on new roles, but it also erected new challenges that further subjugated women and marginalized them from political and economic opportunities. Within the Liberation Tamil Tigers of Eelam (LTTE), for instance, some commentators note that women LTTE fighters participated in the war alongside men, thus challenging conventional gendered norms and putting women in a more liberated position. Others see the LTTE as ultimately supporting patriarchal norms and further exploiting women.<sup>37</sup> What is clear is that the wartime transformation of women's roles in northern Sri Lanka occurred unequally, and sometimes in contradictory and paradoxical ways. While 20 percent of the LTTE were women, families also married off women and girls in the North in larger numbers and at younger ages to shield them from LTTE recruitment.<sup>38</sup>

Building on this, the author similarly maintains that post-war legacies have had uneven and double-edged effects for Tamil women in the North. On the one hand, since the end of the war, women have taken on new identities and responsibilities as primary caregivers and heads of households, mobilizing on behalf of their families and communities as activists and advocates for victims. Women assumed

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<sup>36</sup> The author would like to thank Sharuka Selvarajah, Shivathas Sivasubramaniam, Jeganathan Thatparan, Daya Somasundaram, Mario Gomez, Alex Thevaranjan, Jasmine Mitchell, Kirsten Ainley, Thrish Nanayakkara, and my host family in Jaffna for their immense support. The author is extremely grateful to Mats Berdal, David Ucko, and the Conflict, Security and Development Research Group for funding the research. The author also thanks Mayesha Alam, Roslyn Warren, Andrea Welsh, and the participants at the August 2015 Georgetown Women and Transitional Justice workshop for their excellent feedback and discussion of this article.

<sup>37</sup> For more information on feminist debates on female agency and the LTTE, see: Neloufer De Mel, *Women and the Nation's Narrative: Gender and Nationalism in Twentieth Century Sri Lanka* (Colombo, Sri Lanka: Social Scientists Association, 2001); Sidharthan Maunaguru, "Gendering Tamil Nationalism: The Construction of 'Women' in Projects of Protest and Control," in *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka*, eds. Prajeep Jeganathan and Qadri Ismail (Colombo, Sri Lanka: Social Scientists Foundation, 1995).

<sup>38</sup> The LTTE did not forcibly recruit married women.

strong leadership roles and gained respect due to their persistence and dedication to advancing women's rights and post-conflict reconstruction within their communities. This was pronounced in relation to the devastating numbers of (largely male) disappearances, where women were especially critical in campaigning for and uncovering the truth regarding missing persons. On the other hand, the end of the war has reinstated patriarchal customs and social stigmas that raise difficult questions as to how to rebuild livelihoods and family life, particularly in a context of widespread disappearances and internal dislocation. In a politicized post-war context, women have become symbols of community experiences and struggles in ways that often restrict their movement and behavior. They have also been subject to conservative and gendered social norms, which seek to reinstate women's roles in society and regulate their post-war behavior in a way that conforms to patriarchal identities and social practices.

Within this context, the article examines creative ways in which communities in northern Sri Lanka manage to move forward and cope with the devastating and gendered effects of the war. The author pays attention to the less-researched but important contribution of culturally mediated psychosocial support programs to women's post-conflict healing and recovery.<sup>39</sup> The article expressly focuses on Hindu healing and mourning rituals that have been reinstated and expanded since the end of the war. While these mechanisms are longstanding and practiced outside of the northern peninsula, they are also innovative, as local activists and mental health professionals help imbue them with a special context-specific meaning in the northern region. Ultimately, this paper argues that culturally mediated grieving rituals at once offer a critical grieving outlet and foster community resilience and solidarity (in terms of communicating empathy and acknowledging particular stakeholders' dignity and struggles) amongst women conflict survivors. Women-centered healing is especially critical given the demographics of victimization in the North, where high rates of male war-related deaths and disappearances during the war left high numbers of female-headed households. At the same time, the article looks critically at the limitations of communal interventions. While the article elevates the important contributions made by micro-level, culturally sensitive interventions in this regard, it also explores ongoing operational challenges, including gendered social expectations surrounding grief and healing. It makes the

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<sup>39</sup> By 'culturally mediated,' the author refers to processes that draw on recognized practices and values, but that are often innovative themselves. For an important discussion on innovative adaptations of cultural healing and conflict resolution practices in post-war contexts, see: Rosalind Shaw and Lars Waldorf, "Introduction," in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, eds. Rosalind Shaw, Lars Waldorf, and Pierre Hazan (Stanford, California: Stanford University Press, 2010).

case that formal transitional justice processes are needed alongside locally driven ones to produce the most durable forms of healing.

The article draws on two months of field research carried out in Sri Lanka in July and August 2015. During this time, the author spoke to more than 40 community leaders, activists, and professionals involved in women's issues and post-conflict healing. Additionally, the author conducted focus groups and interviews with war widows and attended several conferences on healing and war-affected women within Sri Lanka. The methodology also included field visits with the psychosocial support organization, Shanthiham, meaning "house of peace" in Tamil;<sup>40</sup> interviews and field visits with psychiatrists from the University of Jaffna and Vavuniya Hospital; and interviews with the Family Rehabilitation Center.<sup>41</sup> The author also sat in on traditional Tamil Hindu theater practices (known as Koothu), Tamil family mourning rituals (known as Aadi Amavasai), and practices native to Mullivaikal as important local initiatives to rebuild the societal fabric and provide space and opportunities for mourners to grieve and receive acknowledgment.

## The gendered legacies of the Sri Lankan war

From July 23, 1983 to May 18, 2009, Sri Lanka experienced a violent and protracted civil war. The roots of the Sri Lankan civil war are complex. Sri Lanka's long history of British colonialism, post-independence political struggles, and sectarian politics created a backdrop that deeply divided the country along ethnic lines. Sri Lanka obtained independence from Britain in 1948, after which the Sri Lankan Sinhalese majority consolidated its power through the political, economic, social, and cultural marginalization of ethnic Muslim and Tamil minorities. Tamil resistance to these policies, which began as calls for constitutional pluralism, evolved into campaigns for secession and the creation of a separate nation-state, Tamil Eelam, in the late 1970s and early 1980s. This period also saw the rise of militant Tamil nationalist groups, the most prominent of which became the LTTE. Beginning on July 23, 1983, the LTTE waged an intermittent insurgency against the Sri Lankan government. The war was followed by several failed peacemaking attempts and the deployment of an Indian peacekeeping force from 1987-1990. The war had a devastating impact on civilians across the country. Exact figures remain

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<sup>40</sup> Shanthiham is a community psychosocial support organization created in 1987 to train counselors and psychosocial workers in the North.

<sup>41</sup> The Family Rehabilitation Center was created in 1992 in Colombo, Sri Lanka.

disputed, but it is estimated that the war killed over 100,000 civilians.<sup>42</sup> The UN Secretary-General’s Report in 2011 found credible evidence that government forces deliberately shelled safe zones, and that the LTTE used civilians as human shields and forcibly recruited civilians, including children.<sup>43</sup> The Sri Lankan military defeated the LTTE in a decisive and highly controversial military victory in May 2009, bringing the civil war to an end.



The districts of Kilinochchi and Mullaitivu in the northern peninsula, where the research was carried out, were especially hard hit during the war. These areas were under LTTE control for many years of the civil war, until the military recaptured them in 2009. The Sri Lankan government has begun a rapid post-conflict reconstruction and development program, yet both areas – and the North in particular – remain heavily militarized. War-affected parts of the North face a number of serious problems that, as local civil society organizations allege, have been insufficiently addressed in the government’s rapid post-war rebuilding, including alcoholism, lost documentation, enforced disappearances, human rights abuses, and domestic and sexual violence.<sup>44</sup>

**Figure 1. Map of Sri Lanka<sup>45</sup>**

Sri Lanka’s considerable post-war challenges are strongly gendered. The most pronounced challenge is forced disappearances. As men died in large numbers and were targets of state disappearances, the end of the war left a high number of female-headed households.<sup>46</sup> While women tend to be disproportionately affected by

<sup>42</sup> “Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka,” *United Nations*, March 31, 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf).

<sup>43</sup> Ibid. For more information, see: Yasmin Sooka, “An Unfinished War,” *Bar Human Rights Committee of England and Wales and the International Truth and Justice Project*, (Colombo, Sri Lanka: March 2014).

<sup>44</sup> M.H. Mohammed Hassan Rushdy, Sivarajini Sivarajah, and Saruja Sivanesan, “Land Issues Affecting Female-Headed Households of Victims of Enforced Disappearances, in the Districts of Kilinochchi and Mullaitivu,” *Law and Society Trust Review: Devolution of Powers Relating to Land Right to Sustainable Development: Land Rights of War Widows in the North* 25, no. 325-326 (2014).

<sup>45</sup> Angela King and Brad Cole, “Sri Lanka Map - Sri Lanka Satellite Image,” *Geology.com* (2008), <http://geology.com/world/sri-lanka-satellite-image.shtml>.

<sup>46</sup> The OHCHR continues to rank Sri Lanka as having one of the highest rates of disappearances in the world, with cases of disappearances dating back to the 1970s. For more information, see: United Nations High Commissioner for Human Rights, “Report of the OHCHR Investigation on Sri Lanka,” *Annual report of the*

disappearances in Sri Lanka and elsewhere in terms of having to rebuild their lives and start over – in many cases they instantly turn into the sole providers for their families – they often receive less attention in policy and academic discussions of disappearances. As M.H. Mohammed Hassan Rushdy and his colleagues note, through research conducted by the Human Rights in Conflict Programme, *Law and Society Trust*, policies and activism surrounding disappearances focus almost always on “either the victim or the perpetrator, with hardly any attention paid to the grievances of women (wives, daughters), who are the family members of victims, directly affected by the loss of loved ones.”<sup>47</sup>

The gendered challenges facing relatives of missing persons are both economic and social. Women in female-headed households have been left to rebuild their livelihoods under harsh patriarchal conditions. The Household Income and Expenditure Survey of 2012, issued by the Department of Census and Statistics, reports that female-headed households comprise 23 percent of Sri Lanka’s total households (1.1 million out of 5.2 million households).<sup>48</sup> More than 50 percent of these women are widows, and the majority of female-headed households hold an education level of grade six to eight.<sup>49</sup> NGO reports and academics widely document the difficulties facing widows as breadwinners, particularly in securing jobs and loans in a male-dominated economy.<sup>50</sup> The broader legacies of the war, particularly the militarization of society, the trafficking of women, and land settlement and resettlement, also negatively affect women, especially those leading female-headed households.<sup>51</sup>

Qualitative analyses also reveal broader impediments facing war-affected women in their quest to recover from the war. For affected women, the practical challenges of rebuilding livelihoods and family structures after the loss of a family member often

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*United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General* (September 16, 2015), 71-108. In 2011, the OHCHR ranked Sri Lanka as having highest rates of involuntary disappearance in the world. For more information, see: The Office of the United Nations High Commissioner for Human Rights, “Committee against Torture begins examination of report of Sri Lanka,” (November 8, 2011).

<sup>47</sup> Rushdy et al., “Land Issues,” 56.

<sup>48</sup> Department of Census and Statistics, “Demographic Characteristics: Female Headed Households,” *Household Income and Expenditure Survey 2012/2013: Preliminary Report* (December 24, 2013). For more information, see also: “A Report on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Anuradhapura District: Kebethigollewa and Mahavilachchiya,” *Fokus Women* (Colombo, Sri Lanka: 2015), 1-3.

<sup>49</sup> Ibid.

<sup>50</sup> For an interesting discussion and caution that female headed households should not only be seen as a legacy of war, see: Kanchana N. Rupanpura and Jane Humphries, “Mundane Heroines: Conflict, Ethnicity, Gender, and Female Hardship in Eastern Sri Lanka,” in *The Dilemmas of Lone Motherhood: Essays from Feminist Economists*, eds. Randy Albeida, Sue Himmelweit, and Jane Humphries (New York, New York: Routledge, 2005).

<sup>51</sup> Ibid., 3. See also: International Crisis Group, “Sri Lanka’s North II: Rebuilding under the Military,” *Asia Report* 220 (Brussels, Belgium: 2012).

clash with emotional loyalties and cultural expectations. Widowhood retains a stigma in traditional Tamil society. Currently, women who lost loved ones due to disappearances are required to obtain death certificates from security forces under the Registration of Deaths (Temporary Provisions) Act 19 of 2010.<sup>52</sup> As Rushdy et al. find, however, “These women are not in favour of obtaining death certificates as they continue to live in hope for the return of their loved ones.”<sup>53</sup> Women survivors concede that obtaining a death certificate is an important step to receive state or humanitarian assistance and apply for land and property payments in the name of the missing person. However, these women also note the mental anguish involved in the attainment of a death certificate, as it requires their personal acknowledgment that their loved ones are not returning. Some also expressed concern that by registering the deaths, information on what happened to their loved ones would not be provided or the search would not continue.<sup>54</sup>

Ostracization also impacts other war-affected women, such as female ex-combatants. Although both male and female ex-combatants are subject to surveillance, female ex-combatants tend to be especially stigmatized for their roles in the war and the manner in which state security forces subsequently monitor them.<sup>55</sup> While state rehabilitation services generally released female ex-combatants earlier than their male counterparts, female ex-combatants usually remain subjects of surveillance for longer periods of time after release.<sup>56</sup> The continued military surveillance of female ex-combatants enhances their marginalization and excludes them from employment and marriage opportunities. These visits by military personnel raise fears among the community, male suitors, and these women’s families, as well as bring back unwelcome wartime associations.<sup>57</sup>

The externalities of state-led reintegration also take on an additional gendered dimension for female ex-cadres, where conservative social norms further stigmatize these visits by male officials. Military representatives often “check-in” on their

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<sup>52</sup> “Registration Of Deaths (Temporary Provisions) Act,” last modified March 28, 2016, <http://www.srilankalaw.lk/Volume-VII/registration-of-deaths-temporary-provisions-act.html>.

<sup>53</sup> Rushdy et al., “Land Issues,” 69.

<sup>54</sup> Focus group with ten female-headed households, interview by Rebekka Friedman, Mullaitivu, Sri Lanka, July 28, 2015.

<sup>55</sup> For broader insights on female ex-combatants and economic reintegration, see: Sonny Inbaraj Krishnan, “Coping with Little Support: Batticaloa’s Women Ex-combatants and their Reintegration,” *The International Center for Ethnic Studies Series on Post-war Reconciliation, Justice, and Development* (April 27, 2012).

<sup>56</sup> Rehabilitation officer (name purposefully kept confidential), interview by Rebekka Friedman, Colombo, Sri Lanka, August 3, 2015.

<sup>57</sup> Ambika Satkunathan, interview by Rebekka Friedman, Colombo, Sri Lanka, August 11, 2015; Shreen Saroor, interview by Rebekka Friedman, Colombo, Sri Lanka, August 3, 2015; Mrs. Karthiga Athithihan and Mrs. Vani Raveendran of Women in Need, interview by Rebekka Friedman, Jaffna, Sri Lanka, July 16, 2015; Rajani and focus group with female community leaders at the Women’s Action Network, interviews by Rebekka Friedman, Jaffna, Sri Lanka, July 20, 2015.

surveillance subjects in spontaneous and unpredictable ways – female ex-militants recount visits “at any time” and “under any pretext” by military officials, including late at night and with no notice.<sup>58</sup> This generates general uncertainty and unease amongst former cadres and their wider communities, especially in conservative northern areas. In addition, relationships between female ex-cadres and the military feed into allegations that ex-militants provide “survival sex” to soldiers in the region. These tensions tie into a broader gendered and ethnicized political landscape in the North, in which large numbers of southern Sri Lankan and foreign men, including aid workers, police, and military personnel, work among a largely female civilian population. For female ex-cadres, surveillance has had severe consequences, particularly in inhibiting women’s marriage prospects and their relations with their in-laws and spouses. Families are wary of being associated with former cadres – they do not want to be implicated in continued security concerns, and there are negative stereotypes of female ex-militants as contrarian and uncontrollable. As a result, women’s organizations report that ex-cadres often marry men on their second or third wives, face abuse, and are frequently taken for granted.<sup>59</sup> Pressure from family members to marry as quickly as possible accentuates these dynamics.<sup>60</sup>

## Gender and formal justice

Academic and policy-oriented literature on Sri Lanka often stresses the significant political obstacles facing transitional justice and peacebuilding in a context of a heavily militarized state victory. Although the Sri Lankan government declared the war officially over in 2009, transitional justice in Sri Lanka has been contentious and politicized. While the Sri Lankan government established a number of transitional justice mechanisms earlier in the conflict, it has resisted global efforts to implement restorative or retributive justice programs and deflected calls for international accountability mechanisms. A panel appointed by the UN Secretary-General (UNSG) in 2009 issued a report calling for an independent international investigation into atrocities committed during the conflict, but the Sri Lankan government rejected the report, and members of the UN Security Council (UNSC) accused the Secretary-General of over-stepping his remit.<sup>61</sup> In 2010, Sri Lanka set up a “Lessons Learnt and Reconciliation Commission” (LLRC) in response to the UN report, but most of its recommendations for curbing impunity and restoring rule

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<sup>58</sup> Interviews with former cadres, interviews by Rebekka Friedman, Kilinochi and Mullaitivu, Sri Lanka, July 2014.

<sup>59</sup> See footnote 57.

<sup>60</sup> Shreen Saroor, interview by Rebekka Friedman, Colombo, Sri Lanka, August 3, 2015.

<sup>61</sup> United Nations, “Report of the Secretary-General’s Panel.”

of law have not been implemented.<sup>62</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR) published a report on reconciliation and accountability in Sri Lanka in February 2014, recommending that the UN Human Rights Council (UNHRC) establish an international inquiry mechanism to investigate alleged violations of international human rights and humanitarian law during the Sri Lankan conflict.<sup>63</sup> In March 2014, the UNHRC adopted a resolution by 23 votes to 12, with 12 abstentions, establishing an international investigation and calling on the Sri Lankan government to make progress on accountability, reconciliation, and human rights.<sup>64</sup>

There have been 64,831 filed complaints of enforced disappearance through domestic mechanisms of Presidential Commissions of Inquiry since 1994.<sup>65</sup> Of these mechanisms, the LLRC has been the most important. Despite external and internal criticisms and concerns, the LLRC attracted hundreds of witnesses within Sri Lanka and gathered approximately 5,000 written submissions.<sup>66</sup> Significantly, for women who testified, participation was a chance to have a voice, receive recognition, and seize an opportunity to collect information on the whereabouts of missing persons. Most women who testified expressed that retributive justice was less important, and that their most immediate demands were information relating to missing family members and their return. The LLRC reinforced this emphasis on missing persons, assuring survivors in each setting that they were there to look into grievances and assert a right to truth in the final report.<sup>67</sup>

Commentators offer various reasons for female witnesses' emphasis on restitution over punishment and retributive justice. Preferences may, to some degree, be pragmatic, reflecting Tamil women's doubly marginalized gendered and ethnic minority statuses and their limited access to formal justice.<sup>68</sup> Yet, there are also normative and symbolic rationales in survivors' preferences for justice. In her

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<sup>62</sup> For a comprehensive policy-oriented analysis on transitional justice in Sri Lanka, see: The Centre for Policy Alternatives, "Transitional Justice in Sri Lanka and Ways Forward: Exploring Four Thematic Areas: Recruitment & Conscription of Child Soldiers, Disappearances, Sexual Violence and Internal Displacement" (Colombo, Sri Lanka: July 2015): 7. For an interesting perspective on the valuable potential of public testimony for war-affected women, see: Neloufer de Mel, "The Promise of the LLRC: Women's Testimony and Justice in Post-war Sri Lanka," *The International Center for Ethnic Studies Research Paper*, no. 4 (Colombo, Sri Lanka: Karunatatne & Sons (Pvt) Ltd, February 2013).

<sup>63</sup> The Office of the United Nations High Commissioner for Human Rights, "Promoting reconciliation, accountability and human rights in Sri Lanka," (February 24, 2014).

<sup>64</sup> The Office of the United Nations High Commissioner for Human Rights, "Human Rights Council adopts a resolution on reconciliation, accountability and human rights in Sri Lanka," (March 27, 2014).

<sup>65</sup> International Crisis Group Report, "Sri Lanka's Human Rights Crisis," *Asia Report*, no. 135 (June 14, 2007).

<sup>66</sup> Ministry of Defense, "Report of the Commission of Inquiry on Lessons Learnt and Reconciliation," November 2011, [http://www.defence.lk/warcrimes/lessons\\_learned\\_and\\_reconciliation\\_commission\\_final\\_report.html](http://www.defence.lk/warcrimes/lessons_learned_and_reconciliation_commission_final_report.html).

<sup>67</sup> De Mel, "Promise of the LLRC," 11-12.

<sup>68</sup> Jo Baker, "Women Left Behind: Truth Commissioning in Sri Lanka," *Groundviews*, November 11, 2011, <http://groundviews.org/2011/11/11/women-left-behind-truth-commissioning-in-sri-lanka/>.

interviews with women who testified at the LLRC in Batticaloa, De Mel finds that for women to “live *as though* their loved ones were not dead was also to live in hope.”<sup>69</sup> She further argues that the non-pursuit of retributive justice is a form of repair. For female survivors, everyday coping, resilience, and survival means putting the abuse out of the public eye and focusing on the everyday: “This requires the careful daily management of affect and emotion, including keeping their trauma subdued, and doing little things that make them useful to family and community.”<sup>70</sup> Focusing on the restoration of normalcy is not resignation, but a rejection of violence in the sense that it dramatically distances the act of violence from its potential ongoing effects on relationships and daily activities.

Nevertheless, the LLRC has been highly criticized. Criticisms concern both the LLRC commissioners themselves – some served as government officials during the war and defend the government’s actions – as well as the Commission’s mandate for focusing on investigating specific harm rather than the direct perpetrators of crimes. Significantly, from a gendered perspective, the Commission was criticized for not providing a space to investigate sexual violence. Despite widespread allegations of sexual violence during the last stages of the war, few women participants gave testimony of rape or sexual violence. This is largely attributed to the severe cultural stigmas surrounding rape, and that those accused of sexual violence tend to remain at-large or be released without bail. As De Mel notes with regards to the LLRC, “...neither the women’s organisations, nor female witnesses could bring themselves to name the crime. Nor did the LLRC, which had the power to do so, sufficiently explore allegations of sexual violence.”<sup>71</sup> Additionally, local civil society organizations argue that information about the Commission was limited for people in remote and interior-affected areas, and that many women were afraid to come forward, particularly in a context of continued militarization and ethnic tensions. Although the LLRC had no power to enforce restitutive justice and could only make recommendations, women who testified felt that the delay of restitutive justice was their largest frustration. For witness survivors, the LLRC was the most visible representation of post-war transitional justice, and had raised (and failed to meet) expectations.<sup>72</sup>

## Collective trauma and ritual healing

Formal mechanisms are by no means the only medium through which women and affected communities seek to facilitate recovery and redress. Psychosocial support

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<sup>69</sup> De Mel, “Promise of the LLRC,” 13.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid., 12.

<sup>72</sup> Rushdy et al., “Land Issues,” 55; De Mel, “Promise of the LLRC,” 17.

programs – like those provided by Shanthiham and through local hospitals, such as University of Jaffna, Vavuniya Hospital, and Mullaitivu Hospital – also provide mental health services to affected communities. Created in 1987 to train counselors and psychosocial workers in the North, Shanthiham initially focused its services on survivors of war, but it has since expanded its practice to deal with broader trauma, particularly in light of the South Asian tsunami and flooding in 2011. Psychiatrists and counselors at the Vavuniya Hospital and Mullaitivu Hospital also provide significant support through individual psychotherapy sessions and focus groups. The Family Rehabilitation Center originally emerged as a human rights organization, after which it expanded its work to focus on psychosocial services due to an increase in incidents of torture across the island. All of these organizations put women at the forefront of their work, setting up specialized support groups and targeted services for war widows and female heads of households, in particular.

The theory and practice of peacebuilding and transitional justice often put less emphasis on psychosocial support, partly due to its individualized and clinical character. The northern Sri Lankan case is, thus, of particular interest given the emphasis of the mental health community on collective healing and ritualized interventions. This communal focus occurred for multiple reasons. In general, there was a severe strain in psychological services within the country. In 2009, for example, there were just 26 psychiatrists and fewer psychologists, the majority working in the south of the country, to serve a population of nearly 21 million.<sup>73</sup> Additionally, stigmas surrounding individualized psychosocial support strengthened preferences for collective healing, including group therapy and non-formal ritual mechanisms.<sup>74</sup> The work of Shanthiham evidences this shift, changing course from a counseling agency model to a community-based model.<sup>75</sup> A key consideration is that Sri Lanka's most affected populations, particularly women, are often already marginalized. The individual provision of mental health services risks bringing additional stigma.

These factors reinforce an interest among community organizations and practitioners in the North for culturally mediated healing processes over individual psychosocial support.<sup>76</sup> Tamil psychiatrists, Daya Somansundaram and

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<sup>73</sup> Rachel Tribe, "Shanthiham," in *Scarred Communities. Psychosocial Impact of Man-Made and Natural Disasters on Sri Lanka Society*, ed. Daya Somansundaram (New Delhi, India: Sage Publications, 2014), 351. While a range of indigenous healers provide support, many find it hard to practice during the war due to limited mobility and strain on the social fabric.

<sup>74</sup> *Ibid.*, 350.

<sup>75</sup> *Ibid.*

<sup>76</sup> In the northern peninsula, mental health officials believe strongly in ritual healing. See: Shivathas Sivasubramaniam, interview by Rebekka Friedman, Vavuniya, Sri Lanka, July 27, 2015 and Mullaitivu, Sri Lanka, July 28, 2015; Daya Somansundaram, interview by Rebekka Friedman, Jaffna, Sri Lanka, July 20, 2015.

Sambasivamoorthy Sivayokan, document the creative use of drama narratives, laments, and arts, such as Koothu and Opari, as forms of healing.<sup>77</sup> Koothu is a form of traditional folk drama performed with music and dance with religious, epic, and historical themes, where well-known characters act out common cultural narratives.<sup>78</sup> For Somansundaram and Sivayokan, creative arts provide “valuable conduits for the expression of emotions, finding meaning and developing meaningful community narratives.”<sup>79</sup> Ritual processes offer relief from negative emotions and create hope and meaning. The process of collective participation, in their view, has further strengthened communal support networks and restored the social fabric in the communities where they work.<sup>80</sup> This has been particularly significant for women and their roles within these communities as important bearers and transmitters of culture.

Aadi Amavasai practices are used traditionally within Tamil communities to mourn ancestors, fathers in particular. Three years ago, communities resumed an annual ceremony in Mullivaikal, which was heavily hit by the war. In response to significant causalities in the area, local mental health staff and community leaders expanded the practice to include those mourning any immediate family member; many grieving widows participated. The ritual provides a crucial mourning space and fosters community solidarity. After a full night of theatre, mourners take part in an early morning seaside ritual process, including a ceremonial recitation of names of lost loved ones, bathing, and the consumption of specially prepared milk rice. Through the support of local mental health personnel, mothers from the Vavuniya Hospital’s psychotherapy group attend cultural events, including this year’s Aadi Amavasai ceremony in Mullivaikal. Discussions are also under way with mental health staff and religious leaders to set up an Aadi Amavasai ceremony to focus specifically on war-affected individuals. Another proposed initiative is the creation of a symbolic “holy zone” in affected areas, where families of the disappeared can pay respect to their missing loved ones.<sup>81</sup>

Although it is too early to evaluate the effects of ritual healing (such as Koothu and Aadi Amavasai), female interviewees in the North reported mixed feelings about

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<sup>77</sup> Daya Somasundaram and Sivayokan Sambasivamoorthy, “Rebuilding Community Resilience in a Post-war Context: Developing Insight and Recommendations – a Qualitative Study in Northern Sri Lanka,” *International Journal of Mental Health Systems* 7, no. 3 (2013): 13.

<sup>78</sup> *Ibid.*, 22.

<sup>79</sup> *Ibid.*, 7.

<sup>80</sup> *Ibid.*

<sup>81</sup> Sivasubramaniam, interview by Rebekka Friedman. For more information, see also: Somasundaram and Sambasivamoorthy, “Rebuilding Community Resilience,” 23.

their experiences.<sup>82</sup> In a focus group with war widows in Mullaitivu, participants, all of whom had lost several immediate family members, described strong stigmas within their own communities regarding their status, and, thus, expressed difficulty in attending communal events, such as Koothu. Societal expectations demand they continue to mourn by staying in the home and not giving the appearance of enjoying public events. A common concern amongst widows, including war widows, was that enjoying public events and moving on with their lives would give rise to negative gossip, especially because widows in these circumstances sometimes report feeling blamed for the deaths of their husbands. Of the female participants, none had found gainful employment, many made do with small temporary jobs, and all struggled with land titles and caring for injured family members. However, each also felt stronger on account of their increased responsibilities as breadwinners and providers for their families.

Despite their feelings of personal strength, these women also cited the negative impact of their status on their dependents as their primary concern. Their dependents already faced difficult marriage prospects as a result of their household's status, and would likely continue to struggle economically well into adulthood. Two widows in their sixties emphasized the *intergenerational* nature of the transmission of trauma and suffering. For both women, the loss of their husbands and sons compromised their daughters' marriage prospects, resulting in broken and prematurely terminated marriages for their daughters. Both eventually assumed primary responsibility for their grandchildren, which added to their responsibilities and raised additional pressures to protect their young dependents from negative gossip from neighbors. Echoing other war-affected female interviewees, many continue to feel severely isolated, despite the solidarity brought by communal healing. All the affected people interviewed still agreed that they felt happiest amongst themselves, and stressed the importance of providing a support base for each other.

Significantly, all of the women interviewed found psychosocial group support to be empowering and helpful in terms healing. It was especially important in creating a sense of solidarity and camaraderie that allowed group members to feel less alone and atomized. For many interviewees, the strongest relief came from sharing experiences with women in similar situations, expressly because women had been isolated, pressured not to share wartime experiences, and forced to keep a low profile. For victims, hearing the testimonies of others reinforced in themselves that

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<sup>82</sup> Focus group with ten female heads of households, interview by Rebekka Friedman, Mullaitivu, Sri Lanka, July 28, 2015. For more information, see: *Women in Need and the Women's Development Network*, interviews by Rebekka Friedman.

abuses were time bound events, rather than personalized experiences and traumas.<sup>83</sup> In Sri Lanka, for female survivors, speaking to other women with similar experiences and receiving acknowledgment (from community and mental health staff in this instance) helped counter negative gendered perceptions of widowhood, as associated with misfortune or deserving of their fate. This building of communal memory as a solidarity activity has come out in other contexts, for instance, in Ayacucho, Peru, where historical memory projects are ongoing, particularly at the communal-level in affected areas.<sup>84</sup> In northern Sri Lanka, empathetic bonds were particularly pronounced among war-affected women, who drew on their common experiences to offer mutual support. War-affected women kept close ties with others in similar situations; these bonds were often facilitated through their participation in community support services. These exchanges facilitated an atmosphere of understanding and warmth, even amid severe deprivation and marginalization. Interviewees described a sense of sisterhood with other women having undergone similar experiences.

This discussion highlights the double-edged sword of women's experiences of communal healing and recovery. Women play a vital role in communal healing, specifically as wives and mothers of missing men, and more generally as central players in building and sustaining the familial and communal fabric of society. As this research reveals, communal healing helps the affected from a personal psychological perspective, and represents a more culturally appropriate form of healing when compared to individual psychotherapy. At the same time, however, Sri Lankan women encounter specific gendered cultural obstacles to mourning publicly, making participation in communal healing difficult. Despite the benefits women expressed vis-à-vis communal healing, there are, thus, unique challenges in providing healing services to women in a transitional justice context because of the inherent contradictions in the cultural expectations placed on women regarding grief.

## Conclusion

This article detailed the chronic effects of violence on some of Sri Lanka's most marginalized stakeholders: war-affected women in the northern peninsula. Prolonged violence leaves both explicit legacies (physical injury, death, and the

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<sup>83</sup> In South Africa, psychologist Brandon Hamber relays that while giving testimony in front of the Truth and Reconciliation Commission was often challenging for victims, it still played a vital role through its contextualization of atrocities. For more information, see: Brandon Hamber, "The Need for a Survivor-Centered Approach to the Truth and Reconciliation Commission," *Community Mediation Update*, no. 9 (1996).

<sup>84</sup> Rebekka Friedman, *Competing Memories: Truth and Reconciliation in Sierra Leone and Peru* (Cambridge, United Kingdom: Cambridge University Press, 2016).

obstruction of access to livelihoods) and pervasive psychosocial damage. After nearly 30 years of violence, individual and collective traumas reinforce one another.<sup>85</sup> Untreated individual experiences of marginalization, atrocity, and suffering leave the fabric of society irreparably torn, and further entrench fatalism within affected communities. This is particularly harmful for women, who tend to be especially marginalized.

This article argued that tradition plays a mixed role in this context. On the one hand, as evidenced by the economic data in relation to female-headed households and interviewee reflections on ritual healing and psychosocial support practices, the end of war and the strengthening of communal identities further entrench social hierarchies and forms of exclusion, particularly around gender. Fears about communal stability and a desire to leave the war behind also further stigmatize widows, and bolster negative gendered perceptions of widows as associated with misfortune or deserving of their fates. On the other, culturally mediated practices provide an important inroad for healing and resilience. Activists and community organizations in northern Sri Lanka, particularly psychosocial support staff and women's organizations, play a critical role in promoting healing and community building within affected communities. By addressing the needs of women, in particular, they also strengthen communal resilience and help mend the fabric of a society torn apart by war.

While psychosocial and informal interventions fill a critical vacuum in the war-affected North, formal accountability measures will also be vital, particularly given the continued marginalization of victims. At present, psychosocial support has been acceptable to prevailing political currents, where the government's post-conflict reconstruction in the North has been framed as a diffuse policy of "reconciliation through development" rather than accountability for violations and war-related harm.<sup>86</sup> Ultimately, healing for war-affected women and their wider communities requires a holistic process, which furthers accountability and recognition, as well as political, social, and economic justice, and integration.

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<sup>85</sup> Joanna Quinn, "What is Reconciliation?" in *Reconciliation(s): Transitional Justice in Post-conflict Societies*, ed. Joanna Quinn (Montreal and Kingston, Canada: McGill-Queen's University Press, 2009), 181.

<sup>86</sup> Zinaida Miller stresses the importance of not simply outsourcing economic repair to development or post-conflict reconstruction "as a definitional project, transitional justice cannot stand aside from the distributional consequences of its inclusion or exclusion of particular questions." For more information, see: Zinaida Miller, "Effects of Invisibility: In Search of the 'Economic' in Transitional Justice," *The International Journal of Transitional Justice* 2 (2008): 291.

# Accessing Gender- Responsive Reparations in Kenya

Anna Applebaum and Briana Mawby

## Introduction

Following the election violence of 2007 and 2008, the government of Kenya engaged in reforms and peacebuilding processes that provided an opportunity for gender-responsive justice. In an effort to address the causes of the election violence, President Uhuru Kenyatta announced in March 2015 the creation of the Restorative Justice Fund (RJF), a reparations fund to disburse ten million Kenyan shillings over the course of three years to victims of the violence related to the 2007 elections. The creation of the RJF occurred against the backdrop of the stalled implementation of the Truth, Justice and Reconciliation Commission (TJRC) report, which recommended a need for transformative reparations to address the underlying causes of violence and the factors that exacerbate vulnerability, especially for Kenyan women. In this report, the TJRC emphasized the importance of redress for state-sanctioned discrimination against women, cultural practices and laws that adversely affect women's enjoyment of human rights, lack of representation for women in land dispute tribunals, inadequate maternal healthcare, and sexual violence perpetrated by state security agents over the course of the TJRC's forty-year mandate. While the RJF may have the potential to fulfill the TJRC's recommendation for meaningful reparations, it is not officially affiliated with the TJRC, and is instead housed in the Office of the President. As a government-led initiative intimately tied to the current political party in power, the RJF inhibits the ability of civil society and the TJRC to join in the process of addressing grievances. Though post-election violence reforms raised hopes for implementing meaningful and effective gender-responsive reparations, the window of opportunity is closing rapidly. Importantly, the necessarily wide-reaching reforms challenge long-standing power bases, and creating viable justice mechanisms is an inherently political task. As exemplified by the Kenyan case, there is an intrinsic challenge to implementing state-led transitional justice mechanisms with transformative goals. Such tension demonstrates the barriers to addressing the root causes of violence and fundamentally reshaping Kenya's governmental institutions. As of the time of this writing, the RJF is still being organized. Women's organizations<sup>87</sup> and human rights organizations are mobilizing to ensure the effective use of the funds, but it remains to be seen whether the RJF will be empowered to act, and the extent to which it will distribute reparations in a meaningful way. The RJF has been created in a political environment that is likely

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<sup>87</sup> Including organizations such as the National Victims and Survivors Network, Grace Agenda, and the Coalition on Violence Against Women.

to limit the Fund's ability to provide transformative justice<sup>88</sup> or yield real political action, and time is running out in its three-year mandate. Little to no media, practitioner, or academic work has focused on the RJJ, despite its potential impact on Kenyan communities. This article is, therefore, timely in providing a comprehensive examination of the RJJ and identifying the barriers and opportunities regarding the RJJ's implementation. Reparations processes have the opportunity to address the root causes of the cycles of poverty and conflict that disproportionately affect women. As such, reparations can be transformative. They represent a powerful political instrument with the potential to reorganize community relationships, and, thus, the balance of power within those communities. As the RJJ is being organized – and if resources are distributed according to the RJJ's mandate – the state should use a gender-responsive lens to disburse these funds that would be in accordance with the recommendations of the TJRC report more broadly. Doing so will address the specific needs of women victims and survivors across Kenya, while contributing to the development of sustainable peace.

The challenges facing the RJJ illuminate the tensions inherent in transitional justice processes. Transitional justice inevitably seeks to reform state institutions, which is a deeply political process, and, thus, transitional justice mechanisms themselves are politicized. Via both process and outcome, the TJRC report provided an inclusive accounting of forty years of cyclical outbreaks of violence, as well as the broader socio-political context of structural discrimination and abuses of the Kenyan state and society. Yet, the same factor that made the TJRC report successful – the depth and breadth of its examination – is also the reason it is currently stalled. Because of the political nature of its content, the TJRC report is now stymied in implementation by a lack of political will. This article recognizes the paradox involved in transitional justice mechanisms that aim for transformative justice, but whose accomplishments may be limited by the politics of achieving such goals.

This article aims to reveal the critically important role gender-responsive reparations play in transforming societies emerging from violence, and the inherent tension embedded in state-led transitional justice processes that articulate such transformational agendas. In this regard, the Kenya case stands as exemplar. To do this, the article will discuss the importance of gender-responsive reparations, the

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<sup>88</sup> Transformative justice seeks to address the broader socio-political injustices that inform the context in which human rights violations took place, as well as address the specific violations of perpetrator against victims. For more information, see: Anthony J. Nocella II, "An Overview of the History and Theory of Transformative Justice," *Peace & Conflict Review* 6, no. 1 (2011), <http://www.review.upeace.org/index.cfm?opcion=0&ejemplar=23&entrada=124>.

operation and findings of the TJRC, the creation of the RJF, and the politicized context in which transformative justice mechanisms must operate. Within this framework, what cannot be overlooked is that these events are happening against a backdrop of state co-optation of justice processes, which clearly limits the promise of such mechanisms to deliver on the transformative change Kenyan women and the Kenyan state sorely need.

## Gendering reparations

Reparations occupy a unique space within the universe of transitional justice; they attempt to attach material means of redress to the more abstract issues of reconciliation, peacebuilding, and economic stability. Reparations can be material or symbolic in form. Material reparations may include financial compensation, the restitution of land and property assets, and dedicated rehabilitative services to victims, which may include medical services, educational benefits, and psychosocial services. Symbolic reparations may include the creation of memorials or monuments, and gestures such as apologies. Ideally, both material and symbolic reparations are implemented meaningfully and responsively.<sup>89</sup> This means that the implemented reparations are powerful enough to compensate for material harms experienced, while also acknowledging and acceding to symbolic grievances. In reality, reparations mechanisms are often limited in their political and financial capabilities, with a resulting emphasis on more concrete material losses over the violation of rights. This paper posits that, in order to respond to victims' needs effectively and to provide a basis to protect human rights more broadly, reparations must take both into account. As its starting point, this paper maintains that reparations must be gender-responsive to be transformative, effective, and meaningful.

Rubio-Marín argues that “doing justice” requires not only action against the perpetrators of violence, but also taking action specifically for victims.<sup>90</sup> Recognition of victims and their rights includes the recognition of the wrongful violation of their rights, acknowledgement of state responsibility for these violations, recognition of the serious harms to victims as a result of these violations, and an attempt to help victims cope with some of these effects. To be effective, transitional justice mechanisms must subvert the structures of subordination that led to the violation

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<sup>89</sup> Fionnuala Ní Aoláin, Catherine O'Rourke, and Aisling Swaine, "Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice," *Harvard Human Rights Journal* 28 (2015): 21.

<sup>90</sup> Ruth Rubio-Marín, "Introduction: A Gender and Reparations Taxonomy," in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín. (New York, New York: Cambridge University Press, 2009), 2.

of their rights.<sup>91</sup> It is in this subversion that reparations can act as a liberating mechanism, especially for women. Women experience conflict in distinct ways, and they also play a key role in post-conflict processes, searching for victims, trying to rebuild families and communities, serving as the bearers of community memory, and mobilizing for justice, to name a few.<sup>92</sup> Reparations must take women's distinct needs and experiences into account to be meaningful and responsive to women victims, and, in doing so, help disrupt structures of subordination. Rubio-Marín argues:

The goals of a reparations program are to provide a measure of justice, albeit imperfect, to victims; but reparations are also intimately tied to building a just and peaceful foundation for a transitioning society. A program that fails to provide redress or justice to women in effect weakens the link between the goals of reparations and their contribution to the establishment of a democratic state.<sup>93</sup>

Gender-responsive reparations are a critical component of integrating symbolic action with material redress, of using material means to achieve abstract goals of reconciliation, peacebuilding, and successful transitions.

The object of gender-responsive reparations is transformation: complete redress of the feminized cycle of poverty and conflict.<sup>94</sup> Reparations can be politically transformative, both for individual women and entire communities. This requires more than a return to the pre-conflict status quo. Rubio-Marín argues:

One of the problems of conceptualizing reparations primarily as corrective actions to address every consequence of the breach of a person's rights in an attempt to revert her to the *status quo ante* (the situation prior to the violation) is that in many societies, even before the outburst of conflict or political repression, women were not treated as equal rights holders but rather were subject to different forms of discrimination and violence. Thus, when reparations are thought of as part of a political project about re-constituting a new (more legitimate, democratic, and inclusive) political order – one able to further horizontal and vertical civic trust – a window of

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<sup>91</sup> Ruth Rubio-Marín, "The Gender of Reparations in Transitional Societies," in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín, (New York, New York: Cambridge University Press, 2009), 71.

<sup>92</sup> *Ibid.*, 2-3.

<sup>93</sup> *Ibid.*, 3.

<sup>94</sup> The majority of people living in poverty are women, and their status as women denies them opportunities – to credit, land, inheritance, education, healthcare – to emerge from poverty. When women's lives are marred by conflict, this cycle of poverty is exacerbated through the differential impact of conflict on women. See: UN Women, "The Feminization of Poverty," Fact Sheet no. 1, (United Nations Department of Public Information, 2000), <http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm>.

opportunity opens up for women. A new space is created that allows for endorsing transformative reparations, which is to say forms of reparations that also aim to unsettle pre-existing gender hierarchies that were at the root of women's subordination and account for many of the reasons, forms, and effects of such violence.<sup>95</sup>

A key step forward for gender-responsive reparations was the 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparations. The Declaration emerged from a conference of women activists and international civil society leaders, and was driven by the belief that the needs of women who had survived sexual violence in conflict were not being addressed under existing reparations frameworks. The Declaration emphasizes the importance of including victims' perspectives when interpreting the right to a remedy and reparations for women and girls who have experienced sexual violence during conflict.<sup>96</sup> It is worth noting that although the Declaration's mandate specifically emphasizes victims of sexual violence, its language argues for transformative reparations for all women. The Declaration states:

That reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls; that reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of violations of women's and girls' human rights predate the conflict situation.<sup>97</sup>

The Declaration rests on two key principles: a just reparations program must transform an entire society, and the participation of women is key to this process.<sup>98</sup> The Declaration articulates that women are important actors in rebuilding stability within families, communities, and societies, and posits that the design, implementation, and evaluation of reparations processes must be participatory. Although women are key actors, the state bears the primary responsibility for justly distributing reparations. Moreover, the Declaration states that investment in development activities cannot replace reparations processes, as women and girls risk being excluded from the opportunities provided by development.<sup>99</sup> To be effective, reparations must target the root causes of vulnerability. Doing this

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<sup>95</sup> Rubio-Marín, "Gender of Reparations," 2003, 69-70.

<sup>96</sup> Valérie Couillard, "The Nairobi Declaration: Redefining Reparations for Women Victims of Sexual Violence," *The International Journal of Transitional Justice* 1 (2007): 446.

<sup>97</sup> *Nairobi Declaration on the Right of Women and Girls to a Remedy and Reparation*, (2007), accessed March 18, 2016, [https://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf).

<sup>98</sup> Couillard, "Nairobi Declaration," 450.

<sup>99</sup> Genevieve Renard Painter, "Thinking Past Rights: Towards Feminist Theories of Reparations," *Windsor Yearbook of Access to Justice* 30, no. 1 (2012): 17; *Nairobi Declaration on the Right of Women and Girls to a Remedy and Reparation*, (2007), 4.

includes a range of actions. Ní Aoláin, O'Rourke, and Swaine argue that truly transformative reparations should ensure fairness and nondiscrimination, address bias and stigma, respond in a timely way, consult and inform the affected population, employ processes that are mindful of fragile and challenging societal contexts, work at multiple levels and in different ways, generate national ownership, balance material reparations and symbolic reparations, and work alongside and in tandem with other transitional justice processes.<sup>100</sup>

Today, an opportunity for transformation is present in Kenya. It has emerged from several years of investigations into the state's violent and politically repressive past, and offers space to address the entrenched economic and political marginalization of Kenyan women if implemented effectively.

## The promises and pitfalls of transformative justice: Kenya's TJRC and RJF

The Kenyan Truth, Justice and Reconciliation Commission (TJRC) was a substantial undertaking, from its inclusive and gender-sensitive process to its detailed recommendations that address both the material harms and symbolic grievances experienced by Kenyan victims and survivors. The sections below explore the transformative potential of the TJRC's final report and its possible role in ending the systemic marginalization of Kenyan women, while also recognizing the political barriers that have unraveled much of that work. While the RJF offers limited space for realizing the transformative agenda of the TJRC, it remains the only available avenue for women to realize gender-responsive reparations in Kenya.

### *The Truth, Justice and Reconciliation Commission*

The call for a reparations fund emerged as a result of the TJRC, and was established after the 2007-2008 post-election violence in Kenya. The 2007 elections were contested, with widespread accusations of ballot tampering and corruption. Incumbent president Mwai Kibaki was declared the winner, and mass violence erupted quickly, lasting nearly a month. The resulting damage not only hurt the state's physical infrastructure, but it also destroyed inter-group trust among Kenyan citizens. The event also showed the public's disenchantment with the political establishment, regardless of party allegiance.<sup>101</sup> The violence was

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<sup>100</sup> Ní Aoláin, et al., "Transforming Reparations," 22-24.

<sup>101</sup> Susanne D. Mueller, "Dying to Win: Elections, Political Violence and Institutional Decay in Kenya," *Journal of Contemporary African Studies* 29, no. 1 (2011): 100-104.

perpetrated largely along ethnic lines, and resulted in the deaths of more than 1,000 people, the displacement of as many as one million people, and the rape of hundreds of women.<sup>102</sup>

The TJRC was established in late 2008 through the Truth, Justice and Reconciliation (TJR) Act, which emerged out of the national dialogue process that brought an end to the violence.<sup>103</sup> The Commission was created with a temporal mandate that reached far back in history, and was charged to investigate, analyze, and report upon gross violations and abuses of human rights, and investigate the causes and circumstances under which the violations and abuses occurred.<sup>104</sup> The mandate covered the following human rights violations: abductions, disappearances, detentions, torture, sexual violations, murder, extrajudicial killing, ill-treatment and expropriation of property, economic crimes (including grand corruption and exploitation of natural or public resources), the irregular and illegal acquisition of public land, the marginalization of communities, ethnic violence and tensions, and crimes of a sexual nature against female victims.<sup>105</sup>

The mandate emphasized gender-related issues and gender-sensitive practices, as well as the need for the Commission to collect data. As a result, the Commission collected and published ample information about women's experiences and needs; this information can prove useful for informing the potential workings of the RJJ. All of the objectives in the Commission's mandate included gender dimensions, and the mandate itself emphasized crimes of a sexual nature, especially against female victims. The implementation plan for the Commission's work incorporated gender-sensitivity into its four main parts: civic education and public outreach, statement-taking, collection of memoranda and other materials from representatives of different affected communities, and hearings.<sup>106</sup> To encourage men *and* women to offer their testimonies, the Commission ensured that approximately one third of its statement takers were women. Also, statement takers were trained to explicitly ask women witnesses about their own experiences so as to ensure that their testimonies did not exclusively focus on the suffering of their loved ones.<sup>107</sup> As another

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<sup>102</sup> "Ballots to Bullets: Organized Political Violence in Kenya's Crisis of Governance," *Human Rights Watch* 20, no. 1(A) (March 2008): 2, <https://www.hrw.org/sites/default/files/reports/kenya0308web.pdf>.

<sup>103</sup> The National Accord and Reconciliation Act is an act of the National Assembly of Kenya that re-established the offices of Prime Minister and created the offices of two deputy prime ministers. For more information, see: National Council for Law Reporting, "National Accord and Reconciliation Act," *Laws of Kenya* (2012), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalAccordandReconciliationAct\\_No4of2008.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalAccordandReconciliationAct_No4of2008.pdf).

<sup>104</sup> *The Truth, Justice and Reconciliation Commission Act*, no. 6 (2008): 5, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TruthJusticeandReconciliationCommissionAct.pdf>.

<sup>105</sup> *Ibid.*

<sup>106</sup> Mayesha Alam, *Women and Transitional Justice* (New York, New York: Palgrave Macmillan, 2014), 93.

<sup>107</sup> Truth, Justice and Reconciliation Commission (TJRC), "TJRC Final Report – Volume IIC," in *The Final Report of the Truth Justice and Reconciliation Commission of Kenya* (2013), <http://digitalcommons.law.seattleu.edu/tjrc/7>.

important gender-responsive decision, the Commission committed to providing women-only hearings. These hearings, held separately from the public mixed-gender hearings, created a space for women to share their experiences in a safer environment. The Commission also provided psychosocial support before and after the hearings.<sup>108</sup> The Commission investigated and demonstrated how women were victims of systematic marginalization within Kenyan society, as well as directly affected by state-sponsored violence.<sup>109</sup>

The Commission's initial mandate lasted two years to complete work and deliver the final report, but the mandate was ultimately extended over five years. In that time, the TJRC collected 42,465 statements – 16,503 of which were from women – and conducted public hearings all over the country.<sup>110</sup> The Commission also made specific decisions regarding the process and content of the final report that supported its gender mandate. The Commission decided upon an expansive definition of violations of bodily integrity (e.g., extrajudicial killings, enforced disappearances, detention, torture) by accounting for violations committed by non-state actors, as well as by state actors. This allowed for a more comprehensive report that responded to mandates 5(c) and section 6(h) of the Truth, Justice and Reconciliation Act, claiming the need to investigate respectively “rape and any other form of sexual violence,” as well as to “provide redress in respect of crimes of a sexual nature against female victims.”<sup>111</sup> Given that sexual violence was not solely committed by state actors, the expanded definition adopted by the Commission provided for more accurate findings and conclusions.

### *The report*

After four years of investigations, the Commission released *The Final Report of the Truth Justice and Reconciliation Commission of Kenya* on May 21, 2013. Covering 45 years of Kenyan history – and at an expansive 2,000 pages – the report chronologically and thematically addresses the perpetuation of violence and abuses by state and non-state actors alike. Chronologically, the report investigates violations and injustices during the British colonial era, as well as during the respective presidencies of Jomo Kenyatta, Daniel Arap Moi, and Mwai Kibaki. Thematically, the report engages its topics through a three-pronged approach:

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<sup>108</sup> TJRC, “TJRC Final Report – Volume IIA,” in *The Final Report of the Truth Justice and Reconciliation Commission of Kenya* (2013), <http://digitalcommons.law.seattleu.edu/tjrc/>.

<sup>109</sup> Alam, *Women and Transitional Justice*, 92.

<sup>110</sup> Kenya Transitional Justice Network, “Summary: Truth, Justice and Reconciliation Commission Report,” (August 2013): 1-2, <http://www.acordinternational.org/silo/files/kenya-tjrc-summary-report-aug-2013.pdf>.

<sup>111</sup> TJRC, “TJRC Final Report – Volume IIA,” 3.

violations of bodily integrity, historical injustices, and group oppression and discrimination.<sup>112</sup>

The wide range of women's experiences of violence emerges within this framework. Sexual violence – against both women and men – is specifically addressed in Volume IIA, Chapter 6,<sup>113</sup> under violations of bodily integrity, as a crime which “uses the victim's own sexual anatomy to dominate, suppress and control.”<sup>114</sup> The report also recognizes that while sexual violence is a serious human rights violation that disproportionately targets women, women's rights are also violated regularly and pervasively through discriminatory norms and practices that are embedded in cultural customs and enshrined in state law.<sup>115</sup> Chapter 1, “Gender and Gross Human Rights Violations,” of Volume IIC – which covers group oppression and discrimination – gives voice to the variety of injustices and human rights violations specific to women that took place during the time period of the Commission's mandate.<sup>116</sup> Although it is beyond the scope of this paper to explore in detail the findings of the report, others<sup>117</sup> note the report's success, despite numerous obstacles, at documenting the extent of atrocities committed against women – many of which were revealed for the first time through the work of the Commission.

Drawing upon the vast data collected through the TJRC's investigations, expert testimonies, and public hearings, the report also issued numerous recommendations that specifically address retributive<sup>118</sup> and transformative<sup>119</sup> justice for women. The report contains six specific recommendations to address human rights violations

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid., 707.

<sup>115</sup> TJRC, “TJRC Final Report– Volume IIC,” 1.

<sup>116</sup> Ibid., 1-156.

<sup>117</sup> Christopher Gitari Ndungú, “Lessons to be Learned: An Analysis of the Final Report of Kenya's Truth, Justice and Reconciliation Commission,” *International Center for Transitional Justice (ICTJ)* (May 19, 2014): 1-7, <https://www.ictj.org/publication/kenya-TJRC-lessons-learned>; FIDA Kenya, “TJRC Review Report Gender and Gross Violations of Human Rights: Focus on Women And Sexual Violence,” date accessed April 4, 2016, [http://fidakenya.org/wp-content/uploads/2013/10/TJRC-Report\\_Review-by-FIDA-Kenya.pdf](http://fidakenya.org/wp-content/uploads/2013/10/TJRC-Report_Review-by-FIDA-Kenya.pdf); Peter Nordström, “Gender and Reconciliation in the New Kenya: Equality at the Heart, Policy Brief,” in *The Institute for Justice Reconciliation Policy Brief*, no. 3 (July 2013), <http://ijr.org.za/publications/pdfs/Gender%20and%20Reconciliation%20in%20the%20New%20Kenya%20Policy%20Brief.pdf>.

<sup>118</sup> Retributive justice is the response to atrocities that focuses on accountability and punishment within the law and the compensation of victims, most often through national and international trials. For more information, see: Jon'a F. Meyer, “Retributive Justice,” *Encyclopedia Britannica*, <http://www.britannica.com/topic/retributive-justice>.

<sup>119</sup> Transformative justice seeks to address the broader socio-political injustices that inform the context in which human rights violations took place, as well as to address the specific violations of perpetrators against victims. For more information, see: Anthony J. Nocella II, “An Overview of the History and Theory of Transformative Justice,” *Peace & Conflict Review* 6, no. 1 (2011), <http://www.review.upeace.org/index.cfm?opcion=0&ejemplar=23&entrada=124>.

against women,<sup>120</sup> and eight specific recommendations to address sexual violence.<sup>121</sup> Only one recommendation, however, includes reparative<sup>122</sup> justice: “Provision of reparation for victims and survivors of sexual violence as set out in the Reparations Framework proposed by the Commission.”<sup>123</sup> The Reparations Framework classifies victims of sexual and gender-based violence as “extremely vulnerable individuals,”<sup>124</sup> and, thus, prioritizes them as recipients of individual reparations. However, the victims of gendered human rights violations so clearly defined in Chapter 1, Volume IIC fall under the least prioritized “systematic marginalisation”<sup>125</sup> category. As proposed, this framework creates a bizarre scenario for granting reparations in which sexual violence is considered a non-gendered violation.

Despite its shortcomings, the TJRC Reparations Framework did specifically reference the need for victims’ participation in the development and distribution of reparations. The Framework establishes that the Implementation Committee should consider five key principles in the design and implementation process:

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<sup>120</sup> The recommendations: 1. The President, within six months of the issuance of this Report, offers a public and unconditional apology for state’s sanction of discrimination against women. 2. The Gender and Equality Commission steps up measures to raise awareness about harmful cultural practices that adversely affect women’s enjoyment of human rights. 3. The Attorney General and Parliament expedites the enactment of the following bills relating to women’s rights: Marriage Bill, 2007; Matrimonial Property Bill, 2007; Family Protection Bill, 2007; Equal Opportunities Bill, 2007. 4. Within nine months of the issuance of this Report, the government, in conjunction with the UNHCR and the Uganda Government, conducts its own independent survey of the willingness of Kenyan Refugees in Uganda to return to Kenya. 5. Within twelve months of the issuance of this Report, the government shall ensure that the composition of land dispute tribunals meets the Constitutional gender ratio requirement. 6. Within twelve months of the issuance of this Report, the Ministry of Health adopts a Plan of Action outlining measures to be taken to increase and improve maternal health facilities in the country. For more information, see: TJRC, “TJRC Final Report – Volume IV,” 41.

<sup>121</sup> The recommendations: 1. The President, within three months, must make a public and unconditional apology for acts of sexual violence committed by state security agents during periods of generalized violence. 2. The formation of gender violence recovery centers in every county to provide comprehensive services for victims and survivors of sexual violence including medical and counseling services. 3. Provision of reparation for victims and survivors of sexual violence as set out in the Reparation Framework proposed by the Commission. 4. Establishment of the Office of the Special Rapporteur on Sexual Violence as recommended by the Commission of Inquiry into the Post-Election Violence within 12 months. 5. Formation of a new Code of Conduct and Ethics for the National Police Service Line by the National Police Service Commission, to be in line with the Constitutional values and principles and highlighting disciplinary and accountability measures for failure to adhere to the Code. 6. Prosecution of Nganda Nyenze who allegedly planned, supervised, and was involved in the Kavamba Operation leading to widespread rape and sexual violence against women. 7. Apology by the British government for the sexual violence committed against women in Samburu and Paikipia by British soldiers. 8. The Kenyan government should consider entering negotiations with the British government to seek compensation for victims of sexual violence committed by British soldiers in Samburu and Laikipia. For more information, see: TJRC, “TJRC Final Report – Volume IV,” 36.

<sup>122</sup> Reparative justice seeks to provide compensation for human rights violations. These can be economic reparations – such as monetary compensation – or rehabilitation reparations. For more information, see: “Reparations,” *ICTJ* (2016), <https://www.ictj.org/our-work/transitional-justice-issues/reparations>.

<sup>123</sup> TJRC, “TJRC Final Report – Volume IV,” 36.

<sup>124</sup> Allen Nagari, “Reparative Justice in Kenya: Building Blocks for a Victim-centered Framework,” *IJR Kenya Policy Brief*, no. 4 (October 2013): 6.

<sup>125</sup> *Ibid.*

how victims are currently mobilised; which victims are likely to be excluded from participation and how to include them in the matrix of actors; gendered perspectives and roles of victims in the reparations process; inclusion of marginalised victims; and capacity-building and local ownership of the reparations programme by victims to ensure sustainability of the benefit to the well-being of the victims.<sup>126</sup>

The overall report emphasizes the creation of a reparations fund – especially concerning collective reparations – as an inclusive process.

### *After the release*

The content of *The Final Report of the Truth Justice and Reconciliation Commission of Kenya* offers a reckoning of 45 years of state and non-state violence and – aided by the creation of transitional justice mechanisms – a vision of reconciliation. Nevertheless, the progress of the report stalled immediately after its release. Despite being published nearly three years ago, the report has not yet been adopted – or even debated – by Parliament. The release itself was marred by controversy. Initially scheduled for May 2, 2013, the release was postponed by nearly three weeks while it was reviewed by the President’s Office. During that time, five paragraphs were taken out of Volume IIB, specifically regarding land rights.<sup>127</sup> As a result, the three foreign members of the TJRC – Zambian High Court judge Gertrude Chawatama, Ethiopian diplomat Berhanu Dinka, and American law professor Ronald C. Slye – withdrew their signatures from the volume in question, and also published a dissent, which was also then removed from the final report.<sup>128</sup>

The report’s thorough content, including the specific names of several army commanders responsible for mass human rights violations and recommendations for investigating others alleged to have been involved in similar crimes, provides a powerful disincentive for elected officials to debate its content.<sup>129</sup> Furthermore, many involved in the post-election violence of 2007-2008 remain in positions of power, whether in government or as prominent figures of civil society. Indeed, with President Kenyatta himself as one of four Kenyans who faced International Criminal Court (ICC) charges of crimes against humanity regarding the 2007-2008

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<sup>126</sup> Ibid.

<sup>127</sup> Tom Maliti, “Kenyan President and Chief Justice Apologize for Past Injustices,” *International Justice Monitor*, last modified April 9, 2015, <http://www.ijmonitor.org/2015/04/kenyan-president-and-chief-justice-apologize-for-past-injustices>.

<sup>128</sup> “TJRC Dissent From the International Commissioners,” *Journalists for Justice*, last modified June 3, 2013, <http://www.scribd.com/doc/145383594/TJRC-Dissent-From-the-International-Commissioners>.

<sup>129</sup> “Kenya TJRC Final Report Deserves Serious Analysis and Action,” *ICTJ*, last modified May 2014, <https://www.ictj.org/news/ictj-kenya-tjrc-final-report-deserves-serious-analysis-and-action>.

violence,<sup>130</sup> there remains powerful political will against inviting further attention to the report's detailed discussion of accountability. Although the ICC has since withdrawn its charges against President Kenyatta,<sup>131</sup> the TJRC stalemate remains. In fact, the only action thus far undertaken by the Kenyan Parliament regarding the TJRC report has been, in December 2013, to pass an amendment to the original Truth, Justice and Reconciliation Act, established in 2008. The amendment ostensibly streamlined the process of implementation for the report (if ever passed by Parliament), but also included a provision that, in effect, allowed the National Assembly to revise the report's recommendations.<sup>132</sup> As the International Center for Transitional Justice (ICTJ) notes, "If the National Assembly were able to succeed in amending the report, Kenya will hold the unfortunate distinction of being the first country to alter an official truth report after its public issuance."<sup>133</sup>

The stalled TJRC report has meant little progress on meaningfully addressing the findings of the Commission and on the creation of transitional justice mechanisms. It has hindered the open, widespread acknowledgement of crimes committed by the Kenyan government, and denied victims an opportunity to seek redress. Despite these setbacks, there remain small areas of opportunity. Individuals have carried out actions that reflect the intent behind several of the report's recommendations, albeit not equivalent to the proposed changes outlined in the TJRC.

On March 7, 2015, Chief Justice Willy Mutunga made a public apology, the first such apology from the head of Kenya's judiciary system. He specifically noted that he was apologizing to fulfill the recommendation of the TJRC, proclaiming "...the TJRC recommends an apology from the Judiciary for its failure to protect the rights of Kenyans. Let me announce here our apology and our readiness to offer yet another apology when Parliament performs its duty by the report."<sup>134</sup> He also noted that the additional requirements to fulfill other recommendations were "not taxing."<sup>135</sup> In later public appearances, he reiterated

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<sup>130</sup> "High Stakes: Political Violence and the 2013 Elections in Kenya," *Human Rights Watch*, last modified February 7, 2013, <https://www.hrw.org/report/2013/02/07/high-stakes/political-violence-and-2013-elections-kenya>.

<sup>131</sup> "ICC drops Uhuru Kenyatta charges for Kenya ethnic violence," *British Broadcasting Corporation (BBC)*, last modified December 5, 2014, <http://www.bbc.com/news/world-africa-30347019>.

<sup>132</sup> "Concerns Over Bid to Amend Kenya Rights Report: Observers criticise bill that would allow legislators to water down measures aimed at bringing justice," Robert Wanjala, *Institute for War & Peace Reporting*, last modified August 13, 2016, <http://iwpr.net/report-news/concerns-over-bid-amend-kenya-rights-report>.

<sup>133</sup> Christopher Gitari Ndungú, "Lessons to be Learned: An Analysis of the Final Report of Kenya's Truth, Justice and Reconciliation Commission," *ICTJ* (May 19, 2014): 10, <https://www.ictj.org/publication/kenya-TJRC-lessons-learned>.

<sup>134</sup> Tom Maliti, "Kenyan President and Chief Justice Apologize for Past Injustices," *International Justice Monitor*, last modified April 9, 2015, <http://www.ijmonitor.org/2015/04/kenyan-president-and-chief-justice-apologize-for-past-injustices>.

<sup>135</sup> *Ibid.*

the apology.<sup>136</sup> These statements marked the first time that a recommendation from the TJRC had been implemented since its release nearly three years ago.

Following Mutunga's remarks, Kenyatta's 2015 State of the Union speech acknowledged that the history of Kenya has been marred by political violence and repression, and apologized on behalf of the state.<sup>137</sup> Kenyatta's apology, while garnering significant media attention, did not reference the TJRC or its objectives. Instead, the President announced a ten billion shilling reparations fund, the RJJ, to be distributed over three years to victims of the 2007-2008 post-election violence.<sup>138</sup> His announcement defined the RJJ as an initiative under the Office of the President, and as officially distinct from the recommendations of the TJRC.<sup>139</sup>

Indeed, the RJJ is structured very differently from the TJRC's recommended reparations initiative. The TJRC hoped to address violence and crimes perpetrated and supported by the government. However, the President's announcement of the Fund co-opted this process, a process intended to be carried out by an independent body – a body clearly separated from many of the actors responsible for or connected to the violence that the RJJ is mandated to address. Early fears about the RJJ as a mechanism to sideline progress on the adoption and implementation of the TJRC<sup>140</sup> prove relevant, as there has been little to no action on setting up the Fund since President Kenyatta's announcement in 2015. The RJJ has yet to establish either a legal framework or a reparations policy.<sup>141</sup>

While the RJJ has not yet been operationalized, it is one of the only avenues of potential recourse for victims of the post-election violence. For Kenyan women specifically, the RJJ, despite its limitations, remains one of few existing avenues to push for transformative change against a cycle of poverty and conflict. If implemented effectively, the RJJ could – by enacting gender-responsive reparations – open the door for addressing entrenched economic and political marginalization of Kenyan women. This outcome is not yet within reach, given the multitude of setbacks outlined above and the current political climate. Yet, any hope of such societal transformation rests with women in Kenya's civil society, who have

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<sup>136</sup> Ibid.

<sup>137</sup> Nancy Agutu, "Kenya: I am sorry for All the Past Wrongs, Uhuru Tells Kenyans in State of the Nation Speech," *The Star*, last modified March 26, 2015, <http://allafrica.com/stories/201503261717.html>.

<sup>138</sup> Maliti, "Kenyan President."

<sup>139</sup> Joyce J. Wangui, "Kenya: What Happened to Uhuru's Sh10 Billion Restorative Justice Fund?," *Capital FM*, last modified August 27, 2015, <http://allafrica.com/stories/201508280075.html>.

<sup>140</sup> Abdullahi Boru, "Will Kenya's restorative justice fund sideline truth commission findings?," *International Justice Tribune*, last modified May 4, 2015, <https://www.justicetribune.com/articles/will-kenyas-restorative-justice-fund-sideline-truth-commission-findings>.

<sup>141</sup> Wangui, "Kenya: What Happened."

mobilized successfully to advocate for such goals before and continue to push for this agenda, despite the obstacles before them.

### *The RJJF as an opportunity for action*

Women have long been important political actors in Kenya's robust civil society. In recent history, following the 2007-2008 election violence, women's coalitions lobbied for an inclusive national dialogue as part of the peace process, and for the formation of the TJRC. The Women's Consultative Group (WCG) built alliances across civil society to articulate an inclusive peace agenda, submitting their goals through a Women's Memorandum presented before the Kenya National Dialogue and Reconciliation forum. The four-point agenda that emerged from the national dialogue process comprises language and themes outlined in the Women's Memorandum. Similarly, in the buildup to the TJRC, Kenyans for Peace with Truth and Justice (KPTJ) – a coalition of civil society organizations led by multiple women's groups – launched a campaign for independent mediation that emphasized the inclusion of truth and justice mechanisms in the peace process. Also led by women, the National Civil Society Congress (NCSC) worked in concert with the KPTJ on these and other goals. Together, the NCSC and the KPTJ worked to reopen debate around constitutional reforms that would address the longstanding grievances that undergirded the violent eruptions of 2007-2008. Women also led other coalitions, such as Concerned Citizens for Peace (CCP), which fought for a seven-point peace agenda.<sup>142</sup>

The legacy of women's civil society activism continues today. Women's civil society organizations in Kenya are a significant part of the coalition championing the effective implementation of the RJJF; they are also continuing to mobilize for the adoption of the TJRC. A few examples illustrate civil society women's multifaceted engagement. Immediately after the announcement of the RJJF, in April 2015, the ICTJ organized workshops with women's civil society organizations. In these consultative forums, women discussed what effective reparations should entail, with the goal of contributing to the future formation of the RJJF's reparations policy.<sup>143</sup> Nearly six months after the announcement of the RJJF, the National Victims and Survivors Network<sup>144</sup> organized a two-day meeting to debate and act on the

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<sup>142</sup> Patty Chang, Mayesha Alam, Roslyn Warren, Rukmani Bhatia, and Rebecca Turkington, *Women Leading Peace: A Close Examination of Women's Political Participation in Peace Processes in Northern Ireland, Guatemala, Kenya, and the Philippines*, Georgetown Institute for Women, Peace and Security (2015), 79-81.

<sup>143</sup> "In Kenya, Organizing Women Victims to Help Inform future Reparations Policies," *ICTJ*, last modified June 9, 2015, <https://www.ictj.org/news/kenya-women-inform-reparations-policies>.

<sup>144</sup> The National Victims and Survivors Network is defined as: "Citizens of Kenya who are victims and survivors of diverse forms of human rights violations and historical injustices including, but not limited to, massacres, sexual violations, murder and extrajudicial killings, abductions, disappearances, detentions, ill-treatment and expropriation of property, economic marginalization, and acts of state repression including torture, cruelty and

implementation of the Fund and the TJRC report.<sup>145</sup> The conference concluded with the creation and distribution of a petition, later presented to the National Assembly, calling for the immediate adoption of the TJRC report, as well as immediate action to implement the RJJF.<sup>146</sup> The petition calls for these actions “to promote national healing and reconciliation by addressing the longstanding needs of the victims and survivors of diverse forms of gross human rights violations and historical injustices.”<sup>147</sup>

Despite these repeated calls to action from women within Kenyan civil society, no movement has occurred within the Kenyan government regarding the RJJF. What progress has emerged is disjointed and small, underscoring claims that the RJJF was intended to co-opt and limit the recommendations of the TJRC. Even other initiatives from the Kenyan government fail to recognize the RJJF as an established program. The government recently released a National Action Plan on Women, Peace and Security, which calls for, among other items, a reparations fund for victims of sexual and gender-based violence in conflict – yet, the National Action Plan makes no mention of the (theoretically) already-established RJJF or the reparations fund recommended in the TJRC report.<sup>148</sup>

Additionally, the timeline for implementation of the RJJF looks increasingly grim. As nearly one full year of the limited three-year mandate has passed without action, the RJJF is far behind on operations. Furthermore, the next round of Kenyan elections have been scheduled for August 2017. The politically tense and technically challenging work of distributing reparations is not an easy companion to election operations and campaign objectives, which themselves are deeply divisive and volatile within the Kenyan context. Thus, the upcoming elections pose a significant barrier in gathering the political power and public will necessary for successful action vis-à-vis reparations generally.

There thus exists a narrow window of opportunity for the implementation of the RJJF, the remaining pathway to accessing gender-responsive reparations and by extension realizing any of the transformative potential enshrined in the TJRC’s recommendations. Given their long tradition of mobilizing, women’s civil society

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degrading treatment.” For more information, see: “The National Victims and Survivors Network Petition,” *The National Victims and Survivors Network*, 2015, <http://www.jfjustice.net/userfiles/file/THE%20NATIONAL%20VICTIMS%20AND%20SURVIVORS%20NETWORK%20PETITION.pdf>.

<sup>145</sup> Wangui, “Kenya: What Happened.”

<sup>146</sup> “The National Victims and Survivors Network Petition.”

<sup>147</sup> *Ibid.*, 1.

<sup>148</sup> Skye Wheeler, “Dispatches: New Plan to Help Women in Kenya, but What About Rape Survivors?,” *Human Rights Watch*, last modified March 14, 2016, <https://www.hrw.org/news/2016/03/14/dispatches-new-plan-help-women-kenya-what-about-rape-survivors>.

organizations are the last best hope to lobby for and help shape the future of reparations in Kenya.

## Conclusion

In the aftermath of the election violence of 2007 and 2008, the Kenyan state, pushed by civil society actors, entered a period of peacebuilding and reform. This opening provided a meaningful opportunity for structural reform and gender-responsive justice, which could have begun the process of dismantling the longstanding gender hierarchies in Kenyan society. However, the objective of state reform challenges long-standing bases of power, and the window of opportunity for wide-reaching change is closing rapidly. The RJJF remains unstructured, and the distribution of funds in the near future seems unlikely.

As women in civil society continue to pressure the state to operationalize the RJJF, it remains unclear how effective such lobbying will be. If the RJJF were to become a significant instrument in providing reparations and promoting reconciliation in Kenya, gender justice would be a crucial component. While this would be a significant contribution to operationalizing gender justice, very little has been written regarding the RJJF and its potential in this regard. Future research is needed to determine how women's activism on the ground is currently working to shape the outcome of the Fund. Without rapid and sustained mobilizing by women in civil society, the RJJF may be caught in the same paradox as the TJRC – limited by the political nature of the processes they aim to transform. This seems an inherent tension embedded in the state-led transitional justice processes that seek to realize transformative agendas. The TJRC's embrace of a transformative mandate ultimately limits its opportunity for implementation; the lack of progress on the RJJF reveals a similar narrative of a politicized co-optation of transitional justice processes.

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