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Proceeding with Caution: An Analysis of Women in Tennessee without *Roe v. Wade*

Christina Hicks-Goldston, Kiana Simmons, and Conchetta Willis
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Abstract

This research applies a rhetorical, legal, and socio-economic analysis to the state of Tennessee's abortion laws, which are the strictest laws in the United States as of August 25, 2022. Tennessee abortions laws have no exceptions for cases of rape, incest, or maternal health, and the laws' impact on women will be severe, with women living in poverty or as members of marginalized communities impacted disproportionately. This research proposes a communication strategy for empowering women via information about how to operate within the post-Roe landscape while remaining healthy and safe to be presented to representatives at reproductive freedom organizations (the Southeastern Alliance for Reproductive Equity, composed of four anchor groups, Health & Free Tennessee, SisterSong Women of Color Reproductive Justice Collective, SPARK Reproductive Justice NOW, and the Women's Rights and Empowerment Network), and other women's groups serving the community for effective dissemination of the message. The communication plan combines rhetorical strategy emphasizing women's health as the primary concern rather than imposed public opinion morality, a legal strategy of providing all necessary information for operating within the law while retaining body autonomy, and a socio-economic strategy that revises existing dialogues between the medical community and marginalized women. This research includes content outlines for informative presentations, media communication strategies, and suggested resources for women.

Keywords*: reproductive freedom; abortion; women's health*

Proceeding with Caution: An Analysis of Women in Tennessee without *Roe v. Wade*

When the current United States Supreme Court overruled *Roe v. Wade* on June 24, 2022, thirteen abortion "trigger" laws (laws are enacted by specific circumstances) went into effect in Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming (Robert, 2022). The most restrictive abortion law in the United States is in Tennessee, in which termination of pregnancy is illegal from the moment of fertilization, with no exceptions for cases of rape, incest, or maternal health as of August 25, 2022 (Wadhwani and Guzman, 2022). The authors of this paper conclude that women's rights are moving in reverse rather than forward with the loss of body autonomy, and women need thorough information about the law's legal, financial, and practical impact on their lives in order to make educated decisions. This research provides an education plan for women that would assist in achieving that goal. This research proposes that women should direct the conversation about the impact of Tennessee's termination of pregnancy ban on women's physical and mental health, women's legal status, and their socio-economic well-being by organizing and disseminating all relevant information and resources via organized women's reproductive freedom organizations and other groups dedicated to empowering women.

Literature Review: Women's History as Feminist Rhetoric

The history of Feminist rhetoric includes varied perspectives, analytics, and conclusions about how to provide, examine, remember, and raise the female voice in society. A review of Feminist thought about raising women's voices in a variety of situations provides insight into women's roles in a democratic yet patriarchal society. When addressing "affective-discursive" proceedings in International Relations, Åhäll (2018) proposed a Feminist methodology for analyzing the "politics of emotion"; according to the author, a Feminist perspective could achieve better understanding of emotions involved in situational analysis of international politics. The authors of this paper propose applying a Feminist perspective to domestic policy

regarding termination of pregnancy legislation for the purpose of providing a better understanding of a highly emotional issue. Women's lack of inclusion in civic discourse was a core premise for Kohrs-Campbell (2010), who acknowledged the rich rhetorical history of men, but found no antecedent for women largely because men prohibited them from speaking, creating social obstacles for women wanting their voices to be heard. While civic discourse proved problematic, academic discourse remained limited as well. Meyer (2007) examined Feminist rhetorical scholarship and determined that it lacked prominence in academic rhetorical discussions, continued to be referenced as a "newer" form of scholarship, and failed to define and resist commentary on power structures constructed by male agency. Talbot (2018) examined the concept of personhood rhetorically and legally and discussed the mandatory ultrasound for physicians legally terminating pregnancies in North Carolina at the time (known as the Display of Real-Time View Requirement, which was ruled unconstitutional in 2018). The author applied two posthumanist theories, Latour's Actor-Network-Theory (ANT) and Barad's Agential Realism. (Talbot, 2018). In both cases, the "personhood" rights of the mother equal any attached to the fetus. In examining Feminist rhetoric, the authors argue that women faced reduction rhetorically, physically, and historically by patriarchy. A specific form of rhetorical strategy should be applied to the discussion surrounding women's body autonomy in the medical condition of pregnancy.

A Call for the Jeremiad

The authors of this research propose that the jeremiad format best serves Feminist Rhetoric in the post *Roe v. Wade* political climate. Research reveals the jeremiad as useful in a variety of rhetorical situations. Bartsch, DiPalma, and Sells (2001) proposed that the writings of Feminist Donna Haraway were examples of a postmodern jeremiad, based on her rhetorical content mimicking the jeremiad format of: (1) warning of literal and figurative annihilation; (2) calling for a divine mission; and (3) the value of community based on shared politics. Certainly, Haraway's writings would consider the current state of restricted body autonomy and health risks for women a part of literal and figurative annihilation. Bates' (2005) analysis of former Senator Bill Frist's 2001 speech to the American Society of Thoracic Surgeons relates to this research, in which Frist argued for American physicians to have more active participation in preserving the health of the people and control of the medical system. For Bates, Frist's speech was a jeremiad warning against politicians telling physicians how to practice medicine – something discussed in this paper, in which doctors are prevented by the law from choosing the traditional medical choice of termination of pregnancy in a situation such as an ectopic pregnancy, because the fetus is growing outside of the womb and will not live. Buehler (1998) analyzed the successful use of a jeremiad by then-president Theodore Roosevelt at a 1908 Governor's Conference on Conservation to persuade the attendees to create and follow a national conservation policy which was not popular at the time (the jeremiad is often a method of persuading against definite opposition rather than a passive audience). Murphy (1990) offered Robert F. Kennedy's 1968 eulogy for Reverend Martin Luther King, Jr. in Indianapolis following King's assassination as an example of a successful jeremiad. Murphy noted the jeremiad format: (1) explaining a precedent establishing the communal norm; (2) acknowledging community failure to adhere to that norm, resulting in catastrophe; and (3) offering a prophetic vision of a better future attached to a return to the valued norm (Murphy, 1990). Opie & Elliot (1996) concluded that the jeremiad is a popular form of rhetoric in American politics and discourse, and is used frequently in reference to civic or communal concerns such as the environment, but as this research reveals, the jeremiad is also applicable to civil rights or Feminist issues.

Proposed Rhetorical Strategy

A jeremiad speech regarding women's rights surrounding a termination of pregnancy would be arranged as follows:

(1) **Recognize women's legal status since 1973** – women enjoyed a previous status of an independent agent with body autonomy (and assumed continuance of that status) in the United States, which was (and is) a necessary part of their rights as U.S. citizens.

(2) **Examine the effects of trigger laws** -- The far-reaching consequences of the new Tennessee trigger laws will include possible incarceration for physicians who terminate pregnancies to save the mother, and economic hardship for women in a variety of situations in which they have no means for childcare (medical issues, work conflicts, etc.)

(3) **Recognize the conditions surrounding the loss of Roe v. Wade** -- Women must unite, vote, educate the populace, and support the women in medicine providing care until they achieve their desired outcome.

Any rhetorical strategy should be directed by women's experiences and concerns about termination of pregnancy law. Feminist rhetoric requires a specific dialogue requiring awareness of pregnancy as a *medical condition* for nine months before childbirth – with the emphasis being on *pregnancy as a state of health,* much like other states of health or medical conditions (cancer, an autoimmune disease, a broken bone, etc.) Words matter -- the phrase "termination of pregnancy" should replace the polarizing word "abortion," as "termination of pregnancy" re-directs the conversation about women's bodies to its accurate positioning – terminating or attending to a medical condition. The Feminist rhetorical strategy must continue emphasis on pregnancy as a medical condition, emphasis on women's voices at the center of the argument (specifically those voices operating from a rhetorical position of body autonomy based in medical science rather than disinformation, misinformation, or public opinion morality) and on the intersectionality of all members in the community of women who know their situation can be better.

The Legal Implications

Recently, two laws have been passed regarding women's access to terminating a pregnancy. Following the June 2022 reversal of *Roe v. Wade*, Tennessee's SB 1257 Human Life Protection Act went into effect on August 25 of the same year. Under Code Section 39-15-216, a person shall not perform or induce, or attempt to induce, an abortion upon a pregnant woman whose unborn child has a fetal heartbeat. At least one parent must consent for an abortion to be performed on a minor, with no parental consent necessary if an emergency; a minor may petition the court for a waiver (TN Code 39-15-211, 2018). The penalty for disobeying the law is being charged with a Class C Felony; a Class C Felony is punishable by up to 15 years in prison (Tamburin, 2022). The law contains no true exceptions, and instead lays a path for providers (physicians) to defend themselves in court by arguing that terminating the pregnancy was necessary because the pregnant person's life was in jeopardy or if there was a "serious risk of substantial and irreversible impairment of a major bodily function" (Tamburin, 2022). Such rhetorical vagueness of the law places all the risk on the health care provider, who could be found guilty if a jury does not agree with the conditions surrounding a pregnancy termination (Galofaro, 2022). Yet, by allowing women to risk death due to ectopic pregnancies, infection, or sepsis, a physician is in direct conflict with the professional ethic of doing no harm to the patient (Galofaro, 2022). The specific example of an ectopic pregnancy is highly problematic with regard to the new law. An ectopic pregnancy occurs when a fertilized egg implants and grows outside the main cavity of the uterus. Tennessee's abortion ban defines pregnancy as being established the moment that the egg is fertilized by sperm; technically, by definition, an ectopic pregnancy would still contain a fertilized egg. (Wadhwani, 2022).

The other law addressing Tennessee women's access to termination of a pregnancy is the recently-passed HB 2416, known as *Tennessee Abortion-Inducing Drug Risk Protocol Act,* requiring any abortion-inducing drug to only be distributed by a doctor or physician that works in a medical facility (TN Code 63-6-1104, 2022). HB 2416 restricts women from accessing abortion medication via mail. The physician must be in the physical presence of the pregnant woman for an in-person examination in a medical facility, and the physician must have the adequate credentials/training required for performing abortions to assess any complications that may result from the medical procedure. The law also requires physicians to set up a

follow-up appointment around 7-14 days after the drug was administered to ensure that the pregnancy was "completely terminated" so that the physician is able to "assess the degree of bleeding" (TN Code 63-6-1104, 2022). The law took effect on January 1, 2023, with an included penalty for violation of HB 2416 being a Class E felony and maximum fine of $50,000 (TN Code 63-6-1104, 2022). In addition to the felony charge and the fine, the physician is subject to possible malpractice for any damages, whether punitive or actual (TN Code 63-6-1104, 2022). The physician is also subject to professional discipline, including license revocation or suspension, wrongful death action lawsuit, and a possible injunctive relief if the physician violated the law again (TN Code 63-6-1104, 2022).

Socio-Economic Impact

According to research by the Economic Policy Institute, abortion access is an economic issue because access to, and inversely, denial of, abortion services directly impact labor market experiences and economic outcomes (Banerjee, 2023). As reported in the EPI research from a study by Robbins and Goodman (2022), termination of pregnancy access is crucial for policymakers to consider because of its impact on racial and economic disparities, in addition to the limitations on reproductive health and freedom. A CDC report from 2019 stated that Black women made up 38.4% of the women obtaining abortions in the 30 states that reported data on the demographics of women terminating pregnancies (CDC, 2021). The rate of Black/African American infants dying compared to White infants must be included in the discussion. Racial disparity in childbirth has long been an issue in this country, with the CDC reporting deaths for Black mothers as two to four times more likely than White mothers. Systematic racism is the number one reason for maternal vulnerability for Black women (www.cdc.gov). Avoiding racism is difficult when looking for quality prenatal care; the preconceived notion of being "tough" has resulted in Black women being three times more likely to die in childbirth than White women (www.cdc.gov). An ignored request for help is a familiar story among Black women experiencing pain, bleeding, or other unexplained conditions during and after labor. A 2016 study found that half of the first and second-year medical students believed Black people have "thicker skin than White people" (https://www.pbs.org). For that reason, if a Black woman suffers from a critical medical condition due to a complicated pregnancy, she will face scrutiny for bringing attention to her pain. However, whether a physician should treat the patient by performing an induced labor to end the pregnancy is a big issue. The March of Dimes organization, in partnership with Surgo Ventures, examined determinants of maternal health using the **Maternal Vulnerability Index (MVI)**. The MVI is the first county-level, national-scale tool to identify where and why mothers in the U.S. are vulnerable to poor pregnancy outcomes and pregnancy-related deaths. The MVI includes known clinical risk factors and critical social, contextual, and environmental factors influencing health outcomes. Differences in counties are measured using numerous factors broken into six areas: (1) reproductive healthcare; (2) physical health; (3) mental health and substance abuse; (4) general healthcare; (5) socioeconomic determinants; and (6) physical environment. The MVI assigns a score of 0-100 to each region, where a higher score indicates greater vulnerability to adverse maternal outcomes. Tennessee's current score is 86.0, meaning access to quality healthcare before, during, and after pregnancy results in medical complications. The causes of the score are inadequate prenatal care and insurance policies that do not cover preventative care during pregnancies. On top of vulnerability to mothers, the state has an 11.3% preterm birth rate and a 6.2% infant mortality rate. In 2020, 502 infants did not reach their first birthdate because of congenital disabilities, low birth weight, sudden infant death syndrome (SIDS), injuries, or maternal pregnancy complications (https://mvi.surgoventures.org/). In summary, Tennessee's termination of pregnancy law places physicians at legal risk, patients at medical risk, and the socio-economic impact will be negative, particularly on minority women. The proposed education strategy is in the following paragraph.

Information as Empowerment Campaign and Strategy

The educational strategy begins with coordinating the information into specific topics and arguments to be presented by women to organizations assisting women in the community, such as the Southeastern Alliance for Reproductive Equity (composed of four anchor groups, Health & Free Tennessee, SisterSong Women of Color Reproductive Justice Collective, SPARK Reproductive Justice NOW, and the Women's Rights and Empowerment Network), as well as other organizations, such as the Young Women's Christian Association (YWCA), so that every woman in attendance would be aware of the law's legal parameters, the rights of the patient, and the law's impact on society. Additionally, a social media platform or website would serve as a virtual clearinghouse of information for women to access information about particular topics in pdf format for downloading, and brief "info posts" to Tik Tok. Informational videos on YouTube would also be utilized. The intended goal of the information campaign is revising the current situation in which the voting population does not know the language and impact of the new laws. Other intended goals are raising awareness of women's history of successful social change campaigns and encouraging women to be community change agents. The authors of this research are not advocating for termination of pregnancy as a single goal; the advocacy is for freedom of choice for the physician and patient to care for the woman's personal and reproductive health. The purpose of this research is to argue that every woman (physician and patient) be thoroughly informed about the laws' legal and socio-economic impact so that women make educated decisions -- information is empowerment.

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Meaningful Participation of Girls as Victims of Violence in Legal Proceedings, under International Human Rights Law and Some Recommendations for Viet Nam.

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Abstract

The report "A Familiar Face" published by UNICEF in 2017 estimates that globally, around 15 million girls aged 15 to 19 have experienced sexual violence in their lifetime and most of them did not dare to tell anyone due to various reasons. With such traumatic experiences, children in general, and girls as victims of violence, need to be handled by a child–friendly and gender–sensitive justice process that will help girls effectively engage in the legal proceedings, build trust, and encourage them to report the case. In this system, their right to be heard in a safe environment with respect and compassion from authorities is protected. However, in a world where gender-based violence and gender discrimination still exist, girls continue to face secondary traumatisation and stigmatisation which prevent them from speaking up. Article 12 of the United Nations Convention on the Rights of the Child obliges State members to provide children with "the opportunity to be heard in any judicial and administrative proceedings affecting the child". State members shall not passively hear the child but actively establish judicial procedures, mechanisms, human resources, and other elements to be more friendly and respond better to the special needs of girls as victims of violence. Under the context of legal and judicial reform in Viet Nam to build a child-friendly and gender-sensitive justice system that strengthens access to justice for children and girls in particular, this paper will focus on: (1) analysing the right for girls as victims to be heard (right to participation) in the justice process under international human rights law; (2) analysing the achievement of, and remaining challenges for, promoting the meaningful participation of Vietnamese girls who have been victims of violence in Viet Nam's justice process; (3) proposing recommendations for Viet Nam to strengthen the right to participation of girls as victims of violence.

***Keywords**: girls, victims, right to participation, access to justice, Viet Nam.*

The right of the child to participation is one of four core principles of the United Nations Convention on the Rights of the Child (UNCRC). Article 12 of the Convention obliges State members to establish mechanisms to receive and take children's opinions into account in the decision-making process of any matters affecting them. This guarantees that State members shall not disregard the voices of child victims based on their age or their dependency on adults. Globally, girls are still subject to many types of violence and stereotypes which have long-lasting consequences on their comprehensive development and prevent them from reporting the perpetrators. Therefore, State members shall not passively hear the child but actively establish judicial procedures, mechanisms, human resources, and other elements to be more friendly and respond better to the special needs of girls as victims of violence.

I. The right to participation of girls as victims of violence in criminal justice process under international human rights law:

1. Girls as victims of violence and their experiences being in contact with the justice process:

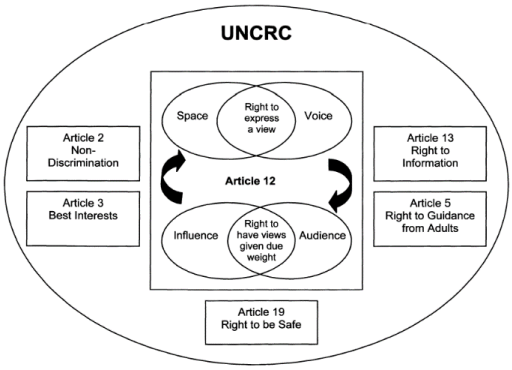
According to a report by UNICEF (2017), data from 30 countries shows that only 1 percent of adolescent girls who were sexually abused reported their cases to seek professional help. Children may not speak up because they may feel guilty, blame themselves for their experience, fear they will not be believed, worry they will ruin their family's reputation, worry they could hurt their loved ones, or have received threats from the perpetrators (Paine & Hansen, 2002). Culture, gender stereotypes, conservative attitudes, patriarchy, and sexism in the community are also contributing factors to the

feeling of shame, wanting to protect a girl's dignity and family's reputation, and fear of being stigmatised (Alaggia, Collin-Vézina, & Lateef, 2019; Alaggia, 2005) leading to hesitation to report.

The experience of violence itself is very traumatizing to girls and the disclosure is a complex process containing many emotional conflicts. At the time of being in contact with the criminal justice system, girls have already experienced physical and emotional damage. But in many cases, girls have to face secondary traumatisation and stigmatisation in a system that is supposed to assist them (ECOSOC, 2005). Legal involvement with certain conditions (stressors) creates negative impacts on children. These stressors include lack of support services, unprofessional and insensitive actions and attitudes from police when communicating and taking testimony, repeated interviews, insufficient information provided before any stage of legal proceedings especially pre-trial, an intimidating environment within both interview rooms and the courtroom, fearful face-to-face experiences with the accused at the court, and cross-examination (Eastwood, 2003; Quas & Goodman, 2012; Elliffe & Holt, 2019). Child victims are more likely to feel comfortable and satisfy with performance of police and justice professionals and engage in the process more effectively by removing those factors (Beckett & Warrington, 2015; Paine & Hansen, 2002).

2. The right for girls to participate in the justice process as victims of violence:

The right to participation (Article 12) together with the right to freedom from discrimination (Article 2), the right to life, survival, and development (Article 6), and the best interest of the child (Article 3) construct four core principles of the UNCRC which guide State parties in all actions relating to children. Children are very special subjects of rights because they have not yet fully developed physically and socio-emotionally and still need care and education from adults, but they still can exercise their agency if they are sufficiently empowered. The recognition and assurance of the right to participation of children mean recognising the autonomy of children and challenging the power of adults to take actions and make decisions.



Laura Lundy's model to conceptualise Article 12 of UNCRC (2007)

In analysing children's agency and their participation, this paper is based on the model by Laura Lundy (2007) that articulates elements relating to the participation of girls as victims of violence in criminal legal proceedings. Her model has been used widely by international organisations and many papers (UNICEF, 2021; World Health Organization, 2018) to promote the implementation of children's right to participation. For successful assurance of Article 12, Lundy conceptualises this provision of UNCRC in four factors: Space, Voice, Audience, and Influence in relation to Articles 2, 3, 5, 13, 17, and 19 of UNCRC.

2.1. A safe and inclusive space, free from coercion:

Under Article 12 of UNCRC, expressing views is a right, not a duty, and girls as victims can choose to do so in an environment where they feel "respected and secure". Police stations and courtrooms are

formal and intimidating even for adults. Removing stressors by adopting a child–friendly space will make girls feel more comfortable instead of making them feel frightened after abusive experiences. General comments no. 12, 13, and the Guidelines of the Economic and Social Council (ECOSOC) encourage State members to employ child-sensitive investigation measures, pay attention to the special design of courtrooms and interview rooms including using alternative equipment to take testimony (video recording, etc.), less formal attire of judges and police, facilitating sight screen to prevent the girl from seeing the accused and only take her to the court when necessary, and adopting sensitive and appropriate measures when testifying is necessary. To protect girls from being victim blamed after the case, the courtrooms and interview rooms should be closed to the public. A space that is accessible with a ramp for wheelchairs or other supportive technologies should be available for girls as victims with disabilities.

2.2. Voice of children must be empowered:

In the criminal justice context, the right to express views and the right to be heard can easily be impeded by the evaluation of testimonies of justice professionals. Girls are at a vulnerable stage after being abused or being abused for a long time, as mentioned above, and they may experience complicated psychological issues. It is unreasonable and, in some cases, impossible to request them to retell every incident without mixing up details. Additionally, according to Piaget (1976), children at different developmental stages will achieve different milestones regarding their cognitive, socio-emotional, sexual, memory, and language development. State parties have obligations to assure the rights of children by not putting any age limit that restricts children or girls to express their views or to use their age to assess the validity or trustworthiness of their testimonies (UN Committee on the Rights of the Child (CRC), 2009, para. 21; ECOSOC, 2005, para. 18).

Any information relating to a female child victim's case such as available supports, processes, and outcomes of legal proceedings, and possible reparation from the offender and the State should be delivered in a child-friendly, understandable, age-appropriate, and timely manner to her and her family by relevant authorities. They should be familiarised with the interview room or courtroom setting as well as well-informed about their roles and the roles of other relevant justice professionals in the justice process before providing testimonies.

2.3. Well-trained professionals:

All professionals working with child victims of violence in the justice system (police, judges, prosecutors, social workers, health professionals, etc.) need to be provided with pre-service or in-service training on their specific role or how their role collaborates with other sectors to protect and support children, so they can learn the skills needed to treat girls with respect, with sensitivity, to avoid victim blaming, and to avoid stigmatisation (ECOSOC, 2005, para. 16, 17, UN Committee on the Rights of the Child, 2011). They also need to be capacitated with child development and the impact of violence on girls to adjust their attitudes when assessing female child victims' testimonies and when communicating with children.

The investigation needs to be conducted rigorously without unnecessary delay, and with the least intrusive measures for girls as victims, especially when taking their testimonies and conducting a forensic examination/body search (UN Committee on the Rights of the Child, 2011, para. 51). Specialised methods, approaches, and attitudes are also recommended by the Committee and ECOSOC including the establishment of specialised family and juvenile courts (F&JC), police units, and lawyers for children. State parties are encouraged to make comprehensive changes in policies, laws, and legal practices to respond effectively to the special needs of female child victims, provide better protection, and act in the best interest of the child.

2.4. Views of children must be given due weight:

Article 12 of UNCRC requires decision-makers to take children's views seriously. This Article discourages taking a tokenistic approach without considering children's views in the decision-making process as it negatively impacts the meaningful participation of children in judicial proceedings. Adults need to act in the best interest of children, meaning that decisions are made while considering children's voice. To balance these conflicting pressures, Article 12 recommends training specialised lawyers for children who protect the rights of children in legal proceedings from any conflicts of interest with their parents. Female child victims have the right to submit appeals or complaints about how their views are considered and the outcomes of that decision-making process. If their views are not accommodated, decision-makers need to explain the reasons why (ECOSOC, 2005, para. 21). This meets the requirements of a transparent, inclusive, respectful, and safe process of the implementation of the child's right to be heard, which is demonstrated in five steps by the CRC (2009, para. 40 - 47).

II. Viet Nam in the process of promoting meaningful participation of girls as victims of violence in criminal justice process:

1. Viet Nam is making progress in developing a child-friendly justice system:

Viet Nam has always put great effort into building a socialist, democratic, rule-of-law state of the people, by the people, for the people. In 2005, the Politburo of Viet Nam adopted Resolution No.49-NQ/TW dated 02 May 2005 on the Judicial Reform Strategy to 2020, marking a milestone in this process. The Resolution serves as a guiding policy for all judicial reform initiatives, including orientations on improving policies, criminal law, civil law, and legal proceedings, establishing judicial agencies and cadres of justice officers. Along with international commitments, especially after ratifying UNCRC, Viet Nam has made great strides in the protection of children and of girls who are victims of violence, thereby strengthening the child's right to participation in all criminal proceedings.

The period from 2014 to 2020 marked a major change in Viet Nam's journey towards a more child-friendly and gender-sensitive justice system with the introduction of the Penal Code, Penal Procedural Code 2015, the Law on Children 2016, and the Law on Legal Aid 2017. The Penal Procedural Code 2015 has a separate chapter governing special proceedings in cases involving people under 18 years old in which one of the principles in handling these cases is "respecting the right to participate and present opinions of persons under 18". The Law on Children has a separate chapter to ensure children's rights to participate in all matters relating to them. Notably, although the Law on Children 2016 of Viet Nam defines children as persons under 16 years, provisions of criminal procedural laws, its sub-law documents, and Law on Legal Aid 2017 still cover children from 16 to under 18.

2. Situation of violence against children and girls in Viet Nam:

Despite the continuous efforts of the Government, the situation of violence against girls is still very complicated in Viet Nam. According to the report of the Government (2020), Viet Nam has around 2,000 child victims of crime annually and girls as victims take up around 81% of child victims. However, this is only the tip of the iceberg since that is only the number of cases reported and brought to legal proceedings. According to the National Report on violence against women (MOLISA, GSO, UNFPA, 2020, p. 28), around 4.4 percent of women who participated in the survey (N=5,976) disclosed that they were sexually abused during their childhood and this rate is higher (6.4 percent) among women with disabilities. The Viet Nam SDGCW Survey 2020-2021 reveals that 72.4 percent of children aged 1 to 14 experienced at least one form of psychological or corporal punishment by family members in one month preceding the survey (General Statistics Office; UNICEF, 2021, p. 358). However, Viet Nam has not had any research on the experiences of girls or children when being in contact with the justice system and does not have a mechanism to collect feedback from children after the entire process or during each stage of legal proceedings. Therefore, all legal and judicial progressive achievements of

Viet Nam are great efforts of the Government in learning international experience and standards as well as internalising and contextualising recommendations of the United Nations, especially CRC.

3. The right to participation of children and girls in Viet Nam's criminal law system:

Viet Nam is still developing a comprehensive law on child justice, therefore, legal provisions regulating the handling of child victims of violence in criminal proceedings are scattered in a range of laws and sub-law documents. Details on space, voice, audience, and influence below are collected and analysed based on Viet Nam's system of relevant laws and sub-law documents, including Penal Procedural Code 2015, Law on People's Court Organization 2014, inter-agency Circulars, Circulars and Resolution of Supreme People's Court (SPC), Supreme People's Procuracy (SPP), Ministry of Public Security (MPS) and other relevant ministries (Supreme People's Court of Vietnam, 2018; Justice Council of Supreme People's Court, 2019; Supreme People's Court of Vietnam, 2017; Ministry of Public Security of Vietnam, 2021; SPP, SPC, MPS, MOJ, MOLISA, 2018).

Child-friendly, safe and private courtroom and interview room:

According to Viet Nam's laws, at the investigation stage, taking testimony from children as victims need to be conducted in a child-friendly and suitable condition for their age and maturity. Accordingly, police officers must not wear a uniform, and they must minimise the number of interviews. The location to testify children is chosen by the police officer in charge. In case of child abuse, they should prioritise testifying where children live, study, or work. If the interview needs to be conducted in a police agency, the children should testify in a child-friendly interview room (if available). If it is not available, the police officer in charge needs to set up an appropriate space to make sure children feel comfortable. However, testifying at home can make female child victims feel uncomfortable if their house is a crime scene and doing this at their school poses a risk of leaking the victim's identity. It is essential to issue detailed guidance on minimum standards to arrange interviewing locations (for example, a separate pathway to ensure the girl is not identified, nearby toilets, avoid passing police office rooms/detention area, etc.). Circular 49/2021 of MPS still considers cross-examination and confrontation with child victims as an option in case there is no other option to prove the offence.

Since 2014, Viet Nam has had 40 F&JCs at the central and provincial levels (out of 63 provinces), however this specialised court and the designation of specialised family and juvenile Judges at the district level are not yet implemented while violent crimes against children are still under the jurisdiction of district level. In general, guidance of SPC is quite in line with international standards in adjudication of child abuse cases. The judges are required to avoid requesting child victims to come to the court, no cross-examination is allowed, and the trial is closed to the public. In cases where the child has to testify in court, the courtroom needs to be arranged on the same plane, in a round table setting and the child is allowed to sit with her legal representative within 3 meters from the Trial panel, and priority is given to using alternative measures to testify or using a sight screen if the court does not have isolation room. The Trial panel must not wear gowns but formal working attire. If a child-friendly courtroom is unavailable, the normal courtroom needs to be rearranged in a child-friendly approach to ensure the child's best interest. Nevertheless, the SPC has not issued clear guidance for the operation of a child–friendly courtroom, using technological equipment and other facilities and the minimum requirements to arrange a child-friendly, safe, and private space for adjudication, waiting/resting before and during the trial.

Ensuring the right to information to empower the voice of girls as victims of violence:

In general, Viet Nam's laws focus on the responsibilities of competent authorities to inform children about their right to a legal representative and legal aid of child victims, time, and locations to participate in legal proceedings. Circular no. 43/2021 of MPS (2021) regulates the duty of police officers in charge to inform children of all legal rights and benefits for child victims as well as protective measures

available. He/she is also required to use simple, age and developmental level appropriate language when speaking to the child. But both in the investigation and pre-trial stages, there is no guidance for court officials and police officials on how to avoid legal jargon during communicating with children or official age-segregated IEC materials for child victims and their families. Notably, according to Resolution no. 06/2009 (Justice Council of Supreme People's Court, 2019), female child victims need to be familiarised with the court environment and procedures. This is a very progressive provision, but SPC has not provided any guidance on the responsibilities of relevant parties such as Court clerks, victim supporters, or child protection officers in this pre-trial visit. In addition to requirements for the pre-trial visit to be child-friendly, gender-appropriate, not use stigmatising language, take time to build rapport, and provide break time if the child feels tired, SPC and MPS also introduce a body diagram when taking testimony from children. This is also encouraged by international standards, but it is needed to provide further guidance for using this tool.

All relevant legal conducting bodies should have experience and sufficient knowledge in working with female child victims.

Under the Penal Procedural Code 2015, legal conducting persons in cases involving child victims must be trained or have experience in investigating, prosecuting, and adjudicating cases involving child victims and have knowledge of child psychology and pedagogy. This is the legal basis for Viet Nam's Government to develop training programmes for judges, police, and prosecutors. Now, Viet Nam does not have provisions to regulate requirements on certification and does not specify how often these professionals must receive refresher training. Judicial Academy and Ha Noi Law University are the first higher education institutions to develop child justice modules into official curricula which can ensure all lawyers attain the necessary knowledge and skills to protect female child victims. However, the People's Police Academy, Court Academy, and Procuracy University have not yet mainstreamed or developed a child justice subject although F&JCs have been established. Circular 43/2021 stipulates that assigning investigators in cases involving girls as victims of violence should be female, however, in fact, the number of female police is very small, and, in many cases, it is not practical to implement this provision. The prioritisation should be professionally trained police officers regardless of gender.

Provisions on how views of girls as victims of violence are given due weight are not clear:

The right of victims to submit an appeal and be informed about the legal process is generally stipulated in the Penal Procedural Code 2015 in Article 62. Unlike adults, female child victims involved in the justice process need assistance and are accompanied by a legal representative and their family members or legal guardians. Therefore, to avoid girls' voices being manipulated, sufficient and thorough explanation from legal conducting bodies on their legal rights, procedures, and legal consequences after consideration of their testimonies play an important role in informing their decisions, helping them build trust in justice and minimising recantation. Additionally, Viet Nam's laws still lack provisions on a mechanism to collect feedback/complaints of the child victims after receiving the outcome of their case, during legal proceedings or after receiving legal assistance services to improve the justice process in a more child-friendly approach.

III. Recommendations for Viet Nam to strengthen the right to participation of girls as victims of violence in criminal justice process

Based on the analysis above, this paper proposes some recommendations on strengthening the right to participation of female child victims of violence in the criminal justice process as below:

First, for better implementation of the rights of children in general and the rights of girls as victims of violence, as recommended by the CRC in the Concluding observation in paragraph 52 (2022), Viet Nam needs to accelerate the adoption of a comprehensive child justice law to provide consistent principles in handling and collaborating between relevant ministries and agencies. This child justice law also needs to set minimum standards for qualifications of legal conducting bodies and other parties,

such as lawyers and social workers, and criteria for the assignment of cases involving children/girls as victims of violence. It is also recommended to develop standardised training programmes with gender elements mainstreamed for Court professionals, lawyers, police, and prosecutors and set a timeline for refresher training. Development of these training programmes requires an inter-sectoral approach to avoid inconsistency.

Second, regarding the development of a child-friendly, safe, and inclusive space for girls as victims of violence, it is recommended to develop clear guidance on a child-friendly investigation and interview, especially how to operate a child-friendly interview room and circulate it nationwide. Regulations on minimum standards of a space to take testimony from a female child victim should be in place including the usage of body diagrams as a supporting tool in interviewing. Cross-examination and confronting child victims during investigation or adjudication stage should not be an option to avoid further traumatisation for the child.

Third, F&JCs need to be expanded nationwide and to the district level in order to increase access to justice for girls as victims. The number of specialised F&J Judges at the central and local levels should be increased to make sure that at the district level, there are sufficient human resources to handle cases of child victims. Detailed guidance on using child-friendly courtrooms and their functioning rooms and minimum standards for adjudicating space for cases involving children as victims should be developed.

Fourth, as recommended in the Concluding observations of CRC in paragraph 13 (2022), operational procedures for all professionals working in cases involving child victims should be developed to ensure that the voice of child victims is given due weight. Along with that, it is recommended that more specific provisions on the right to information of the child are provided. It is especially important to provide child victims of violence information regarding their legal rights, available protective measures and support services, and legal procedures. Methods to convey that information should be various and available to adapt to each age group and forms of disability. Options include comic books, animated videos, audio files, or taking the child to the courtroom before the trial. In this way, child victims are psychologically and intellectually prepared for the justice process.

Fifth, legal conducting bodies should consider developing a confidential complaint mechanism for children during and after their involvement in the justice process. To provide better legal assistance services, lawyers and legal aid providers should develop feedback forms in a child-friendly language so they can adjust their counselling methods to children in a timely manner.

Lastly, Vietnamese Government should improve data collection systems in each legal conducting bodies, establish sharing mechanism among state agencies and invest more in research on the experience of children in general and girls as victims of violence in the justice system, so this research can inform legal reform initiatives and the improvement of the legal framework.

By ensuring four factors: (1) safe, free from coercion, and inclusive space, (2) empowered voice of children, (3) well-trained and available professionals, and (4) influence, the right to be heard of female child victims of violence will be effectively implemented, which will help to minimise further traumatisation and stigmatisation caused by the child's judicial involvement. With the leadership of the Party and the Government, the legal and judicial reform of Viet Nam has been carried out since 2002 and has brought about many positive changes in the protection of the rights of children, especially girls as victims of violence. There is still a lot of work to be done, but these changes represent the great and active efforts of the Government in implementing international commitments and changing the justice system to be more in line with international standards and best practices in the world.

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Getting it Wrong: Why International Justice Mechanisms and Frameworks Have Been Unable to Serve Rohingya Women.

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Abstract

This paper analyses what transitional justice means for Rohingya women living in Cox's Bazar refugee camp, and the extent to which existing justice and accountability mechanisms and frameworks provide useful tools or processes for facilitating progress towards that conceptualisation of justice. The authors are two Rohingya women living in Cox's Bazar refugee camp, and a female lawyer who represents them before international courts and accountability mechanisms. The views of Rohingya women on justice and accountability have been drawn from the authors' direct involvement as part of the community, and through conducting trainings for camp-based Rohingya women on the accountability processes. The authors draw on these experiences to provide insight into how Rohingya women conceptualise justice, and conclude that the current accountability processes and frameworks are inadequate and ill-suited to taking these conceptualisations of justice into account.

Keywords: *Transitional justice, gender justice, Rohingya*

This paper analyses what transitional justice means for Rohingya women living in Cox's Bazar refugee camp, and the extent to which existing justice and accountability mechanisms and frameworks provide useful tools or processes for facilitating progress towards that conceptualisation of justice. The authors are two Rohingya women living in Cox's Bazar refugee camp, and a female lawyer who represents them before international courts and accountability mechanisms. The views of Rohingya women on justice and accountability have been drawn from the authors' direct involvement as part of the community, and through conducting trainings for camp-based Rohingya women on the accountability processes. The authors draw on these experiences to provide insight into how Rohingya women conceptualise justice, and conclude that the current accountability processes and frameworks are inadequate and ill-suited to taking these conceptualisations of justice into account.

The Women, Peace and Security (WPS) agenda first emerged as a UN Security Council priority with the adoption of UN Security Council Resolution 1325 in 2000. Key to this agenda is the understanding that post-conflict reconstruction processes had traditionally reinforced traditional and often harmful gender roles, in which women were relegated to the gendered space of victimhood. Prior to the adoption of Resolution 1325, efforts to incorporate a gendered focus into conflict prevention and peacebuilding focused *"solely on protecting women and ending discrimination, rather than involving them in the formal postconflict policy planning"* (UN Women 2014). Resolution 1325 attempted to reverse that trend, by recognizing women as active agents in bringing about and maintaining peace and security. The Resolution was followed by nine others, the most recent being adopted in 2019. Four of the subsequent resolutions are

predominantly focused on the role of women in peace making and conflict prevention.[1] The other five focus on access to justice, primarily for sexual violence.[2]

The Resolutions focused on women's role in conflict prevention and peacebuilding recognize the importance of women equally contributing to the design of the peace processes themselves. UNSC 1889 (2009), for example, calls on states to *"improve women's participation during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peacebuilding"*, specifying that women must be involved from the *"early stages of the recovery process"* (para 1). UNSC 2242 (2015) provides more details about how states should facilitate and ensure the inclusion of women, stressing the importance of partnerships between governments, women-led civil society groups, and the UN. In describing women's role in peacebuilding and conflict prevention activities, it uses terms such as *"developing strategies"* (para 13) and *"participat[ing] in the design and implementation"* of such initiatives (para 15).

The Resolutions focused on justice, in general, describe the way in which women and girls should be able to access justice for sexual violence. They do not mandate that women be involved in shaping the transitional justice processes that are established to address legacies of violence – sexual or otherwise. Earlier Resolutions, such as UNSC 1820 (2008) and 1888 (2009), reference accountability processes that will deliver justice to communities following conflict in a way that presumes that this will fall to the pre-existing criminal justice system. Later resolutions, such as UNSC 1960 (2010), recognize that a range of justice and reconciliation mechanisms may be set up after conflict – but do not suggest that states ensure that women are equally involved in determining which of these mechanisms will be able to deliver justice to all members of society. Only in UNSC 2467, adopted in 2019, does the UN Security Council recommend that women be included in the design of transitional justice processes – though in doing so, it conflates 'women' with 'survivors of sexual and gender-based violence.' In paragraph 16, sub-paragraph (b), the resolution:

> *Encourages concerned Member States to ensure the opportunity for the full and meaningful participation of survivors of sexual and gender-based violence at all stages of transitional justice processes, including in decision-making roles, [and] recognizes that women's leadership and participation will increase the likelihood that transitional justice outcomes will constitute effective redress as defined by victims and will respond to important contextual factors.*

Outside UN Security Council resolutions on WPS, UN actors and other experts have increasingly specified that women should not only be equal beneficiaries of transitional justice processes, but equal participants in the decision-making procedures through which those processes are negotiated and defined (Domingo 2022, p 1). The Overseas Development Institution has noted that references to ensuring women's meaningful involvement in such decision-making have *"become a routine feature of UN policy documents in the last ten years"* (Domingo 2022, p 10). In 2022, a research brief on gendered transitional justice commissioned by UN Women and the UNDP called for practitioners to move away from including women in transitional justice processes as victims of sexual violence, and towards including them as leaders and rights-holders. It concluded:

> *Fundamentally, 'meaningful' women's participation in transitional justice… involves the convergence of several elements and manifests when women from diverse*

[1] UNSCR 1889 (adopted in 2009), UNSCR 2122 (adopted in 2013), UNSCR 2242 (2015) and 2493 (adopted in 2019)
[2] UNSCR 1820 (adopted in 2008), UNSCR 1888 (adopted in 2009), UNSCR 1960 (adopted in 2010), UNSCR 2106 (2013), and UNSCR 2467 (2019)

> *backgrounds: have the ability to enter; are present; possess self-efficacy; deploy their agency; and exert influence over transitional justice processes (UN Women 2014, p 8).*

Obtaining the equal input of women from diverse backgrounds in the design of transitional justice processes is important not only because representation matters, but because these processes will only be able to deliver justice to communities if they are responsive to the type of justice the community – at least half of which are likely to be female – prioritizes. Conceptualizations of justice differ significantly across both cultures and genders. The exclusive focus on domestic criminal justice procedures in the early WPS resolutions belies an understanding of justice as individualistic and punitive – views which are more prevalent in some cultures than others (Kugler et al 2013), and which some research indicates are more likely, in certain societies, to be held by men (Kutateladze et al 2009; D. A Mackey et al 2006). Later WPS resolutions acknowledge the wide variety of transitional justice options that may be available, but miss the opportunity to recognize that the option ultimately chosen will be the outcome of a politically negotiated process – which will, without strenuous and strategic efforts to counter the inevitable, reflect pre-existing social inequalities and power imbalances (UN Women 2014, p 8). These power imbalances exist both within affected communities, and between the affected community and the national and international actors conducting their own political negotiations on what justice should look like.

The case of the Rohingya is evidence of the damage that can be done by failing to meaningfully consult victim communities when designing transitional justice approaches – and by ignoring Rohingya women almost entirely. In this case, the Rohingya are seeking justice for violations committed against their community in Rakhine State, the most serious of which were committed in August 2017 – when mass killings, torture, burning of villages, rape and gang rape committed by the Myanmar military (the Tatmadaw) forced over 700,000 Rohingya into neighboring Cox's Bazar. In the time period since, the International Criminal Court (ICC) has authorised an investigation into the situation in Bangladesh/Myanmar; the International Court of Justice (ICJ) has accepted jurisdiction over a case alleging genocide on the part of Myanmar filed by The Gambia; the Independent Investigative Mechanism for Myanmar (IIMM) has been established in to investigate violations committed against the Rohingya and prepare case files for accountability mechanisms and criminal investigations; and a universal jurisdiction (UJ) case has been brought in Argentina.

Having a multitude of international justice mechanisms focusing on a single conflict is unusual. In its 20-year lifespan, the ICC has opened investigations in 17 situations. To put this in context, the International Crisis Group is monitoring developments in over 70 conflicts worldwide (Crisis Watch 2023). There are currently only three cases open at the ICJ that relate to violations committed during conflict, including the one against Myanmar.[3] Independent Investigative Mechanisms, mandated to prepare case files to a certain evidentiary standard, have been established only for Syria and Myanmar.[4] UJ cases remain rare, with only 57 perpetrators on trial for international crimes in UJ cases around the world at the end of 2022 (Trial International 2023).

Learning from the failures of past international courts to allow for the meaningful engagement of victims, some of these mechanisms have victim participation procedures built in. The ICC is famously the most developed in this area, having a department with its Registry – the Victims Participation and

[3] Gambia's case against Myanmar; Ukraine's case against Russia; and an advisory opinion on Israel's actions in the Occupied Palestinian Territory: ICJ: List of all cases, available at https://www.icj-cij.org/list-of-all-cases

[4] Other investigative bodies, with less stringent rules around the preparation of files and standard of proof required, are active in a further eight situations: OHCHR (2023) 'Human Rights Council-mandated Investigative Bodies', available at https://www.ohchr.org/en/hr-bodies/hrc/list-hrc-mandat

Reparations Section (VPRS) – mandated to oversee victim engagement, as well as an Outreach office responsible for *'informing, listening, connecting with and empowering'* victims and affected communities (ICC Outreach 2023). The IIMM receives evidence and information from Rohingya civil society groups, and to cultivate that relationship, it has visited the camp in Cox's Bazar, held calls with people in the community, and participated in online information sharing activities with camp-based Rohingya.[5] It is also reportedly developing an Outreach Strategy, though no draft has yet been made public. The Prosecutor in Argentinian UJ case has recognized camp-based Rohingya as having official standing, allowing some to testify in proceedings via video link.

The ICC and the IIMM have also made efforts to adopt a gendered approach to their work. As with victim participation, the ICC's statute and procedures are much further developed in their ability to respond to sexual violence crimes than the courts that went before it. The Rome Statute enumerates a wide range of sexual crimes, demonstrates an unprecedented degree of gender sensitivity in its rules of procedure, and obligates the Prosecutor to appoint an advisor on sexual and gender-based violence (SGBV) (Altunjan 2021). The IIMM team includes a gender specialist and expert in investigations of SGBV, whose role description includes liaising with civil society actors on the collection of information (UN Talent 2022). It is reportedly developing a Gender Strategy – though like the Outreach Strategy, no information about this document has been released. The Gambia team taking the case against Myanmar before the ICJ, by contrast, does not include members with specific gender expertise. The team unfortunately missed an opportunity to formulate their submissions in a gender-responsive way, arguing that rape was only committed against women and girls, and omitting mention of any other gender-based crimes (ICJ 2019). While the Netherlands and Canada have announced their intention to intervene in the case, with a special focus on the issue of SGBV, they have provided no further public details (Global Justice Centre 2020). In the Argentina UJ case, where six of the victims who have already testified are women who were subjected to sexual violence, an approach to delivering gender-responsive justice does not appear to have been formulated.

Despite the unusually large number of accountability mechanisms focused on the violence committed against the Rohingya; despite their attempts at engaging victims; and despite their efforts to adopt a gendered approach, no transitional justice efforts currently exist that are capable of serving the Rohingya women forced to flee Myanmar in 2017. This is unsurprising and is the corollary of the failure of international frameworks on women and transitional justice to be articulated in a way that is truly inclusive, or that can be tailored to the population they are intended to serve. The 'gendered' components of the ICC, ICJ, and Argentina cases, and of the IIMM investigations, replicate the focus on women as victims of sexual violence. None of these mechanisms have processes in place to consult Rohingya women on the question of what justice should look like. None are able to undertake gendered assessments of their capacity to deliver the type of justice the affected population is seeking, or to amend their focus and procedures to respond to those needs and priorities.

Almost all the Rohingya women who fled the violence of 2017 currently live in the Cox's Bazar refugee camp. Two of the authors of this article, Minara and Showkutara, are the Directors of two camp-based women's groups: Education and Wisdom Development for Rohingya Women (EWDRW), and Rohingya Women Association for Empowerment and Development (RWAED) respectively. Over the past year, EWDRW and RWAED have conducted trainings with over 500 women in the camp on the justice processes relevant to their community. Victim Advocates International (VAI) is a victims' membership organization that provided guidance and mentoring to the women conducting these trainings, which included sessions on the ICC, ICJ, IMM, and the Argentina case. Clare Brown, the third author of this article, is VAI's Deputy Director. Pre-training assessments from these sessions indicated that less than 10%

[5] Eg, see the videos at https://www.youtube.com/channel/UCS9mLup7W-zSyJ583qDRrUA.

of women knew what these acronyms stood for or referred to. When asked about the case in Argentina, answers included, *"Argentina is a country in Europe"*, *"Argentina is a football team who won the world cup"*, *"Argentina is a court set up for the Rohingya"*,[6] and *"I don't know what Argentina is"*.[7] More detailed questions were asked about what crimes the different mechanisms were investigating, and what each case would achieve, if successful. Not a single correct answer was given.

More concerning than the lack of understanding of the female participants about the different mechanisms, however, was their understanding of what these cases would be able to achieve. While the majority of women did not recognize the name of these mechanisms on first hearing, those who did (or who recognized the description once an explanation had been given), when asked what these institutions were working towards, gave responses such as, *"The ICC will solve our problems and we can go back home," "If the ICC wins the cases, we can go back to our country",* and *"The ICC is working to get everything that was taken by the Myanmar government back to us, and so that we can live with freedom in Myanmar."*[8] In trainings on the ICJ, they gave similar responses: *"The ICJ will send Rohingya people to Myanmar"*; *"If the case is successful, they will arrest the Myanmar military and let us go back to Myanmar"*; *"If the ICJ wins the case, we can go back to our country with full rights and dignity".*[9]

These answers reflect the conceptualization of justice most commonly held by Rohingya women living in the camp: that justice means going home, with guarantees of non-recurrence of the violence carried out against them. In conversations about 'justice for Rohingya', members of the international justice community and Rohingya women have simply been talking past each other. When international lawyers talk of 'justice' being achieved through the ICC proceedings, they refer to the possibility of carrying out successful prosecutions – meaning criminal accountability for a handful of top-level perpetrators, and some form of remedy for a select number of victims. The IIMM is set up to support this and other criminal investigations. The Argentina case, too, may result in some accountability for some perpetrators – most likely in the form of economic sanctions and restrictions on travel. While it has been argued that *"bringing accountability for serious crimes in Myanmar will… contribute to an atmosphere that is more conductive to repatriation"* (Koumjian 2023), the reality is that the mandates of these courts and mechanisms do not extend to supporting the Rohingya to return home. In each of the trainings conducted with the women in the camp, this revelation has surprised people. One Rohingya woman, when responding to information about the type of accountability on offer, stated, *"We don't care much about punishment. Just, we are willing to return with full rights, and with no genocide happening in the future. Punishment means revenge. We don't want."*[10] Another agreed, *"We just want peace. We need to find ways so that we can go back to our country with rights, safety, and security. If we take revenge from Myanmar for committing genocide, then they will imprison us and initiate violence. No need to do these kinds of acts."*[11]

This does not necessarily mean the women are not supportive of punitive accountability for those alleged to be involved in the violence against them. Many of the participants indicated that though returning to Myanmar is their most pressing justice priority, they did not feel they could do so while perpetrators of rape and sexual violence continued to live unpunished in their communities. The perpetrators they named, however, were low-level soldiers and ethnic Rakhines who were the direct perpetrators of the alleged crimes – those likely falling below the threshold of importance needed to warrant attention by the ICC or a UJ

[6] Trainings by Showkutara on 4 April 2023; by Minara and Showkutara, 5 April; and by Minara on 12 April.
[7] At least one answer in all trainings.
[8] Training run by Showkutara, 16 November 2022; by Minara, 17 November 2022; by Minara, 17 December 2022
[9] Training run by Minara, 19 December 2022; by Showkutara, 25 December 2022; by Minara, 31 December 2022
[10] Training report by Showkutara, 28 February 2022.
[11] Training report by Showkutara and Minara, 4 April 2023.

investigation. In a discussion on the case in Argentina, a woman commented, *"If they have jail for Daw Aung San Suu Kyi, why not for our rapists?"*[12]

From the perspective of many Rohingya women living in the camp – including the two authoring this article – criminal accountability for high level perpetrators seems unhelpfully geared towards taking revenge, rather than on making Rakhine state safer and easier to return to. As in every community, perceptions of crime, punishment, justice and peace within the camp are gendered. Some Rohingya men have demonstrated themselves to be focused primarily on revenge. Militia groups in the camp, originally established to demand justice for the Rohingya after years of persecution, have consistently turned to violence – first against the Tatmadaw, and more recently against those in their own communities who they perceive to have wronged them. These militias are entirely comprised of men. Women, by contrast, tend to be more orientated towards peace. Of course, most camp-based Rohingya men do not join these militias – and many, such as slain community leader and human rights activist Mohibullah, speak out tirelessly for a peaceful resolution to the Rohingya crisis. These male-led groups and male activists are important voices for the Rohingya community, but they receive disproportionate attention from international delegations and justice actors visiting the camp. Rohingya women activists and groups face additional barriers to speaking out about their ideas about justice and their vision for the future.

For justice processes to be able to serve women, they must be able to include women in conversations about their establishment, scope, focus, and outcomes. At the very least, this must involve extensive conversations with women about their rights, international crimes, and the different forms of transitional justice. At best, women should provide input into the design of the transitional justice processes themselves. Current international justice mechanisms and processes – even at the ICC, where both victim participation and gender mainstreaming are more advanced that in other institutions – have limited ability to truly listen to the needs and justice priorities of women from the affected communities. In 2019, before the investigation into the Bangladesh/ Myanmar was announced by the ICC Prosecutor, the VPRS visited Cox's Bazar, to gather the views, concerns, and opinions from Rohingya in the camp about the possibility of opening a case. VPRS held 60 meetings during four visits to the camp, over a four-month period, in which it met with a total of 1,700 people. It describes receiving 205 'representations', which it says represent 470,000 individual victims, eight families, and one village (ICC VPRS 2019, p 18). The adult population of the refugee camp, at the time, was 359,100 (UNHCR 2019). In its 60 meetings with the community, the VPRS describes informing the participants about ICC, and seeking views and concerns relating to the opening of an investigation. VPRS does not disaggregate victim perceptions as between men and women. Rather, it claims that *"every single Rohingya in the camps want[ed] an investigation by the Court into all potential crimes committed against them"*, but that given the challenges in meeting with community members and the short timeframe, it could *"not exclude the possibility that not all victims represented understood the process"* (ICC VPRS 2019, p 19).

The trainings undertaken by the authors with women in the Rohingya community indicate that many female victims did not understand the process. Most, in fact, could not describe the ICC at all – with participants in pre-training assessments guessing that the ICC was *"a country", "a hospital name", "a city name at America",* and *"a football team name, like Argentina."*[13] Even if VPRS's consultations with the victims did successfully explain the scope and potential outcome of the ICC proceedings to some camp residents, they did not have the intention nor the time to gather genuine feedback from the community about how they define justice, or what justice outcomes they consider most important. This should not be understood as a criticism of the VPRS. Rather, the current international criminal justice system is not set

[12] Ibid.
[13] All of these answers come from a single training by Showkutara on 16 December 2022.

up to be able to respond to the needs and priorities of victims. The IIMM, too, provides information to victim communities, but is not currently designed in a way that allows it to learn from victims about their conceptualization of justice, or priorities for accountability processes. While the Argentina Prosecutor recognizes victims as having stood in the proceedings, he has done very little to facilitate their participation in or input to the case. The ICJ, traditionally mandated to give advisory opinions and resolve disputes between states, is the least equipped mechanism to allow victim engagement – and the legal teams acting before it have done little to bridge this gap.

While many aspects of the design of these mechanisms render them unable to allow victims to shape their own justice processes, or to overcome the barriers to women's full and effective participation, opportunities to improve the situation do exist. Concretely, pre-investigation engagement with affected communities by the VPRS could be a longer, more comprehensive process, focused on understanding how the affected victims conceptualize justice. Findings on these perceptions should be disaggregated by gender, as well as other identity factors. Where victims do not prioritize criminal justice, this should trigger a strategic rethink about how the ICC and other justice processes could best serve the affected population. The ICC's Trust Fund for Victims (TFV) has an Assistance Mandate, which allows the TFV to provide assistance to victim communities before the conclusion of cases. The TFV could develop its capacity to speak to victims about what they want and need and be better resourced and utilized. As expressed by one woman in the camp, when addressing the ICC: *"If it takes time for you to do our justice, you should help us with medicine, money and education."* For its part, the IIMM could seek to expand its mandate from its narrow focus on collecting evidence for criminal prosecutions to also include collecting and storing their stories and experiences, so that the history of the Rohingya is not forgotten – something women, during the trainings, said they did consider important. It could also consult with women in the camp on its Outreach and Gender policies, holding comprehensive meetings with Rohingya women from diverse backgrounds to make the process of drafting the document truly representative and participatory. The IIMM and the Argentinian Prosecutor could both ensure their investigations include a focus on lower-level alleged perpetrators of sexual violence, being the only category Rohingya women consistently identify as their focus for any potential convictions. The ICJ is mandated to make another decision Rohingya women say they care about – namely, determining whether they are victims of the crime of genocide. On this basis, the legal teams bringing the case, or intervening in the name of victims, could visit the camp, speak to the women, and cultivate an ongoing connection with them.

International transitional justice frameworks and processes have proven themselves ill-equipped to facilitate meaningful victim participation and input in general, but are particularly poorly designed for responding to the specific justice needs and priorities of women. In no context is this clearer than the Rohingya crisis. If international courts and accountability mechanisms care about delivering a form of justice that is valued by Rohingya women, they must meaningfully rethink their strategies. This should begin with engaging with the community about what they want. Rohingya women must be invited to speak – and international justice actors must truly listen.

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Pierre Sell: The Testimony of Homocaust

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Abstract:

Homocaust refers to the deportation of gay people to concentration camps operated by the Nazi Regime. Pierre Seel was born on the 16th of August 1923 in Hageunau, Alsace, France. He was the first French citizen to have openly testified that he was deported to a concentration camp during WWII for being homosexual. Pierre Seel can be considered a pioneer of the Homocaust literature. In 1994, Pierre Seel published his biography "Pierre Seel, Deported Homosexual". In his book he counts his epic story: when he was seventeen years old the police summoned him for being homosexual. In 1941, when Alsace was submitted to German law and thus the Paragraph 175, which classified male homosexuality as a crime, all homosexuals had to be deported to camps, to be re-educated to civil life. After two years in the camp and some weeks in a Lebensborn program, which aimed, based on the Nazi eugenics, to increase the number of "racially pure" and "healthy" Aryans, Pierre had become a re-educated German citizen. Consequently, he was sent to fight for the Nazis. Once back home, he raised a family. It was only in 1982 that he came out with the truth, when the French law against homosexuality was repealed. Pierre was not recognized as a deported (French) citizen until 2001. After that, Pierre committed himself to assist the LGBTQ people. He strived for the construction of a Memorial to homosexuals persecuted under Nazism in France.

Introduction:

The Second World War is notoriously linked to the Holocaust. Holocaust refers to the deportation and the extermination of Jewish people conducted by Nazi Germany and Fascist Italy. However, the extermination of Jewish people is not the only genocide committed by Hitler and Mussolini. The historical chronicles have also documented the deportation of gypsies, political opponents, and homosexuals. This paper aims to divulge the history of deportation of homosexual people during the WWII, driven by Nazi homophobia. To achieve this, we will explore the story of someone who lived through *Homocaust* and has testified about his first-hand experience, to ensure it does not become a *forgotten extermination.* The word Homocaust is a blended world: Homo+Holocaust. By Homocaust, we mean the deportation of homosexuals in concentration camps during the Second World War. As many as twenty thousand male homosexuals were deported. Moreover, it is estimated that at least ten thousand have died. the Homocaust is one of the least studied exterminations. The only French testimony of Homocaust is Pierre Seel. He has openly testified about his deportation to a concentration camp during WWII **for being homosexual.** His major work entitled "**I, Pierre Seel, Deported Homosexual: Memoir of Nazi Terror**" was published in 1994.

The only other homosexual, who provided his testimony of deportation to camp, was the Austrian Josef Kohout. He wrote under the pseudonym of Heinz Heger "The Man With The Pink Triangle" in 1972. This publication helped to expose not just the suffering of gay prisoners under the Nazi regime, but also the lack of recognition and compensation they received after the war's end. His witnessing inspired the play "Bent" (1979) by Martin Sherman, which was made into the movie "Bent" directed by Sean Mathias (1997).

Methodology:

With the aim of providing a complex picture of the Homocaust, we will focus on Pierre Seel's story. But first, we will try to offer a state-of-the-art review regarding the question of homosexuality, which will allow us to better understand how the homosexual condition has changed over the course of history.

"Insult and The Making of the Gay Self" (1999) by Didier Eribon is a text investigating the history of homosexual status. The author plunges us into the past by mentioning that the Ancient Greeks used to practice pederasty. By pederasty, we mean the relationship between *Erastes* (master) and *Eromenos* (disciple) forming together a homo-erotic socio-instructive path. It was widely accepted by the *polis* and regarded as completely normal. While Erastes played an active role, Eromenos a passive one. Furthermore, it was thought that semen had masculinizing properties.

The Victorian era in England portrayed homosexuality as sinful. The *dandy* Oscar Wilde has been one of the most famous (homosexual) writers in the world. Oscar Wilde's most relevant piece of writing, regarding the researched topic, is "*De Profundis".* It is a letter dedicated to his boyfriend Bosie. Wilde accused Lord Alfred Douglas, Bosie's father, of defamation. This proceeding led to a trial. Nevertheless, the trial turned against Wilde himself because of a political satire cartoon portraying Wilde practicing sodomy. This trial had worldwide resonance because Wilde, already very famous at the time, went to prison. Another source providing information about the question of homosexuality is Giovanni Dall'Orto's book "Tutta un'altra storia: L'omosessualità dall'antichità al secondo dopoguerra" (2015), which translates to "A Whole Other Story: From Antiquity to the Mid-Twentieth Century". In this biography of the LGBTQ movement the author mentions Karl Ulrichs, the pioneer of the homosexual movement who adopted the word *Urning* to describe male gay people. In addition, he argued that gay love is biologically normal: "*anima muliebris virili corpore inclusa* (a female psyche confined in a male body). His epigone Magnus Hirschfeld stated that homosexual behaviour is due to the existence of what he called the "third sex". However, this line of thinking was overturned by Freud. He theorized that homosexual behaviours are linked to psychological traumas. Freud assumed that homosexuality does not infer from the biological sphere but from the psychological one. He thought that human sexuality evolves from a condition of undifferentiated bisexuality up to a heterosexual one. This process was interspersed with anal, oral, and genital phases. While the third sex theory was envisaging that homosexuality was linked to a lack of evolution of the foetus, Freud assumed that homosexuality was linked to psychological trauma in childhood. Despite Freud's beliefs and only a few years after Pierre Seel lived his epic adventure as he testified in his **autobiography,** in 1952, the US defined homosexuality as a mental disease.

Results:

Pierre Seel was born in Hageunau, 16 August 1923. In 1940, he was in Mulhouse, a French town. He was hanging around square Steinbach, next to a gay bar. His watch was taken away from him. He started screaming aloud but his voice did not scare the robber, who ran away with the loot. So, Pierre decided to go to the police station. The police officer understood immediately the intent of Pierre Seel in that street, famously frequented by homosexuals. Pierre did not note that his name was put in the records of gay people of the town.

Mulhouse is, as we said, a French town. However, during the Franco-Prussian War, it was taken by Germany. After the WWI, it became French ground again. This town hosted Pierre Seel and the "German vice", as homosexual behaviour was referred to in Europe during that period. In his autobiography, Pierre Seel indicated he did not have a clear reason for his homosexual orientation. He thought an accident had driven to his sexuality. He was in Howald on holiday with his family when the incident occurred. He fell in love with a girl. He needed to try to talk to her. So, he left a love letter under her door. Unfortunately, the mothers of the two young lovers were not happy about that. He was scolded and punished. He thought this exaggerated reaction might have led him to commit an action, deemed "outrageous" at the time.

He was ten years old when he fell in love with a boy for the first time, during a journey with his father. A few years later, when he was fifteen, he was at a beach with his family and realized being attracted by naked men playing sports there.

In 1939, Germany declared war. Many people from Alsace, including Jewish people, had to flee persecution because of racial laws. Pierre had a boyfriend, who is only described by the fictional name, Jo. In 1940, the Maginot line was broken, and Germans invaded Alsace. Violating the Treaty of Versailles, the Nazis occupied again the Alsatian territory including Upper Rhine, Lower Rhine, and Moselle. Two of Hitler's men kept administrative control of Mulhouse and the orders to arrest also homosexuals were directly given by Himmler himself. The repealing of the *German vice* was an obsession of Hitler and Himmler. For them homosexuality was a destructive illness, that could destroy the German race. In France, Napoleon issued the last law concerning homosexuality in 1792. According to that law, homosexual behaviour was not a crime. However, Pierre did not know that in Germany male homosexuality was illegal and plenty of gay people had been sent to camps in accordance with Section 175, a provision of the German Criminal Code from the 15th of May 1871. This German law made homosexual acts between males a crime, and in early revisions the provision also criminalized bestiality as well as forms of prostitution and underage sexual abuse.

Alsace, 1941. The Gestapo summoned Pierre Seel to the police station. He was suspected to be a homosexual. Upon arrival, he was immediately nicknamed "schweinhund", German for "shit fagot". The Gestapo began torturing Pierre along with other arrested suspects. They were all beaten up until they were bleeding. On the 13th of May 1941, Pierre was sent to the Shirmeck camp and came to know evil for the very first time.

Once in the camp Pierre's head was shaved immediately. The deported homosexuals were marked by the pink triangle. However, this symbol was never seen in this camp, despite having been used in the camp of Struthof nearby. The camp was built personally by Pierre Seel together with the fellow sufferers. Pierre's camp contained several types of prisoners: the Jews, marked by the yellow star; political resisters marked by red; and gypsies marked by brown. There were also German deserters, priests, and so on. Some of them managed to escape from the camp, but others were caught while attempting to do so and then received up to 180 lashes with a stick. This was not the only kind of physical violence performed by the Nazi guards on the prisoners. As Pierre narrates in his memoir, homosexual people were "treated" by the Nazis to eliminate their homophile behaviours. For instance, Nazis would implant synthetic fibres in their prisoners and make painful stings. People often died during these experiments.

Pierre had not seen his boyfriend Jo since he was summoned to the police station. Well, one day, Pierre's name was called out aloud by the speaker. He was "invited" to a session of "medical treatment". Pierre and the others had to form a circle. In the middle of the circle, a Nazi held Jo by the neck. Pierre had never seen him in the camp. But there he was, fallen into the Nazi trap just like him. With a bucket over his head, Jo was mauled to death by dogs.

On the 6th of November 1941, Pierre was summoned over the speaker. He was informed that it was time to leave the camp and become a free German citizen. The only price to pay was a complete silence about his "experience" in the camp.

Once in Mulhouse, he returned to his family house. He had become a young re-educated German citizen. As Alsace was providing the German army with soldiers, war was waiting for Pierre.

On the first day of spring, 21st of March 1942, Pierre received a call to arms letter. Pierre was assigned to the Rad, *Reichsarbeitsdienst.*

All Alsatian men were called to arms by the Reich. He left Mulhouse station while his mother cried. He was a German soldier. He had to give his life to the Nazis even though they had already taken his life.

Pierre felt ashamed of the crimes he committed while wearing the Nazi uniform. In Yugoslavia he had to kill several innocent people to perform his duty. But the atrocity was not over. After the service in Yugoslavia, he was sent to a *Lebensborn.* In these places, Germans used to couple up with selected Norwegian women, to give birth to new perfect Aryan children. After that, Pierre was sent to Berlin to work

as an accountant for the Nazis. On July 20th, 1944, someone tried to kill Hitler. Pierre was called to arms again, this time to the worst destination he could ever imagine, the cold Russia. Germany had already lost ground in Stalingrad. Most German soldiers were injured or very sick from the cold, so they needed replacements. Pierre was sent to the Vistula as an attendant to a Nazi officer, and while there, he had to shoot Russians. When Pierre heard the officer listening to the London radio, he understood something was about to change. He and his fellow German soldiers abandoned their station, and Pierre found refuge in the forest. Some days later, the French army reached Pierre and the other fugitives. Pierre told them his story. To hide his Alsatian origin, he was advised to change his name to "Celle" and pretend to be from Belfort. Germans were sent to a *gulag* with no way back.

In 1945, the war was finally over. Pierre had been gone for four years. Once at home Pierre appreciated the warmth of his family. Despite getting very close to his mother in those years, Pierre did not share his sadness with her. He kept silent about his orientation due to the law, which had criminalised homosexual behaviour in France since 1942. After a while, Pierre revealed the truth to his mother. That confession pushed him to testify many years later.

During that period, Pierre did not socialize much, keeping to himself, as the homophobia he faced left him feeling insecure. Some of his relatives ridiculed him because of his homosexual leaning. For this reason, he was even excluded from his godfather's testament. The constant homophobia made him want to change his life. He understood that was impossible in his society to carry on living as homosexual, so he wanted to find a woman to get married to and have children. Pierre decided to send his portrait to a matrimonial agency which planned a meeting with a woman. The couple got engaged in Pierre's godmother's house, and on August 21st, 1951, they got married in a civil service in Mulhouse. The ceremony was hosted by Pierre's brother as he was a municipal counsellor. One month later, they had a religious ceremony in Saint Rouen. In 1952, their first child was born. Pierre opened a tissues store. In 1954, a second child was born, and in 1957, they had a daughter. Pierre was finally happy.

Pierre had never explained to his wife why he had been deported to a concentration camp. She did not know about Pierre's repressed homosexuality. Sometimes she would get mad at him because he did not ask for compensation for being deported. But Pierre could not explain why he did not claim compensation; his sexuality remained his secret.

On May 27th, 1981, a meeting was organized in a bookshop of Toulouse. The topic was homosexuals deported by the Nazis to concentration camps. Pierre did not recall how he knew about the meeting. It was one week after the election of François Mitterrand President. Pierre sat in the last row. He was now fifty-eight years old. Jean-Pierre Joecker, the editor and founder of the homosexual magazine, *Masques*, was presenting a book *The Men with the Pink Triangle*. Joecker recounted the deportation of German homosexuals and read a few lines of the text. Although Pierre wanted to tell his story, he wished to remain anonymous. The two men met the next day. After thirty years, Pierre felt he could finally reveal his secret. The interview appeared in the magazine linked to the play *Bent,* from Heger's book.

One day, the bishop of Strasbourg, Elchinger, cancelled all reservations for the Congress of ILGA (International Homosexual Association). When asked about the reason behind the cancellation, he claimed that homosexuality was a disease, like other pathologies, and homosexuals must be treated like the ill. The bishop was sued for his statement. Pierre decided to write him a letter. It took six months for the letter to reach the bishop. At first, Pierre sent the letter to his family. Then the letter was sent to the homosexual press, and finally to the bishop. Pierre wrote about his story of the torture he had experienced and the homophobic treatment which he suffered. In the end, he added that he had decided to abandon his anonymity because of the bishop's declaration to ensure other minorities who were still tortured or killed received the support they needed, homosexuals or not.

In 1991, when Jean Marie Bockel was the mayor of Mulhouse, Pierre Seel wrote a letter to the French National Assembly to ensure that the homosexuals were recognized as deported during WWII.

Then, he wrote a letter to the President of the French republic as a witness of the extermination faced by homosexuals during the Second World War. Pierre asked the President to recognize him as a homosexual who was deported, and consequently have his rights acknowledged. The public recognition of a deported homosexual was only given to Pierre in 2001.

Discussion:

Pierre Seel's autobiography is one of the most important testimonies about the massacre committed by the Nazis against gay people. He is the first French citizen to have testified about his deportation to a concentration camp for being a homosexual. In light of this, Pierre Seel, can be counted as a pioneer of the *Homocaust Literature.* He is the author of "I, Pierre Seel, Deported Homosexual. Memoir of Nazi Terror". His brand-new narrative allows us to investigate overlooked historical facts. Pierre Seel's work has given worldwide resonance to the genocide of gay people. The disgust towards modern society pushed Pierre Seel to report the story of atrocities he lived. These atrocities were driven by the Nazi's homophobia. This kind of aversion towards gay people persists to this day. It is important to remember that no one is born homophobic. People become homophobic through the direct and indirect messages transmitted by education, politics, and family. This is why homophobia is such a pressing issue in the field of Gender Studies. The homophobic attitude is a mental border, which can be overcome by a deeper academic investigation of Homocaust Literature, which represents a bridge between the *Genocide Studies* and G*ender Studies*: this literary movement embraces the academic domain of *Genocide Studies* as it is dealing with the massacre of people. At the same time, it belongs to the academic field of *Gender Studies* as it concerns homosexual stories. Thus, we can consider Homocaust Literature an interdisciplinary matter.

Even today homosexuality is considered a crime in 64 countries.

Conclusion:

The goal of this work is to let the world know about a true Homocaust story, and to raise awareness about the *question of homosexuality.* To achieve this, we focused on *Homocaust Literature* by framing homosexual status across history, from the Hellenistic era up to the last century when the Homocaust Literature was born. Pierre Seel can be considered a pioneer of Homocaust Literature, as his autobiography offers a testimony of his deportation to a WWII concentration camp for being a homosexual. This literary movement promotes LGTBQ rights and pertains to the *Genocide Studies* and *Gender Studies.* Even though lots of effort has gone into gender equality and human rights, there is still much to do. Pierre Seel's testimony should not stand alone. His memory must be saved. Nowadays, in 2023, there are still plenty of human beings suffering just for their sexual orientation.

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Post-Conflict Reparations: Need for a Gender Dimension and Mainstreaming in Sri Lanka's Reparations Programmes

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Abstract

The conflict between the Government of Sri Lanka (GoSL) and the Liberation of Tigers of Tamil Eelam (LTTE) ended in 2009, after nearly 30 years of battle, mainly concentrated in the North and East of the country, which have a Tamil majority. Even though the war ended 13 years ago, Sri Lanka still has unresolved issues and stands accused by the international community for not adequately addressing post-war reconciliation, rebuilding and reparation. Reparations are an important part of the transitional justice process that enable sustainable peace after war and contribute to non-recurrence. It builds trust among communities to rebuild and reconcile while empowering vulnerable communities, especially women. Reparations programmes are carried out in Sri Lanka in an ad hoc manner that do not provide comprehensive solutions to the aggrieved. This paper shows the Sri Lankan attempts in the transitional justice process with special emphasis on women and highlights the importance of a holistic approach in the reparations programmes. Although Sri Lanka established home-grown mechanisms such as the Office for Reparations and Office on Missing Persons, there are many shortcomings when trying to achieve the goals of the mandates. This paper attempts to analyze conflict-affected Sri Lankan women's experience with the country's transitional justice mechanism being implemented in the post-war context. It reviews the literature on the integration of a gender dimension in reparations programmes and Sri Lankan conflict-affected women's participation so far. The paper also highlights human rights abuses in Sri Lanka, focusing on women as victims. Sri Lanka's transitional justice mechanisms lack equity, non-discrimination, and gender sensitivity which will be highlighted in this paper. These key principles ensure inclusivity in the reparations process enabling all conflict-affected communities and vulnerable groups to become included as beneficiaries with their unique situations and experiences taken into consideration. It concludes by providing recommendations for Sri Lanka's reparations programmes by reiterating the importance of considering women and girls in all aspects of reconciliation.

Keywords *- Post-conflict, Reparation, Transitional justice, Sri Lanka*

Background – Sri Lanka, Transitional Justice, and Reparations Programmes

The conflict between the Government of Sri Lanka (GoSL) and the Liberation of Tigers of Tamil Eelam (LTTE) ended in 2009, after nearly 30 years of battle, mainly concentrated in the North and East of the country, which have a Tamil majority. Sri Lanka's majority is Sinhalese, while Tamils are the second minority. Even though the war ended 13 years ago, Sri Lanka still has unresolved issues and stands accused by the international community for not adequately addressing post-war reconciliation, rebuilding and reparation. In order to address accountability issues, especially due to the pressure exerted from the international community, Sri Lanka, six years after the war ended, initiated a post-war reparations programme by establishing several processes and mechanisms to ensure truth, justice, and reparation and guarantee non-recurrence. The Commission of Inquiry, Office on Missing Persons, Office for Reparations, Office of National Unity and Reconciliation, Sustainable Development Council, and Human Rights Commission, have commenced their processes to investigate and deliver justice to the aggrieved, although progress has been slow and inadequate. There are questions over GoSL's genuine intentions of addressing outstanding issues and accusations against it; that it has only established reconciliation mechanisms for the international show while nationalistic sentiments take precedence over the needs of conflict-affected

minorities. Legitimate concerns of the victims of war are brushed under the carpet and only resurface in the event when Sri Lanka's case is taken up at the United Nations Human Rights Council (UNHRC). Even though the GoSL won a military operation, it still failed to win sustainable peace and reconcile with the Tamil community due to unresolved problems in the country's human rights records. Apart from post-war rebuilding, resulting from infrastructure and livelihood loss for people in conflict-affected areas, psychological problems such as trauma and isolation need to be addressed.

Not only in Sri Lanka but examples from the world demonstrate that post-war recovery is not an easy task for governments. However, government-led processes are vital when addressing post-war problems for people to re-establish their trust with the government, leading to a speedier recovery process. The importance of transitional justice is that it is a comprehensive approach for communities to deal with conflict and move on with better mindsets rather than harbouring enmities and hostilities that could trigger another war in the future. Transitional justice, when implemented to its true sense, ensures the non-recurrence of war, and Sri Lanka needs to take this path to gain sustainable peace. United Nations Security Council report Annan (2004) explains that transitional justice "*comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses to ensure accountability, serve justice and achieve reconciliation* (United Nations, 2004)." South Africa is often cited as an example for comprehensively using transitional justice mechanisms, and other examples can be found from many other countries where combined approaches such as prosecutions, reparations, institutional reform, memorialization, lustration, vetting, and truth commissions have been adopted (Sikkink and Walling, 2007).

Transitional justice evolved from focusing on legal proceedings, prosecutions and punishments to being more about healing where both parties are encouraged to reconcile differences, admit wrongs and move on. Legal proceedings alone were not the best approach to achieving sustainable peace, and several conflict-affected countries began to include other transitional justice mechanisms such as Truth Commissions. Argentina, Chile, and El Salvador are examples. Truth commissions are "*official bodies set up to investigate and report on a pattern of past human rights abuses* (Hayner, 2011, p. 323)." They strive to bring the truth to the fore and aim to achieve reconciliation between communities which separated and became hostile due to war. They also aim to reform institutions and provide victim redress and ensure non-recurrence.

Victims are central to truth commissions and aim to take their needs into account when recommendations are made for reparations. Compensation and restitution for victims' losses, rehabilitation, as well as non-recurrence are aimed at providing redress to the victims to their satisfaction. Reparation programmes are successful only when the needs for such programmes are understood. Governments may not genuinely commit themselves to carry out all recommendations of truth commissions. However, by adopting such mechanisms, transitional justice processes "*cease to be cheap talk [with] the receipt and the disbursement of reparations*," in instances when governments uphold their commitments (Rubio-Marín, 2011, p.295). In the beginning, the conflict's impact on women was not a consideration at Truth Commissions. For example, Truth Commissions in Argentina and Chile did not consider women's unique needs and experiences. It was with the Guatemalan Commission that the investigating of grievances of conflict-affected populations with a gender dimension began (Nesiah, 2006). Truth Commissions in South Africa, Peru, Haiti, and Timor-Leste later adopted it. However, the presence of women and girls in reparations programmes is still poor which imposes limitations on transitional justice mechanisms (Shelton, 2010). Women are underrepresented despite non-combatant women and children undergoing a silent suffering during the war, being victims to sexual abuse, slavery and other gender-based violence. Lack of access to them in reparation programmes excludes them from justice for atrocities committed against them (True, 2012). In addition to low participation in programmes, research on redress for women and the impact of reparations on women are limited.

Therefore, this paper attempts to analyze conflict-affected Sri Lankan women's experience with the country's transitional justice mechanism being implemented in the post-war context. It reviews the literature on the integration of a gender dimension in reparations programmes and Sri Lankan conflict-affected women's participation so far. The paper also highlights human rights abuses in Sri Lanka, focusing on women as victims. It will conclude by providing recommendations for Sri Lanka's reparations programmes by reiterating the importance of considering women and girls in all aspects of reconciliation.

Reparations Programmes and Adopting a Gender Approach

Reparation is the core of transitional justice, integrating the aspects of justice, truth, and non-recurrence. Although direct benefits cannot be seen immediately as opposed to judiciary measures, reparations when implemented genuinely reaching all affected communities, have a long-term impact (Moffett, 2017) that heal wounds, build trust among once-warring parties, achieve sustainable peace and non-recurrence. Sections of society victimized in war may even have been neglected due to prioritising of victims when providing redress, thus treating some victims as secondary. They too need to be integrated into reparation processes in order for the entire society to return to normalcy in dignity and restart livelihoods. Neglected groups such as women need to be acknowledged, bringing them a sense of belonging to society, which may have been historically denied given the cultural and religious barriers including patriarchy. Reparations can be used "*to subvert, instead of reinforce, pre-existing structural gender inequalities and thereby to contribute, however minimally, to the consolidation of more inclusive democratic regimes,"* thereby transforming societies (Rubio Marin, 2009, p. 66).

However, Hamber (2000) points out that reparations could be a *double-edged sword* warning against perceptions that reparation can single-handedly provide the remedy rather than encompassing justice, truth, and non-recurrence – the other pillars of transitional justice. All pillars must be included in a genuine process to transform societies, rather than transitional justice being a cat's paw to gain political mileage or international approval. This way, conflict-affected communities can reckon with their pasts and ensure non-recurrence as they truly recognize the futility of conflict and realize there are better ways to resolve differences. When reparation is supported with all other aspects, societies would be able to return to the status quo, enabling equality and a sense of belonging in a just society (Lawther, 2019). According to Roht-Arriaza (2004) reparations encompass a society's acknowledgement of harms done, regret for what happened, and making amends. Reparations aim to "*give victims due recognition as citizens*," including "*the recognition of the wrongful violation of victims' rights; the acknowledgement of state responsibility for such violations of victims' rights; the recognition of harms ensuing from the violations; and the attempt to help victims cope with the effects of harms in their lives* (Rubio Marin, 2009, p. 70)."

The UN General Assembly adopted the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2005, recognizing that governments are the main party responsible for ensuring reparations for victims. The UN guidelines set out five main components for a reparations programme which are restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. However, governments' reparations programmes rarely recognize violence against women during a conflict (Scanlon and Muddell, 2010; Bamidele, 2017).

Several studies explain that due to the fear of women raising their voices and fighting for justice for the socio-cultural limitations imposed on women, governments have curtailed their participation in reparations programmes (Bell and O'Rourke, 2007; Rubio-Marin and Greiff, 2007; Rubio Marin, 2009). Since women have become a cultural and even religious symbol in society, their agency is not received positively at large. As such, their exclusion "*from the process of designing reparations programmes, the definition of violence to be repaired, the criteria for defining beneficiaries, the benefits given by way of reparations and the implementation of reparations programmes risk undermining their agency*(Bell and O'Rourke, 2007, pp. 29–30)."

However, at times, we see efforts by States to include women in reparations and address their woes resulting from the conflict. The Nairobi Declaration on Women's and Girls' Right to Remedy and Reparations (2007) is an example of inclusivity of the gender dimension in reparations and addressing gender inequalities (Couillard, 2007). Other examples are reparations programmes in countries such as Morocco, Timor Leste, and more recently, Colombia. The UN Security Council Resolutions on Women, Peace and Security and UN provisions in the Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence, guide UN programmes towards including women who are victims of sexual violence. The latter calls for reparations programmes to be "*specifically tailored to the consequences, sensitivity, and stigma*" regarding sexual violence in conflict (United Nations Women, 2014, p. 2).

Existing gender discrimination in societies could increase with an ongoing war and ensuing oppression on minorities since women take the hardest hit given their demeaned social status and cultural limitations. Therefore, reparations programmes, if properly implemented, can greatly contribute to transforming societies to become more gender-sensitive and inclusive, elevating the status of women (Carol, 2017). Rubio-Marin (2008) reiterates this idea, urging for holistic reparations programmes to be implemented so that societies can be transformed.

Need for Gender Sensitivity Reparations Programme in Sri Lanka and Gender Mainstreaming

Although the Sri Lankan situation with regard to women has improved over the last five decades compared to countries in the region, where women are increasingly being represented in the labour force and contributing to the country's economy, women affected by war are still oppressed and doubly marginalized given the socio-economic conditions resulting from war. They are deprived of even the basic needs such as education, healthcare and shelter.

Hellsten (2012) argues that ethnic conflicts often project women as the "*the weaker sex*" due to "*natural hierarchies*" formulated by those propagating nationalistic ideals impacting on perceptions of women as victims vs agents of change (p.17). The conflict presented a dual effect on women, making them empowered with new opportunities, and at the same time, aggravating oppressions they already face. In Sri Lanka, the interaction of gender and ethnic dynamics resulted in a complex network of intersectionality, which had far-reaching effects on women as victims, combatants and change agents. As a result, the entire war increases women's socioeconomic and physical vulnerabilities while also providing chances for their empowerment. Furthermore, women refugees face a different situation altogether, dealing with safety issues and daily struggles to survive. Apart from the lack of freedom, they become vulnerable to sexual violence. Thus, women in all communities in Sri Lanka have undergone some sort of suffering due to war although experiences may differ.

According to the 2015 Office of the United Nations High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka, women in refugee camps, mainly Tamil, faced harassment from authorities, ranging from sexual violence, torture, and extrajudicial killings (OHCHR, 2015, p. 284). The report also states that male refugees underwent similar harassment for being Tamil. However, this has been different outside the refugee camps where gender-based violence was more intense and complex for women. For example, even when they had to obtain a service from the government, they were asked to provide some sort of sexual favour. Women in conflict-affected areas were twice in jeopardy, being from the minority and being women. According to the Human Rights Watch report of 2013, the Emergency Regulations imposed by the Sri Lankan government aggravated human rights violations committed by the security forces, including rape and other gender-based violence (Human Rights Watch, 2013, p. 370).

Gender-based violence needs to be a key consideration in Sri Lanka's transitional justice process. So far, several barriers are identified in this process such as delays with prosecutions, lack of expertise on gender, and bureaucracy. Gender sensitivities must be considered when incorporating a gender dimension to the transitional justice process, not only when investigating direct sexual violence. Sexual and gender-based violence is a feature of a culture that propagates violence against women. Therefore, Sri Lanka needs

to address this in the transitional justice process. At present, prominence is not given to it and sufficient resources are not allocated.

Women made up a large number of internally displaced persons (IDPs) accounting for nearly 80 percent in the immediate aftermath of the war (OHCHR, 2015, p. 96). With the loss of males in their families, conflict-affected women became the only breadwinners, with over 23 percent of households headed by women where a majority is concentrated in the North (United Nations, 2015). They lead their lives with much difficulty due to the lack of opportunities in income generating avenues as well as the lack of social security. They have added pressure with the burden of children and extended families on their shoulders. Added to that, they are vulnerable with uncertainties regarding safety, reproductive health rights (United Nations, 2016) and conflict-related trauma.

Many of the women heading households engage in Small and Medium Scale businesses, as well as agriculture and fishing as the Northern part of Sri Lanka is home to marine resources. They have daily challenges in obtaining an income to sustain their families and paying off debts. Reparations programmes should also consider gender dimensions in the case of reintegrating female ex-combatants into society, to support them in livelihood programmes, and dealing with stigma and disabilities (Saavedra and Saroor, 2017). Women heading households also need to grapple with issues relating to land rights, militarism, and stigma related to sexual abuse and being widows. Women's vulnerability limits movements inhibiting economic and educational opportunities, especially for girls, where the only option for the latter becomes marriage, resulting in the increase of underage marriages. All these challenges are a result of conflict which is why a gender lens is vital in the transitional justice process.

Reparations programmes are carried out in Sri Lanka in an ad hoc manner that do not provide comprehensive solutions to the aggrieved. Since the Office for Reparations was passed in Parliament under Act No. 34 of 2018 ("*the Reparations Act*") five commissioners were appointed and formulated a reparations policy. The aim was to deliver justice to "aggrieved persons" of the war. According to Section 27 of the Act, an "*aggrieved person*" is a person who has suffered damage as a result of loss of life or damage to their person or property and "relatives" of a deceased person or, a person missing under the above-noted circumstances. The Office for Reparations is mandated to provide redress to 'aggrieved persons', living or have lived previously in Sri Lanka. The Act encompasses non-discrimination, victim centrality and fairness, special needs of women, children, and persons with disabilities. According to the reparation policies and guidelines (2021), livelihood support, compensation and financial support, restitution of land rights, housing, community infrastructure, administrative relief, psycho-social support and measures to advance unity, reconciliation and non-recurrence of violence are some of the aspects that the Reparations policy entails. This clearly shows the need for women to become a significant part of the process as women are central to many of the mentioned aspects, although this is not practiced.

Another mechanism of Sri Lanka's transitional justice process is the Office on Missing Persons (OMP). Its mandate is to investigate into disappearances and missing persons and take action, as well as provide opportunity for people to record their grievances with authorities and have their voices heard. In such instances, the aggrieved persons want the wrong doers to acknowledge the wrongs. Many who go before the OMP are women who have "*disproportionately borne the burden of searching for the disappeared*" showing courage for making their voices heard (Consultation Task Force on Reconciliation Mechanisms, 2016, p. 176).

Women expect authorities to ensure their safety, prevent impunity, and enable them better prospects in society by going before such bodies (Björkdahl and Selimovic, 2015). However, since women were not involved actively when drawing up reparations programmes, their participation and agency in the actual operations is not as effective. Björkdahl and Selimovic (2015) point out that in most transitional justice processes, women have become passive receivers rather than active agents of change, which is the case for Sri Lanka too.

On the other hand, reparations programmes emphasize more on state-led violence against civilians in the public space and less on violence perpetrated by civilians in the private space (Oduro and Nagy, 2014). It is to neglect a large part of the violence against civilians committed by non-state actors. This is true in the case of Sri Lanka too, since violence committed against civilians was not limited to state-sponsored incidents and these did not get much emphasis in Sri Lanka's reconciliation process. The Center for Equality and Justice (CEJ) report on *Reparations For Women In Sri Lanka* emphasizes this fact based on the experiences of women, stating that women heading households face economic injustice resulting from actions of non-state entities which were largely neglected in the reparations programme (CEJ, 2021). Unemployment, stigma, childcare issues, trauma, sexual abuse, and double marginalization for being women from a minority are some of the problems women find themselves in due to abuse within the community. Also, both men and women have difficulties with employment for being connected to the LTTE at some point in their lives, as employers do not want to take a risk with the police or armed forces. A study by the International Crisis Group (International Crisis Group, 2017) quoted a woman participant saying;

> "*My husband is educated but because he was in the LTTE, he can't get a job. I was also injured so we are both dependent on others with two children. It is very difficult. We lost everything. We have no choice, we are here, we have to live now. Today, educated or not, we are like beggars.*"

On top of this, women in their thousands have been unable to engage in agriculture as an income source due to the inability to obtain land deeds resulting from displacement or military occupation. In addition, women's ownership of houses was not recognized in the past. For example, during the Tsunami, only the male heads of households were recognized for house grants under the Tsunami Housing Policy of April 2006 even when the property was originally owned by female family members (CPA, 2005). Resettled IDPs have also become unable to have adequate housing due to financial difficulties and are compelled to live with relatives creating social issues with individuals having to share food and shelter. In addition, the military runs civilian operations in the post-war era, such as shops and restaurants, which limits opportunities for conflict-affected returnees from engaging in business due to market competition (ICES, 2016). This is a "*systematic suppression of the Tamil people in the North and East* (ICES, 2016, p. 21)." The lack of opportunities has forced women, especially widows and girls, to resort to prostitution to acquire the basic needs leading to social and psychological problems.

Livelihood programmes are an important component of the transitional justice process and the State, and several NGOs provide some support for women to take up self-employment ventures. However, most of the programmes lack sufficient funds. Therefore, programmes are either abandoned halfway or unable to be launched on the full scale. Most programmes are implemented in an ad hoc manner with the insufficient assessment of needs, funding, resources, trainings and follow-ups. In addition, programmes are not planned with the involvement of conflict-affected women while some sections of society complain of favourism regarding the programmes implemented. Trainings sometimes focus on accessing services and advocacy to guarantee rights. However, women complain that they are unable to access government services due to sexual harassment (CEJ, 2021, p. 4). When implementing housing programmes, women are required to find a part of the cost which leaves them in debt on top of being indebted already to obtain basic needs as they had to restart their lives after resettlement (Kulasabanathan, Gunasekara and Mohamed, 2014).

Conflict-affected women as well as organizations that undertake various reparations programmes prefer small grants for small-scale projects such as housing, livelihood support, and trainings rather than large compensations. They believe that this would enable them to seek truth and justice without using payments as a closure to the suffering they underwent during the conflict. However, small-scale programmes are implemented in an ad hoc manner without showing concrete results. In addition, families are not keen on obtaining "*Certificates of absence*" for their loved ones due to the mistrust of authorities as well as the ignorance of procedures on the part of officers, although the government issues such certificates for families to receive benefits, especially regarding land rights and social welfare (CPA, 2015, p. 6).

Memorialisation has been a contentious issue in Sri Lanka's transitional justice process due to government barriers in commemorating diseased LTTE combatants, stating that it is propagating terrorism. However, scholars such as Barsalou and Baxter (2007) highlight the importance of memorialisation as a healing process to move on from the loss of a loved one. They define memorialization as "*a process that satisfies the desire to honor those who suffered or died during conflict, and a means to examine the past and address contemporary issues* (Barsalou and Baxter, 2007, p. 1)." Memorialisation is an important part of acknowledging the truth and reconciling, as well as for documentation purposes. It entails "*symbolic reparations"* to acknowledge the suffering of conflict-affected victims and enable them the space to tell their stories (Barsalou and Baxter, 2007, p. 4). In Sri Lanka, the Office for Reparations Act refers to memorials as a method of "*collective reparations*," and the Office on Missing Persons too identified the need for memorials in its interim report. This highlights the need for Sri Lanka's conflict-affected populations to acknowledge the missing persons from all ethnicities. However, what is on paper is not practiced as families with loved ones missing are still unable to mourn for their loss. This is especially difficult for mothers who are unable to hold a funeral for their children due to laws against commemorating LTTE combatants which the government sees as propagating the LTTE cause. Although some restrictions on this rule were relaxed in the North and East, families of loved are still unable to carry out memorial services or even access or build a memorial. The UNHRC report of 2020 states (United Nations General Assembly, 2020, p. 65);

> "*The Government in Colombo seems to be aware of these distinctions and has partly relaxed restrictions on memorialization in the North and East. In 2018 and 2019, on 30 August, the Office on Missing Persons commemorated the International Day of the Victims of Enforced Disappearances with the participation of the family members of the disappeared. At the local level, however, surveillance, intimidation and arrests continue to hamper memorialization activities; family members of victims do not have access to memorials and monuments, some of which have been deliberately destroyed; and the prohibition on the memorialization of fallen Tamil Tigers persists. Grieving families have expressed the need to bury or destroy photographs of their deceased loved ones in uniform for fear of harassment by the security forces. The contrast with several sizable, ostentatious displays of military victory could not be starker. Predictably, victims find this dynamic retraumatizing and alienating".*

Reparations for the conflict-affected women need to be comprehensive as their needs are varied and different. According to the CEJ report (CEJ, 2021), *Reparations for Women In Sri Lanka: What Stakeholders Say*, programmes do not address their grievances holistically. In addition, compensations given to conflict-affected women have become a token rather than genuinely trying to address grievances. The report highlights that women deserve a more comprehensive approach to reparations by way of providing support systems apart from compensation.

> "*There is no point in providing employment opportunities if there is no infrastructure to help women sustain that. The government should also, provide the necessary infrastructure such as daycare centers, allowances, and transport in order to effectively engage in employment opportunities* (CEJ, 2021, p. 4)."

The report also calls on authorities to couple reparations programmes with legal proceedings for women to come to terms with their losses and find closure, tying it up with psychological support since this was identified as a barrier for women to find employment. The report also found that conflict-affected women do not have the platforms or opportunities to share their experiences in the public sphere, which is a vital aspect to reparations programmes. They need to have encouragement and feel safe to talk about their experiences and existing challenges when resettling to a 'normal' life. It was also found that women show

a lack of enthusiasm to do so as they are not given the space. Moreover, information about reparations programmes is not freely available or transparent, resulting in most victim families eligible to obtain benefits being ignorant about it. Therefore, the Office for Reparations and Office on Missing Persons has the added burden of looking for women affected by the conflict and their families to provide support inclusively. The report, therefore, emphasizes the need for officers to be more proactive and recruit women for higher positions since they understand women's unique needs and grassroots realities. The officers themselves need to provide a safe, trustworthy and enabling environment for affected women to walk in and talk about their woes, especially if they had been victims to any sort of gender-based violence. The government has the responsibility of ensuring this and not treat reparations as a form of charity.

Conclusion

Reparations are an important part of the transitional justice process that enables sustainable peace after war and contributes to non-recurrence. It builds trust among communities to rebuild and reconcile while empowering vulnerable communities, especially women. This paper shows the Sri Lankan attempts in the transitional justice process with special emphasis on women and highlights the importance of a holistic approach in the reparation's programmes.

Although Sri Lanka established home-grown mechanisms such as the Office for Reparations and Office on Missing Persons, there are many shortcomings when trying to achieve the goals of the mandates. Programmes are implemented in a haphazard manner without considering the unique challenges that women had undergone during conflict and undergoing in the aftermath. Women were not consulted when drawing up reparations programmes or when establishing transitional justice mechanisms. As a result, their experiences are not understood when providing redress. Women make up a large majority in the conflict-affected population in Sri Lanka and neglecting their woes in the reparations programmes signifies the overall failures of the reconciliation process. The inability to provide a proactive role for conflict-affect women in the transitional justice process leaves a large part of society in frustration. The reparations programmes being implemented do not provide redress to human rights abuses of women in a comprehensive manner, falling short of covering its five elements of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These shortcomings are seen not only in Sri Lanka's case but also in other parts of the world. There are many instances when they struggle to implement recommendations of transitional justice mechanisms such as Truth Commissions due to nationalistic sentiments overpowering reconciliation and legal processes.

Sri Lanka's transitional justice mechanisms lack equity, non-discrimination, and gender sensitivity which this paper highlighted in the discussion. These key principles ensure inclusivity in the reparations process enabling all conflict-affected communities and vulnerable groups to become included as beneficiaries with their unique situations and experiences taken into consideration. Apart from gender sensitivity in the socio-economic sphere, Sri Lanka's reparations programmes should also incorporate justice mechanisms and adhere to the Constitution where prosecutors are brought to book, devolve powers as indicated in the 13th Amendment and ensure that administrative structures are accessible in grassroots to achieve a holistic approach specifically to benefit vulnerable groups such as women. It is important to incorporate a gender dimension and mainstreaming in all aspects to address conflict-affected women's unique situations and experiences; be it as mothers, daughters, widows, refugees, breadwinners or those still mourning the loss or disappearance of loved ones (Saavedra and Saroor, 2017; Jeyasankar and Ganhewa, 2018; Kodikara, 2018).

International organisations such as the UN too urges the Office for Reparations to consult a wide range of stakeholders, including war-affected women from grassroots when developing policies and guidelines to ensure that programmes holistically address victim needs (United Nations General Assembly, 2020). It is only through incorporating women that Sri Lanka can achieve the desired goals of transitional justice to ensure that war of such a scale does not recur in the country.

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