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Women's Participation in Transitional Justice Mechanisms: Comparing Transitional Processes in Timor Leste and Sierra Leone

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WOMEN'S PARTICIPATION IN TRANSITIONAL JUSTICE MECHANISMS:
COMPARING TRANSITIONAL PROCESSES IN TIMOR LESTE AND SIERRA
LEONE

A Thesis

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by

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ABSTRACT

Women tend to suffer a disproportionate amount of sexual and reproductive violence during periods of conflict, though they generally participate at a lower rate than men in transitional justice processes. Because participation is discussed in procedural justice literature as being crucial to securing feelings of justice and dignity within victims of violence, the lack of women's participation in transitional process indicates that justice outcomes could suffer without equitable participation of women. In light of this issue, this study uses a comparative case study analysis method to investigate women's involvement in the transitional justice processes in Timor Leste and Sierra Leone to uncover conclusions that can be used to understand women's participation in other transitional societies and thus encourage equal participation of women to enhance justice outcomes.

This study indicates that the two main factors that influence women's participation are the extent to which women or women's issues were included in the original transitional justice process mandates and the way in which women are viewed in the transitional society. Furthermore, it can be seen that women are included in transitional processes in mechanism mandates or as decision-makers and/or testimony

givers/participants. Women are excluded from transitional processes because they either exclude themselves or are overtly excluded by justice systems.

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CHAPTER ONE: TRANSITIONAL JUSTICE: CONTEXT, GOALS AND MECHANISMS

INTRODUCTION

The study of transitional justice is crucial to determining how societies that are transitioning from war to peace should deal with the human rights abuses, lack of government accountability and disregard of the rule of law that were perpetrated during the period of conflict. Transitional justice is the spectrum of approaches used to address past human rights violations in a state transitioning from an authoritarian regime to a democracy or from a period of conflict to peace. The goals it intends to achieve can be grouped into four categories: reconciliation, justice, victim healing, and government accountability, although the degree to which one of these goals is valued above or focused upon more than the others differs greatly between processes. Transitional justice processes are critiqued for not meeting the above goals for the following reasons: lacking adequate time and resources to complete their work, political pressure from former regime inhibiting justice processes, and the difficulty in prosecuting perpetrators¹

¹ Both high- and low-ranking perpetrators have proven difficult to prosecute due to various circumstances. High-ranking perpetrators have been known to leave the country where the violations occurred, such as those in Timor Leste who fled to Indonesia after the transitional process began, while lower-ranking perpetrators benefit from the lack of obtainable evidence to link them to crimes committed. In both cases, prosecution can be difficult because of the general lack of evidence available to prove that human rights abuses occurred.

Although generally not addressed as a critique in the study of transitional justice, procedural fairness literature indicates that the lack of importance placed on participation should be examined more thoroughly. According to procedural justice literature, participation plays a crucial role in securing feelings of justice and dignity within victims of violence (d'Estrée, 2006). For the purposes of this study, voice will be highlighted as the defining element of participation. Voice, which also relates to process control is described as “the degree to which the procedure gives those affected by a decision an opportunity to express their views about how the decision should be made” (Tyler, et. al. 1985, p. 72). According to d'Estrée (2006), “to have voice is to have legitimacy and integrity; denial of voice denies legitimacy and legitimate participation, ruptures integrity, and threatens the self’s existence” (p. 107). Hamber (2009) writes that “giving victims ‘voice’ (that is giving them space to put their opinion or view across) positively influences whether a person considers a process to have been procedurally just irrespective of the outcome,” which is echoed by Folger (1977), Lind & Tyler (1988) and Gibson (2002).

It is important to illuminate voice as a defining aspect of participation because there can be a significant difference between being present during a transitional justice process and being able to express opinions and influence outcomes. Although it will be important to consider, for example, how many individuals testified during a truth commission hearing, it will be paramount to this study to examine more acutely the nuances of voice surrounding participation and procedural fairness. Hamber (2009) writes that “James L. Gibson in his survey work on the TRC found that perceptions of

fairness of the TRC and its amnesty provisions among the public increased if they felt that victims had ‘voice’ in the process,” (p. 130) illustrating the importance of this distinction. Herman (1992) further writes that “victims themselves may dissociate, forever wounded by un-named and unintegrated memories, and societies as well may suffer from this insidious amnesia never able to move forward healed and whole”. As illustrated above, the lack of and/or discouragement of participation negatively affects victims and societies’ ability to move forward as well as victim’s ability to maintain their identity and to feel that justice has been achieved. Without the ability to meet these ends through voice and participation, the achievement of justice, reconciliation, victim healing and government accountability are hindered. It is hypothesized that when participation is limited and voice is denied, a transitional process is less likely to achieve these four goals.

As a nation transitions into a new beginning and turns the page on its violent and repressive history, women are often still subjected to the same structural inequalities that they experienced prior to the transition and enjoy less than full participation even though they comprise as many if not more of the victim population as men. These issues arise because of cultural norms of participation and social stigma that surrounds sexual violence in a majority of transitional nations. Thus the same problems of being denied voice and representation that existed before the transition are perpetuated, pointing to a striking and profound problem that has been minimally addressed in the transitional justice literature. By not allowing and/or encouraging women to participate and to have voice in transitional processes, a transitional nation eschews the possibility of gaining valuable input from victims who suffered significantly during periods of violence and

thus denies them access to justice, healing, reconciliation, and having confidence in their government.

To understand how to build a more solid foundation for the future and truly make a transition into something new, it is crucial to explore the context of transitional justice in terms of women's involvement in transitional justice processes. As the topic relating to women's participation in transitional justice mechanisms is vastly underresearched, this study seeks to answer: 1) What are the factors that determine/influence women's level of participation in transitional justice processes and 2) In what ways are women included or excluded in these processes? For this study, I have chosen to examine the transitional justice processes in Timor Leste and Sierra Leone as not only are they very timely and recent processes, but through various elements intrinsic in each process, they illustrate the immense range from encouraged participation to outright and overt exclusion. Although there are many elements that contribute to transitional processes, this paper will focus specifically on truth commissions, criminal tribunals, and reparations processes because these can be seen to be more participatory in nature, running the gamut between participation to exclusion and will therefore highlight the reality of participation of women in transitional nations.

This paper will begin with an explanation of transitional justice and description of and justifications for the six main transitional justice mechanisms, followed by general critiques of these mechanisms and then narrowing in to examine the critiques of women's role in truth-seeking, prosecutorial, and reparations processes. Through these discussions, the vital need for this study will be illuminated, which validate the case study choices of Sierra Leone and Timor Leste. These cases will be used to explore factors that influence

women's level of participation in transitional nations. By undertaking this study, it is hoped that the researcher will uncover ways in which women are included and excluded from transitional processes, thereby lending recommendations to the greater field of transitional literature to contribute to future transitional justice processes.

Post-Conflict Context

In order to fully understand transitional justice, it is crucial to understand the context in which transitions take place. Transitional nations are marked by a history of past human rights abuses and violations and typically a disregard for the rule of law by either the ruling regime, the police/military, and/or by guerrilla combatants. These societies are fraught with victims of physical and often structural violence that characterized their lives during the period preceding the transition. Although societies may have moved on in the larger sense from the past violence, many “post-conflict societies” often still exist in a state of “continued political tension, social instability, economic disruption and heightened crime” making progress, reconciliation and a sense of peace a difficult undertaking (Mani, 2002, p. 11). Sooka (2006) also notes the types of stakeholders that are involved in post-conflict societies—stakeholders that transcend the obvious victim and offender dynamic to include individuals and systems that benefitted from the past regime's practices and likely have interest in maintaining whatever semblance of power they still enjoy. Because of the often continued presence of members of the former regime, it can be difficult to achieve what Bohl (2006) calls “pure justice”. Transitional societies tend to be complex and fragile, replete with critical questions such as is it better to forget, to forgive, to punish, or try to create some combination of all of these to address the needs of victims, perpetrators and the greater society?

One contributing factor to the fragility of transitional nations is the state of the rule of law. Mani (2002) writes that the “rule of law...and the entire apparatus of the justice system, is usually either delegitimized, debilitated or destroyed during or prior to conflict, (p. 6)” and therefore must be (re) built in order to promote confidence and accountability for both victims and the emerging nation. Sooka (2006) echoes this sentiment by mentioning that rehabilitating the rule of law is an important aspect in the promotion of democratic institutions. In the context of a state with no justice system, how can it be imagined that victims of the abuses of the former regime would have any faith, confidence or desire to move forward without positive steps being made to make the government accountable for its actions? Otherwise, those victims could remain in fear that their suffering could be relived without a significant revamping of the system that compromised the safety, security, and well-being of themselves and their families. The context in which transitional justice mechanisms are undertaken is critical to explore in order to understand why certain goals emerge in transitional processes.

Transitional Justice Goals

Depending on the nation (or more specifically the new regime), the goals of transitional justice can vary greatly, which makes pinpointing nebulous terms like “success” quite difficult. Likewise, although many of the aspects of transitional justice are generally agreed upon throughout the literature, there are still a wide variety of definitions available. For the purposes of this paper, the following definition will be utilized: Transitional justice is defined

as comprising 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, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none

at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof (UN Security Council, 2004).

Some authors have generalized the conception of success to say that success happens when a transitional process fulfills its mandate, without any sort of standardized definition that could be used to understand past cases or be applied to future ones (Brahm, 2007). Each author seems to contribute a slightly different take on the goals of transitional justice, which make it difficult to grasp completely, but can generally be grouped into four main categories. These are: reconciliation, victim healing, promotion of the rule of law and government accountability, and justice (Crocker, 2002; Freeman, 2000; Zalaquett, 1995; Hamber, 2009; Arnould, 2006; Amstutz, 2005). These four areas are addressed in a variety of ways that differ from nation to nation, often with one of these aims in the forefront while the rest are secondary. The following sections intend to elucidate what each of these areas aims to achieve and how transitional processes can be most effective in reaching those goals.

Rule of law and government accountability. The promotion of the rule of law and government accountability is one element that appears to be paramount for a successful transitional process throughout much of the literature. Amstutz (2005) writes that “if a new government is to keep the faith with the victims of repression, it must hold offenders accountable” (p. 21). As echoed in Minow (1998) and Hazan (2006), transitioning societies must consolidate the rule of law by taking some sort of action against offenders in order to move on and reconcile the nation. On this same line of thinking, Brahm (2007) writes that truth commissions are one way to promote accountability of both the society and its political leaders as well as build trust within the nation, which Amstutz (2005) validates, writing that by both telling and hearing the truth,

victims and perpetrators are held accountable, which is an integral step in promoting the “collective moral health of a nation” (p. 24). Extending this notion is Jacoby (1983) who develops the idea that “a society that is unable to convince individuals of its ability to exact atonement for injury is a society that runs a constant risk of having its members revert to the wilder forms of justice” (p. 10). This means that without justice in place, a legitimate societal system will collapse from both the legal and social sides. Freeman (2000) writes that the prevention of this type of wild justice by victims can be quelled by pursuing the goal of government and institutional accountability. Similarly, Crocker (2002) writes that it is critical for a transitional process to provide “recommendations for changes in the law and governmental institutions, including the judiciary, the police, and the military, to remove the causes of past abuses and ensure they will not be repeated” (p. 496). Throughout the literature it can be seen that by promoting government accountability and the rule of law, a more solid transitional process is pursued as this goal aims at ensuring justice to those who suffered under the former regime.

Societal reconciliation. Many authors point to the goal of societal reconciliation in a nation to ensure success of the transitional process. Arnould (2006), Freeman (2000) and Crocker (2002) note that social reconciliation should be pursued as a goal because it can reverse feelings of hate and violence between former enemies or groups that remain from before the transition took place, thereby contributing to peace, a necessary element to a democratic society. In an effort to clarify the generally vague nature of the literature dealing with reconciliation, Brounéus (2008) provides the following definition that proves to be quite useful in the context of this study: “Reconciliation is a societal process that involves mutual acknowledgment of past suffering and the changing of destructive

attitudes and behaviors into constructive relationships toward sustainable peace” (p. 294). To this end, she notes that reconciliation is an important pursuit because the prevalence of intrastate conflicts dictates that neighbors will continue to live next to one another after the conflict has ended and thus must find a way to make mend relations at least enough to coexist (Brounéus, 2008).

According to Arnould (2006), the pursuit of reconciliation through transitional justice mechanisms also leads to increased feelings of trust between “the peoples and of the population in the state” (p. 141). This pursuit was illustrated through the activities of the South African Truth and Reconciliation Commission, where Archbishop Desmond Tutu (1999) writes that “the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society” (p. 45). Without improving relations and promoting a change in hostile relationships among individuals and between individuals and the state, a peaceful transition seems destined to fail. Thus, societal reconciliation tends to be a well-recognized goal in transitional processes, though is generally not pursued as the sole goal without integrating other elements.

Victim healing. Another goal in transitional justice processes is providing victims opportunities to heal through various avenues, including gaining recognition for their suffering and being empowered or re-empowered by society. Govier (2002) writes that victims need to be able to re-assert themselves in a way that brings back some of their control and power, which can be achieved through truth-telling. As an extension of this idea, Brahm (2007) writes that “on the individual level the truth-telling process can serve to empower the victims and provide a catharsis for their suffering, but it also only gives a

limited amount of time to discuss one's narrative with little to no follow-up counseling provided afterwards" (p. 20).

Recognition and voice are integral to promoting victim healing. Amstutz (2005) writes that in truth commissions, victims have the opportunity to have their suffering acknowledged, which is a positive step in receiving recognition from the state that wrongdoings were committed. Minow (1998) further illustrates this need as she describes a mother who participated in the South African TRC that said "I wanted the world to see my tears" to which Minow responds: "There can be pride and strength in seeing oneself as an actor on the world stage, and as one who can educate the world while also exposing personal suffering in a public way" (p. 68). To this same end, Crocker (2002) writes that by having the opportunity to publicly share their narratives, victims can "receive public redress in the form of acknowledgment of compensation" (p. 496), further illustrating the potential for this goal to make a positive contribution to the success of a transitional process.

Freeman (2000) reiterates this concept by noting when victims are allowed to share their stories and be acknowledged and recognized in a public forum, they have a opportunity to "regain their dignity" (p. 115). By reclaiming dignity and having their suffering acknowledged victims can once again begin to feel human, a right often denied to them during periods of conflict. This re-humanization can be a critical step in the healing process. Acknowledgment by the international community in general can also contribute to victim healing as Arnould (2006) writes, noting that the establishment of transitional mechanisms "may provide some relief to victims and their families as they come to feel that their status as victims is finally being taken seriously by the

international community” (p. 149). This illustrates the capacity to reassert one’s self-respect and regain power and control of one’s life that was taken away during a period of authoritarian rule.

Interweaving these notions of recognition and empowerment, Minnow (1998) believes that both empowerment and recognition can be gained through the act of forgiving as she notes that “through forgiveness, victims can reassert their own power and reestablish their own dignity while also teaching wrongdoers the effects of their harmful actions” (p. 15). On the other hand, it should be considered that in the South African Truth and Reconciliation Commission many victims felt that “forgiveness [was] assumed, rather than granted”, which neglects the sentiment that “forgiveness is a power held by the victimized, not a right to be claimed” (Minnow, 1998, p. 17). Govier (2002) and Jacoby (1983) echo this sentiment by highlighting the ability to forgive as a way for victims to regain control while stopping the cycle of hatred that violent revenge often perpetuates. Further illustrating the harm that can result if victims’ needs are not addressed is Herman (1992) who writes that “victims themselves may dissociate, forever wounded by un-named and unintegrated memories, and societies as well may suffer from this insidious amnesia never able to move forward healed and whole” (cited in d’Estrée, 2006, p. 107). Through recognition and empowerment from the new state, former regime or perpetrators, victims can begin the healing process, which is argued by many authors as an important goal in transitional processes.

Justice. The need for members of a transitioning society to feel that justice has been done is also an important goal in transitional processes. Justice, although arguably

an overarching and to some degree an *implied*² goal in every transitional justice process, is difficult to accurately measure as the meaning tends to vary from individual to individual and between processes. The most commonly known types of justice are retributive, procedural, distributive and restorative. Depending on the mandate of a transitional process, one of these tends to be valued over the other, which is often balanced by what states view as being realistic and attainable. Based on the trend of new states to create truth commissions in an attempt to reckon with past human rights abuses, it would appear that restorative justice is gaining popularity in the mandates of transitional processes, though it still seems clear that many victims still push for retributive justice to right past wrongs.

To this end, Hazan (2006) writes that “restorative and criminal justice are both [often] perceived as necessary” (p. 20) as these two types of justice provide victims, offenders, and society with different elements of justice, restorative being focused more on healing, where criminal is focused more on punishment. Although some authors note that the punishment of perpetrators is central to achieving justice in the eyes of victims (Hamber, 2009), others feel that justice can be served through victims having the opportunity to share their stories in a public forum (Minow, 1998). Interestingly, there is even a great deal of inconsistency in the perceptions of justice within single cases, such as in the South African transitional process. Minow (1998) offers an example of a man who was blinded by a member of the apartheid regime who testified in the TRC that “I feel what has been making me sick all the time is the fact that I couldn’t tell my story.

² I use the term *implied* here to highlight that although this field of study is indeed called “transitional justice” the study of justice remains a bit nebulous as justice tends to be quite unique from person to person and thus is difficult to determine if it has actually been achieved without merely asking individuals’ perceptions of the process.

But now I—it feels like I got my sight back by coming here and telling you the story” (Krog, 1998, p. 43). On the other hand, Hamber (2009) writes that “contrary to popular perceptions of the South African TRC, my experience of the process suggests that most victims favoured punishment of perpetrators. This included calls for retributive action” (p. 118). Likewise in a study about the transitional justice process in the Democratic Republic of the Congo, Vinck and Pham (2008) note that when asked to define justice, respondents in the study noted various elements, such as “establishing the truth, applying the law, being fair, and punishment” (p. 404). With such opposing views on justice, it is a daunting task to develop a comprehensive definition, but should be included as a foremost goal in transitional justice processes as nearly all authors point to justice in some capacity as a necessary element in transitional processes.

Procedural justice. It is worth considering pioneering theories of justice, such as those found in John Rawls’ *A Theory of Justice*, in which it is stated that “each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all” (Rawls, 1999, p. 266). This is the initial step in the idea of fairness that is discussed significantly in procedural justice literature, which is the body of work that will guide this study. In regard to the concept of fairness, a guiding aspect of procedural justice, Minow (1998) quotes a former judge for the International Criminal Tribunal in Rwanda and Yugoslavia who says that “‘the success of the international tribunal will be tested by whether the trials were fair,’ not by the number of prosecutions or convictions” (p. 26), which insinuates—as other studies have also indicated—that the fairness of the process is one of the most indicative elements of the success of a trial proceeding.

One defining element of procedural justice is the ability of victims to have a “voice” in justice processes (Gibson, 2002). Lind and Tyler (1988) note that “people usually feel more fairly treated when they have had an opportunity to express their point of view about their situation” (p. 5). d’Estrée (2006) further discusses voice, writing that “voice not only improves one’s distributive justice outcomes through influence on the decision, but it also signifies that one has the legitimacy and value to have a voice” (p. 105). She also describes four levels of voice as having the “ability to voice one’s views and experiences”, “ability to be heard by others”, “ability to be heard by the other that perpetrated the injury”, and “acknowledgment of injury by the other” (d’Estrée, 2006, p. 113-114). Voice, as described through the procedural justice literature is critical to this study as voice will guide the understanding of participation of women in transitional justice settings.

Outcome justice. The notion of having justice done is ultimately related to the notion of balance, which is not a particularly unique idea to the study of justice, but important in the context of transitional justice. Govier (2002) and Jacoby (1983) specifically discuss the inherent desire to settle the score when one is wronged, which is not a reprehensible idea, but should be pursued with caution. Phelps (2004) further expounds upon this idea by writing that “if a state fails to enact retribution that is emotionally satisfying to victims, victims will eventually take justice into their own hands in an attempt to establish a psychologically necessary balance” (p. 38), which parallels Jacoby’s (1983) notion of *wild justice*. One issue that has been seen to affect notions of outcome justice is that in numerous transitional processes, the number of perpetrators who are ultimately tried is not reflective of the amount of perpetrators that

actually committed crimes. This was exemplified in the South African transitional justice process, which issued amnesties in lieu of prosecutions.

Reasserting self. The next theme of justice can be realized in the need to reassert one's self, whether it is self-respect, self-worth, or dignity. Reasserting one's self in these ways is particularly critical because when one is victimized, especially in a setting of genocide and grave human rights abuses, they lose elements of control in their life which in turn threatens their identity. By having the opportunity to regain this feeling of control, individuals appear to be more likely to feel as if justice has been served. Although this concept has significant worth on the individual level, perhaps it can also be applied on the state level as the nation begins to assert itself in a new light, pursuant of democracy and human rights, for example. Justice can be promoted in terms of seeking to regain control over those who perpetrated the past atrocities, whether through truth-telling, reparations or prosecutorial processes. As these elements are integral to the general conception of justice, likewise is the study of procedural justice to understanding justice in the context of transitional nations.

Interactions between these goals. Although this paper enumerates these transitional justice goals as separate entities, it should be mentioned that several authors discuss the interaction between multiple goals, implying that there can be an important interaction between them. According to some authors, one goal cannot be achieved unless other goals are also achieved. For instance, Arnould (2006) writes that “accountability is central to reconciliation as a lack of it breeds feelings of injustice amongst victims and hampers the creation of a human rights culture” (p. 141), which marks the interplay between accountability, reconciliation and justice—three of the goals noted above.

Similarly, Amstutz (2005) writes that a sense of justice can help to “promote reconciliation” and “consolidate the rule of law” (p. 38), also illustrating the view that transitional justice goals can be connected. This is an important element to consider as transitional justice goals are not necessarily mutually exclusive, but are often somewhat fluid and amorphous, with elements of each goal bleeding into other goals to create an indefinite amalgamation. Among other issues, this aspect leads to the difficulty in defining the “success” of transitional processes because the “goals” are not always clearly defined. In light of the prevalent lack of clarity and definition of goals in transitional justice settings, it is important to identify the hindrances to “success” in these settings.

Roadblocks to Success

Completely achieving one of these factors, let alone all four of these factors has proven to be quite difficult in transitional justice processes for a variety of reasons. First, each state has a different and unique idea of what their nation’s process should comprise and how it should be undertaken. Thus, one goal may be valued over others and some rejected entirely. There can also be significant disagreement on what each of these goals actually means. For instance, justice is a particularly difficult concept to agree upon as it means something different to each person or state that might be asked to define it. For some, justice means punishing those who wronged them and for others it may mean forgiving their perpetrator. Some might even desire some mix between the two extremes. For example, after General Augusto Pinochet declared a blanket amnesty for all the members of his regime that committed grave human rights abuses in Chile, a woman leader of an organization of relatives and missing political prisoners, said “we just can’t live at ease while the murders and torturers walk the streets of this country free,”

implying that some step must be made to ensure justice had been served (“Frustration Still Strong Among Victims of Rights Abuses Under Pinochet”, 1992). On the other hand, regarding the South African Truth and Reconciliation Commission, Archbishop Desmond Tutu, who served as the head of the TRC, believed that using the truth-telling process instead of tribunals would “‘open wounds’ so as to cleanse them and ‘stop them from festering’”, because it would be geared toward “the victims of human rights abuses and would focus on rehabilitating them and restoring their dignity” (“Archbishop Tutu welcomes his Appointment to Head Truth Commission”, 2005). This statement is indicative of the feeling that truth alone is enough to secure feelings of justice.

Victim healing, meaning addressing the past suffering of victims in order to help them move forward in their lives, has also been difficult to achieve in many cases as the majority of truth commissions or prosecutorial processes lack follow-up mechanisms to address the wounds that have been opened by victims giving painful testimony about their suffering. There are also a great deal of victims, especially women, who do not talk about their suffering, which some would argue is a necessary step in healing. This often happens because of the stigma that is placed around the experience of sexual violence (Hayner, 2001) and also the cultural norms that influence many societies’ views and treatment of women. Healing is also not always built into transitional justice processes as a main goal, as some states feel it is more important to merely close the door on the past and move forward. In Chile, for example, although there was a truth commission, the scope of the abuses that were addressed and the publicity surrounding the release of their final report was quite limited (Hayner, 2001). This exemplifies the lack of desire of the

state (or in this case the former dictator that still enjoyed a heavy presence in the state) to address victim healing.

Reconciliation can also be difficult to achieve as many individuals are unwilling to reconcile with those who caused them suffering under the former regime. Perhaps more importantly, the concept of reconciliation “tends to be indistinct and vague” as discussed in the literature (Brounéus, 2008, p. 293). Keeping in mind the violent and abusive past of transitional nations, it seems clear why reconciliation may not always be readily accepted as “attitudes and behaviors do not change from genocidal to collegial at the moment of a declaration of peace” (Brounéus, 2008, p. 292). Many people eschew the possibility of making amends with a person that was responsible for their suffering during a period of conflict. In South Africa, for example, one woman, who was shot during an anti-apartheid protest and is now paralyzed said, “I tell my child, don’t trust the white man. He is not your friend. He is your enemy” (“Apartheid’s victims say reconciliation only a distant dream for South Africa”, 2004). Without broad steps undertaken by the new regime to ensure that justice has been served and victim’s needs have been addressed, it is unrealistic to expect that reconciliation will just come about because the state desires it. Likewise, in many cases, perpetrators have been unwilling to make apologies or offer recompense for the crimes they committed, which further jeopardizes the desire for reconciliation.

Promoting the rule of law and government accountability has also proven to be a difficult undertaking in transitional societies because often times there is still a strong presence of the former regime in the government and/or military (Mendez, 1997). In the case of Chile, General Augusto Pinochet had written into the Constitution that he would

“remain commander in chief of the army until 1998, and would thereafter serve as senator for life” (Hayner, 2001, p. 35). With this kind of heavy handed presence of a former dictator still in power to some degree, how can accountability of the government be ensured and trusted by the people? McAdams (1997) also asserts that newly transitioning regimes may not enjoy a substantial amount of political power, making it difficult for them to uphold the rule of law to the satisfaction of the greater society.

Freeman (2000) lists six complications to transitional justice processes, which include: capacity complications, program costs, program trade-offs, complications of interdependence, complications of timing, dilemmas of legality and fairness (p. 117-121). In terms of capacity complications, new states often have difficulty prosecuting perpetrators because of the new state’s lack of political will and financial means. Consequently transitional states have been seen to institute amnesties, which are incongruous with the widely accepted goals of transitional justice. Program costs can be a hindrance because prosecutions, especially if they are for an extremely large amount of perpetrators, as seen in Rwanda, can be quite expensive. Because it can be difficult to determine which programs of a transitional process should be top priority, there are often program trade-offs which may lead to certain programs being forgotten or carried out in a suboptimal fashion. Similarly, some transitional justice goals are inversely related and thus one may be valued over the other in an effort to “preserve peace and stability”, thus illustrating the complications that can arise because of the interdependence of transitional goals (Freeman, 2000, p. 120). Timing also presents an issue because although the international community generally demands action immediately following the end of a conflict, it is unrealistic to think a process can adequately execute its goals without proper

time to plan. Lastly, legality and fairness have proven to be issues for a variety of reasons. For example, in some states there has been a question of whether laws “can be applied retroactively” or “whether amnesty laws enacted in the pre-transition period should be respected” (Freeman, 2008, p. 121). Speaking to this issue, Freeman (2008) notes that there is often a desire to apply rules and laws that best serve the transitional process instead of those that might be consistent with international or national norms, a factor that jeopardizes credibility and accountability of the new regime. Because of so many potential roadblocks to transitional processes achieving their mandate and fulfilling their goals it is not unclear why a definitive literature on the success of these processes does not exist. Now that the goals and barriers to those goals have been enumerated, the specific mechanisms will be discussed to give the reader a more precise picture of the inner workings of transitional justice.

General Critiques of Transitional Justice

Although transitional justice processes aim to do important work such as transforming violent dictatorships into democratically based institutions, there are many critiques of the processes that comprise transitional justice. Some of these critiques are general and some are focused on specific transitional mechanisms. A central critique of transitional justice, which has only minimally been addressed in the literature, is that procedural fairness often suffers in the implementation of various processes because it is generally not as readily considered in initial mandates. Aoláin (2008) writes that a problem of all mechanisms is “how to appropriately discharge justice while ensuring fairness of process and procedure to those who have committed or colluded in the most heinous of crimes against their fellow men and women” (p. 217). With this in mind, it is

obvious that dispensing justice when one is already assumed to be guilty can be a tricky undertaking. Because of the tendency for the public to automatically view one who is being tried for human rights to be guilty, the fairness of the process, particularly the concept of allowing one to be innocent until proven guilty is jeopardized. Although western precepts should not be cursorily applied in non-western societies, this is a norm that is consistent with international legal principles and should therefore be considered. In addition to criminal tribunals suffering from possible lack of fairness, community reconciliation mechanisms tend to lack common due process elements, like accusing without evidence, or employing judicial authorities that do not have proper legal training (Corey & Joireman, 2004).

For example, in Rwanda, nearly all those being tried in the community-based *gacaca* courts are of the Hutu ethnicity, although there were also Tutsis that committed violent crimes and are also culpable. To this same end, the term *génocidaires* (meaning those who committed genocide) is synonymous with Hutu ethnicity, inevitably marking all Hutus as guilty regardless of their participation in the genocide. Corey and Joireman (2004) write that the *gacaca* process “specifically excludes Tutsis involved in the massacre of civilians as the RPF gained control over the country” (p. 86). The fact that one group is generally considered to be more guilty than the other is a striking blow to procedural fairness.

Participation, which is exemplified by “voice” for the purposes of this study, is another aspect of procedural fairness that can be lacking in transitional processes. Hamber (2009) writes that “giving victims ‘voice’ (that is giving them space to put their opinion or view across) positively influences whether a person considers a process to

have been procedurally just irrespective of the outcome,” which is echoed by Folger (1977), Lind & Tyler (1988) and Gibson (2002). To more explicitly illustrate this, Hamber (2009) writes that “ James L. Gibson in his survey work on the [South African] TRC found that perceptions of fairness of the TRC and its amnesty provisions among the public increased if they felt that victims had ‘voice’ in the process,” illustrating the importance of this distinction (p. 130). It is important to illuminate voice as a defining aspect of participation because there can be a significant difference between being present during a transitional justice process and being able to express opinions and influence outcomes. Although it will be important to consider, for example, how many individuals were present during a truth commission, it will be paramount to this study to examine more acutely the nuances of voice surrounding participation and procedural fairness.

Aoláin (2008) also addresses three specific critiques that are echoed throughout the transitional justice literature. She says that transitional justice can be *selective* in that, for instance, ad hoc tribunals may be created in some states but not in others, and political choices may define whether they are created or not (p. 213-4). It can be *partial*, as only fractions of actual perpetrators are brought to “truth” or trial, in tandem with the prevalence of the “some truth and some justice” concession (Aoláin, 2008, p. 214). Lastly, it can be *myopic* because individual accountability seems to be the norm (i.e. Nuremberg) but the context and systemic factors should be taken into account as well. Now that the general critiques of transitional justice have been outlined, the more specific critiques of the mechanisms will be explicated in the following chapter.

CHAPTER TWO: TRANSITIONAL JUSTICE MECHANISMS

Definitions and Justifications

Amnesia, noted by the Yale Journal Company Inc. (1961), is “nothing more than a failure of memory concerning facts or events to which an individual has been exposed” (p. 109). This has been adopted by some transitional nations as a way to promote a forward-looking policy to avoid being dragged down by the negative stigma that often results both during and after the transition from an authoritarian regime.

The first justification that Amstutz (2005) offers for this method is that “forgetting is a necessary approach to cope with the demands of life,” which signifies a balance between confrontation and neglect and remembrance and forgetting. Another justification provided by Amstutz (2005) is that “forgetting facilitates the consolidation of democracy and the rule of law” (p. 19). It could be argued that by forgetting the atrocities of the past, the transitioning state can move on and turn the page to a new society, respectful of human rights and democracy. Méndez (1997) refers to this kind of policy as the “thick line theory,” which rejects any effort to investigate the past and to disclose to the public the misdeeds of former intelligence and police forces” (p. 8). An argument for this mechanism is that to be able to move forward, new states should not dwell in the past because the past brings up too much pain and suffering. Additionally, forgetting about the past serves a new state by not leeching resources that would be needed for prosecutions or truth commission activity, for example. Additionally, in a country like Chile where

those responsible for mass atrocities still enjoy a presence in the socio-political realm of the state, simply forgetting about the past allows the former leaders to avoid criticism for their past behavior (or at least that is the hope).

The next strategy amnesty, is when a state exempts perpetrators from prosecution, although they may still be subjected to some sort of justice mechanism such as truth commission processes, depending on the mandate set forth by the state. This strategy is commonly used for regimes that remain in power or still enjoy a heavy presence in the nation that is transitioning. Amstutz (2005) writes that amnesty “is based on the recognition that wrongdoing has occurred, but it offers exemption from punishment to offenders for political or moral reasons (p. 21).” One clear example of this was seen in Chile, where General Augusto Pinochet the former leader of the military regime there, declared a blanket amnesty for himself and all of the members of his regime where none of them could be tried for the crimes they committed. Another prominent example is found with South Africa, where those who committed crimes under the apartheid regime could apply for amnesty in exchange for full disclosure of the truth about the crimes they committed in front of the Truth and Reconciliation Commission.

A justification for this process is that transitional societies often have limited “political, institutional, and moral capital” and therefore could be seen as wasting limited resources to prosecute human rights abusers through trials instead of closing the door to the past and using amnesties to move forward and “consolidate political authority” (Amstutz 2005, p. 22). Bohl (2006) notes that amnesty can be necessary for “political survival in times of transition [because it] automatically tempers the hopes of granting full reparations” (p. 567). Dugard (2004) also offers the justification that amnesty can be

effective in promoting reconciliation and “political settlement” in transitional societies. Although this seems like a bleak intention for a transitional process, the point is well taken that amnesty can sometimes curb expectations that are too lofty, making achieving an effective transition more realistic.

Truth-telling is another method used in transitional justice which serves to create a record of the events that transpired pre-transition. Truth-telling can be achieved in two ways: literally opening files and developing a historical account of past events, or creating a truth commission. Truth commissions are temporary bodies that are created to investigate patterns of human rights abuses in a specific country (Hayner, 2001; Bohl, 2006). They have four main components which are that they: 1) focus on the past; 2) “investigate a pattern of abuse over a set period of time rather than a specific event”; 3) are a “temporary body, usually operating over a period of 6 months to 2 years” that “complete[s its] work by submitting a report to the government that documents their findings”; and 4) are “officially sanctioned, authorized, or empowered by the state” (Hayner, 2001). Daly (2008) writes that they also “establish an authoritative record, help victims, make recommendations for reform, promote accountability, support reconciliation, and help draw a line between the present and the future (p.28),” aspects that are also discussed by Bohl (2006) and Popkin & Roht-Arriaza (1995). This can be important for victims as it represents acknowledgment of past wrongs and commitment to address past issues. By participating in truth-telling processes, perpetrators are held accountable to some degree, which is an integral step in promoting the “collective moral health of a nation” (Amstutz 2005, p. 24).

Also, by definition, truth commissions tend to be more public in nature with more focus on victims than do trials (Call, 2006). For example, the South African Truth and Reconciliation Commission was broadcast via radio and television, being widely publicized throughout the country in an effort to encourage participation. This kind of encouragement of public involvement has become a trend in many transitional processes following South Africa, including countries like Timor Leste, which had a relatively high percentage of its population as participants (Zifcak, 2005; Daly, 2008). Along with this, commission reports are generally produced and distributed to the public, including recommendations to address past wrongs.

To justify their implementation, many scholars point to the potential of truth commissions to contribute to peace, justice and reconciliation. Amstutz (2005) writes that “truth can help restore victims and their families and contribute to the reformation of social and political structures, leading ultimately to national peace and justice” (p. 24). Likewise, “truth commissions can bring positive benefits including ‘closure’, ‘healing’, ‘reconciliation’, and may assist society in general to move forward by working through a violent past” (Lundy & McGovern, 2008, p. 270). Call (2006) also writes that truth commissions “have contributed to creating shared accounts of disputed and hidden events, clarifying who committed abuses and how, eliciting acknowledgement of state misconduct, and restoring some degree of social reconciliation and moral order” (p. 103). Daly (2008) and Bohl (2006) also point to the ability of a truth commission to contradict the cloaked nature of a former regime by broadcasting and publicizing its past abuses in a public forum. Bohl (2006) notes that truth commissions can be particularly appropriate in

situations in which “multiple truths” exist, such as in highly ethnically driven conflicts in which all parties believe they are correct and justified in their past behavior.

Reparations are “things done or given as an attempt to deal with consequences of political violence” (Hamber, 2009, p. 97) and “do justice to victims” (de Greiff, 2006, p. 455). The most common types are restitution, compensation, rehabilitation and “satisfaction and guarantees of nonrecurrence” (de Greiff, 2006, p. 452; Amstutz, 2005; Rubio-Marín, 2009). The main justifications for reparations are that they can be used to help victims monetarily cope with the harm committed against themselves or their families, as an “official acknowledgment of [the victims] pain by the nation], and to “deter the state from future abuses, by imposing a financial cost” for wrongdoings” (Kritz, 1995, p. xxvii). These aims can be achieved through both symbolic gestures and material means that the state pursues to acknowledge the harm that has been done and make effort to rectify it or attempt to restore something that was lost during conflict (Hamber, 2009).

Lustration of members of the former regime has also been a means to facilitate a transitional society. Also called purging, vetting, screening or administrative justice, these are “processes that exclude or purge certain officials of prior regimes and other human rights violators from public office” (Aoláin, 2008, p. 215). Amstutz (2005) writes that lustration “aims to purify a political system by eliminating the power and influence of former regime officials and party supporters” (p. 34-35). This mechanism can help to draw a more distinct line between the past regime and present state and institutions, thereby facilitating a more positive transition (David, 2004; Amstutz, 2005). Aoláin (2008) also writes about the three different levels of vetting, which are *total*, which is the

“complete abolishment of an institution,” *direct* which “evaluates personnel of an institution and determines precisely who should be separate from it”, and *indirect*, which are “institutional reform measures that require personnel to undertake new selection procedures in the future” (p. 215). The main justification for this method comes from its ability to remove all of those who were responsible for past abuses from the positions of power, thereby placing at least a modicum of trust in the government. By removing all those responsible for the crimes of the past regime, credibility can be restored which can enhance the potential of a process to move forward.

Lastly, trials are seen as the transitional justice mechanism that provides the most accountability. Trials are intended to “suppress international crime (war crimes, crimes against humanity and crimes of genocide) and, also according to their mandate, serious human rights violations” (Hazan 2006, p. 24). One important aspect of trials is that they can sometimes provide a sense of justice, which may “promote reconciliation”, “consolidate the rule of law”, and “rehabilitate illiberal states” (Amstutz 2005, p. 38).

Minow (1998) writes that

a trial in the aftermath of atrocities should mark an effort between vengeance and forgiveness. It transfers the individuals’ desire for revenge to the state or official bodies. The transfer cools vengeance into retribution, slows judgment with procedure, and interrupts, with documents, cross-examination, and the presumption of innocence, the vicious cycle of blame and feud (p. 26).

One of the most definitive arguments for trials is that they are thought to provide at least some element of justice and retribution for harm done. Often times the chief desire of victims of crimes is to see that justice has been served, which may be achieved by seeing some punishment bestowed upon the perpetrator. Kritz (1995) notes that some believe that trials are “not only essential to achieve some degree of justice, but that a

public airing and condemnation of their crimes is the best way to draw a line between the old and new governments” (p. xxi). This illustrates the possibility of trials meeting the criteria cited in the definition of transitional justice, such as ensuring accountability and serving justice. Now that the arguments and justifications for transitional justice and the specific mechanisms used to carry it out have been discussed, critiques of both the concept and individual mechanisms will be addressed in the following sections.

Critiques of Specific Mechanisms

The following section will elucidate the most common critiques of each transitional justice mechanism in order to identify the array of shortcomings in a more specific way. Amnesia can be a way to forget the past and move forward, but arguably it is an unhealthy solution that likely only leads to repressed bitterness and animosity in victims. Amstutz (2005) remarks that “if a new government is to keep the faith with the victims of repression, it must hold offenders accountable”, which insists upon looking to another option (p. 21). Further contesting the effectiveness of this mechanism, Méndez (1997) writes that the “forgive-and-forget” policy is not an acceptable way to address grave and widespread human rights abuses that occurred in pre-transitional nations. He also states that this kind of policy is an “abuse of majoritarianism” (Méndez, 1997, p. 7) and is therefore not an ideal solution. Amstutz (2005) writes that “most political philosophers and human rights activists claim that acknowledging past offenses is morally necessary for the renewal and restoration of political society” (p. 19-21). Currently, the majority of transitional justice scholars recognize a need to address past wrongs before a transformation from authoritarianism to democracy can be made.

A significant problem with amnesty is that it does not comply with international legal norms, particularly those set forth in the Rome Statute of the International Criminal Court (Dugard, 1999). This factor makes the transitional society even more fragile as it furthers the new state from being viewed as credible and accountable (Amstutz 2005, p. 23). Bohl (2006) notes that without punishing those responsible for atrocities, the “cycle of impunity” is continued which can jeopardize feelings of justice, reconciliation and government and institutional accountability. Amnesty does not tend to be victim focused, which hinders the possibility for victim healing in a transitional nation. Gibson (2002) writes that “granting amnesty to those who have admitted gross human rights violations is an inherently unfair policy in the sense that evil deeds seem to be excused, if not rewarded” (p. 541), which illustrates incompatibility of amnesty with procedural fairness.

Despite their admirable aims, there are a great deal of critiques of truth-telling mechanisms. Some of these obstacles arise from the difficulty of reconciling conflicting accounts of the “truth” and also the inherent bias that is perceived against perpetrators who are implicated in the commission reports. Call (2006) writes that truth commissions are “second-best alternatives to judicial punishment for perpetrators” (p. 103), a sentiment with which Bohl (2006) would also agree as she notes that they may not always sufficiently address victim needs and grievances. In light of this, it should be noted that some victims do not feel like justice has been done through their involvement in truth commission processes. In reference to the work of the South African TRC, a 2003 article in the South African Sunday Times notes that victim suffering was essentially two-fold. Not only did they suffer during the apartheid regime, but also after testifying the Commission as the majority of them were let down by the promise of the

government to provide reparations in exchange for their opening up old wounds (“Victims Before, Victims Once More,” 2003). Brounéus (2008) discusses that based on the results of an empirical research project she undertook in Rwanda dealing with retraumatization of victims in the *gacaca* courts, there are indeed risks involved with testifying in truth-telling mechanisms. These are “due to the short-term exposure testifying involves, as well as to the vulnerable position of testifying in an environment surrounded by family members of the perpetrators, as well as by the perpetrators themselves, and in relation to sexual violence” (Brounéus, 2008, p. 71). This exemplifies the potential for a lack of justice and re-victimization in truth-telling processes.

Because of time constraints and general lack of funding, “most [truth commissions] are unable to obtain detailed account from perpetrators of their policies and actions” (Call, 2006, p. 104). For example, the Commission for Truth, Reception and Reconciliation (CAVR) in Timor-Leste, took 7,000 testimonies between 2001 and January 2004 and none of them were from perpetrators (Call, 2006). Without receiving testimony from those most responsible for committing mass atrocities, and hence promoting accountability, justice, reconciliation and victim healing, it is questionable how a truth commission alone can achieve the goals of transitional justice.

The majority of truth commissions have lacked a follow-up mechanism that would help to provide support for victims, who may continue to suffer after testifying in a commission. Lundy and McGovern (2008) write that

they reopen old wounds and may generate further polarization; ‘the truth’ delivered is often partial and limited; their ‘top-down’ nature can marginalize victims, and there are often unpalatable tradeoffs between truth and justice on the one hand and stability and pragmatic politics on the other (p. 271).

This is a significant problem if a nation is looking to reconcile and heal since they do not continue to acknowledge the problems victims experience. Victims can essentially be left behind in favor of national reconciliation. Additionally, one of the most significant aspects of a truth commission is its ability to develop a final report with recommendations on how to move forward and also avoid the repeating the past, but some commissions have failed to either complete a report or widely release one. Both Haiti and Uganda failed to submit full reports after the culmination of the commissions work, and although Chile did create a report it was scarcely released (Hayner, 2001). This is in stark contrast to countries like Argentina whose report, *Nunca Mas*, sold over 110,000 copies in its first month making it the best-selling book in Argentine history (Ocampo, 1999; Hayner, 2001).

Financial reparations can run into problems in their implementation because of limited resources of the state and also deciding how to place a price on the loss of a spouse or family member. Some nations only offer reparations to those who have had a family member or relative die, which leaves those who have suffered *only* human rights abuses and continue to live with physical and/or psychological pain with nothing. Hamber (2009) writes that “symbolic acknowledgment and monetary compensation can be useful, but they can never wholly meet all the psychological needs of survivors or offer full reparation” (p. 97). In addition, the mandates of certain processes can be selective, as in South Africa where only victims of “gross human rights violations” were to be compensated (Graybill, 2001).

Restitution of stolen property, which also serves as a symbolic means of restoring victim’s livelihood to the state it was in pre-conflict, also has problems in its

implementation. Amstutz (2005) writes that these types of reparations are an issue because often during conflict, land and other types of property can be so severely damaged or destroyed that there is no longer any sort of value in them. The most significant problem with reparations is that they can never completely restore a situation to what it was before a conflict. Also, Aguirre & Pietropaoli (2007) notes that some reparations programs may try to restore pre-conflict situation, which is disadvantageous to marginalized groups, particularly women. To this end, the problem of deciding how to properly decide upon and dispense reparations is highlighted, suggesting that there are many things to consider when instituting a reparations program in a transitional nation.

With lustration, there is a nearly inevitable possibility of purging some individuals who were not responsible for the past wrong doings, which creates a lack of credibility and disenchantment with the rule of law. The international legal system intends to allow for those who are innocent not to be punished, but those associated with past injustices generally must be included in the purge for it to be considered complete in terms of public opinion. Kritz (1995), David (2004), Amstutz (2005) and Aoláin (2008) also point out the lack of due process associated with lustration, which tends to single out individuals in regard to their political opinions and affiliations. Time and financial constraints present a significant limit to conducting investigations into perpetrators' responsibility, which renders this method ultimately ineffective when considered alone. As a practical matter, Kritz (1995) and David (2004) also write that often the members of the former regime may be the only ones with knowledge of infrastructure and things like bank operations, etc., if the regime was in power for a great deal of time. If those

individuals are removed as expeditiously as lustration intends, the strength of infrastructure could be threatened.

Although there are many positive aspects of trials, particularly in providing accountability, there are certainly drawbacks and critiques in the field. For one, it is known to be difficult to obtain credible evidence in state-sponsored crimes and exceedingly complicated to take legal action against high-level leaders of a former regime, especially if they still have a place in the current political or social system. Likewise, in many cases the policies that fostered human rights abuses had been created by the state itself making it difficult to determine who to bring to trial as either a large number of individuals could be culpable or a system itself could be responsible—and how would one try a system (Amstutz 2005)? Additionally, the public support must favor prosecution of the former regime or it is unlikely to be successful. In terms of international trials, the International Criminal Tribunal for Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were considered to be highly politicized, where “members of some ethnic groups of the former Yugoslavia and Rwanda view the tribunals as tools for ethnic persecution rather than prosecution” (Call, 2006, p. 105). This can be illustrated, for example in the aforementioned discussion of the application of the term *génocidaires* to those of Hutu ethnicity and not to Tutsis in the Rwanda (Corey & Joireman, 2004).

Call (2006) further critiques the ICTR noting that the extraordinary costs may not have been worth the benefits. For example, the tribunal was located outside of the country in Arusha, Tanzania, thereby limiting participation of those who might not be willing or able to travel such a distance. There can also be a problem with being able to

bring every perpetrator to trial when abuses had been extremely widespread. As in Rwanda, “only a tiny percentage of the hundred thousand perpetrators would be tried, and almost no public education or publicity surrounded the court’s work” (Call, 2006, p. 105). Both of these issues greatly affect the perception of fairness and justice that aims to be achieved in trials. Amstutz (2005) notes that the “domestic political environment must be conducive to trials,” which is not always the case in transitional nations, because without proper conditions “trials could imperil the fragile democratic structures” (p. 39). In light of these critiques, trials may also find themselves as somewhat of a “second-best” model for achieving the goals of transitional justice.

In all, transitional justice intends to do admirable and important things in terms of helping a nation overcome their abusive history and move into a new phase of democracy and the promotion of human rights. Often times the mechanisms used to carry out these lofty goals of justice, reconciliation, victim healing and government accountability fall short in some way or another, thus it is important to understand the shortcomings in order to amend their implementation in future nations. As the more general critiques have been summarized, the next sections will discuss transitional justice in the context of women, including a set of more specific critiques viewed through a gender lens. Some of the critiques elucidate gender issues in relation to justice such as the fact that women tend to be invisible before the law and women do not tend to speak as openly about their experiences with violence during periods of conflict, which are especially pronounced issues in most non-western societies.

CHAPTER THREE: WOMEN IN TRANSITIONAL JUSTICE

Post-Conflict Context in Relation to Women

Though men and women alike are subjected to violence and repression during periods of conflict, women experience conflict and post-conflict justice in a much different way than men. Not only do women experience issues related to sexual and reproductive violence in different ways than men, they tend to suffer from structural inequalities (both pre- and post-transition) and are also not given the same consideration in procedural justice matters in transitional processes. During periods of conflict, women are disproportionately and systematically subjected to sexual and reproductive violence, but tend to talk about their experiences with violence less than men.

One reason that women tend to avoid testifying in transitional processes is the cultural stigma surrounding the experience of sexual violence in a vast amount of societies that inhibits women from sharing their experiences in a public forum. McKay (2000) writes that “women are often silent and withhold testimony from reconciliation bodies, war tribunals, and other judicial proceedings because of their feelings of shame, inhibitions, social taboos, denial, and fear of consequences” that come with speaking about their trauma (p. 565). This theme of silence due to social stigma around sexual violence is pervasive in a great deal of the transitional justice literature that focuses on women.

Walker (2009) writes that “women are often stigmatized or abandoned because sexual violence renders them socially unacceptable or unmarriageable” (p. 20), which adds to the reluctance of women to involve themselves in transitional processes. Alldén (2007) discusses this in more specific detail in regard to Timor Leste, where few women were willing to testify in court because of the blame placed on victims of sexual violence that results in the shame and loss of honor of both the victim and the victim’s family. Furthermore, in Sierra Leone, Staggs Kelsall and Stepakoff (2007), Nowrojee (2005), and Muddell (2007) all write about the social implications of talking about rape, which make women less willing to divulge their experiences in trials, thereby limiting the testimony that could help indict human rights abusers. Rubio-Marín and de Greiff (2007) remark that by testifying about these sensitive issues, women may experience re-victimization (in conjunction with cultural stigma), which serves as a deterrent for speaking out about the abuses that were suffered, illustrating another aspect of the issues women may face in testifying publicly. Brounéus (2008) also addresses the issue of re-victimization and truth-telling in the *gacaca* courts in Rwanda, which occurred from women feeling both physically threatened and socially stigmatized because of expressing experiences of sexual violence in a public forum. Being that women make up roughly half of most nations and generally endure the brunt of sexual and reproductive violence in pre-transition societies, it seems it would be obvious that their inclusion in the process would be of great weight and importance; however they often are left behind by the process to continue suffering silently.

Women not only suffer personally because of trauma experienced during conflict, they also must deal with the suffering of their family members that experienced violence.

Duggan, Bailey & Guillerot (2008) write that “survivors live, in the aftermath of political violence with the severe physical or mental health consequences of the abuses suffered. This is often compounded by ongoing insecurity unrelated to the conflict [specifically in terms of women survivors], including re-victimization by returning husbands, sons and uncles” (p. 194). Because of these factors, more consideration should be given to women and women’s issues in transitional processes in an effort to overcome these problems.

It is difficult, and sometimes impossible for women to participate in transitional processes for a variety of reasons. McKay (2000) writes that “gender injustice perpetuates inequality, violates fundamental human rights, hinders healing and psychological restoration, and prevents societies from developing their full potential” (p. 562), which tends to have little impact on the inclusion of women in transitional processes as women tend to be somewhat invisible before the law. To this, Bell (2007) remarks that “both the legal standards which transitional justice mechanisms draw on, and the processes by which they have been designed tend to be exclusionary of women” (p. 24). As a continuation of these ideas, it should be noted that “legal norms and practices instantiate and reiterate, rather than transform, existing hierarchical gender relations,” making it difficult to rebel against the existing power structure (Campbell, 2007, p. 411).

According to Aguirre and Pietropaoli (2007), women are affected disproportionately by structural inequalities that have “far-reaching human rights implications” (p. 364). A statement like this begs the question of how can a society promote reconciliation, justice, victim healing and government accountability if there is no change made to affect a group whose human rights have been and continue to be

violated. Rubio-Marín (2006) and Aoláin (2008) both discuss the fact that women's sub-socioeconomic status in societies preceding conflict make them experience violence in a more devastating way, making their social status even more "precarious." In addition to this, women are often sidelined during the transitional period, being marginalized and excluded from decision-making processes and are often denied the right to contribute testimony, particularly in trials (Bell & O'Rourke, 2007). According to Aoláin (2008), "gender can provide an official pretext for regime change, as in Afghanistan, but takes an immediate backseat to 'real' politics when the transition actually begins" (p. 214). Unfortunately, this factor only serves to reify the status quo of women having a second-class status in society and inhibits any sort of true transition from past to present.

New regimes take a wide range of stances on the inclusion or attention paid to victims. The spectrum ranges from South Africa's Truth and Reconciliation Commission being broadcast on television and radio, with victims and perpetrators alike being encouraged to participate, to the former dictator of Chile, General Augusto Pinochet's declaration of a blanket amnesty for himself and all members of his regime, denying victims an avenue for retribution to avenge or address their suffering. This continuum of state responses creates a lack of consistency in participation and fairness for victims in transitional nations, particularly women who have suffered sexual and reproductive violence at the hands of an oppressive regime. Because of the fact that women's access to justice and participation in transitional processes can be so limited in many cases, it is important to examine the factors that influence their involvement in order to make recommendations for nations undertaking transitional processes in the future.

Specific Transitional Justice Mechanisms and Women

Although, women can certainly be affected in a multitude of transitional justice processes, those most discussed throughout the literature are truth-telling procedures, prosecutorial processes and reparations processes, likely because these can be seen as the most “participatory” of the six main mechanisms. Amnesia, amnesty and lustration are generally implemented directly from the state and therefore less likely to take into account victims or the society at large, which are very unlikely to be asked to participate in the decision-making or execution of these mechanisms. Therefore, the three most participatory mechanisms, truth-telling, prosecutorial and reparations processes will be the focus of this analysis in regard to women’s participation in transitional justice mechanisms.

Truth-telling. There are several positive aspects signifying the inclusion of women as truth commissions have become most nearly a default mechanism in transitional nations, characterizing a vast amount of current transitional processes. In the South African TRC, many commissioners made attempts to refocus the testimony on women that experienced human rights abuses, by amending a form to say: “Important: Some women testify about violations of human rights. Don’t forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse” (South African Government Information, 2003). There was also effort made to allow women to tell their stories to only female commissioners during meetings where only women were present (Graybill, 2001). It was steps like these in the TRC that paved the way for the greater inclusion of women in truth commissions.

There has been a trend in some later truth commissions to promote special attention on women's issues. In Haiti, the truth commission mandated that there be a focus on politically motivated sexual violence against women (Hayner, 2001). Likewise, the Truth and Reconciliation of Sierra Leone developed a similar priority, which they bolstered with an intensive training for commissioners to understand how to appropriately deal with women's issue and sexual violence (Nowrojee, 2005). One of the most progressive steps in increasing voice and representation of women in TRC processes was the creation of three different options that women in Sierra Leone could choose among for elucidating their testimonies. Nowrojee (2005) writes that these options were to testify *in camera*, which would then be shown in a public forum, to have a screen placed in front of their person to hide their identity, or to speak openly in front of the TRC audience. Having these options available is a positive step in encouraging more women to participate and speak out during truth commission processes.

There are also several negatives in regard to women and participation in truth commissions. First, the social stigma that surrounds talking about rape and other sexual violence can significantly inhibit voice and participation of women. Perhaps as a result of this factor, crimes of sexual violence are believed to be significantly underreported in truth commissions in addition to trials (Hayner, 2001). This was illustrated in the Commission for Reception, Truth and Reconciliation in East Timor (CAVR), where "sexual violence is marked by such a stigma that many are afraid to come forward to talk about what happened to them" (Allدن, 2007, p. 15). This problem has far-reaching implications for a truth commission to even achieve its mandate to uncover truth when only a portion of stories are being heard.

Patriarchal values and cultural norms are another limiting factor in the voice and participation of women in truth commissions. In Sierre Leone, Nowrojee (2005) writes that some commissioners held “traditional views on women’s role in society and had no previous exposure to or experience in dealing with rape victims,” which sometimes resulted in the posing of “questions framed insensitively by some of the male commissioners” during hearings (p. 93). This factor could easily have a distinct chilling effect on women’s speech. In many societies it is also very common for women to testify about the human rights abuses of their sons, brothers, husbands, or fathers instead of their own. This comes out of the patriarchal norm that considers women to be “secondary victims”, which can be illustrated in the testimonies of the Craddock Four widows³ in South Africa or testimony found in the Guatemalan commission (Graybill, 2001; Hayner, 2001).

According to Graybill (2001), there is also a common assumption in African culture that women who are victims of sexual abuse somehow “deserved it,” making women feel as if they are not justified in seeking redress for wrongs committed against them. This issue severely constrains the voice of women who might have wanted to speak out about their abuse.

Sometimes, women are also denied voice and participation due to the mandates set forth for a commission. For example, the mandate of the South African TRC also hindered the voice and representation of women because “it was mandated only to

³ While testifying in the South African TRC, these widows neglected to speak about their own experiences with violence and human rights abuses and instead focused solely on what happened to their husbands, illustrating another way in which women do not speak about their own suffering in the same capacity as men.

recompense victims of *gross* human rights abuses, defined as the ‘killing, abduction torture, or severe ill treatment’ or any person acting with a political motive” and would exclude compensation or remuneration for women who suffered from violence that resulted from the structure of the apartheid system (Graybill, 2001, p. 4). In some cases, truth commissions have explicitly decided not to include testimony regarding sexual violence in the final truth commission reports, such as in El Salvador which had clear accounts of the occurrence of rape, but excluded those accounts (Hayner, 2001). This aspect can have detrimental implications for women who desire to have their voice heard and acknowledged.

Trials. Although it is generally accepted by scholars in the field that most legal processes are designed to be exclusionary towards women. Campbell (2007) notes that there is “no distinct offence of sexual violence in international law. Rather, if the requisite elements are met, then sexual violence can be prosecuted as a criminal violation of international humanitarian law: namely, as a war crime, genocide or as a crime against humanity” (p. 413-14). This illustrates the exclusion of a legal agenda that is focused on women, as women are disproportionately affected by sexual violence, though indictments explicitly regarding sexual violence are lacking if not nonexistent. Bell and O’Rourke (2007), discuss that the crime of rape has been historically excluded from international tribunals, such as in Nuremburg and Tokyo and that “matters that address underlying issues of discrimination, domination and improvement of physical, social and legal security, particularly with regard to gender, are often addressed as secondary, or not at all” (p. 25), further illustrating the exclusion of women from justice processes as both victims and more generally as members of society who were affected by a period of

conflict. In terms of discrimination through bureaucratic means in court systems, McKay (2000) writes that “judicial ignorance of the social context of women’s experiences, male identification with witnesses and accused persons, and stereotyping women constitute forms of judicial bias towards women” (p. 562). As women are often not valued as equally contributed members of society in the same capacity as men, their participation is sidelined in favor of that of men.

Despite these issues, there are some positive developments in prosecutorial mechanisms in transitional nations. It is notable that the first judicial mechanism to emphasize the need to address crimes of sexual violence was the International Criminal Tribunal for Former Yugoslavia, where there was a push to include more women in the process, in various staff positions and particularly as gender issue experts. The ICTY also sought to facilitate “the inclusion and valuation of women witnesses, the treatment of wartime rape and sexual violence under international law, and the participation of indigenous, nongovernmental organizations” (Mertus, 2008, p. 1301). The ICTY staff also tried to enable the participation of women by providing a small subsidy for child and/or family care that would need to be addressed in many women’s absence (Mertus, 2008).

Another positive step in the realm of trials is the classification of rape as a crime against humanity that was first instituted by the ICTY and also adopted later by the International Criminal Tribunal for Rwanda. Mertus (2008) remarks that the focus that the ICTY placed on crimes of sexual violence is a factor that affected the participation of women in the Tribunal because of the opportunity they had to have their experiences validated and recognized. Chief Prosecutor of the ICTY, Richard Goldstone, also stated

that he credited “women’s involvement for indictments based on gender-based crimes in the [ICTY]” (Naraghi-Anderlini, 2005, p. 105).

In the more recent Special Court for Sierra Leone, there was a specific mandate to address crimes of sexual violence. The process was designed to also increase participation by including many Sierra Leoneans on the staff of the Court and to hold the Court within the country (Nowrojee, 2005). Interestingly, nearly 20% of the investigative teams were tasked with addressing sexual assault, while previously in the ICTR, there were never more than 1% or 2% of the teams dedicated to this issue (Nowrojee, 2005). Overall, there have been some positive steps made in the tribunals that are created for transitional nations, but there are still a great deal of shortcomings, particularly surrounding the issue of cultural stigma and patriarchal values that limit women’s voice and participation.

For a variety of reasons, women are disproportionately silenced or constrained in both what society and justice systems allow them to talk about and what they personally *want* to talk about while testifying about human rights abuses in transitional nations. Although some women have expressed the desire to speak about their experience of sexual violence, there have been cases reported in which the justice system explicitly prohibited their discussion of that topic. Staggs Kelsall and Stepakoff (2007), undertook a study regarding the trial of the Civil Defence Forces in Sierra Leone, in which the Trial Chamber explicitly proclaimed that there would be no introduction of evidence of sexual violence included in the indictments. Initially ten women were to testify about their experiences with sexual slavery and sexual abuse during the more than decade long civil war, however only seven ultimately took the witness stand and all of those who spoke

were explicitly prohibited from talking about their experiences of sexual violence. After the trial, Staggs Kelsall and Stepakoff (2007) conducted interviews of the ten women who were supposed to testify in order to assess their reactions to their being silenced on issues related to sexual violence. They note that six of the ten women expressed that they would have chosen to speak about their experience of sexual violence if they had been allowed to when asked the open-ended question: ““If you had been permitted to testify about whatever you wished, what would you have chosen to testify about?”” (Staggs Kelsall & Stepakoff, 2007, p. 372). They also note that six of the seven women who testified experienced “psychological distress regarding the silencing” in regard to testifying about what they wished (Staggs Kelsall & Stepakoff, p. 372). This study illustrates the negative effect of women not being able to testify about sexual violence in the manner that they choose.

There is significant underreporting of gender-based crimes because of this silence that pervades many cultures as women are ostracized and shamed for the experiences. Alldén (2007) remarks that in East Timor there were few women willing to testify in court because of the blame that is placed on victims of sexual violence in that country that results in the shame and loss of honor of both the victim and the victim’s family. The same is true in Nepal, where victims are “stigmatized as culturally ‘impure’ and unfit for marriage, thus shaming the whole family or community” (Aguirre 2008, p. 360). This silence can mean perpetrators walk free, returning to the same communities as victims, who have “no means of legal redress or access to reparations” (Naraghi-Anderlini 2005, p.104). Additionally, by testifying about these sensitive issues in trials, women may also experience re-victimization in conjunction with the aforementioned cultural stigma,

which serves as a deterrent for speaking out about the abuses that were suffered.

According to McKay (2000), Campbell (2007), and Aguirre and Pietropaoli (2007) men's testimonies are often valued over women's stories as illustrated in Uruguay, Nepal, and Yugoslavia. In the ICTY, for example, about 80% of the witnesses were men, creating disproportionate representation for women's stories in the Tribunal (Campbell, 2007).

This can also occur in favor of creating nation-building narratives instead of developing a truly complete historical narrative (Bell, 2007).

Women's voice and representation in international courts is also an important point to consider. Nowrojee (2005) writes that many victims are either unable or unwilling to participate in international courts for various reasons such as having to travel too great a distance or finding adequate child or family care in one's absence. Hence, many lower level perpetrators are not held accountable on an international level, which greatly impedes the perception that justice has been served. Likewise, the "adversarial nature" of the courtroom, including hostile cross-examinations can hinder the desire for women to tell their stories (Nowrojee, 2005; Bell, 2007). Mertus (2008) writes that there were relatively few women who testified at the ICTY, which exemplifies the exclusion of a great deal of stories which leads to an imbalance in the crimes that were reported. This fact has led to shortcomings in the international court process because of the fact that many perpetrators are not being held accountable. Also, Mertus (2008) remarks that "many witnesses were frustrated by the legal process, which made it hard to talk about their experiences in their own terms" (p. 1321). There is also an issue with the way that sexual violence was viewed in the International Criminal Tribunal of Rwanda, in which one Deputy Prosecutor said that "the reason they have not collected rape testimonies is

because African women don't want to talk about rape... We haven't received any real complaints. It's rare in investigations that women refer to rape'" (Nowrojee, 2005, p. 99). This illustrates the prevalent behavior of men speaking for women and sidelining their voices and legitimacy, thereby reifying patriarchal norms.

Reparations. There are several positive elements that reparations programs can offer to women that might not be available through other transitional justice mechanisms. In many cases, judicial processes are difficult for some women to access for reasons such as the distance required to travel to actually testify, the need for family duties to be tended to, and the stigma attached to reporting sexual violence, as discussed above (Rubio-Marín, 2006). These issues greatly affect the representation and voice of women in trial processes and have the potential to be amended in reparations programs. Rubio-Marín (2006) and de Greiff (2006) write that reparations programs hold promise in their ability to simplify procedures, lower thresholds of evidence and bypass the pain victims might experience during cross-examination.

In some transitional processes, there has even been a trend to include a gender element in reparations processes. Countries such as East Timor, Sierra Leone, Peru and Guatemala have even made efforts to explicitly include rape and sexual violence as a reason to receive reparations (Rubio-Marín, 2009), which shows a positive step towards including women in the process. Rubio-Marín & de Greiff (2007) explains this further by noting that the reporting of sexual violence has the potential to be increased because some reparations programs have been designed to accept the authenticity of victim's stories if they fit in line with other trends. Evidence of this was seen in the in Chile during the Commission on Illegal Detention and Torture "where it was assumed that

those who had spent time in [a certain] facility had indeed endured torture” (Rubio-Marin & de Greiff, 2007, p. 323). These elements of reparations programs certainly show some promise for the inclusion of women in transitional justice processes.

In terms of providing women with voice and participation, reparations programs show some promise, however women are still disproportionately excluded both from being involved in the administration of the programs and readily participating as beneficiaries. Bell (2007) writes that there are still a great deal of problems with the distribution of benefits and the criteria used to determine those who should receive benefits from the programs. Because of this issue, for example, the manner of choosing beneficiaries is somewhat subjective and not necessarily standardized. Rubio-Marín & de Greiff (2007) discuss that women’s representation in reparations programs could be enhanced if there was more participation by women’s groups, which until recently has been lacking on the whole.

Additionally, because of the kinds of violence, particularly sexual violence that women endure during periods of conflict, they often are not ready to talk about their trauma in a public forum in the time closely following the end of conflict and are therefore excluded from reparations programs because of their silence (Rubio-Marín, 2009; Walker, 2009). Naraghi-Anderlini (2005) writes that “the silence around gender and sex-based crimes is also due to underreporting” based on the possibility of disclosure resulting in shame and ostracization in their communities (p. 104). It is also important to note that in many cases, even if the victims were to get reparations they would typically be miniscule as many perpetrators have very little to offer in terms of financial recompense in particular (Naraghi-Anderlini, 2005). This fact is important to consider as

it could be wondered what the efficacy is of being involved in a reparations process if one is not offered any sort of actual reparation for their suffering.

In all, there are a variety of ways in which women are included and excluded in transitional justice processes. In truth commission processes, evidence of women's inclusion has been seen in terms of mandating that rape victims are only questioned by female commissioners, allowing women options of varying degrees of public exposure to testify in truth commissions and requiring training on gender-based issues for commissioners. Regarding trials, there have been recent positive developments in the inclusion on women including the classification of rape as a crime against humanity, first instituted in the ICTY and designating a larger portion of the investigative teams to address issues of sexual violence. Reparations processes have made steps to include women by simplifying procedures to circumvent adversarial and potentially traumatizing cross-examinations and also to explicitly mandate that victims of rape and sexual violence be given some priority as beneficiaries.

Women are excluded from transitional justice processes in a variety of ways. For example, the exclusion of women from truth commission proceedings is based on the social stigma surrounding sexual violence that inhibits women from coming forward to speak about their abuse and also cultural norms that prohibit women's participation from being at the same level of influence and efficacy as men. Women tend to be excluded from trial processes because of the tendency for justice processes to disregard females in regard to sexual and reproductive violence and because of the difficulty women have in traveling to testify. In reparations processes, women do not participate in the execution of the programs at the same rate as men and the distribution of benefits tends to neglect

women. Thus, reparations processes have not yet overcome the prevalence of disproportionate participation of women.

Although there are indeed some positive aspects of women's participation in truth commission, trial and reparations processes as discussed above, the prevalence of so many negative aspects illustrates the lack of women's participation and signifies that much more must be done to counter-act these flaws. More recent processes have made steps to encourage and promote the inclusion of women through ways such as allowing different options for testifying and including issues surrounding sexual violence in the mandates of the programs; however the degree to which the mechanisms achieve these mandates still falls short of gender equality. The following section will discuss the reasons why it is important to examine the factors that determine or influence women's participation in transitional societies in order to shed light on the relevance of this study.

Importance of Examining Factors that Determine Women's Participation

Although the literature surrounding the subject of women in transitional justice processes has progressed more steadily in recent years, it is still lacking in addressing through empirical data the range of factors that influence women's participation in transitional settings. According to procedural justice literature, participation plays a crucial role in securing feelings of justice and dignity within victims of violence. For the purposes of this study, voice will be highlighted as the defining element of participation. Voice, which also relates to process control is described as "the degree to which the procedure gives those affected by a decision an opportunity to express their views about how the decision should be made" (Tyler, et. al. 1985, p. 72). According to d'Estrée (2006), "to have voice is to have legitimacy and integrity; denial of voice denies

legitimacy and legitimate participation, ruptures integrity, and threatens the self's existence" (p. 107). This is particularly relevant to this research because denying voice to a group who is already marginalized in society only reifies the inequality of women in transitional justice settings. In effect, this hinders the possibility of achieving a real transition from past to present and violence to peace. In d'Estrée (2006) it is noted that silencing victims of trauma "will allow the violence and trauma to continue, the lack of voice characteristic of such experiences runs the risk that their experiences will be 'rubbed' out of the picture, denied that they ever happened" (p. 107). Because of this issue, it is paramount that marginalized groups, particularly women for this study, be included and encouraged to participate in transitional justice processes to increase feelings of justice, reconciliation, and victim healing.

Through archival comparative case-study analysis of the transitional justice processes in Sierra Leone and Timor Leste, this study intends to illuminate the factors that influence and/or determine women's level of participation in transitional justice mechanisms, contributing to the lack of empirical research in this subject area. The ways in which women are included and excluded in these processes will also be explored, thus shedding light on how women can be better represented in transitional nations.

CHAPTER FOUR: METHODOLOGY

In order to develop answers to the questions: 1) What are the factors that determine or influence women's level of participation in transitional justice processes and 2) In what ways are women included or excluded in these processes, a comparative case study analysis methodology was used. A comparative case study is an effective method for this type of study as the research addresses "holistic and meaningful characteristics of real-life events" (Yin, 2008, p. 4) and the lessons learned from the study are "intended to be generalizable" to other research contexts (Yin, 2008, p. 6).

To explore these issues, the cases of Timor Leste and Sierra Leone's transitional justice process were used. Not only have both of these countries undertaken transitional processes in the recent past (both more or less beginning in 2002), they also both illustrate ways in which women have been included and excluded in transitional processes along a continuum of overt exclusion to positive measures that were taken to encourage their participation. Although certainly not congruent, the transitional processes in each country share enough similarities to make them ripe for comparison, such as they both utilized a truth and reconciliation commission, trials and reparations processes. Additionally, the prosecutorial processes in each country are known as "hybrid" models, meaning that they are comprised of both international and domestic judges. During the conflicts in both countries, there was also a high incidence of sexual violence committed against women, making the study of women's level of participation in each transitional

justice process a worthwhile endeavor. Because a large amount of women were negatively affected during these conflicts, the investigation of how women were later involved in transitional efforts intends to illustrate the ways in which women participate after being victimized.

In using the term “women,” this study assumes that those who were either decision-makers or testimony givers/participants were adult females, as that is the implication from the literature, though the researcher does acknowledge that this factor would exclude the large amount of young or adolescent girls who were also victims of violence during periods of conflict. Although adult women will be the focus of this study, the participation of adolescent females is an aspect that could be investigated further in another study. Furthermore, although “women” is used in a general sense in this study to refer to adult females, women are indeed not a homogenous unit embodying all the same views and/or opinions; however this topic should be more fully investigated further in a future study.

A distinction should also be made between reporting, witnessing and testifying—three elements related to the disclosure of events related to the experience of past violence. Witnessing is the actual observation of an event, atrocity, or abuse, which could be followed by a subsequent narrative or discussion. This differs from reporting in that reporting deals more with what is observed by individuals who are trained to observe events and either may or may not have actually seen the event. Testifying is related to events that are disclosed in a more formal setting, such as in a court room or a truth commission hearing.

In order to effectively compare these cases, the following topics were investigated across both cases:

I. Quantitative comparison between men and women's participation

A. As testimony givers/participants

B. As decision-makers

II. Qualitative illustrations of nature and extent of women's participation

A. Illustrations of effective participation

1. Illustrations of inclusion in the process

2. Positive examples of voice

B. Illustrations of ineffective participation

1. Illustrations of exclusion from the process

2. Negative examples of voice

These topics were first explored in the separate cases and then the data found for each case was compared and contrasted with one another in order to create a comparative analysis that will help to develop generalizations that can be applied to the greater field of transitional justice.

The following section will briefly outline the history of the Conflict in Timor Leste, followed by a discussion of the transitional mechanisms that were employed and then general critiques of those mechanisms. Then the case analysis questions will be answered. The case of Sierra Leone will be addressed using the same strategy and after the case studies are examined, a discussion section and then conclusion with recommendations for future processes will follow.

CHAPTER FIVE: CASE STUDY: TIMOR LESTE

BRIEF HISTORY OF THE CONFLICT IN TIMOR LESTE⁴

From the 1500s to 1974, the Caetano Party of Portugal ruled the colony of East Timor, until they were overthrown by a left-leaning military group called the Armed Forces Movement (Commission for Reception, Truth and Reconciliation (CAVR), 2006). This event left open the possibility of self-determination for East Timor, but was squandered due to feuding among the two key political parties within East Timor, leaving the country open to the subsequent invasion and occupation by Indonesia (CAVR, 2006). After the invasion, the brutal Indonesian military regime ruled between 1974 and 1999, during which an estimated 183,000 (1/4 to 1/3 of the East-Timorese population) were killed by the Indonesian anti-independence forces (CAVR, 2006; Alldén, 2007). The Commission for Reception, Truth and Reconciliation also reported that during this time, the “Indonesian government and Indonesian army (who are blamed for nearly 85% of the human rights violations) violated international humanitarian law by targeting civilians; conducting indiscriminate military attacks; and pillaging and unnecessarily destroying civilian property” (International Center for Transitional Justice (ICTJ), 2006, p. 2)

⁴ Timor Leste will be used interchangeably with East Timor, but it should be noted that the name Timor Leste is the official name of the country after their declaration of independence in 2002.

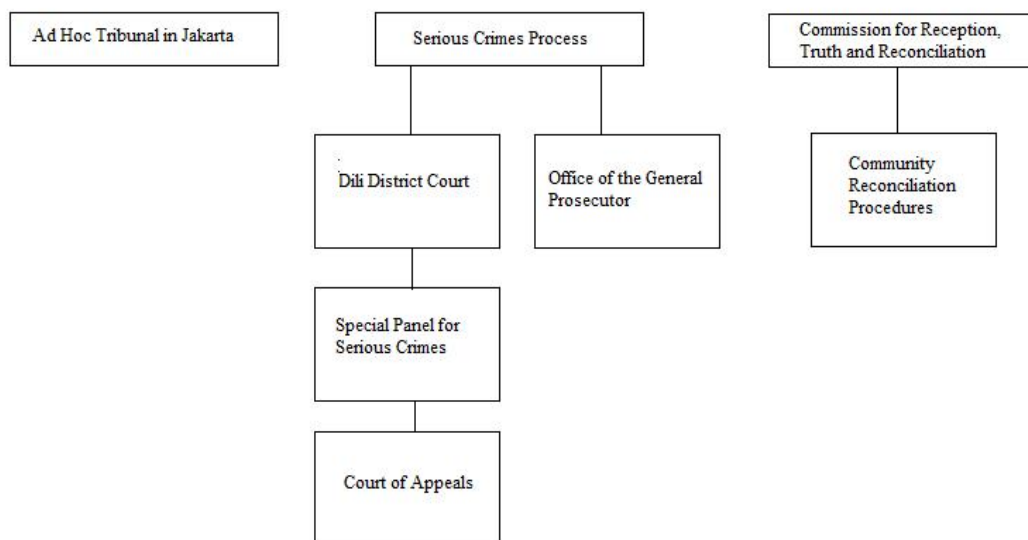
In 1999, in an effort to bolster his political support, President Bacharuddin Jusuf Habibie of Indonesia announced that there would be a referendum in East Timor to determine if they would become completely independent or have special autonomy as a part of Indonesia (Charlesworth & Wood, 2002; Alldén, 2007). Despite threats from Indonesian anti-independence militants, nearly 80% of the population voted for full independence, negating the offer of autonomy as a part of Indonesia, which led to a “scorched earth” campaign—a retaliatory burning and razing of over 70% of villages in the country and the forced relocation of almost 250,000 East Timorese in only a three week period (Nevins, 2003).

After this massacre, the United Nations Transitional Administration for East Timor (UNTAET) oversaw the country’s transition from 1999-2002, until the Commission for Reception, Truth and Reconciliation (commonly known by its Portuguese acronym, CAVR) began its work in 2002 (Nevins, 2003). At the end of the UNTAET’s mission, the United Nations Mission of Support in East Timor (UNMISSET) stepped in to continue supporting the transition to an independent democracy. Three years later in 2005, the United Nations Office in Timor-Leste (UNOTIL) took over operations, until a resurgence of violence occurred in 2006 in the wake of 1/3 of the military presence being relieved of their posts (Alldén, 2007). In response to this, the United Nations once again increased their presence and established the United Nations Integrated Mission in Timor-Leste (UNMIT), which is still maintains a presence in the country. After experiencing so much violence and political flux, a well executed transitional justice process would be critical to address Timor Leste’s tumultuous past.

DESCRIPTION OF TRANSITIONAL JUSTICE MECHANISMS

The quite complex transitional process in Timor Leste was designed to provide accountability for injustices committed during the 25 year Indonesian occupation and the violence immediately following the referendum for independence in January 1999. There were both retributive and restorative justice elements of the transitional process. The Ad Hoc Tribunal and the Serious Crimes Processes represented the prosecutorial and retributive justice elements and the CAVR and Community Reconciliation Procedures (CRPs) represented the more restorative and reconciliatory elements of the process based on truth-telling.

The prosecutorial aspects of the process had two levels: the Ad Hoc International Tribunal in Jakarta and the Serious Crimes Process. The following graphic is intended to illustrate the organization of the process:



The Ad Hoc Tribunal was noted by Burgess (2004) to have a severely limited mandate, which covered “only three of the thirteen districts in East Timor during only 2 months, April and September 1999” (p. 139), despite the fact that the violence occurred from January until October 1999. This tribunal has been widely regarded as an ineffective sham because of both the limited mandate and the absence of desire or “political will” of the Indonesian government to prosecute high-ranking officials responsible for atrocities (Arnould, 2006; Burgess, 2004; Cohen, 2002).

The Serious Crimes Process consisted of two panels that aimed to provide accountability for the past violence. First, the Dili District Court (DDC) had “exclusive jurisdiction over genocide, war crimes, crimes against humanity, murder, sexual offences, and torture, if those crimes were committed between January 1 and October 25, 1999” and began hearing cases in 2001 (Cohen, 2002, p. 3). Zifcak (2005) notes that there were two panels created to execute the jurisdiction of the Dili District Court, which were the Special Panels for Serious Crimes (SPSC) consisting of two international judges and one judge from Timor Leste and the Court of Appeals to address appeals from the SPSC. The other panel of the Serious Crimes Process was the Office of the General Prosecutor, which was instituted to try “those who committed serious crimes that fell outside the definition of crimes against humanity in the relevant UN regulation” (Zifcak, 2005, p. 51). Now that the prosecutorial aspect of the process in Timor Leste has been outlined, the truth-telling and reconciliatory mechanisms will be discussed.

Cases of lesser magnitude could be filtered to the Community Reconciliation Procedures (CRPs), a process adapted from traditional justice⁵ in Timor Leste. In many instances, cases were recommended to go through the CRPs via testimony received in the Commission for Reception, Truth and Reconciliation. The CRPs relied on the practice of *nahe biti*, literally meaning “stretching or laying down the mat as a means to facilitate consensus, or reconciliation” (Babo-Soares, 2004, p. 24), and were intended to facilitate reintegration of perpetrators into their communities through their “perform[ing] acts of restoration that are meaningful to the survivors and their communities” (Nevins, 2003, p. 682).

Lastly, the CAVR was “concerned with minor⁶ political crimes committed at any time in the past 25 years” (Zifcak, 2005). These “hearings were designed to bring them [perpetrators] together with their victims, to forge new understanding between the parties and to provide for appropriate mechanisms of reparation and reintegration” (Zifcak, 2005). After the initial hearings of the CAVR, those criminals who committed only minor crimes and admitted to their actions in full were channeled into the Community Reconciliation Procedures (CRPs) in order to avoid prosecutions. Those who either did not completely admit to their crimes or committed more serious crimes than they originally admitted to were filtered into the proper prosecutorial agency. More specific details about these mechanisms will be addressed in the following section.

⁵ Traditional justice in Timor Leste is based on *adat*, which is “an Indonesian word for the sacred laws of belief systems on which local justice is based”(Swain, 2003, p. 17).

⁶ “This envisaged a process whereby people accused of relatively less serious crimes, such as theft, minor assault, arson (other than resulting in death or injury), and the killing of livestock or destruction of crops could seek to take part in a local hearing, modeled to some extent on traditional justice lines, known as *adat*.” (Reiger & Wierda, 2006, p. 34).

Commission for Reception, Truth, and Reconciliation (CAVR)

According to its mandate as listed in UNTAET/REG/2001/10, the United Nations regulation that created the Commission for Reception, Truth, and Reconciliation (CAVR), this process was designed to 1) “inquire into and establish the truth regarding human rights violations which occurred during the mandated period, and the factors which may have led to these violations, and to compile a Report of these findings”; 2) “assist victims, promote human rights and reconciliation”; 3) “make recommendations to the government”; 4) “conduct Community Reconciliation Procedures, offering an alternative to court proceedings for politically related lesser crimes”; and 5) “refer matters to the Office of the General Prosecutor where appropriate”. Although often compared to the Truth and Reconciliation Commission of South Africa, the CAVR did not have the power to grant amnesty, but did have the power to direct lesser offenders to the CRPs (Burgess, 2004).

The CRP hearings boasted a substantial turnout of 30,000 attendees (out of a population around 1 million) (Zifcak, 2005; Daly, 2008). This proved to be a tremendous increase over earlier truth-telling processes, such as the Truth and Reconciliation Commission in South Africa, especially because there was a greater emphasis on having perpetrators repair the harm done than merely disclosing the truth about past events (Hayner, 2001). The process addressed interests of perpetrators and victims in that the perpetrators had the potential to be reintegrated into their communities, while the victims had the possibility of receiving recompense or apologies for harm and damage done against them or their families.

It should be noted that one significant difference between the CAVR and CRP process and most other truth commissions is that the idea of reconciliation was placed with a higher value than was truth (Zifcak, 2005). In fact, Zifcak (2005) writes that one of the general goals of the CAVR and CRP process was to “promote reconciliation and to assist in reception and reintegration of individuals guilty of minor offense into their local communities” (p. 52), which illustrates a different and compellingly restorative approach to transitional justice.

Arguably one of the most restorative aspects of the CAVR was the ability to filter perpetrators of minor offenses into the Community Reconciliation Procedures (CRPs), in which “perpetrators agreed to perform acts of restoration that are meaningful to the survivors and their communities” (Nevins, 2003, p. 682). In a traditional sense, *nahe biti* is a “reference to a venue, space, or place where a family and wider social issues are discussed, debated, and settled, its meaning has been broadened to encompass mending differences, resolving disputes or settling political conflicts among the East Timorese” (Babo-Soares, 2004, p. 23). The practice is illustrative of what the Western world would call “reconciliation”, but it encompasses more than just that for the East Timorese people.

According to Babo-Soares (2004), the purpose of the CRPs is to transform society into a more stable and peaceful environment that can support future growth by discussing the past, while focusing on the future. In the CRPs there were two types of grassroots reconciliation: family and people’s reconciliation. Both were used to bring together individuals to create sustainable relationships within communities and between people. Family reconciliation consisted of ceremonies held at the border between East and West Timor which were monitored by leaders in local communities that were intended to

facilitate “discussions and debates” among the participants (Babo-Soares, 2004, p. 20). People’s reconciliation ceremonies were intended to involve a greater community than just families in order to “receive and accept refugees, in which both sides agree to mend their differences and establish peace and order” (Babo-Soares, 2004, p. 20). In reference to the success of the CRPs and the CAVR, Babo-Soares (2004) writes that “apart from being effective, this approach is less costly and less time consuming” (p. 31) than trials.

As the CRP process culminates, the panel “determines the appropriate act of reconciliation, e.g. community service, reparation, public apology” a process that validates local justice norms as “these [processes] do not acknowledge the concept of amnesties but focus on accountability, compensation/ reparation to the victim or the victim’s family in order to redress the ‘socio-cosmic imbalance’ created by the crime and ultimately reintegration” (Arnould, 2006, p. 154). The truth-telling and subsequent community-based reconciliation procedures showed a great deal of promise in their goals, and the extent to which they achieved those goals in relation to women will be discussed below.

Serious Crimes Process (SCP)

As noted above, the Serious Crimes Process in Timor Leste was a very complex process, intended to distribute justice in a widespread manner. In order to make the justice process more accessible to the greater population, it was decided that the court would be located within the country (Reiger & Wierda, 2006), which was an improvement upon other processes like the International Criminal Tribunal in Rwanda, which was located outside the country in Arusha, Tanzania, making it potentially difficult for some to arrange travel.

It should also be noted that the speed at which the trials were undertaken was a significant improvement over other processes such as the International Criminal Tribunal for former Yugoslavia. Reiger & Wierda (2006) discuss that the Serious Crimes Unit (SCU) in Timor Leste indicted 400 individuals, held 35 trials, convicted 48 people and acquitted two in just four years, while the ICTY took 10 years to make approximately 70 indictments of a little more than 130 people (p. 3). Despite these positive aspects, it should be considered that the SCU was not able to secure convictions of high-ranking individuals because of their locations outside of the jurisdiction of the courts in Indonesia. Reiger & Wierda (2006) and Hirst & Varney (2005) do mention that the process could be said to have delivered a degree of justice for some victims, but was certainly not flawless.

GENERAL CRITIQUES OF TRANSITIONAL JUSTICE MECHANISMS

Critiques of the Commission for Reception, Truth and Reconciliation (CAVR) and Community Reconciliation Procedures (CRP)

Although the CAVR and related CRPs have some merits in their intention to provide accountability for perpetrators, they falter in several ways. The lack of an amnesty provision and thus the lack of incentive for perpetrators to testify is one of the most prominent factors that influenced efficacy of the CAVR. Arnould (2006) notes that many offenders have refused to testify and be involved in these reconciliation efforts because of this reason. Additionally, because the aim of the CAVR is not to punish or necessarily enforce the law, the question of amnesty for large scale abuses is not in its hands, making high-profile or “big fish” perpetrators less likely to participate (Arnould, 2006). The CAVR did not have the power to compel witnesses to incriminate themselves

in their testimony, which is significant because any information they admitted could be used against them in trial, being that the process lacked the amnesty provision (Burgess, 2004). This is noteworthy because it exemplifies a major reason why perpetrators may not have participated in the reconciliation process and thus limited the amount of reception, truth or reconciliation that the Commission could have achieved.

Critiques of Prosecutorial Processes

The prosecutorial processes in Timor Leste are largely regarded as having a great deal of problems, thus inhibiting the achievement of retributive justice. The prosecutorial mechanisms, like the CAVR process in Timor Leste, have experienced significant difficulty encouraging and/or compelling participation of perpetrators for trials, trouble providing security in the facilities in which trials were being held and problems in delivering justice because of the prevalence of inexperienced defense teams. The process also suffered because at least one of the mechanisms (i.e. the Ad hoc Tribunal in Jakarta) was created under the guise of justice, but in its execution was a pale substitute created with the intention of merely placating the international community without actually delivering punishment.

Reiger and Wierda (2006) note that “the principal difficulty facing the serious crimes process was that the vast majority of major suspects in regard to the 1999 violence are in Indonesia, and the Timorese government has not been able to secure their surrender” (p. 1). They further write that as a result of the Serious Crimes Unit (SCU) not being able to prosecute offenders, “(1) less persons reported to the CRP than otherwise might have been the case in the absence of a credible threat of prosecutions and (2) those who did submit to the CRP felt resentful because perpetrators of more serious crimes

remained outside the scope of either process. In essence, this created an ‘impunity gap’ that should have been foreseen from the outset and avoided by better planning” (Reiger & Wierda, 2006, p. 35). With such a bleak outlook at the onset it is questionable to what degree justice was actually being pursued, or if the process was merely pursued just to pacify the international community. The Serious Crimes Unit encountered problems when as of 2005, 309 of the 391 indictments were “presumed to be outside of the jurisdiction of East Timor” (Cohen, 2002, p. 13). This factor certainly hampered the possibility of trying responsible parties for their crimes and thus promoting accountability.

The Ad Hoc Tribunal in Jakarta has been referred to by Cohen (2002), as being “Indonesia’s Show Trials”, aiming to “whitewash” the culpability of the Indonesian military on the domestic front and placating the United Nations and the United States by creating some semblance of a prosecutorial mechanism. This was done in an effort to avoid the creation of a “real” tribunal by the United Nations and so that Indonesia would not hinder its chances of receiving continued military aid from the United States (p. 4). These aspects obstruct the pursuit of justice for past atrocities committed by the Indonesian military in Timor Leste as little has actually been achieved toward delivering retributive justice.

By comparison, the Special Panels for Serious Crimes (SPSC) not only failed to provide any type of security, both in and out of the courtroom, but also suffered from procedural injustices due to the lack of a proper defense team (Cohen, 2002). Cohen (2002) notes that the 97.7% conviction rate was “concerning” and resulted from several factors including that the UNTAET did not originally provide for a defense wing,

consequently the defense lawyers that were included were “inexperienced” (p. 16). These problems are clearly illustrated in the failure of the defense to call a single witness during the first 14 trials that were undertaken (Cohen, 2002). Eventually, the Defense Lawyers Unit was established but still suffered from related issues. In all, Cohen (2002) writes that in the Serious Crimes Process, a “significant number of cases failed to meet the UNTAET statutes and international norms” (p. 2) in regard to fairness and just processes, illustrating the ineffectiveness of the process.

The prosecutorial processes have been plagued with flaws that jeopardized the ability of the processes to realize their mandates. The three overarching issues that negatively affected the efficacy of the process were 1) that few high-ranking perpetrators were tried, mostly because of their location outside the jurisdiction of the court, and 2) because of the inexperience of the defense team and consequent inability to deliver justice to both victims and perpetrators. Although these general critiques of the process are important to consider, women’s participation in these processes is of the utmost interest for this study and will be explored in the following section.

GENDER-SPECIFIC MANDATES IN TRANSITIONAL JUSTICE

MECHANISMS

Now that the transitional justice process of Timor Leste has been described in terms of its general operation and critiques, it is important to discuss the gender-specific mandates of each mechanism. In examining these mandates, the reader can gain a better understanding of what each process intended to achieve in regard to women, which will lead to a clearer understanding of the issues related to women’s participation throughout the transitional justice process as it is critical to understand the context and environment

in which women did or did not participate according to the mandates that guided the transitional process.

Original Mandate of Mechanisms in Regard to Women

In the following section, the mandate of each mechanism is examined to locate areas in which women and/or issues relating to sexual violence were specifically mentioned. By looking at the ways in which particular attention was made to include women at the onset of each process, the effort by policy-makers and/or the state to involve women in the transitional process can be seen. The way in which these mandates were ultimately carried out will further illustrate women's inclusion and exclusion in the transitional process and will bolster the characterization of effective or ineffective participation, thus demonstrating factors that influence or determine women's level of participation in transitional justice mechanisms as well as ways in which women are included and/or excluded in the transitional processes.

Serious Crimes Process. In regard to the Serious Crimes Process in Timor Leste, UNTAET 2000/15 established the panels that would investigate serious criminal offenses, the following were enumerated as being part of its jurisdiction relating to sexual violence, and thus women:

--Section 5.1 Crimes Against Humanity, which included two characterizing elements that were specifically focused on women: Enslavement and "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity".

--Section 9: Sexual Offenses, and

--Section 24: Witness Protection, in which Section 24.1 states that

“the panels shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the panels shall have regard to all relevant factors, including age, gender, health and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.

Although it is generally noted that the mandate of the Serious Crimes Process was designed to specifically address sexual violence and provide consideration for women, these are the only three paragraphs that discuss these areas.

Commission for Reception, Truth and Reconciliation. In terms of the Commission for Reception, Truth and Reconciliation (CAVR), the final report titled *Chega!*, lists several women-focused areas that fell within the mandate of the Commission’s work. Most significantly, the CAVR was mandated to address violations of “international human rights standards” (CAVR, 2006, Part 2). This included the Convention on the Elimination of All Forms of Discrimination Against Women of 17 December 1979, and “internationally recognised standards such as the Convention on the Elimination of All Forms of Discrimination Against Women (on 13 September 1984) and Convention on the Elimination of all forms of Discrimination Against Women (on 30 July 1980) (CAVR, 2006, Part 2, p. 15).

In regard to women’s participation in the CAVR process, Wandita (2006) writes that “the CAVR sought to guarantee women’s agency at the national and district levels through the participation of women as Commissioners and staff in both the healing workshops and the Urgent Reparations Program. A special research team on women’s issues and a national public hearing on women in the conflict were formed to give special attention to women’s varied experiences in the conflict” (p. 2). There was also a requirement that “a minimum 30% of all Regional Commissioners be women, and that

panels have ‘appropriate gender representation’” (CAVR, 2006, Part 9, p. 43). In terms of the completed report, Rubio-Marín (2009) remarks that there was an “explicit attempt to mainstream gender throughout the entire [truth commission] report” (p. 76). The degree to which the CAVR process achieved these goals will be discussed below.

Reparations process. With regard to the reparations process, the most notable area that discussed women was the Urgent Reparations Program, which mandated that gender should be a priority in determining who would be beneficiaries of the awards that were to be given. The CAVR “recommended a gender quota stating that ‘at least 50% of resources in this program shall be earmarked for female beneficiaries’” (Wandita, 2006, p. 6). There was also an effort to push women to the front of the line in terms of receiving benefits from the Urgent Reparations Program by prioritizing “violations that resulted in severe and continued suffering” which aimed to include “most vulnerable women—widows, women with disabilities, and women still affected by severe trauma” (Wandita, 2006, p. 4). Along with this line of thinking, there was an explicit decision not to include widowers in the Urgent Reparations Program in an effort to ensure women greater access to benefits (Wandita, 2006, p. 5). To promote greater availability of benefits to women, single mothers would be allowed to receive benefits without having to disclose the details of their marital state or if their child had been conceived as a result of rape (Wandita, 2006, p. 6). By removing the necessity of publicly discussing their trauma, it was hoped that women would be more likely to access needed benefits for themselves and their children.

The temporal aspect of the reparations process is important to consider as well, as Commissioners noticed the marked need for “victims to be mentally and emotionally

prepared for testifying about sexual and reproductive violence” and thus advised that there should be a two-year window for victims to be identified in so as not to discount those victims who were not ready to testify in the CAVR during its operation (Wandita, 2006; Rubio-Marín, 2009). Rubio-Marín (2009) notes also that the reparations program would allow women to qualify for benefits under multiple criteria, so that women who suffered sexual violence or had a child from rape could be seen as receiving reparations for other harms and in this way escape stigmatization” (p. 13). As another aspect of the gender focus of the reparations program, a community could receive “collective reparations” on the condition that the beneficiaries were gender balanced (Wandita, 2006; Rubio-Marín, 2009). The Commission also aimed to link children’s benefits with the “provision of services to their mothers as a way to encourage women to think about themselves, specifically offering services to women in the same place they have to visit to get the scholarship stipends for their children” (Rubio-Marín, 2009, p. 13).

In sum, across these mechanisms it can be seen that there was indeed an amount of attention paid to women and issues relating to sexual violence. Each of the mechanisms did specifically enumerate areas that would be points of focus in carrying out their mandates, which illustrates that there was at least some degree of effort to include women in the process. After investigating women’s participation in the Timor Leste transitional justice process through the case study analysis questions, a discussion regarding the degree to which the mandates of these mechanisms was achieved based on the inclusion and participation of women will follow.

WOMEN'S PARTICIPATION IN TIMOR LESTE

In regard to women, the history of Timor Leste has been called “patriarchal, with tradition and customary laws favouring men over women” (Aldén, 2007, p. 4). Women have been known to be regarded as property or chattel and generally have not enjoyed the same rights as men. During the 25 year occupation by Indonesia, women of Timor Leste endured a significant amount of human rights violations, especially forced marriages and forced contraception. After the referendum for independence in 1999, women were targeted by the violence committed by the Indonesian military and anti-independence forces and suffered from sexual and reproductive violence at an alarming rate. In light of these factors, the transitional justice processes in Timor Leste are said to have paid special attention to including sexual violence in their mandates, however the degree to which this was effectively carried out should be considered. Because of the ultimate lack of participation of women compared to the participation of men throughout the processes, it would appear that the processes were not as effective at including women and women’s issues as they intended to be. Although there were a great deal of positive steps in this arena, there are still many ways in which the transitional justice mechanisms fell short in achieving these goals. If a transitioning nation truly wants to draw a line between an oppressive former regime and a new, democratic leadership it seems critical to incorporate as much of the population (particularly victims) into the transitional processes as possible in order to achieve the transitional goals of reconciliation, victim healing, justice, and rule of law and government accountability. If women, who comprise roughly half of society are not included in the transitional justice process, how can the process be expected to fully achieve its goals?

Although it should be noted that the transitional justice process in Timor Leste has attempted (and succeeded in some respects) to make significant strides in mainstreaming gender in the prosecutorial, truth-telling and reparations processes, there are still a great deal of shortcomings in respect to providing avenues for women to have voice and thus have meaningful, effective participation. The following sections will outline the set of criteria used to analyze this case and then provide examples and illustrations from the relevant literature to determine the answers.

WOMEN’S PARTICIPATION IN TRANSITIONAL JUSTICE MECHANISMS

Quantitative Comparison between Men and Women’s Participation

For the purposes of this study, there are two ways that the inclusion of women in the Timor Leste transitional justice process can be considered, being included in a decision-making capacity (e.g. Commissioners on the CAVR or designers/consultants of transitional justice processes) and those included in testimonial aspects, such as testifying in hearings, etc. Both of these aspects will be examined quantitatively in this section.

The following table taken from Section 12.2 Data and Statistical Methods of the Final Report of the Commission for Reception, Truth and Reconciliation (CAVR) will be used to illustrate the difference between male and female testimony givers during the CAVR proceedings.

Deponent Sex	Deponent same as Victim	Deponent different to Victim	%(Deponent same as Victim)	%(Deponent different to Victim)	Total
F	2939	6666	30.6	69.4	9605
M	17438	31944	35.3	64.7	49382
U	8	979	0.8	99.2	987
	20385	39589	34.0	66.0	59974

Source: Database of Narrative Statements Given to the CAVR

According to the CAVR Report, there were 59,974 individuals who gave narrative testimony during the CAVR hearings. Of these people, 49,382 (about 82%) were men and 9, 605 (about 16%) were women, with the remaining 987 (about 2%) being unidentified (CAVR, 2006. Part 12.2, p. 1). These numbers illustrate a significant discrepancy between male and female testimony, with men having given a significantly larger amount of testimony. It is also relevant to note the difference between women and men who testified as victims themselves or were speaking about the violations of someone else. For females, there were 2,939 (30.6%) deponents who identified themselves as the victims and 6,666 (69.4%) deponents that testified about someone else as the victim. For men, 17,438 (35.3%) deponents identified as the victim, while 31,944 (64.7%) deponents did not identify themselves as the victim. It is interesting to note that there is a significant divergence in the percentage of victims who identified themselves as the victim and those who testified about someone being a victim, with the latter category being much larger. The factors that explain this issue will be examined more deeply in the following sections.

In the CAVR Report, it is also noted that there were 52 Sub-district Victims' Hearings held, which were attended by roughly 6,500 individuals. During these hearings, 149 (approx. 70%) men compared to 65 (approx. 30%) women testified (CAVR, 2006, Part 10, p. 26).

	# that Testified in Sub-district Hearings	% that Testified in Sub-district Hearings
Female	65	30%
Male	149	70%
Total	214	100%

By contrast, in a hearing titled “Hear our Voices”, out of 14 participants who testified, six were women (CAVR, Part 10, p. 21). These statistics differ from the above findings, illustrating a closer level of participation between men and women.

	# that Testified in "Hear Our Voices" Hearing	% that Testified in "Hear Our Voices" Hearing
Female	6	~43%
Male	8	~57%
Total	14	100%

The one area in which women tended to participate at a slightly higher level than men was in the six national healing workshops held throughout the country. Out of 156 participants in the workshops, 82 (52%) were women (52%) and 74 (47%) were men (CAVR, 2006, Part 10, p. 32).

	# that Participated in National Healing Workshops	# that Participated in National Healing Workshops
Female	82	~53%
Male	74	~47%
Total	156	100%

Although women had a relatively strong (just over 50% when compared with men) showing in the national workshops held in Dili, the village-level Community Profile Workshops were not as positive in regard to women’s participation. The CAVR Report notes that on average, men constituted 76% of the participants in these workshops. Strikingly, in “11.5% (31 out of 270) of the workshops open to both men and women, women did not participate at all. At the 24 meetings designated women-only meetings, an average of 15 women participated” (CAVR, 2006, Part 10, p. 50).

The number of women that were involved in the Timor Leste transitional justice process in a “decision-making” capacity was generally much lower than the number of men, particularly in the Serious Crimes Process, although the numbers of women participating in decision-making capacities are much closer to being gender-balanced in the CAVR proceedings. According to a March 8, 2006 JSMP Press Release, titled “Participation of Women in the Justice System of Timor Leste”, out of the 27 individuals that were being trained as Judges, Prosecutors and Public Defenders, only nine, or 1/3 were women. Similarly, the press release notes that as of March 8, 2006, “the Judicial Training Centre has currently accepted 15 attendees to enter the first phase of selection to be considered for the positions of Judges, Prosecutors and Public Defenders” and four of these candidates are women (p.1). It can be seen that women were not as readily included as men in these aspects of the justice process, although the 30% quota of women participants appears to have been considered in the selections of these judges, prosecutors and public defenders.

Further indications of women’s inclusion in a decision-making capacity in the judicial processes in Timor Leste are discussed by Askin (2003), Rimmer (2007) and Lawson (2009) who all note that the following positions were filled by women: the first Justice Minister (Ana Pessoa), an international General Prosecutor for the Dili District Court (Siri Frigaard), a public defender (Lisete Quintão), a member of the Appeals court for the Special Panels (the Hon. Judge Jacinta Correia da Costa), and a judge on the Special Panels (Judge Maria Natércia Perreira Gusmão S.H.), who is now President of the Dili District Court. Although the number of men who filled similar positions is not available to provide a comparison, the fact that at least some of these positions were filled

by women indicates their presence in a decision-making capacity. Hirst and Varney (2005) also write that “during March 2005, the Serious Crimes Unit had 13 Timorese trainees (seven of whom were women), including four in prosecution, six in information technology, and three in data entry” (p. 24). Although, Reiger & Wierda (2006) note that in the Court of Appeals “gender balance has not been ideal. While two of the three Timorese judges have been women, only one of the 11 international judges has been female” (p. 15). This indicates an exclusion of women from the decision-making realm of the judicial process. In light of the above data, it appears that women participated as decision-makers in some capacities, but were also excluded in other capacities.

In terms of the participation of women in a decision-making capacity in the CAVR, Wandita (2006) notes that 50% of the statement-takers, 50% of the District-level Victim Support staff, and 30% of Regional Commissioners were women (p. 3). Four women out of a seven member team were also included as part of the Working Group in Victim Support which was “formed to design the Urgent Reparations Program and develop guidelines for its implementation” (Wandita, 2006, p. 3). Women were likewise included as part of gender-balanced teams on the Victim Support and Community Outreach Team, Community Reconciliation Team (both one woman and one man), and on the Truth Seeking Team (comprised of two men and two women). To a similar end, “the Commission trained two district Victim Support staff, one woman and one man in each district, in participatory methods for facilitating the Community Profile Workshops” (CAVR, Part 10, p. 47). The Commissioners of the CAVR note that “as Regional Commissioners and panel members, women played an active role in the hearings, which

can only have had a beneficial role on gender equality in Timor-Leste (CAVR, Part 9, p. 43).

In sum, the numbers of women that participated in the transitional process in decision-making capacity appear much larger than those related to women participating in the testimonial aspects. One of the explanations for this higher level of gender representation in the CAVR could have been the provision in the CAVR mandate that 30% of Regional Commissioners would be women and that there should be “appropriate gender representation”. Similarly, as decided in the First Women’s Congress of Timor Loro S’ae in 2001, 30% of the Constitutional Assembly would be women, which appears to have also had an effect on the selection of judges, prosecutors and public defenders as these numbers seem to reflect numbers close to 30% as well. The lower levels of women’s participation in the testimonial aspects could be explained by the general lack of desire to talk publicly about issues relating to sexual violence, the predominant type of violence that characterized the conflict in Timor Leste. Both of these issues will be further explored in a later section.

Nature and Extent of Women’s Participation

It is necessary to investigate the ways in which women have or have not participated in order to determine the factors that influence or determine women’s level of participation in the transitional justice process and also how women are included and/or excluded in that process in Timor Leste. The following section will discuss the nature and extent of women’s participation in the transitional process in Timor Leste through illustrations of both effective and ineffective participation. For the purposes of this study, effective participation will be characterized by perceptions of individuals that

their involvement in the process was meaningful and worthwhile. As quantitative examples of women's participation in the transitional process were discussed above, this section will discuss qualitative examples of women's inclusion in the process to further illustrate effective participation. This topic will be further described by the ability of individuals to feel as if they had "voice" in the process by having the ability to express their views and opinions and also to be heard by others.

In contrast, ineffective participation will be exemplified by feelings of individuals that their involvement in the process was a negative experience that was neither meaningful nor worthwhile. Additionally, qualitative examples of women's exclusion from the process and the inability to express one's views or opinions and be heard by others will be used to expand and illustrate the element of ineffective participation.

Illustrations of effective participation. Although still lacking on the whole, some examples of effective participation can be seen in the process in Timor Leste. The CAVR describes in Part 10: Acolhimento (Reception) and Victim Support, one woman named Iria Moniz's experience in participating in the CAVR as being liberating for her. She said

When I went to the Commission's Maliana office they made me feel welcome and did an interview with me. I was not afraid to give my statement to the Commission. The Commission also provided me the opportunity to talk about my pain and suffering in public. They did not pressure me to participate in the Bobonaro public hearing. I wanted to go myself in order to share the burden that I had been carrying all these years. After I did that, I felt lighter inside (Part 10, p. 21).

The feelings that this woman had of being 'lighter' and being able to testify about something deeply personal that she felt compelled to share illustrate the feelings of validation and recognition she felt through her participation. When one's suffering is

acknowledged they are more likely to feel that their participation was effective and worthwhile (d'Estrée, 2006).

Another example of effective participation is described in the March 8, 2006 Judicial Systems Monitoring Programme (JSMP) report titled “The Law of Gender-Based Violence in Timor-Leste” where “some courts are showing more empathy towards women and children victims, seen in the type of sentences and judges comments in decisions” (p. 4). This factor adds to effective participation because when individuals are shown empathy, they are more likely to feel as if their suffering is being recognized, which contributes to feelings of justice (d'Estrée, 2006). Although not widely available, there are indeed some illustrations of effective participation available in the literature regarding the transitional process in Timor Leste.

Qualitative illustrations of inclusion in the transitional process. As discussed above, women can be seen as being included in the process as either participants/ testimony givers or as decision-makers .As participants in the transitional process on the testimonial side, Rimmer (2007) notes that the “CAVR specifically commissioned research about and held special programs for women who were survivors. This program was led by a woman (Galuh Wandita)” (p. 7). Similarly, the CAVR Report discusses that the Commissioners “selected women to participate in the women’s discussion group, with priority given to women who had experienced violations or had been active in the resistance” (CAVR, 2006, Part 10, p. 47). These statements evidence the inclusion of women and attention paid to women’s issues and experiences, indicating a positive aspect of women’s inclusion in the process.

The ways in which the truth-telling, prosecutorial and reparations achieved their gender-specific mandates also illustrate the inclusion of women. In terms of the achievement of the gender-specific mandate in the truth-telling aspect of the transitional process in Timor Leste, there are several aspects of the Commission for Reception, Truth and Reconciliation (CAVR) that provided for inclusion and participation of women. Wandita (2006) writes that “the CAVR provided space for recognition of women victims of the conflict” (p. 6-7), which illustrates a positive aspect of the process in relation to gender sensitivity. Reports in the CAVR Report note that during the national hearings, many sensitive issues that are typically not discussed in public forums were discussed. The Commission further writes that “women spoke openly of the sexual violence committed against them, challenging the widely-held view that East Timorese culture forbade discussion of this subject” (CAVR, 2006, Part 10, p. 29). Likewise, throughout the 52 Sub-district Victims’ Hearings, roughly 30% of the testimony was from women, having 65 women and 149 men testifying (CAVR, 2006, Part 10, p. 26). Additionally, there were a total of six workshops for survivors of the violence were created in Dili to help facilitate healing. Although five of the workshops were gender-mixed, one was designed specifically for women (CAVR, 2006, Part 10, p. 31). The CAVR Report notes that out of a total of 156 participants in the six healing workshops, 82 women (52%) participated and 74 men (47%), showing a relatively equal proportion of women to men’s participation. The national public hearing that focused solely on women was titled “Women in Conflict: Hear Our Voices” and was held in April 2003 and was designed to focus on women’s experiences and testimony about the violence they experienced.

The examples of ways that the reparations process achieved its gender-specific mandate are quite limited. In essence the reparations program only achieved its goals in regard to including women in one capacity. After testifying to receive benefits from the Urgent Reparations Program, two women's groups, Fokupers and ET-Wave "offered follow-up support" in five different districts, and they also "worked with communities to address the isolation that many victims, especially rural women, suffered" (CAVR, 2006, Part 10, p. 42). Other than this element, the ways in which the reparations program did *not* achieve its women focused mandate, thus excluding women from the process, are far more substantial.

Positive examples of voice. Participation includes the act of actually being present at an event, but effective participation goes a step further to include voice. d'Estrée (2006) discusses four levels of voice, which she writes each "provides opportunities for healing, validation and for resolution" (p. 110). These levels are the "ability to voice one's views and experiences", "ability to be heard by others", "ability to be heard by the other who has perpetrated the injury", and "acknowledgment of injury by the other". By identifying instances that illustrate whether or not these levels were achieved, one can interpret if women were indeed provided voice and thus participated in a meaningful and effective way.

The first positive example of women having voice in the transitional justice process in Timor Leste was illustrated in the "Women and Conflict National Public Hearing", initiated by the Commission for Truth, Reception and Reconciliation (CAVR). This hearing was held April 28-29, 2003 in which 14 women who had been victims of the violence perpetrated by the Indonesian military testified about their experiences.

According to an April 2003 report from the Judicial Systems Monitoring Programme (JSMP)⁷, this hearing was held as a public event at the CAVR National Headquarters in Dili and was broadcast on both television and radio. It appears that the “Women in Conflict: Hear Our Voices” national public hearing did allow the participants to be heard by others at least to some extent. Farsetta (2004) writes that those who testified were asked if they wanted to share a message with national or government leaders or the greater nation at the end of their testimony. Although it is not mentioned whether or not anyone took advantage of this opportunity, it was indeed presented, which is a positive step toward achieving the second level of voice. In regard to this same hearing, it was observed by one journalist that “it seemed like all of Maliana [a village in Timor Leste] was tuned into the radio broadcast” (Farsetta, 2004, p. 51). Despite the lack of solid numbers to substantiate exactly how many people were listening, the impression felt by this journalist insinuates that the women participating did have the ability to be heard by others.

Illustrations of ineffective participation. By contrast, there are a number of ways in which the participation of women can be seen as being ineffective. Le Touze, Silove & Zwi (2005) writes that “frustration [of East Timorese women] was... expressed about the sense of ‘not being listened to’ by the current leaders” (p. 6). This statement appears to indicate that women were allowed to speak and/or participate, at least in some sense, but were not listened to, which brings into question of how “effective” their participation was if the women involved felt they were not being heard. Le Touze, Silove & Zwi (2005)

⁷ This organization was created in 2001 to monitor the Ad Hoc Tribunal in Jakarta and the Special Panel for Serious Crimes in Timor Leste. JSMP also monitors the court and judicial systems of Timor Leste, in general. In 2004, it developed a Women’s Justice Unit, which was created to investigate domestic violence and women’s role in the Timor Leste justice system (JSMP, n.d.).

also write about the occurrence of women who had experienced sexual violence to “shut down...and cease to function effectively” becoming “silent and withdrawn because of their suffering”; they further notes that this group is “most likely to be overlooked” (p. 5-6). If a woman becomes so overwhelmed and retraumatized by recounting her past experiences that she can no longer communicate them in a valuable and meaningful way, her participation is most nearly useless as it does nothing to satisfy the criteria for voice or result in positive outcome. Additionally, because of the inability to communicate in a clear way, these women can be forgotten and overlooked, thus making their participation ineffective.

Although there might be women participating, “some decision-makers [in courts]... still rely on gender-stereotyped assumptions to decide credibility” (Judicial Systems Monitoring Programme, 2006 February, p. 4), meaning that the testimony of a woman is not believed to be as credible as that of a man. The presence of gender-stereotyping implies that participation may be ineffective as women’s testimony is essentially considered to be second class after that of a man. Furthermore, Bere (2005) notes that in an interview conducted by JSMP, “one Dili District Court judge demonstrated gender bias. Attitudes such as this are clearly detrimental to women whose cases need to be handled effectively and sensitively” (p. 28). This issue similarly jeopardizes the effective participation of women as this is evidence that they are not being validated as witnesses on a level equal to men. Rimmer (2007) describes a similar problem in the Serious Crimes Process and the Ad Hoc Tribunal in Jakarta in which

women were poorly represented, and poorly treated in the court room. Timorese women’s gendered experience of conflict was ignored in court or only acknowledged as an afterthought. Worse still, their experience of

sexual violence and forced maternity was seen as a source of stigmatisation and marginalisation... The trials did nothing to counter that perception (p. 29-30).

The concept of blaming women for sexual violence is also indicative of ineffective participation and appears to be consistent throughout a great deal of cases in Timor Leste. Grenfell (2006) writes that “local legal systems are seen ‘to often blame women for the cases of violence presented.’ Generally women victims feel that their needs and input into the process are ignored” (p. 321; citing an interview with Manuela Leong Pereira, the Director of Fokupers, Dili, 17 June 2005). The blame that women are made to feel for experiences that were outside of their control and the lack of validation for their experiences or ideas is illustrative of ineffective participation in that although women may be present during a hearing they are doing nothing to further the transitional process in a meaningful and positive way.

In all, there appear to be a greater amount of examples that demonstrate ineffective participation of women, including the tendency for them to be blamed for experiencing sexual violence, to feel like they are not listened to in the court system and gender-stereotyping that delegitimizes their credibility in traditional justice systems. Although there are some ways in which women have participated effectively, that evidence is still lacking on the whole.

Qualitative illustrations of exclusion from the transitional process. It is important to explore qualitative examples of exclusion of women in the Timor Leste transitional justice process in order to determine the ways in which women have been excluded. According to reports from the Judicial System Monitoring Programme, “it is apparent that the participation of women in the judicial process is still extremely limited”.

Moreover, “women’s access to justice...is almost completely neglected” (JSMP, 2006 January, p. 21; JSMP, 2004, p. 7). Similarly, Grenfell (2006) writes that women in local contexts are “considered to have the least means of access to justice in East Timor” (p. 307). These issues indicate the prevalence of the notion that women are largely excluded from transitional justice processes.

Rimmer (2007) notes that there have been a great deal of obstacles blocking women from inclusion in the transitional process in Timor Leste. Specifically, she writes that these obstacles have included: 1) “the failure of policy or law to provide acknowledgment or compensation for survivors of gender-based persecution or the children born of rape”; 2) “the failure of domestic law to protect women from the escalation of domestic violence post-independence”; 3) “obstacles to participation in pre and post-independence decision-making, including representation in formal elections”; 4) “and obstacles to participation in key decisions about transitional justice mechanisms, such as amnesties” (p. 27-28). Further obstacles are elucidated by Wandita (2006) as including “cultural barriers, limited access to information regarding the CAVR’s activities, and the common notion that the men already represented families’ experiences of the conflict” (p. 5). These issues illustrate the sidelining of women in favor of male testimony and representation and decision-making.

Grenfell (2006) and Swaine (2003) discuss that women are known to be excluded from making legal decisions. The justifications for this exclusion are “the views that the ancestors have decreed that only men can ‘know’ and ‘speak’ the ‘words of law’, that it is a cultural matter, and further, that women are not educated and are therefore unreliable” (p. 321 citing Swaine, 2003). Grenfell (2006) further writes that

“many local belief systems hold that women do not possess, and never have possessed, power in the local sphere to be decision makers. These common local beliefs curtail the possibility of women’s equal participation in local legal systems as both participants and holders of the law (p. 320-21).

The prevalence of this type of cultural norm serves to exclude women from effective participation in transitional justice processes.

The fact that violence against women is often and largely regarded as a “private issue” or “family matter” can also block women from being included in the justice process as these matters can be seen as “falling outside the state’s responsibility” (Allén, 2007, p. 11; also discussed in JSMP, 2006, p. 5). This goes along with a cultural norm in Timor Leste to blame the victim for the sexual violence that was experienced (“East Timor women must tell of RI atrocities”, 2003; Allén, 2007). If a victim of sexual violence feels she is to blame, it is probable that she would be less likely to readily be involved in sharing of her experiences and thus she would exclude herself from the process.

There is also a great deal of social stigma and shame attached to experiencing sexual violence in Timor Leste. In many cases, victims “have become outcasts” being referred to as “fallen” or “broken” (Mydans, 2001). There have been instances reported in which “some have been shunned by their husbands and their communities as ‘dirty’...In some cases, family members have threatened to kill the babies born of rapes...and in one town, Roman Catholic Church workers refused to allow baptisms for the babies or confessions for their mothers,” an extremely difficult fate in the deeply Catholic Timorese society (Mydans, 2001). This kind of stigma has likely led to the prevalence of shame in victims of sexual violence that comes about because women are considered to have “lost their honor” by enduring this abuse and also that some women are ashamed of

having been in “relationships” (although really forced marriages) with former Indonesian military members and are concerned they could be brought to trial for that activity (Mydans, 2001). Because of these factors, women are essential *de facto* excluded from the processes as participating would only serve to further marginalize and stigmatize them, branding them with the experience of sexual violence.

Additional issues relating to the overt exclusion of both women and women’s issues and a lack of gender mainstreaming in the justice process in Timor Leste include the lack of indictments and lower priority given to crimes of sexual and gender-based violence. Alldén (2007) writes that “many crimes, particularly cases of sexual violence remain to be tried in East Timor even after the transition” (p. 13) and as of 2007, “there has only been one conviction of rape as a crime against humanity in East Timor” (p. 15). This is illustrative of the lack of attention paid to including women in the justice process as gender-specific crimes are not being given priority though they were extremely widespread throughout the conflict. If a woman does bring charges against someone for committing a crime of sexual violence, very often there are no witnesses, and even less often is there expert testimony. Generally, the testimony is left to the word of the victim against that of the perpetrator (JSMP, 2006 February). This serves to exclude women from wanting to testify in such a setting as it would essentially be a match of he said-she said. In light of the aforementioned cultural norms relating to women’s subjugation it seems unlikely that favorable outcomes would occur in providing testimony about these types of crimes.

Another aspect of women’s exclusion from the justice system is observed by the JSMP (2006 February) that documents that “the justice system is mainly being accessed

by young unmarried women victims of GBV [gender-based violence]. Crimes, particularly sexual crimes, against older or married women are rarely being tried in courts” (p. 4). The tendency for older women not to participate in the justice process at the rate of younger women is an element that illustrates another way in which women are excluded from the process. As the reasons why this occurs are not completely clear, it would be worthy of further investigation in another study.

In all, women have been excluded from the transitional process because of inadequate protections under Timorese law, cultural barriers to participation such as the belief that sexual violence is a “family matter”, the prevalence of shame and social stigma related to experiencing sexual violence, the exclusion of crimes of sexual and gender-based violence in indictments and the tendency for only younger women to access the justice system. Because of these issues, it appears that women are excluded from the justice process at a disproportionate rate than men.

The ways in which the truth-telling, prosecutorial and reparations processes failed to achieve their mandates are also illustrative of ways in which women were excluded from the transitional process. In all, the evidence that indicates the Serious Crimes Process achieved its mandate is lacking, particularly according to the International Center for Transitional Justice (ICTJ) (2006), which reported that after the United Nations discontinued funding in 2005, there were over 800 cases remaining to be tried, and approximately 60 of those were related to rape and gender-based crimes. The fact that such a small percentage of these crimes were gender-related is indicative of the lack of will or ability of the court system to indict crimes related to gender and sexual violence. The ICTJ (2009) ultimately reports that “very few” gender related crimes were actually

indicted by the SCP. Similarly, Rimmer (2007) writes that “despite the placement of women in some key decision-making positions within the transitional justice mechanisms women [in East Timor] generally did not receive tangible and satisfactory results from the justice system in the post independence period” (p. 7), which indicates the positive inclusion of women as stakeholders in the justice process.

Bere (2005) writes that “very little progress was achieved in cases involving women. Only 16 percent of all of women-related cases actually proceeded to trial. In almost all cases that went to trial, no significant progress was achieved towards reaching a final decision” (p. 28). Similarly, 41 out of 49 (84%) of cases dealing with women that were observed by Judicial Systems Monitoring Programme (JSMP) were postponed and “only six percent of all scheduled hearings in cases involving women related to the presentation of evidence” (Bere, 2005, p. 28). In a February 2006 report, the JSMP documented that “courts still demonstrate a lack of understanding of international legal principles around gender-based violence” (p. 5). Ultimately, “very few gender crimes were indicted by the Serious Crimes Unit” (Hirst & Varney, 2005, p. 19).

Running distinctly contrary to the provision in the mandate providing for witness protection, especially in cases of gender-based crimes, Cohen (2002) gives an example of a woman that was riding on the bus to Dili to give testimony had to share the bus, unescorted, with the man accused of raping her (p. 33). This illustrates a striking disconnect between the goals of trying those crimes against humanity that pertained specifically to women and/or to sexual violence (Section 5.1 and Section 9) and witness protection of victims with regard to vulnerable populations that experienced crimes of

sexual or gender violence (Section 24.1) that were originally enumerating by the SCP and what occurred in practice.

Although the CAVR did appear to achieve its mandate regarding women to some degree, there were several ways in which the process failed to focus on women in the way that it intended. Wandita (2006) notes that “ultimately only a small percentage of women participated in the statement taking process” (p. 6). Unfortunately, this signifies a shortcoming in the efforts to “mainstream gender” in the CAVR process. As noted above in the quantitative illustrations of women’s participation as testimony givers, the CAVR Report notes the significant divergence between the men and women’s participation in the Community Profile Workshops, which were considered an element of the CAVR process. It is documented that women did not participate at all in 31 out of 270 of the workshops that were open to both men and women. Additionally, the CAVR Report notes that a small average of 15 women participated in the 24 women-only meetings held as a part of the Community Profile Workshops (CAVR, 2006, Part 10, p. 50).

The difference between these statistics is worth exploring. First, the disparity in the participation levels between the national and village level workshops should be further investigated. Is it possible that perhaps the national level hearings served as more of a façade to placate the international community and give the impression of gender balance and sensitivity though those issues have still not evolved on the local level? It could be that village leaders still espouse patriarchal values even though the trend in the national arena purports making efforts towards promoting gender equality. The issue of the limited participation at the community level appears to be inconsistent with

promoting gender equality and gender mainstreaming in transitional justice processes. To this effect, the Commissioners noted that

all district teams noted that there was a lack of gender balance, both in attendance and in active participation in the discussion. Reasons given for the imbalance included the fact that women traditionally do not participate in public gatherings and that women's workload, particularly their responsibility for childcare, kept many at home. It was thought that even when women did attend, many may have felt unable to speak in public about the violence they had experienced or did not feel comfortable speaking in the presence of their husbands (CAVR, 2006, Part 10, p. 50).

This exemplifies the existence of cultural norms that appeared to hinder and limit women's participation in the CAVR-related processes, and thus illustrates how the mandate of the CAVR was not fully realized in relation to women.

There are multiple ways in which the reparations program fell short of achieving its gender-specific mandate, and thus excluding women from equitable participation. For instance, Wandita (2006) and Rubio-Marín (2009) write that the "gender component" of the reparations process has been lacking and not well integrated. They further express that women's involvement in the development of a reparations programs has been minimal as women are not often consulted about the policies though they are largely affected by them. Based on these issues it can be seen that women do not have an adequate level of participation in these issues that ultimately affect them. This illustrates a problem because often only women are aware of those issues that affect them most, especially based on the silence surrounding sexual violence that would further distance the possibility of men's understanding of their needs. Thus, without consideration to these issues, gender cannot be effectively mainstreamed into the process, continuing the limited participation of women on the whole.

Although at the onset of the Urgent Reparations Program 50% of the funds were earmarked for female beneficiaries, the CAVR Report notes that between September 2003 and March 2004 73% (or 516) of the beneficiaries of the “cash grant program” were men, while only 27% or (196) were women (CAVR, 2006, Part 10, p. 41).

	# of Beneficiaries in Urgent Reparations Program Cash-Grant Program	% of Beneficiaries in Urgent Reparations Program Cash-Grant Program
Female	196	~27%
Male	516	~73%
Total	712	100%

This aspect illustrates a failure to achieve the original gender-specific mandate being that the benefits intended for allocation to women fell short by 23%, with men receiving the difference. In all, women only represented 23% of the total beneficiaries of the Urgent Reparations Program (Wandita, 2006, p. 5). This discrepancy could be explained by the fact that women only represented roughly 20% of the individuals that gave statements during the CAVR process (Wandita, 2006, p. 5), making the percentage of statements received proportional to the percentage of benefits received; however the inequality between men and women’s access to benefits indicates a shortcoming in the program, particularly taking into account the widely known fact that women tend to be less involved in discussing their trauma in a public forum. To this same end, out of 417 survivors living throughout 10 districts, 322 men (77%) and 95 women (23%) “received the continuing support and assistance”, which included “medicines, referral to district hospitals, and basic counseling and support, including home visits” (CAVR, Part 10, p. 42).

	# of Recipients of Continued Support and Assistance	% of Recipients of Continued Support and Assistance
Female	95	~23%
Male	322	~77%
Total	417	100%

This illustrates again the large difference between the percentages of men who received benefits to the percentage of women that received benefits. In all, Wandita (2006) notes that “women’s role in the articulation of reparations has been limited” (p. 2). The lack of involvement of women in the reparations process in Timor Leste is again illustrative of women’s decisions essentially being made for them by someone who may not have the same insight into their actual needs as someone who has experienced something like sexual violence first-hand. Although this process was generally regarded as being conscious of women’s needs, it appears to have ultimately fallen short as women were excluded in a wide variety of ways.

Negative examples of voice. In terms of negative examples of voice, it is believed that crimes that were related to sexual violence were underreported in both the CAVR hearings (CAVR, 2006; Allén, 2007) and in trials (Allén, 2007). It can be seen that many women’s ability to express the views and experiences was limited by the cultural stigma that is attached to individuals having experienced sexual violence. Allén (2007) writes that “sexual violence is marked by such a stigma that many are afraid to come forward to talk about what happened to them” (p. 15). To this end there is generally a lack of willingness on the part of women to testify in court (Allén, 2007). The issue of

this cultural stigma appears to be tied to men's presence and perceptions in some cases.

Commissioners of the CAVR wrote that

it was easier for women to speak directly about violations, such as rape, when men were not present. If sexual violence was raised at all in the presence of men it was usually done obliquely, as when women spoke of having been 'damaged' or broken' (CAVR, 2006, Part 10, p. 50).

The euphemizing and playing down of experiences in relation to sexual violence is not consistent with being able to voice one's views and experiences. Additionally, Hirst and Varney (2005) discuss that although there was a team created to investigate crimes of sexual violence and rape, "the reluctance of female victims to testify in open court prevented the Serious Crimes Unit from proceeding with many gender prosecutions" (p. 19).

Though there are some illustrations of some women having the ability to be heard by others, there are also illustrations indicating the contrary. Grenfell (2006) writes that "rural women are not supposed to be outspoken and to take the floor in public meetings" (p. 331). If women are not supposed to be outspoken, their ability to be heard by others is greatly inhibited. Being that women's voices have generally been "sidelined" in this process, it seems unlikely that they were successfully heard by others. Lastly, Alldén (2007) writes that "gender-based violence was not considered a crime to be tried in court; hence, perpetrators did not receive any sanctions and impunity was widespread" (p. 1). This implies that since these types of crimes were not tried in court that victims were not given the ability to be heard by the perpetrator of the injury.

TIMOR LESTE CASE SUMMARY

After 25 years of brutal occupation, it is no question that the transition to an independent and democratic state would be difficult. In many ways, Timor Leste has

shown improvements upon transitional processes in other countries; however the process has fallen short in a multitude of capacities, particularly relating to women's role in the transitional justice mechanisms. Most notably, in almost all areas there is a significant rift between the numbers of men who participate and the numbers of women who participate in both the decision-making and the testimonial aspects of the various mechanisms. It appears that some of the reasons by which women are excluded from these processes are due to the social stigma that surrounds the experience of sexual violence as well as cultural norms that perpetuate patriarchal values and reify women's place as secondary citizens in society. Although there are some illustrations of effective participation and inclusion in the transitional processes of women, overall the negative aspects of exclusion and ineffective participation appear to outweigh the positive developments.

One interesting facet of the literature written about the Timor Leste transitional justice process is that many authors note how progressive the process was in regard to the truth commission, trial and reparations processes, however the evidence actually illustrating that progressivism in the implementation of these mechanisms is lacking in regard to the participation of women. Certainly this process can be seen as an improvement upon transitional processes in other countries, making an effort to include sexual violence in the various mandates, for example; however the quantitative data illustrates that there are still a great number of improvements to make in the actual implementation of these mechanisms as there is still a distinct disparity in the participation of men and that of women. These issues will be revisited and examined more thoroughly in the discussion following the Sierra Leone case study.

This case is quite illustrative of the difference between male and female participation and begins to shed light on some of the underlying reasons for such a disparity. Although it can be seen that women participated in effective and meaningful ways to some degree, the actual numbers of participants speak to the fact that women are still not included in the same capacity as men though they experienced a disproportionate amount of sexual violence that was perpetrated during the conflict. Certainly any evidence illustrating positive types of participation is indicative of a positive step, but it is clear that the Timorese process is still lacking in many ways. The following section will investigate the case of Sierra Leone's transitional justice process that will be analyzed according to the same set of criteria used in the above case of Timor Leste. After the case of Sierra Leone is examined, a discussion section will follow in which the case analysis questions from each case will be compared, thus leading to conclusions and additional findings and limitations of this study.

CHAPTER SIX: CASE STUDY: SIERRA LEONE

BRIEF HISTORY OF THE CONFLICT IN SIERRA LEONE

Sierra Leone was originally a British colony that gained its independence in 1961. Shortly after declaring their independence, two indigenous ethnic groups, the Temne and Limba, came into power in 1967 and called themselves the All People's Congress ("We'll kill you if you cry", 2002). After nearly 20 years, people's frustrations with the government and the economic situation in the country led to the formation of the Revolutionary United Forces (RUF), which was made up of "a mixture of middle class students with a populist platform, unemployed and alienated youths, and Liberian fighters from Charles Taylor's National Patriotic Front of Liberia" and was geared to overtake the All People's Congress (APC) and "salvage the country" ("We'll kill you if you cry", 2002, p. 8). Although the original goals of the RUF seemed to be positive and genuine, they quickly turned sour as their plans to overtake the APC became a crusade fraught with violence, marked by the use of sexual violence, sexual slavery and amputations to terrorize the country.

Conflict erupted in Sierra Leone in 1991, when the Revolutionary United Forces (RUF) entered Sierra Leone from Liberia, beginning with the domination of the Kailahun district in Eastern Province. During the nearly decade long civil war that followed this attack, the RUF, later joined by the Armed Forces Revolutionary Council (AFRC), which was responsible for a significant amount of torture and deaths. Women were

systematically targeted by the violence, especially of a sexual nature and suffered disproportionately to this end. Horn, Charters & Vahidy (2009) write that “during the conflict, tens of thousands died and over two million people (more than one-third of the population) were displaced, either to another part of Sierra Leone, into a neighboring country or further afield” (p. 135). Estimates of the number that lost their lives range between 50,000- 75,000 individuals (Graybill & Lanegran, 2004).

In response to the RUF’s campaign of terror, the Civil Defence Forces (CDF) emerged. The CDF were also responsible for violence, but were not known to commit acts of sexual violence until much later in the conflict. The violence continued until the Lomé Peace Accord was brokered in 1999 by the “United Nations, the Organization of African Unity (OAU), and Economic Community of West African States (ECOWAS)” to demand that the RUF and AFRC cease fighting “in exchange for representation in a new government, an agreement that promised amnesty to all those responsible for the violence” (Nowrojee, 2005, p. 92). Although the Lomé Agreement was signed in 1999, the civil war was not declared to be over until 2002, at which time the Special Court in Sierra Leone (SCSL) and the Sierra Leone Truth Commission (SLTRC or TRC) began their work.

DESCRIPTION OF TRANSITIONAL JUSTICE MECHANISMS

The transitional justice process in Sierra Leone illustrates a new approach to redressing past injustices as it established a Truth and Reconciliation Commission, somewhat modeled after the South African TRC, to operate simultaneously with a prosecutorial mechanism, the Special Court for Sierra Leone. The Sierra Leone Truth and Reconciliation Commission (SLTRC) was mandated by the Truth and Reconciliation Act

in 2000 and began its work in 2002 to “address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered” (United States Institute of Peace, 2000). The Special Court for Sierra Leone (SCSL) “was set up jointly by the government of Sierra Leone and the United Nations, following a UN Security Council Resolution (1315) in August 2000” (Horn, et al., 2009, p. 136). It took up its work in Freetown, Sierra Leone in 2002. The SCSL was mandated to prosecute those who “bear the greatest responsibility for violations of international humanitarian law since November 30, 1996” (United Nations Security Council, 2000) and was expected to complete its work by 2005; however there are still trials pending as of February 2010. Both the SLTRC and the SCSL will be discussed further in the following sections.

Sierra Leone Truth and Reconciliation Commission (SLTRC)

The SLTRC had many unique aspects, setting it apart from truth commissions in other countries. Out of the estimated 70,000 perpetrators in the conflict, roughly 13% of testimony in the SLTRC came from perpetrators despite the fact that there were few incentives offered to them for testifying (Graybill & Lanegran, 2004). Hayner (2001) notes that the SLTRC had “broad powers of search and seizure, investigation, and subpoena”, and aimed to promote neutrality and credibility by including three international and four Sierra Leonean members (p. 71). Because of the amnesty provision mandated in the Lomé Accord, the SLTRC was the principal mechanism that would allow some element of accountability and truth-telling about the human rights violations perpetrated during the decade long conflict because it did not have the power to grant amnesty, an ability of the earlier South African Truth and Reconciliation Commission.

The Lomé Accord mandated in Article XXVI that the SLTRC would “address impunity, break the cycle of violence, provide a forum for both victims and perpetrators of human rights violations to tell their stories, get a clear picture of the past in order to facilitate genuine healing and reconciliation (UNSC, 2000 August 14, p. 14).

The SLTRC is widely to believe to have provided for greater inclusion of women’s issues through its mandate and certain undertakings of the Commission staff, but the degree to which this was achieved is contested throughout the literature on this subject. The final report for the SLTRC was released in 2004, but was returned to the Commission for revisions after having many of its details questioned and disputed by various parties implicated in its findings. Interestingly, the only manner in which this report was available was through the blog of a well-known author and professor in the transitional justice field, William A. Schabas (2009). A video report was released to supplement the report, called *Witness to Truth* and can be uploaded via the internet. A children’s version with less graphic detail about the violence committed was also released, and is available through the United Nations International Children's Emergency Fund (UNICEF) website (USIP, 2010). This factor is worth noting as the full report of the Commission for Reception, Truth and Reconciliation in Timor Leste is readily available to download for free on the internet through a website created solely for the CAVR.

Special Court for Sierra Leone (SCSL)

Having been created by the Sierra Leonean Government and the United Nations, the SCSL was “mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the

territory of Sierra Leone since 30 November 1996” (UNSC, August 2000; Horn et al, 2009, p. 136). Special attention should be paid to the mention that only those who bear the *greatest* responsibility (Franke, 2006) will be tried, as this implies that those who only had *some* responsibility, for example, would not be tried. The temporal restriction that calls for only crimes committed after November 30, 1996, when the Abidjan Peace Agreement was signed by the Revolutionary United Forces (RUF) and the government of Sierra Leone should also be considered. By placing this limit on the jurisdiction of the Court, five years worth of crimes committed during the civil war, not to mention any that occurred before 1991 could not be tried.

The SCSL is an example of a hybrid tribunal that was comprised of international and domestic judges and operates in Freetown, Sierra Leone. According to the official SCSL website, two cases, including the appeals process, have been completed, although several important high-profile cases remain to be tried such as Charles Taylor, the former President of Liberia that is now being tried in The Hague (Special Court for Sierra Leone, 2010). The Court has now been in operation five years past its expected term.

GENERAL CRITIQUES OF TRANSITIONAL JUSTICE MECHANISMS

Critiques of the Sierra Leone Truth and Reconciliation Commission (SLTRC)

There are several general critiques of the Sierra Leone Truth and Reconciliation Commission (SLTRC) that should be noted. Although the SLTRC is viewed in many ways as being a vast improvement on processes in other countries, it still suffered from several shortcomings. Dougherty (2004) notes that not only did the SLTRC have deficient funding, but the management of the process and the staffing of the Commission posed problems as well. She also notes that in some ways the parallel operation with the

Special Court for Sierra Leone negatively affected the SLTRC's ability to carry out its work (Dougherty, 2004). She further writes that the dissemination of information about the process was hindered because of the high illiteracy rate and the lack of a *lingua franca* (Dougherty, 2004). All of these issues have been considered as shortcomings to the process.

Critiques of the Special Court for Sierra Leone (SCSL)

There are several general critiques of the Special Court for Sierra Leone. As a recurring theme, the SCSL suffered from inadequate funding which hindered its ability to address its mandate (Fritz & Smith, 2001; Lamin, 2003). Additionally, the temporal restriction mandated in the Lomé Accord that determined the period of jurisdiction to begin in 1996 after the signing of the Abidjan Peace Agreement though the conflict had actually begun five years prior was a significant limiting factor on the distribution of justice (Fritz & Smith, 2001). It is also noted that the amnesty provision dictated in the Lomé Accord was inhibiting for the pursuit of justice. Additionally, the fact that the SLTRC and the SCSL were to operate in parallel created problems in both of their executions as there were differing opinions on which mechanism should be of primary importance (Lamin, 2003). As the general critiques of the SLTRC and the SCSL have been described, a the gender-specific mandates of each of these processes will be outlined in the following section.

GENDER-SPECIFIC MANDATES IN TRANSITIONAL JUSTICE

MECHANISMS

This section investigates the areas of the mandates for the Sierra Leone Truth and Reconciliation Commission (SLTRC), the Special Court for Sierra Leone (SCSL) and the

reparations process that focus specifically on women and women's issues. As described in the above case study of Timor Leste, outlining these mandates will give the reader a better understanding of what these mechanisms actually sought to achieve in terms of women and women's participation. Through seeing the documented mandates of the mechanisms, the case study analysis criteria can be more clearly understood in the context of each of the mechanisms, and will thus enlighten the reader to not only the ways in which women participated, but also how it was *intended* that women would participate in the process. The discussion of these mandates will also serve to explicate ways in which women were included and excluded in the transitional process. After these mandates are discussed, the Sierra Leonean transitional justice process will be examined through the case analysis criteria described in the methodology section.

Original Mandate of Mechanisms in Regard to Women

The Lomé Peace Accord that was signed in 1999 initiated the creation of the Special Court for Sierra Leone (SCSL) and the Sierra Leone Truth and Reconciliation Commission (SLTRC), which were to operate parallel to one another. They began their work in 2002, after the civil war officially ended. According to Bell & O'Rourke (2007), this agreement "provided for the participation of women in transitional justice mechanisms" (p. 33). This is illustrated in Article 28.2 of the Lomé Accord, which said that

given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone ("Peace agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone", n.d.)

It should be noted that this is the only provision in the agreement that calls for a particular focus on women. Although this provision was taken into consideration to some extent, there are several aspects in which its execution fell short, which will be discussed in more detail later.

Special Court for Sierra Leone. In terms of the mandate of the Special Court for Sierra Leone (SCSL), there were several elements designed to explicitly address sexual violence and gender-related crimes (Nowrojee, 2005). The following illustrations of this are found in the SCSL Statute:

--Article 2 "Crimes of Humanity" states that:

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population: (g) Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence (UNSC, August 2000).

--Article 3 "Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II" states that:

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include: (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (UNSC, 2000 August).

--Article 15.4 states that:

given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice (UNSC, 2000 August).

--Article 16.4 similarly states that

the Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance

for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children (UNSC, 2000 August)

The first two of these provisions are concerned with the prosecution of crimes relating to gender and sexual violence, while the second two concern the appointment of staff that will be sensitive to these needs. This exemplifies a step toward promoting gender issues in the judicial system. The degree to which this mandate was achieved will be discussed below.

Truth and Reconciliation Commission. By comparison, the Truth and Reconciliation Commission, which was created by the Truth and Reconciliation Act of 2000 was widely regarded as being explicitly gender-focused in many respects. The following sections address issues of sexual violence:

--Section 6 (2) (b) which states that the Commission will be designed:

to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict (SLTRC, 2004, Vol. I, Ch. 1, p. 25).

--Section 7 (4)

The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may not wish to recount their stories in public and the Commission may also implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations (USIP, 2000 February)

--Part 4 Section 10 (2)

A committee under this section shall include persons who are not members of the Commission but who are appointed, taking into account gender representation and regional participation in the work of the Commission (USIP, 2000 February).

--Subsection (1) of section 3, v.:

Both the Selection Panel and the Selection Coordinator should take into account gender representation and regional considerations in making their selections. While the four members might not necessarily be from each of the four regions of the country, the Commission as a whole should represent the interests and perspectives of the country at large. (USIP, 2000 February)

Similar to the SCSL Statute, the TRC Act provided two articles that address the implementation of gender sensitive procedures and two articles that recognize a need for gender representation on the Commission itself. Dougherty (2004) also notes that the SLTRC “explicitly recognized the need to hear women’s voices” (p. 41), while Rubio-Marín (2006) remarks that the Commission was mandated to hold “thematic hearings dedicated to women” (p. 76). To this end, many authors write about the SLTRC being mandated to address issues of gender violence (Bell & O’Rourke, 2007; Nesiha, 2007; Schabas, 2006; Nowrojee, 2005; Schmid, 2009; King, 2006; Dougherty, 2004; Franke, 2006).

Reparations process. There were several aspects of the mandate of the reparations process that explicitly referred to the inclusion of women and women’s issues in the determination of benefits. As noted above, sexual violence was committed almost exclusively against women. To this end, the SLTRC Report defines victims of sexual violence as “those women and girls who were subjected to such acts as rape, sexual slavery, mutilation of genital parts or breasts, and forced marriage” (SLTRC, 2004, Vol. II, Ch. 4, p. 250 para. 95). This statement intends to highlight the inclusion of women through mandating a focus on victims of sexual violence. It is noted that “the Commission wanted to include those female victims that have not received enough

attention from existing programmes, such as victims of sexual violence and bush wives” (SLTRC, 2004, Vol. II, Ch. 4, p. 243-4). Rubio-Marín & de Greiff (2007) also write that

the reparations program recommended by the TRC in Sierra Leone reserves physical and mental healthcare, pensions and the provision of education, skills training and microcredit/ microprojects for special categories of vulnerable victims, such as amputees, other war wounded, children, victims of sexual violence and war widows (p. 330).

This factor illustrates a consideration for women in the way in which the program was to be executed.

In terms of the “urgent” reparations program that was to be implemented, the Final SLTRC Report (2004) documents that:

The Commission determined the categories of beneficiaries who should benefit from the reparations programme by considering those victims who were particularly vulnerable to suffering human rights violations. Most Sierra Leoneans agree that amputees, war wounded, women who suffered sexual abuse, children and war widows would constitute special categories of victims who are in dire need of urgent care (Vol. II, Ch. 4, p. 242).

To further explicate the areas that would be covered in the Year One Project of urgently needed services, Suma and Correa (2009) write that there were several provisions dealing with women and sexual violence. These include:

(1) educational support to children that were amputees, war wounded, *victims of sexual violence*, and abducted, conscripted, born out of rape or orphaned (excluding those benefited by the DDR program); (2) *free fistula surgery and HIV/AIDS and sexually transmitted infections (STI) testing and treatment for those women raped according to their need*; (3) free health care for all direct victims (excluding children of victims and war widows); and (4) counseling and psychosocial support for all categories of victims (p.7, italics added).

Based on this, it can be seen that two of the four areas to be addressed related to providing reparations for women’s issues and/or crimes of sexual violence.

In all, it can be seen that across these three mechanisms there were several explicit provisions within each mandate that called for the inclusion of women in the

process both as participants/testimony givers and as decision-makers. Through the exploration of the case analysis criteria in the following section, the degree to which each mechanism achieved its gender-specific mandate will be evaluated in an effort to describe the factors that influence or determine women's level of participation as well as how women are included and/or excluded in the transitional process.

WOMEN'S PARTICIPATION IN SIERRA LEONE

The lesser value and status placed on women was not exclusive to the civil war period in Sierra Leone. The Human Rights Watch report "We'll Kill You if You Cry" (2002) notes that "physical violence against women and children is common in Sierra Leone. Indeed, under customary law, a husband has the right to 'reasonably chastise his wife by physical force' (p. 19). To this same end, there is a culture of impunity surrounding rape and sexual violence committed against women, as "only the rape of a virgin is considered a crime, rape of a married woman or non-virgin is largely ignored. Many people believe that the women must have consented" (Nowrojee, 2005, p. 88).

In general women are not afforded a great deal of protection or recognition under general or customary law in Sierra Leone, and are not taken seriously by law enforcement if they are to report issues of domestic or sexual violence ("We'll kill you if you cry", 2002). These attitudes exhibited towards women in Sierra Leone depict a society that does not readily welcome women as equals that deserve the same human rights as men. Because of this mentality that largely considers women to be second-class citizens to men, women have traditionally been less involved in justice-related matters. Although the process in Sierra Leone is touted by many as being quite progressive in terms of considering women and women's issues, the various underlying obstacles described

above have made taking such progressive steps in gender equality and gender mainstreaming a difficult undertaking. The following case analysis criteria will be used to develop more complete answers to the questions: 1) What factors influence or determine women’s level of participation in transitional justice mechanisms? and 2) How are women included or excluded in the processes?

WOMEN’S PARTICIPATION IN TRANSITIONAL JUSTICE MECHANISMS

Quantitative Comparison between Men and Women’s Participation

Women’s participation as testimony givers and participants in the transitional justice mechanisms will be examined in this section. According to the Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone published In October 2004, there were a total of 7,706 statements received (Sierra Leone Truth and Reconciliation Commission., 2004). Of these statement givers, about 35% (2,728) were women and about 63% (4,878) were men (Sierra Leone Truth and Reconciliation Commission, p. 4). King (2006) also notes that females comprised 33.5% of the victims of the violence and that “among the violations reported to the TRC, rape and sexual slavery were committed exclusively against females” (p. 251-2).

	# that Testified in Truth and Reconciliation Commission	% that Testified in Truth and Reconciliation Commission	% Speculated to be Victims of Violence
Female	2,728	~35%	~33.5%
Male	4,878	~65%	~66.5%
Total	7,606	100%	100%

It could be surmised that because women only represented roughly 35% of those who gave statements and 33.5% of those who were victims as reported in the hearings,

that women were victimized at a lower rate than men. However, based on the discussion above, it should be considered that there were many reasons that affected women's participation in these processes, and thus their actual rate of victimization could easily have been higher, although the real numbers may never be known.

In comparison, participation of women in a decision-making capacity was quite limited in the transitional process in Sierra Leone. Binder, Lukas and Schweiger (2008) also note that only male judges were selected to serve on the SCSL and there was only one woman appointed to the Appeals Chamber. This clearly denotes that women have been excluded from the decision-making process in the judicial realm. Although they may have been largely excluded from the court process, King (2006) remarks that three out of the seven commissioners selected for the SLTRC were women. This illustrates a way in which women were included at a rate that was nearly 50% (actually ~43%) in a decision-making capacity.

Nature and Extent of Women's Participation

As quantitative examples of women's participation in the Sierra Leone transitional justice process have been outlined, the following section will discuss women's participation in the transitional process in terms of the case analysis criteria. As in the above case of Timor Leste, participation will be described in two main categories, effective participation and ineffective participation. To illustrate effective participation, qualitative examples taken from the literature on this subject will be described in terms of illustrations of women's inclusion in the transitional process as well as positive examples of women having voice, or the ability to express their views and opinions and be heard by others. In contrast, ineffective participation will be described through examples of

women's exclusion from the transitional process and negative examples of voice in which women did not have the ability to express their views or opinions or be heard by others.

Illustrations of effective participation. To determine the effectiveness of the participation of women, it is important to make the distinction between the kind of participation in which one is merely "present" and the kind of participation in which one is actually involved in the process through factors like voice and being able to influence a process. King (2006) writes that "women's involvement in the TRC had a significant impact on the issue of reparations" (p. 258). This is significant because it shows that at least in this respect, women were able to affect the outcome of a process, which positively affects one's feelings of justice (Tyler, 1987). Another illustration of effective participation is that according to Nowrojee (2005), "rape victims who testified before the TRC appeared to have few complaints about their experience testifying" (p. 95). Such a statement appears to indicate that sharing their stories in a public forum was a more or less positive experience for these women, and thus illustrates effective participation.

Qualitative illustrations of inclusion in the transitional process. It is important to take into consideration the ways in which women were included in the transitional process in Sierra Leone, as it is widely regarded as a progressive process in terms of creating a gender-focused approach that was aimed to be more inclusive of women and women's issues. Like the transitional process in Timor Leste, the inclusion of women in the transitional process in Sierra Leone can be considered on two levels: Those who were included as participants or testimony givers and those who were included in a decision-making capacity

In terms of being included in the testimonial aspects of the transitional process in Sierra Leone, the SLTRC developed women-themed hearings that dealt with issues such as gender violence, as in Timor Leste. It has been noted that these hearings had higher attendance than any other hearings throughout the SLTRC process, although the gender composition of the high attendance rate was not specified, implying that the attendance rate was large in terms of the general public (Nowrojee, 2005; King, 2006). Through the creation of gender-specific hearings designed to address issues surrounding sexual violence, it appears women were included as a priority, at least to some degree, in the goals of the process. King (2006) and Schabas (2006) further write that during the SLTRC hearings women who had experienced sexual violence were only questioned by female commissioners. This type of provision indicates a step toward the inclusion of women as it was believed that women would be more likely to discuss their trauma publicly in the presence of other females, as opposed to male commissioners.

One of the most progressive steps in making a strong effort to include women in the SLTRC was the creation of three different options that witnesses could choose among to present their testimony. Nowrojee (2005) writes that these options were to testify 1) *in camera*, which would then be shown in a public forum, 2) to have a screen placed in front of their person to hide their identity, or 3) to speak openly in front of the SLTRC audience. Having these options available was intended to give witnesses the option for anonymity, thus increasing their control over how their testimony will be given, which is a forward-thinking step in promoting the inclusion of women.

In terms of being included in a decision-making capacity, there was a push for women's participation on the national level in designing the SLTRC, which "ensured the

existence of a special unit to investigate war crimes from a gender perspective”...The Women’s Task Force that was created “is credited with addressing the need for gender balance and sensitivity within the truth commission” (Naraghi-Anderlini, 2005, p. 9). By creating such a body to address women’s issues and needs, women’s inclusion is illustrated in the orchestration (at least to some degree) of the truth commission process. Nowrojee (2005) calls attention to the fact that the Commissioners and upper level staff of the SLTRC did commendable work in “comprehensively including sexual violence against women in their documentation of the civil war...taking steps to train themselves and their staff on this issue, and...ensuring that the hearings were conducted with support for, and sensitivity to, the needs of rape victims” (p. 96). This indicates the inclusion of sexual violence and consideration of gender issues as a priority, which illustrates a way in which women were included in a positive manner.

King (2006) and Nowrojee (2005) both discuss that the Commission made the decision to require that only female Commissioners would question rape victims. This factor illustrates the inclusion of women in that there were steps made to make them more comfortable through questioning from other women, with the intention of enhancing their testimonies and participation. In addition, international local women’s advocates were consulted “early and often” and “formulated special rules of procedure that were designed to address the particular needs of female witnesses” in the SLTRC process (Franke, 2006, p. 827). This is again illustrative of how the truth commission process took into account the needs of women, thus signifying their inclusion in the process. All of these ways illustrate an intention to include women in the process,

although it should be noted that this evidence leans much more heavily on inclusion in the SLTRC process than in the SCSL or in reparations processes.

Some of the ways in which the truth-telling, prosecutorial and reparations processes achieved their gender-specific mandates also illustrate inclusion of women in the transitional process. There are several ways in which the Special Court for Sierra Leone (SCSL) achieved its mandate of focusing on crimes of sexual violence, thus illustrating the inclusion of women. Schmid (2009) writes that “the prosecutor of the Special Court for Sierra Leone has made sexual violence one of the court’s priorities. [In 2009], members of the Revolutionary United Front (RUF) have been convicted for the crime of forced marriage” (p. 8). Thus one element of the mandate, prosecuting enforced marriage, was achieved in some capacity. Additionally, it is mentioned that the adoption of the International Criminal Court standards for crimes against humanity has helped the SCSL to indict perpetrators for crimes such as “rape, sexual slavery, enforced prostitution, forced pregnancy, sexual persecution, enslavement, forced sterilisation and sexual violence” (Schmid, 2009, p. 8). The inclusion of this provision is a strong step towards achieving the mandate that relates to addressing issues of sexual violence through prosecuting crimes against humanity.

The trials of the Armed Forces Revolutionary Council (AFRC) have also been somewhat illustrative of the SCSL’s aim to fulfill its mandate in that “elements of crime for sexual slavery and a definition of forced marriage have been usefully elucidated in the context of a prosecution” (Oosterveld, 2009, p. 76). Oosterveld (2009) further writes that as of 2009, three out of the four judgments against the AFRC that have been issued relate to gender-based crimes.

There is also evidence pointing to the inclusion of women in the staff of the Special Court for Sierra Leone (SCSL), which indicates the fulfilling of the gender-specific mandate in decision-making capacities, at least to some degree. Not only were there “two full-time gender crimes investigators” on the Court staff, but also the Court has “conducted gender sensitivity training for all members of its investigations team” (Staggs Kelsall & Stepakoff, 2007, p. 359). In addition, according to Nowrojee (2005) 20% of the SCSL’s sexual assault investigative teams were women (compared with 1-2% in the International Criminal Tribunal for Rwanda). Although this percentage does not necessarily represent equality, it is certainly a vast improvement over earlier processes and illustrates that the original mandate relating to women being present in decision-making capacities was considered.

In 2005, there was a National Victim Commemoration Conference held, during which it was recognized that the SCSL made positive steps toward “promoting women’s issues, including rape and forced marriage; restoring dignity of children; raising awareness of international law and human rights, international humanitarian law in Sierra Leone, and awareness on witness protection” (McAuliffe, 2008, p. 389). Although this statement does not empirically illustrate that the mandate was achieved, it can be seen that there was an impression that the process made positive steps towards mainstreaming gender.

By comparison, the Sierra Leone Truth and Reconciliation Commission can be examined for achieving its mandate and including women in several ways. There are two key points that should be highlighted. First, King (2006) writes that

the TRC, in keeping with its mandate, compiled the crimes perpetrated during the conflict, making specific findings with respect to women and the impact violence had on them. It recorded many violations against women, including killings, rape, sexual violence, sexual slavery, slave labor, abduction, assaults, amputations, forced pregnancy, detention, torture, enforced sterilization, trafficking, mutilations, enforced cannibalism [and] displacement (p. 251).

Through this, King illustrates that the SLTRC Report was effective in fulfilling the part of the mandate relating to uncovering information about women's experiences in the conflict, including the prevalence of sexual violence, fitting within Section 6.2 (b) of the SLTRC Mandate.

Next, Schabas (2004) also notes that "the Commission made it clear that it considered violations and abuses directed against women to be a major part of its mandate, and an entire chapter in the final report was devoted to this" (p. 10). It should be noted that in the SLTRC Final Report, there is a section specifically dedicated to "Findings in Respect of Women," which provides a thorough examination of the ways in which women experienced violence and the effects that the violence had on them (SLTRC, 2004, Vol. II, Ch. 2, p. 100-106). Women are also referred to in terms of the Commission's recommendations, in which it is noted that

the Commission has prioritised the recommendations to address the underlying causes of the conflict. In addition, certain of its recommendations are directed at remedying particular wrongs committed against specific groups, such as women and children. The civil war created several vulnerable groups such as the war-wounded, amputees, the sexually abused and war widows. Specific recommendations are made in relation to these vulnerable groups. The Commission's recommendations on reparations...put forward measures to redress violations suffered by these groups (SLTRC, 2004, Vol. II, Ch. 3, p. 121).

These examples illustrate ways in which the SLTRC fulfilled, at least to some degree, its mandate. In terms fulfilling the mandate of the TRC Act that declared that gender representation should be considered when selecting commissioners, King (2006)

notes that three of the seven commissioners of the TRC were women. This factor signifies that nearly 50% of the commissioners were women, which shows clear consideration for promoting gender parity in the selection process.

The final mechanism to be discussed in terms of achieving its mandate and including women is the reparations process in Sierra Leone. Currently, there is a lack of significant evidence to determine whether the Sierra Leonean reparations process has fulfilled its mandate because the program was just launched on January 30, 2009, and is still in the implementation phase according to the Sierra Leone Court Monitoring Programme (which recently changed its name to the Centre for Accountability and Rule of Law) and the International Center for Transitional Justice (ICTJ).

It should be noted, however that there have been some positive steps including the progress of the “Year One Project,” which called for a “Le 300,000 (\$100) grant to amputees, war wounded victims that have 50% or more incapacity, and victims of sexual violence” (Suma & Correa, 2009). Thus, it appears as if the beneficiaries of the program fit within the original mandate of the process, which addressed the specific needs of women and survivors of sexual violence. Also in 2009, the ICTJ notes that “235 women victims of sexual violence received fistula surgery or other medical treatment,” which appears to be a positive step in the fulfillment of the mandate towards women (ICTJ, 2009 December 9). Although the total number of women who applied to receive this benefit is not expressed in relation to the 235 women who actually received the surgery and/or medical care, the number does illustrate that at least some women were able to receive medical attention to address the suffering caused by their trauma.

Positive examples of voice. The topic of voice, as a defining characteristic of participation in relation to women will be discussed in the following section. According to the literature, there are several positive examples to illustrate that some women did have the ability to express their views and opinions and be heard by others, two defining elements of voice according to d'Estrée (2006). Dougherty (2004) writes that “victims of sexual violence, all children under 18, and ex-combatants who feared speaking openly could testify in closed hearings, although many women chose to tell their stories publicly” (p. 46). This indicates that women were both able to express themselves publicly if they chose and were able to be heard by others. To this same end, Nowrojee (2005) noted that “the hearings on gender violence had garnered the largest attendance of all the TRC sessions” (p. 95). This high level of attendance would indicate that women did indeed have the ability to be heard by others.

Illustrations of ineffective participation. By contrast, there are multiple illustrations of ineffective participation that should be considered after having discussed the illustrations of effective participation in the transitional process in Sierra Leone. One of the most striking issues mentioned by Staggs Kelsall and Stepakoff (2007) was that in the court system, specifically speaking about the Civil Defence Force (CDF) trials, “women’s testimonies were not used to determine the culpability of the accused” (p. 372). Because women were not allowed to testify about issues relating to sexual violence in these trials, the testimony that they were able to provide was not sufficient to determine the guilt of the perpetrators, and was thus ineffective in securing justice. Additionally, Carranza (2008) notes that there was an overt attempt to “intimidate prosecution witnesses appearing in the Special Court for Sierra Leone,” a strategy

believed to have been pursued by Charles Taylor (p. 314). This again signifies that even women who tried to participate might have been subjected to threats and intimidation, rendering their involvement much less effective than it could have been without the negative influence of threats.

The issue of retraumatization also affects the efficacy of women's participation in transitional mechanisms. According to the Human Rights Watch Report "We'll Kill You if you Cry" (2002)

women and girls have little faith in the criminal justice system or the customary law system, which were never equipped to deal with crimes of such widespread and systematic nature. If a survivor of sexual violence does decide to prosecute, she is likely to be retraumatized by the whole experience given the very poor track record of the Sierra Leonean criminal justice system (p. 66).

Because of the general mentality in Sierra Leone that crimes relating to gender and sexual violence are not "serious", women have little confidence that their experience of these type of crimes will be treated seriously in a court of law, thus testifying about these issues takes a certain degree of courage because of the possibility of being denied justice from the legal system. If a woman participates in a transitional mechanism in order to tell her story and is only met with the negative outcome of revictimization and retraumatization, the fact that she participated means very little in terms of affecting the process in which she was involved. Although, this obviously plays a significant role in the Sierra Leonean process, it has been written about in great length in other transitional justice literature including Brounéus (2008).

The issue of ineffective participation is further illustrated in the fact that "some commissioners held "traditional views on women's role in society and had no previous exposure to or experience in dealing with rape victims," which was occasionally

“evidenced during the hearings in the form of questions framed insensitively by some of the male commissioners” (Nowrojee, 2005, p. 93). It can be surmised here that if a woman is asked a sensitive question in an insensitive manner she will generally be less likely to be as candid as she might have been with more attention paid to the vulnerability of her situation. Although a woman may be present during a hearing, if she is not encouraged and permitted to elucidate her story as thoroughly as possible, her participation could be seen as ineffective.

In a similar illustration of insensitivity in SLTRC testimony, Shaw (2007) writes about a widow who testified about the pain and suffering she had endured both resulting from her loss and also her own personal abuses. Through her testimony she asked to receive financial and health-related assistance above anything else. To this request, one Commissioner gave only recognition to her willingness to serve the “interests of the country” without providing validation of her pain or need for assistance. Shaw (2007) writes that

by not only failing to respond to her plea but also claiming to ‘know’ her feelings and intentions and renaming these as a contribution to an abstract national recovery, he [the Commissioner] was effectively shutting down her experience and concerns. Thus for this widow, testifying did not consist of replacing silence with voice, but of being silenced by the TRC’s model of redemptive memory (p. 202)

Through testifying and being met with this type of reaction from the male Commissioner, the widow only suffered more and in a different way than she had before, which would indicate that her participation was ineffectual and somewhat meaningless, particularly to her personally. These examples illustrate the prevalence of ineffective participation in the Sierra Leonean transitional process, as not only were women denied the opportunity to testify candidly about their experiences of sexual abuse in these examples, but they were

also subjected to intimidation and insensitive questioning by commissioners in the SLTRC. All of these aspects greatly hindered the effective participation of women, thus furthering women from participating in same capacity as men.

Qualitative illustrations of exclusion from the transitional process. There are a variety of ways in which women have been excluded from the transitional justice process in Sierra Leone. The existence of cultural norms that tend to regard women as being lesser than men and the social stigma surrounding the experience of sexual violence are both factors that contribute to this exclusion. Horn, Charters & Vahidy (2009) write that it is extremely rare for women to choose to “testify openly” about experiencing sexual violence, and when that does happen generally “only a witness’s closest relatives are aware that the individual is going to testify” (p. 137). This issue illustrates women’s exclusion from participation in the process because of their reluctance to testify in a public forum. Muddell (2007) explains this issue further, writing that “this culture [in Sierra Leone] discourages women from discussing the sexual abuses committed against them out of a fear of being ostracized and stigmatized” (p. 86). If women do not feel comfortable speaking openly about the violations they endured, it seems as if they would be unlikely to testify, and thus they are in a sense *de facto* excluded from the process because of the cultural norms that lead to their being ostracized.

Further developing the issue of women’s exclusion from the process because of the social stigma that results from experiencing sexual violence in Sierra Leone, Dougherty (2004) writes that “attitudes towards women are deeply ingrained, and there is a culture of silence surrounding sexual abuse” and “there is tremendous stigma attached to being raped; the victim is viewed as spoiled or damaged”; thus she says that “the

degree to which the hearings raised public awareness of gender-based violence is open to question” (p. 50). Indeed, if one of the purposes of the SLTRC was to unearth the truth about sexual violence perpetrated during the civil war, the *de facto* exclusion of women because of these issues did little to further that goal.

Duggan & Abusharaf (2006) also write that some women felt they would be “shunned by their family, community or society as a whole” if they were to openly discuss their trauma because of the social stigma placed on sexual violence in Sierra Leone (p. 633). King (2006) echoes this sentiment by saying that many women “did not participate because of the stigma attached to their experiences during the conflict” (p. 261). This issue indicates the exclusion of many women from reporting their abuses and thus those women “sometimes blame themselves for I t[the experience of sexual violence] and suffer in silence” (King, 2006, p. 249-50). Again, although through these comments there was not necessarily a decree that explicitly excluded women from the process, their feelings of shame and blaming themselves, alongside social stigma resulting from sexual abuse, discouraged women from actively participating in the processes in the same capacity as men.

In these ways, the social stigma that often results from the discussion of sexual violence in a public forum serves to exclude women from participating in a sort of *de facto* manner. This type of exclusion can be seen as *de facto* because women are not necessarily explicitly prohibited from participating by the state or a specific body, but rather the exclusion comes from the knowledge that if they share their stories aloud they will be ostracized and shunned by friends and family may experience a worse feeling than the actual violence they endured (Staggs Kelsall & Stepakoff, 2007).

The tendency to feel shame goes along with the social stigma that is often felt after women publicly share their experience of sexual violence. In the Human Rights Watch Report “We’ll kill you if you cry” (2002), it is noted that “women and girls are often ashamed of what happened to them and are therefore reluctant to present themselves in court” (p. 66). Similarly, it is noted that “many survivors feel intense personal shame that the rebels have defiled them, and therefore often do not report the crime or seek medical attention” (“We’ll kill you if you cry”, 2002, p. 52). The feeling of shame can limit and discourage a woman from telling her story publicly, as after testifying she will have to look at familiar people’s faces after testifying and feel as if they are judging her for the trauma that was experienced. It is because of these reasons that women may be unlikely to report or follow through with charges against perpetrators in the court system, thus being excluded from the judicial process in a *de facto* way.

There are also examples of women being *overtly* excluded from the court system in Sierra Leone. Because women’s financial security is often tied to their husband’s wealth, women often have little access to the same justice as men (“We’ll kill you if you cry”, 2002). To this same effect, it is noted by both the Human Rights Watch Report “We’ll kill you if you cry” (2002) and Staggs Kelsall and Stepakoff (2007) that the judicial system tends to be dominated by older males, who generally do not regard rape as being a serious crime and that it is the victim’s fault. Perhaps in light of this mindset, there were a lack of indictments for sexual violence in the SCSL, despite the widespread and systematic nature of such violence during the 11 year long Civil War. Thus, the lack of indictments for these types of crimes illustrates the overt exclusion of women and gender-specific crimes from the court system.

Staggs Kelsall and Stepakoff (2007) repeatedly discuss that the Trial Chamber for the trial of the Civil Defence Forces (CDF) explicitly chose to exclude indictments of sexual violence in the proceedings, as the judges claimed that “any evidence of sexual violence would ‘undermine the integrity of the proceedings’” (p. 363). It is interesting that they believed the inclusion of a gender conscious agenda would undermine the proceedings being that the counts of sexual violence were the most compelling in terms of charging the CDF forces of wrongdoings. By excluding these crimes, women were effectually excluded as well, as the seven women who did ultimately testify were not allowed to tell their complete stories. Additionally, after discovering that indictments of sexual violence would not be included, three of the original ten women chose not to testify at all. There was some effort to include these counts, as “the prosecution submitted a series of motions to include sexual violence in the list of charges, but was denied” (January, 2009, p. 217). Thus, there was some intention to include these issues in the agenda, but they were ultimately excluded, delivering a blow to the possibility of women being included to the same degree as men.

There are also a number of pieces of evidence to indicate that women were not represented in the processes without clearly explicating the reasons why they were excluded. In the designing of the transitional process, Bartoli & Bundschuh (2009) write that “although the participation of civil-society representatives was a step forward, women and youth, who suffered particularly during the conflict, were not given a specific opportunity to influence the shape of the peace agreement” (p. 166). As illustrated here, although it would have seemed logical to have included women in the creation of the transitional process, they were left out of this aspect, having little ability to shape the

mechanisms in a way that would allow both men *and* women to benefit. The lack of representation of women could be seen on the first day of the SLTRC hearings as described by Shaw (2007), who writes that

the hall [where the hearing was held] was filled with chairs and wooden benches for an audience that, except during the testimonies of notorious ex-combatants, consisted overwhelmingly of adult men. Apart from members of formal women's organizations, women giving testimony and female TRC staff, most women I asked outside the hearings regarded the Commission as a political space of the state and the international world that was removed from them (p. 199).

Although it is mentioned that women were indeed present in this description, it is worthwhile to consider that there were women who did not come to the hearings because they felt it was outside essentially of their realm or sphere of influence. The fact that the audience was overwhelmingly men certainly speaks negatively to women's inclusion in the process.

Though it was noted above that women's involvement did have a positive influence on the design on the reparations process in Sierra Leone, King (2006) writes that the participation of women in discussions about reparations *after* the release of the SLTRC Report were limited. This brings up the question of why women might have been included in the planning stages, but not in the execution stages. In the same way that authors wrote about the process in Timor Leste as being considerate of women and sexual violence, although there was not significant evidence of that being the case in evaluation, perhaps in this case the inclusion of women in initial planning stages but not in the execution stages speaks to the placation of the international community despite traditional views on women's involvement still being held. In this way, the processes had the ability to draw attention to women's involvement in the less critical matters, while excluding them from the more crucial undertakings and decisions, thus obfuscating their

lack of involvement. This issue will be addressed more completely in the following discussion section.

Another issue signifying women's exclusion from the process was that in several cases, gender specific issues of sexual violence (which disproportionately affect women) were not included. Oosterveld (2009) writes at some length about the judgments passed down in the Civil Defence Force (CDF) and Armed Forces Revolutionary Council (AFRC)⁸ trials, which she says ultimately "minimize[d] recognition of the gender-based harms that occurred in the Sierra Leone conflict," resulting in "an incomplete or incoherent narrative of crimes, which makes it more difficult to change attitudes in the post-conflict phase" (p. 76). By downplaying or completely excluding the indictments for charges surrounding gender-based crimes, the SCSL was doing a disservice to not only women but the greater society by not serving justice in a complete and equitable manner.

The ways in which the transitional justice mechanisms failed to achieve their gender-specific mandates also serve to illustrate ways in which women were excluded from the process. There were several ways in which the Special Court for Sierra Leone (SCSL) failed to fulfill its mandate and include women. First, as illustrated in the example of the Civil Defence Force (CDF) trials, counts of sexual violence were not included in the indictment, which runs contrary to the provision in the SCSL Statute to prosecute crimes against humanity, which included rape and sexual violence. Similarly, the Court failed to convict members of the Armed Forces Revolutionary Council (AFRC) for forcing women into sexual slavery (Oosterveld, 2009, p. 76), which was one of the elements explicitly stated in the SCSL Mandate. In *The UN International Criminal*

⁸ She does note that the AFRC trials are *less* responsible for deteriorating recognition of gender-based crimes.

Tribunals: The former Yugoslavia, Rwanda and Sierra Leone, Schabas (2006) notes that “there do not appear to have been any prosecutions at the tribunals for ‘enforced prostitution’” (p. 214). Though enforced prostitution was also noted in the mandate as being an area of focus for prosecutions as it is considered a crime against humanity, it is noted here that convictions were not secured to this end. Although it can be seen above that the SCSL did achieve some elements of its mandate, this section illustrates some of the ways in which the SCSL failed to achieve the goals of prosecuting crimes of sexual violence.

There are several ways in which the Sierra Leone Truth and Reconciliation Commission did not achieve its mandate and include women, although the evidence available to this end is not significant. Dougherty (2004) notes that the SLTRC failed to adequately address needs of stakeholders, which included women and victims of sexual violence. As women as stakeholders were not as readily considered in the process as men, the mandates explicated in the TRC Act were nullified, at least to some degree. In his book chapter “The Sierra Leone Truth and Reconciliation Commission,” Schabas (2006) also points to the fact that the SLTRC ultimately concluded that marginalization of individuals (including women) was among the root causes of the conflict, however the post-conflict period has shown little progress in addressing that issue.

Lastly, the ways in which the reparations process did not achieve its mandate and excluded women will be examined. Because the reparations process in Sierra Leone is still underway, the degree to which the process met its mandate is not yet clear, though there is some amount of evidence pointing to ways in which it has already begun to fall short. Suma and Correa (2009) remark that there was an inadequate four month time

frame for individuals to register for reparations, thus, a new time period began in June 2009, during which it was hoped that more victims, “especially women”, would register (Suma & Correa, 2009). This issue contradicts the aspects of the reparations process mandate that indicate the need for consideration of women as victims of sexual violence as beneficiaries. With such a short window of time allowed in the initial phases to request benefits, it is clear that many women would be at risk of being excluded from the process. This is particularly evident as female (or male) survivors of sexual violence often need more time to become ready to publicly share their suffering (Wandita, 2006), an issue not accounted for through the provision of a four month period to register through the reparations process.

As documented in an International Center for Transitional Justice (ICTJ) Report by Suma and Correa (2009), in terms of those who reported their issues to receive benefits, there were 11,161 (~38% of applicants) war widows and 3,181 (~11% of applicants) victims of sexual violence that applied for reparations out of a total of 29,733 individuals. These numbers, particularly for reports of sexual violence appear to be quite low taking into account the widespread and systematic nature of these types of violations during the 11 year conflict. Based on the evidence available, the reparations process, though still in progress does seem to be falling short of achieving its mandate in some capacities, but cannot be adequately assessed until it completes its work.

Negative examples of voice. There are numerous examples that illustrate that women were not provided opportunities to have voice in the transitional process in Sierra Leone. Several different cases indicate that women were not allowed to freely express their views and experiences throughout the transitional justice process. This issue was

illustrated quite clearly especially in the trial of the Civil Defence Forces. In an interview, a female victim-witness said that

I feel so bad because they raped me very brutally, and that was my main reason for going to court to testify. As soon as I got there, my lawyer told me that I should not talk about that anymore. And up until now, that still causes me pain. It makes me feel bad (Staggs Kelsall &Stepakoff, 2007, p. 357).

Staggs Kelsall and Stepakoff (2007) write that in the Civil Defence Force (CDF) trial, “there is a distinct difference in what the Special Court (SCSL) allowed women to say, and what the women themselves wanted to say” (p. 355). This illustrates the inability for women to fully express themselves, in spite of their desire to do so. They further discuss another witness who said that “I felt sad and disappointed when I was not allowed to talk about my rape. Apart from that, I didn’t have any problem” (Staggs Kelsall & Stepakoff, 2007, p. 372). This indicates that the issue of not being able to talk about the sexual violence that was committed against her was harmful, and appears to be significant as she notes that she was not troubled by any issue besides being silenced in this case.

Initially, 10 female witnesses were supposed to testify against the CDF perpetrators; three of those witnesses decided not to testify because of the judges’ decisions not to include counts of sexual violence in the indictment. The other seven, though they did testify were cut short when they began to mention the specific ways in which they were abused, such as mention of sexual violence or forced marriage (Staggs Kelsall & Stepakoff, 2007). It should be noted that the women interviewed in the Staggs Kelsall and Stepakoff (2007) article had an intense desire to share their stories publicly and were disheartened and saddened by not being able to do that in an effective way.

Thus, the fact that women were not allowed to express their views and opinions openly nor were they able to be heard by others demonstrates that they were denied voice.

Many authors also point to the shame and other social implications of women testifying in a public setting which makes them reluctant to agree to testify and be heard by others (“We’ll kill you if you cry”, 2002; Nowrojee, 2005; Muddell, 2007; Staggs Kellsall & Stepakoff, 2007). Although the issue of shame is a more nuanced denial of voice, it is still quite applicable and illustrates the way in which women are denied voice in a *de facto* way, where social constructs make speaking about issues such as sexual violence taboo and thus unacceptable to discuss. Staggs Kellsall and Stepakoff (2007) also write that in Sierra Leone “crimes of sexual violence against women were not given the recognition they deserve” (p. 373). This lack of recognition appears to be indicative of the lack of acknowledgement from the other, which is another component of voice described by d’Estrée (2006). Based on these illustrations, it appears that women generally did not have notable access to voice.

Overall, it can be seen that there were a significant number of indications of ineffective participation of women in the Sierra Leone transitional justice process based on qualitative examples of exclusion from the process and the lack of voice in the process. As the issue of participation has been discussed in terms of the case study analysis criteria, the following section will evaluate how successful the truth-telling, prosecutorial and reparations processes were at achieving their gender-specific mandates. This evaluation will more clearly demonstrate the context in which women’s participation (or lack of) occurred in Sierra Leone and will thus help to explain: 1) What factors influence or determine women’s level of participation in transitional justice

mechanisms and 2) How women are included and/or excluded in the transitional processes.

SIERRA LEONE CASE SUMMARY

Although the process was far from perfect, the transitional justice process in Sierra Leone illustrated progress towards encouraging women's participation in the truth-telling, prosecutorial and reparations processes. There has been a long history involving the subjugation of women and keeping them in a lower-class status in Sierra Leone, so the number of provisions allowed for in the mandates of the processes speaks highly toward the mainstreaming of gender. However, there are still numerous issues that negatively affect women's participation, hindering the processes from reaching their full potential.

The factors that influence or determine women's level of participation are consistent with those in Timor Leste, although the ways in which women are included and/or excluded illustrate some differences from Timor Leste. In Sierra Leone women's participation was limited by the social stigma that surrounds the experience of sexual violence as well as the cultural norms that determine their place as secondary citizens in society. "We'll kill you if you cry" (2002), Nowrojee (2005), Muddell (2007), and Staggs Kellsall and Stepakoff (2007) all point to the social stigma that is attached to sexual violence as a factor that lessens women's desire to speak publicly about their experiences during periods of conflict. In respect to this issue, women tend to experience a significant portion of the sexual violence perpetrated during wartime, but appear to be talking about it at a lower rate than men, thus inhibiting the full truth to be known about the events that transpired during the conflict. Because knowledge of the truth is tied to both retributive

and restorative (trials and truth commissions, respectively) types of justice, it is questionable how either of these types of mechanisms could completely achieve their goals if the most basic element that defines them—truth—is largely absent. As the process in Sierra Leone suffered from this issue, it seems clear that its original goals could not have been completely achieved.

In terms of the ways that women were included and/or excluded in the process, the process in Sierra Leone shows some similarities to the process in Timor Leste, but was overall quite different. Consideration for sexual violence was apparent in the mandates of the SCSL, the SLTRC and the reparations process, and was achieved in each of the mechanisms at least to some degree, though they all did illustrate some shortcomings. Interestingly, both the SCSL and the SLTRC mandates contained provisions for consideration to be given to issues of sexual violence and to the inclusion of women in decision-making capacities. The SLTRC encouraged the inclusion of women in that rape victims were only questioned by female commissioners and that witnesses were allowed to choose from three different ways in which they could testify in order to ensure anonymity if so desired.

There is also evidence to indicate that women were excluded from the process in various capacities. One of the most apparent examples of women's participation being limited was in the Civil Defence Force (CDF) trials where sexual violence was discounted in the indictments, thus denying women the opportunity to fully disclose the trauma they suffered. This trial also limited participation as three of the original 10 women set to testify chose not to after learning they would not be able to tell the truth about their experiences of sexual violence. Women were also excluded in a more *de facto*

manner as their experiences of shame and social stigma relating to their experience of sexual violence inhibited their willingness to participate as readily as men because of the fear of reprisals or being ostracized that might result after testifying publicly.

In all, Sierra Leone illustrates examples of factors that affected women's participation in the transitional justice mechanisms as well as ways in which women were included and excluded in the transitional justice process. The following discussion section will elaborate on the ways in which the processes in Sierra Leone and Timor Leste are different as well as the similarities between them. Following the discussion section will be concluding remarks, including recommendations for future transitional justice processes and limitations of this study.

CHAPTER SEVEN: DISCUSSION SECTION

Introduction

The following discussion of the Timor Leste and Sierra Leone transitional justice case studies will further explicate both the similarities and differences between the two cases. A comparison will be made between the processes in general, but will focus on the issues relating to gender as that aspect is the defining element of this study. Through using these cases to address: 1) What factors influence or determine women's level of participation in transitional justice processes?; and 2) How are women included and/or excluded in the transitional processes?, the researcher intends to develop conclusions about women's participation that can be applied in the greater context of transitional justice and thus serve to inform future transitional processes. By including women in transitional processes, it is hoped that the processes will be more effective in achieving their overall goals of justice, reconciliation, victim healing and government accountability.

GENERAL LOGISTICAL COMPARISON OF TRANSITIONAL JUSTICE PROCESSES OF SIERRA LEONE AND TIMOR LESTE

Similarities

The similarities between the transitional processes in Timor Leste and Sierra Leone are important elements to mention. First, the prosecutorial processes in each country are both illustrative of what are termed to be "hybrid" processes, meaning that they are comprised of both national and international judges, a different approach than

many prior processes have taken. The prosecutorial mechanisms were both located within the country in an effort to make them more accessible to the greater society and they both have experienced a notable degree of difficulty in trying high-level perpetrators. It is also interesting to note that both processes were limited by temporal restrictions, thus placing a number of crimes outside of their jurisdiction. In Timor Leste, the trial processes only addressed crimes that were perpetrated after the 1999 referendum, avoiding the trials of crimes that were committed during the 25 year Indonesian occupation. Sierra Leone, experienced a similar problem in that, although the civil war officially began in 1991, the jurisdiction of the SCSL only addressed crimes perpetrated after the signing of the Abidjan Peace Accord in 1996, thus abdicating five years worth of serious crimes against humanity. Now that ways in which these processes are similar have been discussed, the following section will outline their differences.

Differences

There are several important differences between the trial processes in Sierra Leone and Timor Leste. The most striking difference is the organization of each of the processes. In Timor Leste, the process was quite complex, with the short-lived Ad Hoc Tribunal in Jakarta, the Serious Crimes Process (SCP) that was made up of the Dili District Court and the Office of the Prosecutor General, and the Commission for Reception, Truth and Reconciliation (CAVR). This process exhibited an element of fluidity as testimony in the CAVR was used to filter perpetrators into prosecutorial mechanisms and also into the traditionally-based Community Reconciliation Procedures (CRPs).

The process in Sierra Leone was quite different in that the truth commission and prosecutorial mechanism were completely distinct, although they undertook their work simultaneously and began at the same time. The process in Sierra Leone lacked a tradition-based element that was present in Timor Leste, although victim-offender mediation was undertaken in some instances, which would parallel the CRPs in that victims and offenders had the opportunity to speak to one another in a facilitated forum.

The types of perpetrators that these processes intended to try were also different. The mandate of the Special Court for Sierra Leone (SCSL) made distinct mention that it would only try those who bore the *greatest* responsibility for crimes committed, while the process in Timor Leste did not specify anything to this end, thus implying that it would aim to try *all* those who were responsible. This was further illustrated through the presence of the different tiers of the trial process that extended from the community level to also trying those perpetrators that held high-ranking positions during the conflict. The Commission for Reception, Truth and Reconciliation (CAVR) was used as a way to determine the culpability and ultimately the proper retributive punishment of perpetrators, while the SLTRC was used specifically to uncover the truth about what occurred during the civil war and was “viewed as the principal means of providing a degree of accountability for human rights abuses committed during the conflict” (SLTRC, 2004, Vol. I, Ch. 1, pg. 23).

The levels of participation in the truth commission processes were also quite distinct between Timor Leste and Sierra Leone. In Timor Leste it is documented that there were roughly 60,000 individuals who gave testimony, while nearly 8,000 gave testimony in Sierra Leone. Dougherty (2004) notes that there were some issues in

publicizing the work of the TRC in Sierra Leone, which could explain the disparity in participation, though it is unclear whether this is indeed the explaining factor. More research should be done on this aspect to determine what aspects of the process in Timor Leste influenced the significantly larger degree of participation.

Perhaps related to the overall amount of participation in each case, is the issue of accessibility of the final truth commission reports for each of these countries. The final CAVR Report is available (and first on the list) through a simple Google search typing in the words “CAVR Report”, while the only version of the final report for the SLTRC that the researcher could find is only available to download through the blog of Professor William A. Schabas (a well-known scholar in the transitional justice field). Although the reason for the difference in accessibility to each of these reports is unknown, it could indeed be linked to the difference of participation levels in each of the truth commission processes. After comparing and contrasting the more basic and logistical aspects of the two processes, the case analysis criteria will be addressed by discussing how the processes are similar under each heading and then how they are different.

GENDER-SPECIFIC MANDATES IN TRANSITIONAL JUSTICE

MECHANISMS

Comparing and Contrasting Original Gender-Specific Mandates of Mechanisms

Prosecutorial processes. In regard to the trial processes, both the mandate of the Special Court of Sierra Leone (SCSL) and the Serious Crimes Process in Timor Leste list rape, sexual slavery, enforced prostitution, forced pregnancy or any other form of sexual violence as crimes against humanity to be prosecuted. In Timor Leste, there is an addition of “enforced sterilization,” likely because of the prevalence of this practice during the

violence. The mandate of the SCP also makes note of the need to include proper consideration for the witness protection of those who experienced violence, especially based on gender. The SCSL Statute differs from the SCP Statute in that it also lists “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault” (UNSC, 2000 August). The Statute also mentions that staff choices should take into account gender expertise and gender issues as well as provide counseling services for vulnerable witnesses, provisions that are not mentioned in the Timor Leste process. In sum, a comparison of the trial processes in both countries reveals that the attention paid to including issues relating to sexual and reproductive violence as crimes against humanity to be tried were quite similar. The SCSL Statute did go a step further by including provisions to include women in a decision-making capacity in the process, and thus could be considered more gender-focused in respect to the original mandates of the prosecutorial processes.

Truth-telling processes. Although it is widely noted that the truth commission processes in both countries had a gender focus, there are some differences in the mandates. For example, the CAVR sought to investigate violations of international human rights standards, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), while in the SLTRC “the TRC Act does not define what constitute violations and abuses with regard to international human rights law and international humanitarian law” (SLTRC, 2004, Vol. I, Ch. 1, p. 34). In this way, the CAVR used accepted international norms to determine the parameters of its mandate, while the SLTRC does not take the same standards into consideration. This implies that

the CAVR made a greater effort to comply with international norms surrounding sexual and gender-based violence.

In terms of gender representation on the commission's staff, the CAVR mandated that 30% of all Commissioners should be women, while in Sierra Leone it was only mentioned that gender representation "should be considered" when selecting staff members. The fact that there was a certain percentage enumerated in the CAVR but not in the SLTRC in regard to gender representation of the commissioners indicates a greater consideration for including women in the process; a consideration that could also be evaluated after the completion of the process. By not including a numerical standard for participation in the SLTRC, any inclusion of women as commissioners could be seen as having "considered" gender representation. Based on the above examples, it appears that although each process mentioned the issue of gender, the CAVR seemed to have considered gender in a more concrete and measurable way than the SLTRC.

Reparations processes. There is one main difference between the mandates concerning reparations in the CAVR and the SLTRC in regard to benefits for women. In the CAVR, it is explicitly noted that 50% of the funds will be earmarked for women's issues, while the process in Sierra Leone makes no such mention, thus making it less obvious whether or not it quantifiably achieved its mandate.

WOMEN'S PARTICIPATION IN TRANSITIONAL JUSTICE MECHANISMS

Quantitative Comparison between Men and Women's Participation.

As the testimony given during the trial processes is not readily quantifiable in the literature, the truth commission processes will be focused on in this section. The actual number of individuals who reported to the CAVR in Timor Leste was 59,974, a

drastically larger number than the 7,706 who reported to the TRC in Sierra Leone. Out of those who testified in the CAVR, approximately 16% were women, while approximately 37% of those who testified in the SLTRC were women, illustrating a step towards gender parity in the Sierra Leonean process.

	# that Testified in SLTRC	% that Testified in SLTRC	# that Testified in CAVR	# that Testified in CAVR
Female	2,728	~37%	9,605	~16%
Male	4,878	~63%	49,382	~82%
Unknown			987	~2%
Total	7,606	100%	59,974	100%

It is noted in the sub-district hearings in Timor Leste that women represented 30% of those who testified, which shows that that women’s participation was higher on the more local level, but it still has progress to make in terms of achieving gender equality. It would be interesting to investigate whether transitional justice mechanisms undertaken on the local level encourage higher levels of women’s participation. In comparing these two truth commission processes, the SLTRC illustrated a higher level of women’s participation as testimony givers on the national level; however a comparison cannot be made between the processes at the local level because Sierra Leone did not undertake truth-telling efforts in the same manner as Timor Leste below the national level.

In terms of decision-making roles in the truth commission processes, Sierra Leone again illustrates an attempt to close the gap on gender disparity as three out of the seven commissioners selected for the SLTRC were women. In Timor Leste, two out of the seven national level commissioners chosen were women and 10 out of the 29 regional

commissioners that were chosen were women. In Timor Leste, there seems to be a theme of women representing close to a 1/3 of those individuals who are in decision-making roles. As mentioned earlier, this may be because of the decision made during the meeting of the First Women's Congress in 2000 to set a standard that 30% of the members of parliament should be women. Though this decision was not made in specific relation to the transitional justice process, it could be assumed that it may have had some effect on the gender representation in the process. Although it is not quite 50%, the inclusion of the 30% provision certainly illustrates a positive step toward promoting gender equal gender participation. Between these two cases, when compared quantitatively, the SLTRC did include women as commissioners at a higher rate, but the fact that the CAVR appeared to more consistently include women in decision-making roles at the roughly 30% rate illustrates a commitment to promoting gender equality and should thus be viewed positively. As a comparison has now been made between quantitative examples of women's participation as testimony givers and decision-makers in both Sierra Leone and Timor Leste, now the way in which women participated will be examined qualitatively.

Nature and Extent of Women's Participation

As in the above individual case studies, the following section will present illustrations of effective participation characterized by qualitative examples of inclusion and positive demonstrations of women having voice in the process. This will be followed by illustrations of ineffective participation characterized by qualitative illustrations of women's exclusion from the transitional process and demonstrations of women not having voice in the process. The differences between effective and ineffective participation as compared in each case intends to develop conclusions that address: 1)

What factors influence or determine women's level of participation in the transitional justice processes?; and 2) How are women included and/or excluded from the process?

Illustrations of effective participation. Although there are no distinct similarities between the two processes regarding examples of effective participation, there are several examples of differences between them. One illustration of effective participation in Timor Leste was that some judges were seen to show empathy towards women and children during the trial processes (JSMP, 2006 February). Through the demonstration of compassion by authorities in the judiciary, it could be assumed that women would be more likely to participate more effectively and completely because the empathy could help to assuage fear and consternation related to testifying about sexual abuse.

Effective participation could also be illustrated in the positive reaction of victims who testified in the CAVR process. The CAVR Report makes mention of a woman who felt "lighter" after being able to testify in the truth commission hearings, which signifies that she felt her participation was of meaningful and worthwhile, and thus effective. If one believes that their situation (particularly psychological or emotional) has been improved after testifying, their participation could be considered effective.

According to Nowrojee (2005), there were few complaints from rape victims who testified in the SLTRC proceedings, implying a similar level of effective participation as women at least did not appear unsatisfied with their participation in terms of testifying about rape. However, the fact that there were few complaints should be contrasted with the fact that there was not necessarily praise for the process, indicating that the lack of negative feedback does not automatically mean that the process was wholly positive.

King (2006) also notes that women influenced the development of the reparations process in Sierra Leone, which would likewise indicate a degree of effective participation of women. Though the ultimate outcome of women's participation in the reparations process in Sierra Leone remains to be seen, this issue could be considered as a positive example of effective participation.

Qualitative illustrations of inclusion in the transitional process. One way in which it can be seen that women were included in the truth commission processes in both countries was the creation of gender-specific hearings. Both countries created hearings that were focused on hearing issues that affected women, including sexual violence. It has been noted that in relation to the other truth commission hearings, the women-themed hearings had remarkably higher attendance rates, though it is not specified whether the hearings were better attended specifically by women or if men also attended at high levels. To this end, the literature implies that the large attendance rate was comprised of both men and women, indicating that the inclusion of women in the transitional justice agenda was viewed positively by the general population, including men, at least relative to the other hearings. This remains to be further verified.

Specific to the SLTRC, there are two main elements that indicate the inclusion of women. First, rape victims were only questioned by female commissioners, illustrating the inclusion of consideration for women's needs. Second, witnesses were offered three different ways in which they could deliver their testimony to the Commission, each of which was designed to provide a range of degrees of anonymity from 1) testifying in public, 2) testifying *in camera* or 3) testifying with one's identity completely concealed. This illustrates that because of the sensitive nature of women's testimony regarding

sexual violence, the Commission sought to make them more comfortable and thus increased their inclusion in the process.

Interestingly, there are more illustrations of women's inclusion in the truth commission process in Sierra Leone as testimony givers, while there is more evidence of the inclusion of women in the prosecutorial processes in Timor Leste as decision-makers. The reason for this is unclear; however one possible explanation could be the active involvement of women's groups in promoting the inclusion of women in the parliament and the judiciary. The role of community-based women's groups in advancing women's participation would be worth exploring in a future study, but will not be further addressed in this paper.

The degree to which transitional justice mechanisms achieved their gender-specific mandates also illustrates ways in which women were included in the process. Although there was no real evidence that the Serious Crimes Process in Timor Leste achieved its mandate regarding women because of the lack of gender- and sexual violence-based convictions, the Special Court for Sierra Leone succeeded in prosecuting members of the Revolutionary United Front for enforced marriages. Additionally, the inclusion of the Rome Statute of the International Criminal Court standards for crimes against humanity⁹ has helped the SCSL to prosecute crimes such as "rape, sexual slavery, enforced prostitution, forced pregnancy, sexual persecution, enslavement, forced sterilisation and sexual violence" (Schmid, 2009, p. 8).

⁹ Article 7(g) of the Rome Statute of the International Criminal Court says that "Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" will be considered as crimes against humanity (Office of the United Nations High Commissioner for Human Rights, 2002).

In the Sierra Leone and Timor Leste truth commission processes, it can be seen that women were included in the focus and findings of the commissions and that in both cases, there was a chapter dedicated solely to women's experiences in the conflicts. There were also specific hearings in both countries that focused on women's issues and sexual violence. The main difference between the truth telling processes is that in Timor Leste, the CAVR created six community-based healing workshops that would supplement the commission's work and in which women played a fairly large role.

In regard to the reparations processes in both countries, there has been a difference in the length of time it has taken to begin implementation of the programs. It is interesting to note the difference between the mandates concerning reparations in the CAVR and the SLTRC in regard to benefits for women. In the CAVR, it is explicitly noted that 50% of the funds would be earmarked for women's issues, while the process in Sierra Leone makes no such mention, thus making it less obvious whether or not it quantifiably achieved its mandate. Although the process in Timor Leste had allocated half of the funds for women, in reality, only 27% of the beneficiaries of the cash grant program were women. The number of women receiving benefits in Sierra Leone also seemed rather low in that although, as of the ICTJ 2009 Report by Suma and Correa, 11,161 war widows applied to receive benefits, only 4,745 (~43%) were actually paid. The numbers for the victims of sexual violence show more promise in that out of the 3,181 women that applied, 2,918 (~92%) were actually paid, however the number of women that applied for benefits seems strikingly low in relation to the number of women who suffered during the conflict.

In Timor Leste, the hearings in the CAVR were used to determine beneficiaries, while they also provided for a two year window after the hearings were completed during which those who might not have been ready to tell their stories relating to issues such as sexual violence could continue to come forward and apply for benefits. Because of the distinct link between the CAVR and the reparations program, the reparations program began its work closely following the release of the CAVR Report in 2006. In Sierra Leone, although recommendations were made to develop a reparations program in the final report released in 2004, the reparations program did not enter into the implementation phase until January 2009, five years after the release of the report. Unlike the flexible timeframe for victims to come forward, the reparations program in Sierra Leone originally only allowed a four month period for individuals to claim benefits, but then extended the time period in an effort to include more victims, particularly women.

Both of the reparations processes began with an urgent reparations program, which had elements within them that were designed specifically to deal with sexual abuse, although the process in Timor Leste appeared to be a bit more comprehensive. For instance, there was a provision for single mothers to be able to access benefits without having to disclose that, for example, their child had been born as a result of rape, thus escaping the social stigma associated with this issue. Also, there was a push in Timor Leste to provide women's services in the same locations in which women would pick up the stipends for their children in an effort to encourage women to also think about their own needs.

Positive examples of voice. The only positive illustration of voice that is consistent between the two countries is the development of women-themed hearings

(mentioned above) in the truth commission processes that were intended to address issues of sexual violence and provide a forum for women. These hearings captured women's ability to share their opinions and be heard by others, capturing two of the defining elements of voice (the ability to express one's views and opinions and the ability to be heard by others) as discussed by d'Estrée (2006). It was noted that the women-themed hearings in both countries were among the most well attended hearings of the truth commission proceedings, illustrating women's ability to be heard by others through their participation in the process. Now that illustrations of effective participation, as characterized by examples of inclusion in the transitional process and women's ability to have voice in the process, illustrations of ineffective participation will be discussed in light of examples of women's exclusion from the transitional process and lack of ability to have voice in the process.

Illustrations of ineffective participation. There are several examples of ineffective participation that can be compared between these two cases. Negative treatment of women in the court system is a common thread between these two cases, which has shown to be a factor that inhibited effective participation. In Timor Leste, Rimmer (2007) writes that "women were poorly represented, and poorly treated in the court, while in Sierra Leone, the article "We'll kill you if you cry" (2002) expresses that "women and girls have little faith in the criminal justice system of the customary law system" and are likely to be "retraumatized by the whole experience" if they do decide to prosecute for crimes of sexual violence. In both of these cases, there is a lack of equitable treatment by the court system, thus jeopardizing justice and minimizing the chance for effective participation.

The prevalence of views toward women that are ingrained in both patriarchal systems is also a factor that makes the participation of women ineffective. In Sierra Leone, Nowrojee (2005) writes that it was evidenced during the SLTRC hearing that some commissioners “held ‘traditional views on women’s role in society’” and sometimes asked questions in an insensitive way. In a similar way, Grenfell (2006) remarks that “local legal systems [in Timor Leste] are seen to ‘often blame women for the cases of violence presented’. Generally women victims feel that their need and input into the process are ignored”. In these ways, the transitional processes were influenced by traditional cultural views on women’s place in society, which has a negative effect on the way in which women participated.

There are two stories that should be noted in relation to both of these countries, one which illustrates how a woman felt her participation was effective and the other illustrating how a woman felt her participation was a waste of time and ineffective. In Timor Leste, there is a story from a survivor who says that she went to great lengths to seek out the ability to testify and that “the Commission provided me the opportunity to talk about my pain and suffering in public...I wanted to go myself in order to share the burden that I had been carrying all these years. After I did that, I felt lighter inside” (CAVR, 2006, Part 10, p. 21). In the other story, a widow in Sierra Leone testified in the SLTRC about the violence she and her family experienced and made a plea for financial assistance to deal with the suffering that resulted from this violence, to which the commissioner did nothing to react to her plea for assistance and “claim[ed] to ‘know’ her feelings and intentions and renam[ed] these as a contribution to an abstract national

recovery” in this way he was stifling and disregarding her attempt to express her needs and ask for necessary help (Shaw, 2007).

These two stories provide very different windows into the efficacy of the participation of these women. In the first example, the woman seems pleased and satisfied with her ability to share her story and be a part of the national narrative, while in the second example the need that that the woman was trying to fulfill by testifying was denied. Through these examples, perhaps it can be assumed that the effectiveness of participation depends on what one wants to get out of the process. For the first woman it seemed that all she wanted was to speak publicly about her trauma, while the second woman wanted to receive benefits or acknowledgment. It would be interesting to explore whether the first woman’s reaction would have been different if she were treated by the same way as the commissioner treated the second woman. Even though the preexisting notions about what one is going to gain from participating in a process likely affects their perception on whether or not their participation was effective, it seems as if there should be a much more standardized process for ensuring effective participation. In this case, one would wonder how the second woman’s feelings about testifying would have differed if she were treated in the same manner as the first woman.

Qualitative illustrations of exclusion from the transitional process. In both Timor Leste and Sierra Leone, there are several similarities across the cases regarding the ways in which women were excluded. The first is the widely discussed social stigma that results from a woman publicly discussing or acknowledging her experience of sexual violence. In Timor Leste, women who have been raped are referred to as “fallen” or “broken”, while in Sierra Leone, they are regarded as “spoiled” or “damaged”. In both of

these cases, the experience of rape dictates that a woman will be considered of lesser value and status because of experiencing sexual violence, though the act was out of her control. This relates to the general belief in both countries that a woman is somehow at fault for the rape by provoking it or consenting to it. Although this seems somewhat unusual by Western standards, it is a view that is widely accepted in both of these contexts. Thus, the consideration of women to be of lesser value that have experienced sexual violence is validated through the belief that it was her fault. The issues of social stigma and blame are factors that exclude women because they are not given equal respect and thus lack equal representation or inclusion in the transitional justice processes.

In addition to these issues, it is common for women to feel shame in respect to the sexual violence that they have experienced. In both Sierra Leone and Timor Leste, there was a high incidence of forced marriage during the respective conflicts, many of which resulted in children. It is noted that women who had these “relationships” with former military members have a great deal of shame associated with these “marriages” and are concerned that they could be prosecuted for somehow aiding the violence if they are to report these crimes. This issue is also indicates women’s exclusion in the transitional justice process.

Another factor that contributes to the exclusion of women is the norm in both countries that violence against women is largely not considered a serious issue. It is widely noted in both contexts that in many cases, violence against women is regarded as a family matter and is thus underreported in the court systems. Because of this issue, women’s experience of violence, particularly sexual violence are not placed as a priority

in the justice process and are thus discounted and not taken seriously. In both countries, it is noted that violence against women is a “family matter” and should thus be dealt with within the family and should not involve disclosing abuse in a public forum.

In Sierra Leone, it is discussed that women’s financial security is tied to that of their husbands or fathers in most cases and therefore often do not even have the option to bring a case to court because they cannot afford it. Further indicating women’s difficulty in obtaining equitable treatment by justice systems, in Timor Leste it is widely considered that men’s testimony is valued over women’s, making it somewhat futile for a woman to, for example, bring a charge against a man who raped her. Although the first issue predetermines women’s exclusion from court and the second issue excludes them after the process has begun, the second issue certainly has the ability to preclude participation as well. To this same end, it is noted in both cases that the judiciaries are dominated by males. As women are not as present as decision-makers in the justice system, a female perspective on women’s needs and issues that women experience exclusively is lacking, making it difficult to dispense justice in a fair manner. Based on this it can be seen that the exclusion of women in transitional justice processes hinders the ability to sustain a successful transition from past to present.

The ways in which these processes failed to achieve their gender-specific mandates also serve to illustrate ways in which women were excluded from the process. There are a variety of ways in which the prosecutorial processes in Sierra Leone and Timor Leste failed to achieve their mandates in terms of gender-related goals. In Timor Leste, Bere (2005) notes that 16% of women related cases went to trial as of 2005 and at that time, evidence was only presented in 6% of the cases. This illustrates an issue with

women related cases being tried at the same level of those that were essentially gender neutral. To this same end, Hirst and Varney (2005) said that there were very few gender crimes prosecuted overall.

Prosecutorial processes in Sierra Leone also fell short of achieving their gender-related mandate in that there were no prosecutions for enforced prostitution, although it was widely practiced during the civil war (Schabas, 2006). It is not clear whether these crimes were explicitly overlooked or that evidence was merely not readily available; however the lack of prosecutions despite the occurrence of enforced prostitution is not illustrative of women's inclusion in the transitional process. Oosterveld (2009) also discusses the failure of the SCSL to indict the Civil Defence Forces (CDF) on counts of sexual violence and the Armed Forces Revolutionary Council (AFRC) for sexual slavery. This exemplifies a culture of impunity surrounding sexual violence, an illustration of how the mandate of the SCSL was not fully realized.

The amount of evidence pertaining to how the truth and reconciliation processes did not achieve their gender-specific mandates is not substantial, although it is still worth mentioning. In Timor Leste, Wandita (2006) notes that only a small number of women participated in "statement-taking process", which was illustrated in the mere 16% that were documented in the CAVR Report. It is also noted that women did not participate at all in some of the community-based workshops that were held around the country. In Sierra Leone, Dougherty (2004) writes that important stakeholders, such as women, were not adequately involved, although this is the only real discussion in the literature of the SLTRC not achieving its mandate, and thus excluding women. It appears that the SLTRC

had far fewer illustrations of women's exclusion than the CAVR, especially based on the amount of statements taken from women in the national hearings.

One way that the reparations process in Timor Leste did not achieve its mandate and thus excluded women was the fact that it had originally allocated 50% of its benefits for women, but in terms of the "cash grant program" for example, women only accounted for 27% of the beneficiaries. Wandita (2006) also notes that women only represented 23% of beneficiaries in the Urgent Reparations Program and that 23% of women received continuing support like medical and counseling services compared with 77% of men (CAVR, 2006).

Although it was later amended, the time frame that was initially set up for individuals to register for benefits in Sierra Leone was inadequate and inhibited individuals from coming forward because they only had a four-month window in which to register. This was particularly inhibiting for women since often times they may not be ready to discuss their trauma publicly until some time has passed. Additionally, Suma and Correa (2009) reported that only roughly 10% of applications for reparations were for issues related to sexual violence, indicating a gap between the large number of women who experienced sexual violence and those who applied for benefits to address their suffering.

Negative examples of voice. It is interesting to examine the way in which women were not able to express their views or experiences completely in each of these cases. In Sierra Leone, women who testified during the Civil Defence Force (CDF) trials were cut short whenever they began to speak about their trauma in terms of the sexual violence that they experienced. Although Staggs Kelsall and Stepakoff (2007) explicitly state that

the women wanted to speak about their experiences, they were censored by the judges. In another way, the women who testified in the CAVR were most nearly self-censored and not able to share their stories in an explicit way because of their discomfort talking about these issues in front of men (CAVR, 2006, Part 10, p. 50). The main difference between these two issues is that in Sierra Leone, women were denied the ability to share their voices specifically by the Court, while in Timor Leste, they most nearly denied themselves the ability to tell their stories because the presence of men hindered their candidness about their stories. Another difference that is explicitly noted in Timor Leste is that women's voices were sidelined in favor of men's testimony.

Overall, there are a great deal of examples of ineffective participation in each of these cases. Although illustrations of effective participation can be seen in the above section, it appears that women were excluded from the transitional process and denied the ability to have voice in more ways than they were able to effectively participate based on inclusion in the process and having the ability to have voice. Based on the above comparison of the cases in light of the case analysis criteria it appears that Sierra Leone better addressed issues of promoting gender equality in the truth commission process than Timor Leste in terms of including women as testimony givers. On the other hand, Timor Leste seemed to better address the promotion of gender equality in the prosecutorial process in regard to including women in decision-making roles. Despite the positive efforts in both of these areas, each process faltered in promoting effective participation of women in various ways. Some of these ways are the failure of the processes to fully achieve their gender-specific mandates, the existence of male-dominated judiciaries guided by the cultural norm of regarding women as secondary to men and the social

stigma that surrounds women's experience of sexual violence. Now that the cases of Timor Leste and Sierra Leone have been compared in terms of the case analysis criteria, the following section will draw conclusions from the above comparisons, using them as illustrations to be considered in context of the creation and implementation of other transitional justice processes.

CHAPTER EIGHT: CONCLUSIONS

Based on the above case studies illustrating the participation of women in the transitional justice processes in Timor Leste and Sierra Leone, several conclusions can be drawn. First, it can be seen that transitional justice mechanisms have varying degrees of specificity (particularly regarding women) in their mandates and vary even more in the levels of success the mechanisms have in achieving those mandates. Second, these two processes illustrate a multitude of ways in which women both effectively and ineffectively participate in transitional justice processes, characterized through illustrations of inclusion in or exclusion from the processes and ability or inability to have voice in the processes. Because of the case study analysis methodology utilized in this study, the researcher's intent was to produce results that could provide a groundwork for understanding women's participation in other research contexts that are undertaking transitional justice processes. In the following section, conclusions will be drawn in regard to the research questions: 1) What factors influence or determine women's level of participation in transitional justice mechanisms?; and 2) How are women included and/or excluded in the transitional justice processes? After addressing these questions, this study will describe its own limitations and will illuminate additional findings as well as potential future research directions.

By comparing the two case study contexts in Sierra Leone and Timor Leste it can be seen that there are numerous factors that determine the degree to which women

participate in transitional justice mechanisms (i.e. truth commissions, tribunals, and reparations processes). Based on the above findings, women's participation is affected by 1) the original gender-specific mandate of the transitional justice mechanism and 2) the way in which women are viewed in the transitional society.

First, the mandate or statute of the transitional justice mechanism appears to play a substantial role in the participation of women. Historically, women have tended to be less involved transitional justice processes, which could be because those issues that particularly affect women have failed to be specifically mentioned in the mandates of transitional mechanisms. In Timor Leste, it was recommended that 30% of the regional commissioners for the CAVR should be women, and ultimately two out of the seven commissioners selected were women, illustrating a percentage quite close to 30%. In Sierra Leone, there were two provisions (Part 4 Section 10 (2) and Subsection (1) of Section 3 v) in the mandate the SLTRC that called for the inclusion of women in decision-making capacities, which was realized in fact that three of the seven commissioners of the SLTRC were women. These issues could signify that if there is no mandate for in the inclusion of women, it is likely to be forgotten in the implementation of the process.

Interestingly, although there was not a specific part of the Timor Leste Serious Crimes Process (SCP) mandate that called for the inclusion of women as decision-makers, women were included at a roughly 30% rate in various levels of the process as decision-makers. By contrast, although there was a provision in the SCSL mandate (Article 15.4) that called for "consideration" in the "appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and

juvenile justice,” which seemed to insinuate that women would be included as such experts in gender-related crimes. The lack of a provision designed specifically to include women appears to have precluded women’s overall involvement as decision-makers in the SCSL being that the only documentation of women’s involvement in this capacity was the appointment of one woman to the Appeals Chamber (Binder, Lukas & Schweiger, 2008).

Although neither process illustrated completely equitable participation between men and women, there were examples in each case that demonstrated that there was at least some degree of women’s participation. Based on this, it can be surmised that the inclusion of issues that affect women (such as sexual and gender violence) in the mandates of the mechanisms positively affected women’s participation. In a vast majority of cases, women are disproportionately affected by sexual violence during conflict societies, but have not necessarily had attention paid to this fact during transitional processes. Although in Sierra Leone and Timor Leste, women may not have participated at the exact same level as men, the fact that the mandates in each of three mechanisms (tribunals, truth commissions, and reparations) explicitly mentioned issues regarding women and/or sexual violence appears to have contributed to the participation of women.

A second factor that appears to influence women’s level of participation in these processes is the way in which a society views women. Based on this study, it can be concluded that many women are discouraged from participating because of the way that they are traditionally viewed by the justice systems and the way that their experience of sexual violence is addressed in societies. As illustrated through the above cases, women are not only less likely to participate as testimony givers because of their treatment in

justice systems that are dominated by males who tend to espouse patriarchal beliefs about women's role in society. Alldén (2007) writes that generally, laws and traditions in Timor Leste favor men over men, indicating that women have less of an incentive to participate in justice processes. Grenfell (2006) and Swaine (2003) also indicate that the justice process in Timor Leste regards women as “uneducated” and therefore “unreliable” and thus have limited participation compared to men. To this same end, in the Human Rights Watch Report “We’ll kill you if you cry” (2002) it is noted that women are generally not afforded a level of protection or recognition under general or customary law equal to that of men. As illustrated through these issues, the justice systems in transitioning nations appear not to readily support the inclusion of women based on the view of women as being lesser than men, thus limiting women's participation.

It is also noted in both Timor Leste and Sierra Leone that sexual violence tends to be regarded as a “family matter” and something that either should not be talked about at all, or should be dealt with only at home. Nowrojee (2005) remarks that in Sierra Leone, rape is still largely not considered a crime, while Alldén (2007) and JSMP (2006) note that violence against women is generally seen to fall “outside the state's responsibility”, demonstrating the notion that there is little reason to testify about sexual violence in the court system because little will ultimately be done to address the suffering. This issue has a large affect on women's level of participation because of the negative view that many transitional nations have on women. Now that the two main factors, inclusion of gender-specific mandates and societal views on women that determine women's level of participation have been discussed, the ways in which women are included and/or excluded in the processes will be examined.

Women can be included in transitional justice processes as both decision-makers and testimony givers and via transitional justice mandates through the inclusion of sexual violence as a crime against humanity. Although the degree to which women are actually included in the processes as testimony givers or decision-makers is highly variable, these are two categories that can illustrate inclusion in the process. Similarly, the inclusion of genders-specific mandates exemplifies a way in which women are included, though the implementation of the transitional mechanism mandates sometimes fall short of the original mandate.

Based on the information discovered in these two case studies, women are excluded from transitional justice processes in two main ways: 1) excluding themselves because of their own feelings of shame and the social stigma that surrounds the experience of sexual violence and 2) being overtly excluded by judicial systems. In regard to excluding themselves from transitional processes, women have tended not to participate in transitional processes because of the shame that they feel from experiencing sexual violence. Mydans (2001) notes that shame has been commonly experienced by women in Timor Leste that were forced to marry Indonesian soldiers during the Indonesian occupation. In Sierra Leone, King (2006) writes that women often blame themselves for experiencing sexual violence, while the Human Rights Watch Report “We’ll kill you if you cry” (2002) further discusses that the shame that women feel about their experiences of sexual violence discourages them from presenting themselves in court.

Women also tend to be hesitant to speak publicly about their experiences of sexual violence for fear of being ostracized or shunned in their communities or by their

families. In Sierra Leone, Muddell (2007) notes that women generally do not want to testify publicly because of the fear they have of being ostracized or stigmatized for disclosing their experiences of sexual violence. Mydans (2001) echoes this idea, writing that women who report sexual violence are often seen as being “fallen” or “broken”, thus being subjected to a social stigma that further jeopardizes their social status compared to that of men. Based on the high incidence of sexual violence during periods of conflict and the similarly high prevalence of social stigma attached to experiencing sexual violence, women’s participation (particularly as testimony givers) in transitional justice processes is limited.

Women and women’s issues have also been seen to be overtly excluded from transitional processes, particularly in regard to court systems. The report “We’ll kill you if you cry” (2002) discusses that women can be overtly excluded from court proceedings in Sierra Leone because of their lack of financial independence that precludes their involvement, as women’s financial security is largely dependent on that of their husband or father, for example. Stagg Kelsall and Stepakoff (2007) also note the explicit exclusion of testimony regarding sexual violence during the trial of the Civil Defence Forces. To this same end, Alldén (2007) notes that there have been a staggeringly few amount of crimes of sexual violence that have been prosecuted in Timor Leste. These issues illustrate the overt exclusion of women in transitional processes, particularly from the judicial realm. Now that conclusions have been drawn from the analysis of women’s participation in the transitional justice processes in Timor Leste and Sierra Leone, the following sections will discuss the limitations of this study, additional findings and then concluding remarks.

LIMITATIONS OF THE STUDY

There were several limitations to this study that should be discussed. First, although the researcher had access to university library materials and internet sources, the amount of quantitative data regarding women's participation in the transitional justice processes in Timor Leste and Sierra Leone is quite limited, particularly in regard to prosecutorial processes. The lack of quantitative data created difficulty in making clear comparisons across the different elements of each process. In light of this issue, this study relied heavily on qualitative data taken from a variety of books, journals and online sources. As the information available about each of these cases is vastly different, there was difficulty in drawing distinct parallels between the two, thus making measurable results more difficult to obtain. Second, the reliance on archival data collection because of financial and temporal restrictions has been a limiting factor on the depth of this study. To develop a more complete evaluation of women's participation in transitional justice mechanisms, it would be advantageous to conduct a study using interviews and fieldwork in the research contexts. Through undertaking fieldwork in transitional nations, the limitations presented by a lack of measurable data and limitations on comparable material would hopefully be reduced.

ADDITIONAL FINDINGS AND FUTURE DIRECTIONS

There were several findings uncovered through this study that would likely be worthy of further investigation. First, in Timor Leste there appears to have been a great deal of difference between participation levels in processes on the national level and the community level. Women comprised 16% of testimony giving participants in the CAVR on the national level, 30% on the sub-district hearing level and only 24% in the village-

level Community Profile Workshops. It would be interesting to investigate if there is a difference between holding hearings on the local or national level in terms of participation.

Next, the lack of data available dealing with how many women participated as testimony givers in prosecutorial processes brings into question both why is there less information available to this end, and which process is ultimately better at encouraging participation of women. Although the purpose of this study was not to determine which process was more effective at garnering participation, it would be worth further exploring this issue to determine which process is the most effective at achieving the transitional justice goals of justice, reconciliation, victim healing and government accountability. Voice and participation are central to feelings of justice based on the transitional justice literature and thus it would be interesting to conduct interviews of individuals in transitional societies to determine whether trials or truth-telling processes give more opportunities for voice and thus perceptions of justice.

Another issue relates to the inclusion of women in the planning of a process and then the lack of female participation in the actual execution. This issue was discovered in terms of the reparations process in Sierra Leone, where King (2006) notes that women's involvement in the reparations process seemed to drop off after the SLTRC Report was released. This brings up the question of whether including women in the planning stages is used to placate the international community and women's rights advocates, but as soon as the attention is off, women are placed back into the second-class position that they previously occupied.

Additionally, the inclusion of tradition-based justice in a transitional justice process and effect on women's participation might be worth exploring further. In comparing the processes in Sierra Leone and Timor Leste, Sierra Leone seemed to have secured a greater amount of women's participation, getting much closer to the 50% mark, while Timor Leste fell much shorter. The process in Timor Leste employed the use of traditionally-based justice and because it is widely noted that women are traditionally subjugated and marginalized in Timorese society one might wonder how including traditional justice would promote their inclusion.

All in all, this study has intended to shed light on issues surrounding women's participation in recent transitional justice societies. It appears that the most significant factors that negatively affect women's participation are the existence of traditional views that reify the secondary status of women, limiting their validity as decision-makers and participants of a transitional justice process, lack of inclusion in transitional justice mandates, social stigma and blame that result from the experience of sexual violence and the overt exclusion of women from judicial systems. It is not the intention of this research to change a society or to impose Western ideals onto another culture, but merely to uncover factors that inhibit the achievement of transitional justice goals in order to hopefully make future processes more effective. Based on procedural justice literature, it is clear that participation positively affects justice outcomes, which in turn have a positive relationship with the other transitional justice goals of reconciliation, victim healing, and government accountability. Thus, equal and effective participation should be encouraged across both genders, promoting a successful transitional from violent past to peaceful future.

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