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PART I

Introduction

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INTRODUCTION

In the times that I have spent working in the delivery of humanitarian aid, I have had the privilege of meeting women in multiple contexts globally who recounted their experiences of being violated sexually, physically, and emotionally by armed actors in the context of political turmoil in their countries. At the same time, and also in the aftermath of these conflicts, many were also experiencing forms of endemic violence that were taking place in their homes and camps for the displaced and that were perpetrated by men who were family and community members, and even community leaders.

What is striking about being in conflict-affected contexts is observing the multifarious ways that violence can take place. Witnessing that violence through and with women and girls opens you up to a realization that in the conflicts of today, the catalogue of gendered violence is still being compiled. In one site, on one occasion, or in various locales and across many occasions, violence confronts women from multiple sources and directions. In any one day in a context such as Darfur, for example, one could observe reports of collective rape by armed actors taking place outside the camps; individual incidents of rape inside the camp of and by family and community members; honor-related harms and killings enacted by family members on teenage girls who became pregnant as a result of forced sex; sexual exploitation by community leaders bartering women's bodies for inclusion on food distribution lists; intimate partner violence; sexual exploitation by peacekeepers or by employers in communities with whom women found work near to the camps; and a litany of non-descript harms, including the invisible yet pervasive threat of violence that is simply a feature of life when you are one of those caught up in a conflict that is not of your doing.

Despite this litany of violence, the response of leaders within both the conflict-affected areas and the international community operating in Darfur (of which I was part) tended to concentrate on a singular typology of violence against women – the act of strategic rape by parties to the conflict. While prolific on a periodic basis in a

context such as Darfur, strategic rape was not, as evidenced, the only nor the most common form of gendered harm that I observed women and girls reporting to the services I managed. Yet, in that setting I witnessed male community leaders actively and collectively expressing outrage at the attacks perpetrated against women by parties to the conflict. There was no acknowledgment that the same kinds of harms were occurring in their own homes and in the camp community more broadly. It seemed politically adept to collectively condemn violence perpetrated by those in uniform, the “enemy,” while at the same time failing to acknowledge the violence against women they themselves may have been involved in.

The response of the international community was not very different. On one occasion, I turned to the UN human rights office for assistance with a number of teenage girls who were pregnant as a result of forced sex by members of the camp community (not armed actors). They had already been subject to torture-like treatment by male family members and were at risk of being killed for the sake of the family’s honor. I was informed such acts were not technically part of this office’s remit, as they did not fit within the parameters of international law it worked to. While this could be debated, it was clear that in reality the ways in which international law was constructed and interpreted could easily fail the women and girls who were experiencing a multitude of harms that may not have been enacted by parties to the conflict, but were occurring because of the exigencies of that conflict. International law applied to armed conflict offers a range of accountability measures that are tied to very particular actors, thresholds, categorizations, and patterns of violence. Its development has strengthened accountability for a range of crimes, including conflict-related sexualized violence.¹ It does not, however, deal with the complexity of the range of violence in the lives of women and girls caught up in conflict whose experiences, as outlined, might traverse its strict categorizations.

Transition from conflict presents similar and new challenges in this regard. While conducting ethnographic research on women’s use of informal justice for intimate partner violence (IPV) in Timor-Leste in 2003, I spoke with men who occupied roles as *lian nain* or “holders of the law” who oversaw these processes.² During the course of multiple conversations, a group of these leaders informed me that since the United Nations had arrived to administer their country in its transition to restoration of independence, “domestic violence” had become a problem in their communities. They stated that the UN had brought this form of violence to Timor-Leste. They were angry about the presence of this violence in their communities and blamed the international presence for its appearance. A correlation was clearly made between

¹ For an overview, see: United Nations, “Review of the Sexual Violence Elements of the Judgments of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone in the Light of Security Council Resolution 1820” (New York: United Nations Department of Peacekeeping Operations, 2010).

² Note that the term for this role varies across different communities within Timor-Leste. Aisling Swaine, “Traditional Justice and Gender Based Violence in Timor-Leste” (Dili: The International Rescue Committee, 2003).

the arrival of the UN, the very visible warnings of the perils of this newly named violence in posters that now colonized the walls of their community buildings, and the obligation on them to engage with an associated lexicon that had arrived with the international presence.³ The numerous posters and campaigning strategies used by international organizations to highlight and prevent domestic violence were obviously at the root of the opinions formed by these community leaders. These campaigns had used a legalistic term that was alien to Timorese culture and which these men, as leaders of their communities, could not identify with and thus understood this violence as something new. Yet this was in a context where violence against women in the home was not only prevalent,⁴ but was chronicled in cultural framing and understanding through the analogy that violence between men and women was simply part of the everyday, just like the daily clash of the fork and spoon against a plate.⁵ This violence had a place and meaning in that context, and these actors were regularly dealing with it in local justice forums.⁶ Their observations, however, were a fascinating example of how international legal categories and definitions may not always fit with the lived experience of violence and may jar with a contextual understanding of what violence is and means, and indeed how and why it might be understood or labeled in a specific way.

It is noteworthy that, at this time in Timor-Leste, parallel modes of prosecutorial and restorative transitional justice models were attempting to provide redress for conflict-time violations that had occurred during that country's 25-year resistance to occupation by Indonesia.⁷ Between the truth commission and the special panels courts in Dili, gendered harms were to some degree being acknowledged and recognized,⁸ yet little redress was delivered as the issue fell through a gap in accountability

³ These observations were made while conducting research for the following project: Swaine, "Traditional Justice and Gender Based Violence in Timor-Leste."

⁴ Michael Dibley, Iwu Utomo, Bruce Caldwell, Terence H. Hull, Judy Gold, Abdul Wahab, Kingsley Agho, and Catherine D'Este., "Timor-Leste 2003 Demographic and Health Survey" (Dili: Ministry of Health, National Statistics Office, Democratic Republic of Timor-Leste; University of Newcastle, Australia; The Australian National University, Australia; ACIL Australia PTY Ltd., Australia, 2003); "Timor-Leste 2009–2010 Demographic and Health Survey" (Dili: National Statistics Directorate, Ministry of Finance, Democratic Republic of Timor-Leste; ICF Macro Calverton, Maryland, USA, 2010).

⁵ Kathryn Robertson, "Gender-Based Violence in Timor-Leste: A Case Study" (Dili: UNFPA, 2005); UNFPA, "Just as a Spoon and Fork Always Touch Each Other: Domestic Violence in East Timor (An Assessment Tool for the First Roundtable Meeting for the Drafting of Legislation for Domestic Violence, June 2001)" (Dili: UNFPA, 2001).

⁶ Swaine, "Traditional Justice and Gender Based Violence"; Annika Kovar and Andrew Harrington, "Breaking the Cycle of Domestic Violence in Timor-Leste: Access to Justice Options, Barriers and Decision Making Processes in the Context of Legal Pluralism" (Timor-Leste: United Nations Development Programme, 2013).

⁷ For an overview, see: Susan Harris Rimmer, *Gender and Transitional Justice: The Women of East Timor* (London and New York: Routledge, 2010).

⁸ Ibid. The Commission for Reception, Truth and Reconciliation (CAVR). "Timor-Leste: Women and the Conflict" (Dili: Republic of Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), 2005).

between these two processes. To the keen observer, a broader chasm was evident in the distinctive and parallel means through which gendered violence as a whole was being addressed: one approach addressed endemic violence against women through long-term community- and national-level programming; the other, separately, attempted to secure redress for conflict-time incidents of violence through distinctive and temporary transitional justice mechanisms. The space in-between these concurrent approaches signifies, and is indicative of, the ways in which “extraordinary” conflict-related and the “ordinary” endemic forms of gendered violence are captured in international frameworks. Not only are these harms differentially positioned within global frameworks, their application works to essentially dichotomize women’s experiences of gendered harms within the one context and across contexts. While specific policy and programming tools, whether in justice or broader service provision should be tailored to the nature of differing harms, what are the implications of approaches that fail to comprehensively address the ways that women will experience fluctuations in the form, intensity, phases, and agents of violence across their life cycles?

Conflict-Related Violence Against Women: Transforming Transition is a product of these experiences, the questions they prompted, and the research that ensued. The book is first an exploration of conflict-related violence against women, and second, an assessment of the process of transition from conflict to peace through the lens of women’s experiences of that violence. Specifically, the book explores the potential for post-conflict transitional justice measures to transform the normative basis of the empirical reality of the gendered violence evidenced across the book. The book is based on a qualitative case-study-based assessment of violence against women in the conflicts and transitions that have taken place in Liberia, Northern Ireland, and Timor-Leste. The book’s central aim is to evidence a wider spectrum of conflict-related violence against women than is currently acknowledged and demonstrate the disjuncture between that empirical reality and the ways that international frameworks engage with gendered harms in transitional justice mechanisms. It confirms the need for approaches to understand and address conflict-time violence against women in ways that acknowledge their broader gendered basis and adopt transformational modes of accountability and redress.

HARM, GENDER, AND CONFLICT: LOOKING BEYOND PROSCRIBED NARRATIVES AND JUSTICE FRAMES

Over the last three decades we have come to know more about the harms that men, women, boys, and girls face during periods of armed conflict. While these are wide-ranging, and map onto the spectrum of civil, political, social, and economic rights violations, there remains a need to generate a more in-depth and expanded understanding of the physical violence that women are subjected to. In my estimation, this need is as urgent now as ever before, due to the contemporary ways that women’s

conflict-time experiences are increasingly conflated to a singular and reductive typology of wartime rape. Since first formally identified as used in systematic ways during the Yugoslav conflicts,⁹ *tactical* or *strategic rape* has achieved growing legal and political significance. This term does not refer to random or privately motivated acts of rape or other forms of sexualized violence; rather, *strategic* or *tactical* refers to the deliberate systematic use of that violence as a means of attack, enacted on a directed and collective basis by state and non-state groups. As defined by the UN Security Council, it is sexualized violence “when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations.”¹⁰ In the last seventeen years, the UN Security Council has adopted four “women, peace and security” (WPS) resolutions focused specifically on sexualized violence in conflict,¹¹ and since 2008 it dedicates one of its calendar days per year specifically to debating this issue;¹² the United Kingdom hosted the first global conference on the issue in 2014,¹³ with an associated declaration on its prevention also adopted by the G8;¹⁴ multiple states include it as a mandatory training issue for their peacekeepers;¹⁵ and in 2015, the United Nations General Assembly adopted a resolution designating June 19 as annual “International Day for the Elimination of Sexual Violence in Conflict.”¹⁶ These are not only extraordinary, but also rapid developments on the part of an international system that, prior to the new millennium and the slowly developing engagement on the issue by the ad hoc criminal tribunals of the 1990s, gave it little attention.¹⁷ However, while the evolution of the “strategic” and “weapon of war” framework has done much to advance attention to violence against women during wartime, it has also become a “pre-established framework for describing wartime

⁹ United Nations, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), S/1994/674, May 27, 1994.

¹⁰ United Nations Security Council Resolution 1820, S/Res/1820 (2008), op. 1.

¹¹ Ibid. United Nations Security Council Resolution 1888, S/Res/1888 (2009); United Nations Security Council Resolution 1960, S/Res/1960 (2010); United Nations Security Council Resolution 2106, S/Res/2106 (2013).

¹² The first open debate of the UN Security Council on women, peace and security focusing on sexual violence in conflict, took place on June 19, 2008. Since that date, an open debate on this topic has been held annually, for which the UN Secretary-General also submits annual reports to the Security Council.

¹³ See report of the summit: “Summit Report: The Global Summit to End Sexual Violence in Conflict London 2014” (London: UK Foreign and Commonwealth Office, 2014).

¹⁴ UK Foreign and Commonwealth Office G8, “Declaration on Preventing Sexual Violence in Conflict” (2013).

¹⁵ Nadine Puechguirbal, “Gender Training for Peacekeepers: Lessons from the DRC,” *International Peacekeeping* 10, no. 4 (2003).

¹⁶ United Nations General Assembly, “Resolution Adopted by the General Assembly on 19 June 2015: International Day for the Elimination of Sexual Violence in Conflict, A/Res/69/293,” United Nations General Assembly (New York: United Nations, July 13, 2015).

¹⁷ I note that the Beijing Platform for Action and preceding world conferences on women did recognize issues of women and conflict, and the impacts of sexual violence.

rape in all settings.”¹⁸ This has advanced a mantra that conflates women’s experiences of conflict broadly with this singular and specific act, both occluding and negating women’s wider experiences of both conflict and violence. How we have come to this moment, and what it signifies in respect of current theorizing and empirical understanding of women’s experiences of conflict, is a fundamental concern underpinning this book.

So, too, is the way that international legal and policy frameworks have generated specific narratives and categorizations of conflict-related violence that now determine our understanding of it. It is through burgeoning approaches to accountability that evidence of women’s experiences of conflict-related violence has most profoundly emerged in contemporary times. Through Transitional Justice mechanisms, now populous in multiple post-conflict sites globally, the harms women have experienced are increasingly documented and are becoming subject to specific treatment. Never before has such rich primary documentation of violent events been available. Consisting of judicial and quasi-judicial processes, transitional justice is generally employed as a political means to bring an end to political problems and violence.¹⁹ A range of tools or mechanisms have emerged as part of what may be conceived of as an overall package of approaches for facilitating societies’ movement from conflict to peace.²⁰ These include: international prosecutions; truth commissions; international and national investigatory commissions; national prosecutions; national lustration mechanisms; civil remedies; and mechanisms for the reparation of victims.²¹ Doris Buss has identified “post-conflict trials ... and truth commissions ... [as] the most productive, recent sites” where women’s experiences of conflict have become formally and legally documented and recorded.²² Since their proliferation, international criminal courts and truth commissions have become the principal sites through which data, evidence, and narratives of women’s experiences of war are formalized and made public. Criminal justice for rights violations produces very specific testimonies, judgments and categorizations of violence and remains one of the most contentious and complex challenges for societies in transition.²³ The turn toward criminal accountability in the 1990s resulted in a short-lived proliferation of ad hoc tribunals, namely the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for

¹⁸ Maria Eriksson Baaz and Maria Stern. *Sexual Violence as a Weapon of War? Perceptions, Prescriptions and Problems in the Congo and Beyond* (London and New York: Zed Books, 2013), pp. 42–43.

¹⁹ Fionnuala Ní Aoláin, “Political Violence and Gender During Times of Transition,” *Colombia Journal of Gender and Law* 15, no. 1 (2006), p. 840.

²⁰ See the following for an overview of the range of mechanisms currently in use globally: M. Cherif Bassiouni, “Accountability for Violations of International Humanitarian Law,” in *Post-Conflict Justice*, ed. Dean C. Alexander and M. Cherif Bassiouni (New York: Transnational Publishers, 2002).

²¹ Taken directly from *ibid.*, p. 399. ²² Buss, “Rethinking ‘Rape as a Weapon of War’,” p. 146.

²³ William A. Schabas, “Introduction,” in *Truth Commissions and Courts*, ed. William A. Schabas and Shane Darcy (Netherlands: Kluwer Academic Publishers, 2004).

Sierra Leone (SCSL) (and later the Extraordinary Chambers in the Courts in Cambodia). Through these tribunals, significant gains have been made in securing a degree of accountability for conflict-related violence against women. The documentation of organized and systematic sexualized assaults in the conflicts in the former Yugoslavia and in Rwanda during the 1990s prompted the beginnings of serious inquiry and consideration of gendered violence during armed conflict.²⁴ Decisions of these courts have determined sexualized violence as a war crime, a crime against humanity, and a component of genocide, giving recognition to tactical rape as an element of (some) women's experiences of armed conflict, and establishing it as a legitimate concern of the international community.²⁵ The adoption of the Rome Statute (1998) and the creation of the International Criminal Court (2002) signaled significant change, where crimes such as rape, sexual slavery, and forced pregnancy were given formal legal codification, solidifying the potential for international legal redress for these crimes.²⁶ The documentation of sexualized violence and its determination as elements of international crimes marked a turning point for how we understand this violence. It has also, however, inherently served to elevate attention to the importance of conflict-time tactical sexualized violence in ways that gendered violence outside of armed conflict has simply not received at global levels.

Truth processes, in their role in documentation and knowledge production on violent political events, are traditionally imbued with the function of facilitating a "new peaceful dispensation" following conflict.²⁷ Truth processes are considered to "provide a detailed account of patterns of abuse and create an accurate record of society's past."²⁸ In truth processes, "new facts are uncovered and previously unknown or hidden aspects of the past emerge."²⁹ Similar to tribunals, truth-telling processes have provided avenues through which first-hand accounts of conflict-related violence are formally documented. The increasing availability of reports from truth commissions provides an abundance of descriptive detail regarding the range of violence that occurs and the actors involved. There is also growing acknowledgment of the silences, where women's voices and experiences may not be heard, or where only particular typologies of violence are acknowledged, making evident the prevailing gaps in both research and accountability.³⁰ The "work of making

²⁴ Alexandra Stiglmayer, ed. *Mass Rape: The War Against Women in Bosnia-Herzegovina* (Lincoln, London: University of Nebraska Press, 1992).

²⁵ See, for example: Prosecutor v. Tadić, IT-94-1-A (July 15, 1999). Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Case Nos. IT-96-23-T and IT-96-23/1-T (2001).

²⁶ United Nations, "Rome Statute of the International Criminal Court," *United Nations Treaty Series*, vol. 2187, No. 38544, United Nations (International Criminal Court, July 17, 1998). See Articles 7 and 8 in particular.

²⁷ Marie Breen Smyth, *Truth Recovery and Justice After Conflict: Managing Violent Pasts* (New York: Routledge, 2007), p. 7.

²⁸ Fionnuala Ní Aoláin and Catherine Turner, "Gender, Truth and Transition," *UCLA Women's Law Journal* 16 (2007), p. 246.

²⁹ Breen Smyth, *Truth Recovery and Justice After Conflict*, p. 10.

³⁰ Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003).

women visible in these discourses ... in a politically divided, sectarian society in transition from armed conflict are complex and vital.”³¹ The “monolithic rape identity” of women that may result from certain transitional justice approaches “excludes women’s other pressing needs for equal opportunity and non-discrimination in their quest for livelihood, rehabilitation and reintegration into a post-conflict economy and society.”³² Where these mechanisms set the context for the onward post-conflict peacebuilding dispensation, there is pressing need to ensure they discern a fulsome picture of women’s experiences, rights violations, and arising interests. Whether the “new facts” and “the accurate record” produced by truth processes include women’s broad experiences of abuse or indeed situate those experiences within the constancy of violence in women’s lives is a concern of this book.³³ As are the ways in which the “truth” or a wider discourse that is established in the aftermath of a conflict will influence the focus of politics and peacebuilding, and whether legal and normative developments post-conflict will reflect the reality of gendered violence.³⁴

Important to note are wider developments in international law and policy that hold significant influence over categorizations of harm and that provide for accountability through these mechanisms post-conflict. The aforementioned WPS resolutions of the UN Security Council, beginning with the adoption of Resolution 1325 (2000), frame contemporary conceptual, legal, and policy nexuses between concepts of gender and armed conflict.³⁵ The UN Security Council has effectively led global normative engagement and development on issues of women and conflict broadly. It has situated its attention to violence against women within four specific resolutions that solely focus on sexualized violence, the definition of which is firmly situated within international humanitarian law (Resolutions 1820 (2000), 1888 (2009), 1960 (2010), and 2106 (2013)). As mentioned earlier, these resolutions have effectively propelled a distinctive discourse that is tied to the idea of tactical rape. While this form of violence requires capture and the work of the Security Council represents significant gains, normative frameworks composed around a specific typology of harm have the potential to engulf the policy space and inhibit broader debate inclusive of conflict-related gendered harms writ broad.

³¹ Eilish Rooney, “Women’s Equality in Northern Ireland’s Transition: Intersectionality in Theory and Place,” *Feminist Legal Studies* 14 (2006), pp. 354–55.

³² Chiseche Mibenge, “Investigating Outcomes of a Limited Gender Analysis of Enslavement in Post-Conflict Justice Processes,” *Journal of Peacebuilding and Development* 5, no. 3 (2010), p. 43.

³³ See, for example: Harris Rimmer, *Gender and Transitional Justice*; Ní Aoláin and Turner, “Gender, Truth and Transition.”

³⁴ Fionnuala Ní Aoláin notes that “by not assessing the structures and modalities of change that create and enforce exclusion for women in post-conflict and post-repression contexts, we fail to effect meaningful political and legal transformation for women”: Fionnuala Ní Aoláin, “Women, Security, and the Patriarchy of Internationalized Transitional Justice,” *Human Rights Quarterly* 31 (2009), p. 2.

³⁵ Kwadwo Appiagyei-Atua, “United Nations Security Council Resolution 1325 on Women, Peace, and Security – Is It Binding?,” *Human Rights Brief* 18, no. 3 (2011).

While these resolutions feature throughout the book, they are not its sole focus. Rather, sites of accountability through court proceedings and reports of truth commissions are instead of interest given their role in broader knowledge production for conflict-related violence against women. These processes are driven by and through modalities of public international law, which themselves are of specific interest to this book (and my interest herein is in international humanitarian, criminal and human rights law in categorizing crimes considered to constitute violations of an international nature and law's role in transition). Underpinned by resolute notions of what "conflict-related" violations might entail, international legal frameworks are found by feminist scholars to be largely devoid of a gendered understanding of conflict and of the ways that women's experiences of "conflict-related" harms might differ from historic rigid and formalized regimes of regulating international crimes.³⁶ The categorization of violence in international law and policy has become a hot debate for feminist scholars as they grapple with what kinds of approaches to documentation and accountability best serve the interests of women. The function of public international law implies strategies that elevate particular offenses and particular actors responsible for crimes in prosecutorial approaches.³⁷ Feminist legal theorists have highlighted the gendered ways in which these laws have been developed; the resulting ways in which the public/private distinction between forms of harm has been sustained; and the precedence given to civil and political rights so that the harms that men articulate receive most attention.³⁸ It has been observed that these laws create a "hierarchy of violence," which, in regards to gendered violence, has largely meant that systematic public rape has been given more attention and credence than the violence that appears in women's everyday lives.³⁹ International law frameworks focusing on conflict-time violence and the behaviors of armed actors are a necessity in ensuring that the harms and crimes specific to those contexts are subject to modes of accountability. Through this very necessity however, arises a conundrum – how to grapple with the distinction that is thereby made between differing forms of violence, public and private, conflict and non-conflict, that one woman might experience across a lifetime, or in one conflict-time moment? International approaches to gendered harms have arguably failed to comprehensively address the range and complexity of violence present in women's lives, namely its rootedness in structural inequalities,

³⁶ Fionnuala Ní Aoláin, "Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-Conflict Societies," *Queen's Law Journal* 35 (2009); Doris Buss, "The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law," *Windsor Yearbook of Access to Justice* 3 (2007); "Rethinking 'Rape as a Weapon of War'," *Feminist Legal Studies* 17 (2009); Fionnuala Ní Aoláin and Eilish Rooney, "Underenforcement and Intersectionality: Gendered Aspects of Transition for Women," *The International Journal of Transitional Justice* vol. 1 (2007).

³⁷ Harris Rimmer, *Gender and Transitional Justice*, p. 16.

³⁸ Hilary Charlesworth and Christine Chinkin, "The Gender of Jus Cogens," *Human Rights Quarterly* 15 (1993).

³⁹ Carolyn Nordstrom, *Shadows of War: Violence, Power, and International Profiteering in the Twenty-First Century* (Berkeley, Los Angeles, and London: University of California Press, 2004), p. 58.